TEXAS REGISTER

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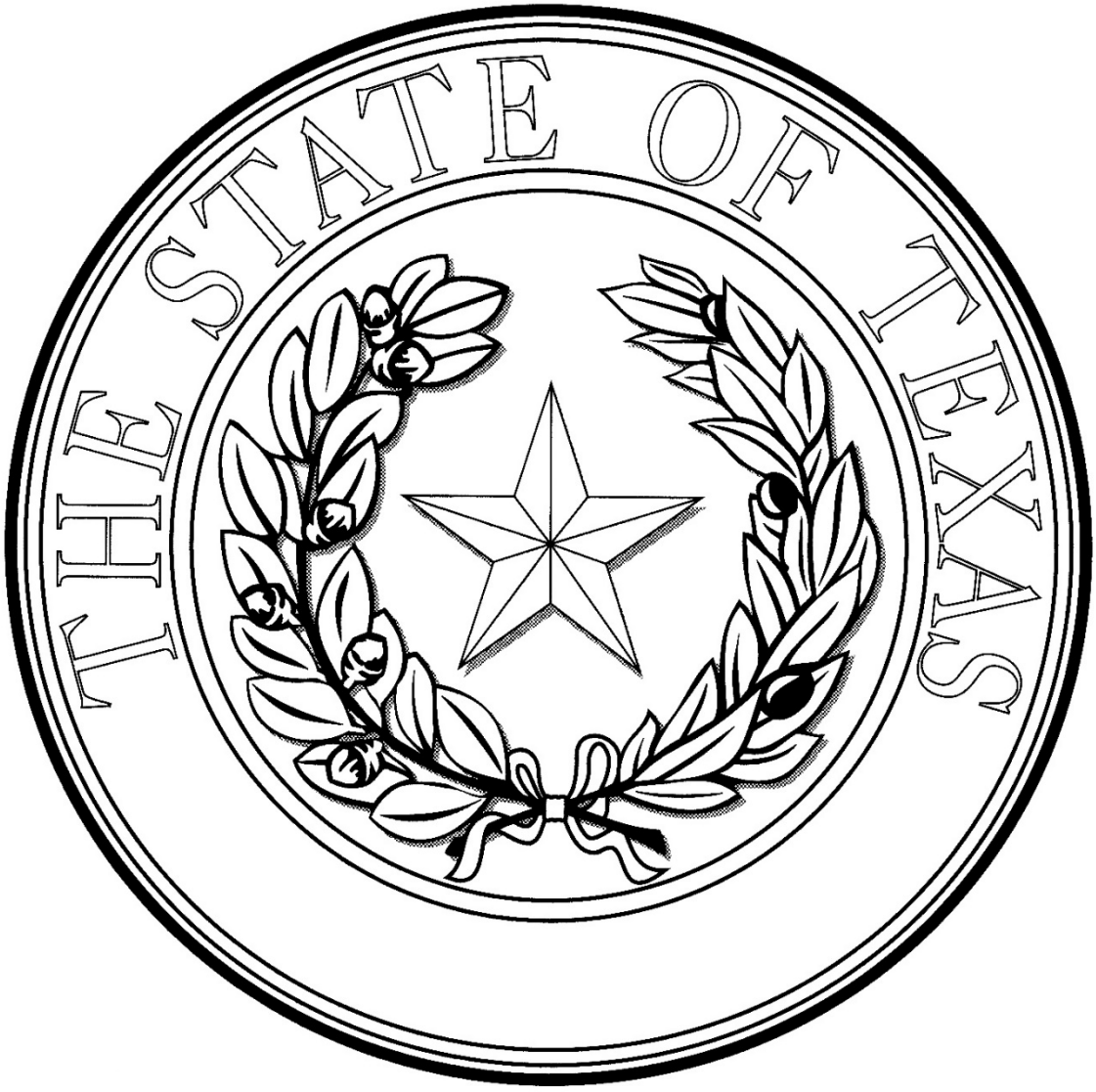

a section of the
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In This Issue

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
https://www.sos.texas.gov/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.texas.gov

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

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.

Proclamation 41-3790

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Natasha Jonell Achord, formerly Natasha Jonell Arnold, D.O.B. October 21, 1977, was sentenced in the County Criminal Court at Law Number 2 of Harris County on February 19, 2003, to 20 days in jail and a $100 fine for the offense of Driving While License Suspended, Cause No. 1145358; and

WHEREAS, she was sentenced in the County Criminal Court at Law Number 2 of Harris County on February 19, 2003, to 20 days in jail and a $100 fine for the offense of Driving While License Suspended, Cause No. 1158976; and

WHEREAS, she was sentenced in the County Criminal Court at Law Number 1 of Harris County on October 3, 2003, to 18 days in jail and a $100 fine for the offense of Prostitution, Cause No. 1171428; and

WHEREAS, she was sentenced in the 185th District Court of Harris County on October 2, 2003, to eight months in state jail for the offense of Possession of a Controlled Substance, Cocaine, less than one gram, Cause No. 960350; and

WHEREAS, she was sentenced in the 185th District Court of Harris County on October 2, 2003, to eight months in state jail for the offense of Unlawful Delivery of a Controlled Substance, Cocaine, less than one gram, Cause No. 960349; and

WHEREAS, the Texas Board of Pardons and Paroles has recommended a Full Pardon and Restoration of Full Civil Rights of Citizenship for each of these offenses;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by virtue of the authority vested in me under the Constitution and laws of this State, and acting upon the recommendation of the Texas Board of Pardons and Paroles, do hereby grant unto the said:

NATASHA JONELL ACHORD

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 1145358, IN HARRIS COUNTY, TEXAS.

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 1158976, IN HARRIS COUNTY, TEXAS.

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 1171428, IN HARRIS COUNTY, TEXAS.

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 960350, IN HARRIS COUNTY, TEXAS.

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 960349, IN HARRIS COUNTY, TEXAS.

I HEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed hereon, this the 23rd day of December, 2020.

Greg Abbott, Governor

TRD-202005735

♦ ♦ ♦

Proclamation 41-3791

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Hakan Hamoi Bulgurlu, D.O.B. September 17, 1972, was sentenced in the County Court at Law Number 6 of Travis County on December 1, 1993, to 15 days in jail and a $1,500 fine for the offense of Driving While Intoxicated, Cause No. 394-503; and

WHEREAS, he was sentenced in the County Court at Law Number 6 of Travis County on October 2, 1998, to three days in jail and a $2,000 fine for the offense of Driving While Intoxicated, Cause No. 394-979; and

WHEREAS, the Texas Board of Pardons and Parole s has recommended a Full Pardon and Resto ration of Full Civil Rights of Citizenship for each of these offenses;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by virtue of the authority vested in me under the Constitution and laws of this State, and acting upon the recommendation of the Texas Board of Pardons and Paroles, do hereby grant unto the said:

HAKAN HAMOI BULGURLU

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HIS CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 394-503, IN TRAVIS COUNTY, TEXAS.

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HIS CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 394-979, IN TRAVIS COUNTY, TEXAS.

I HEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

IN TESTIMONY WHEREOF, I have here unto signed my name and have officially caused the Seal of State to be affixed hereon, this the 23rd day of December, 2020.

Greg Abbott, Governor

TRD-202005736

♦ ♦ ♦

Proclamation 41-3792

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Silvia Carrillo-Corella, D.O.B. June 4, 1980, was sentenced in the County Court of Midland County on December 23, 1998, to six months of probation and a $450 fine for the offense of Assault, Cause No. 82670; and

WHEREAS, the Texas Board of Pardons and Paroles has recommended a Full Pardon and Restoration of Full Civil Rights of Citizenship;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by virtue of the authority vested in me under the Constitution and laws of this State, and acting upon the recommendation of the Texas Board of Pardons and Paroles, do hereby grant unto the said:

SILVIA CARRILLO-CORELLA

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 82670, IN MIDLAND COUNTY, TEXAS.

I HEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed hereon, this the 23rd day of December, 2020.

Greg Abbott, Governor

TRD-202005737

♦ ♦ ♦

Proclamation 41-3793

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Umayra Garza, D.O.B. August 13, 1986, was sentenced in the 351st District Court of Harris County on March 8, 2004, to three years of deferred adjudication probation and a $500 fine for the offense of Credit Card Abuse, Cause No. 0979861; and

WHEREAS, the Texas Board of Pardons and Paroles has recommended a Full Pardon and Restoration of Full Civil Rights of Citizenship;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by virtue of the authority vested in me under the Constitution and laws of this State, and acting upon the recommendation of the Texas Board of Pardons and Paroles, do hereby grant unto the said:

UMAYRA GARZA

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 0979861, IN HARRIS COUNTY, TEXAS.

I HEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed hereon, this the 23rd day of December, 2020.

Greg Abbott, Governor

TRD-202005738

♦ ♦ ♦

Proclamation 41-3794

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Michael Patrick Jarrell, D.O.B. May 3, 1975, was sentenced in the 248th District Court of Harris County on August 23, 1993, to 30 days in jail for the offense of Burglary of a Motor Vehicle, Cause No. 672492; and

WHEREAS, the Texas Board of Pardons and Paroles has recommended a Full Pardon and Restoration of Full Civil Rights of Citizenship;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by virtue of the authority vested in me under the Constitution and laws of this State, and acting upon the recommendation of the Texas Board of Pardons and Paroles, do hereby grant unto the said:

MICHAEL PATRICK JARRELL

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HIS CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 672492, IN HARRIS COUNTY, TEXAS.

I HEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed hereon, this the 23rd day of December, 2020.

Greg Abbott, Governor

TRD-202005739

♦ ♦ ♦

Proclamation 41-3795

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, John Joshua Montgomery, D.O.B. September 13, 1978, was sentenced in the 367th Judicial District Court of Denton County on April 1, 1999, to 12 months in state jail for the offense of Criminal Mischief, Cause No. F-95-1495-E; and

WHEREAS, he was sentenced in the County Criminal Court Number 1 of Denton County on November 2, 1999, to 100 days in jail for the offense of Driving While Intoxicated, Cause No. CR-98-08407-A; and

WHEREAS, the Texas Board of Pardons and Paroles has recommended a Full Pardon and Restoration of Full Civil Rights of Citizenship for each of these offenses;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by virtue of the authority vested in me under the Constitution and laws of this State, and acting upon the recommendation of the Texas Board of Pardons and Paroles, do hereby grant unto the said:

JOHN JOSHUA MONTGOMERY

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HIS CONVICTION OF THE OFFENSE ABOVE

SET OUT IN A COURT IN CAUSE NO. F-95-1495-E, IN DENTON COUNTY, TEXAS.

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HIS CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. CR-98-08407-A, IN DENTON COUNTY, TEXAS.

I HEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed hereon, this the 23rd day of December, 2020.

Greg Abbott, Governor

TRD-202005740

♦ ♦ ♦

Proclamation 41-3796

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Nancy Jo Villarreal, formerly Nancy Darnell, D.O.B. July 1, 1967, was sentenced in the County Criminal Court at Law Number 12 of Harris County on June 6, 1995, to four days in jail and a $200 fine for the offense of Prostitution, Cause No. 9508624; and

WHEREAS, the Texas Board of Pardons and Paroles has recommended a Full Pardon and Restoration of Full Civil Rights of Citizenship;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by virtue of the authority vested in me under the Constitution and laws of this State, and acting upon the recommendation of the Texas Board of Pardons and Paroles, do hereby grant unto the said:

NANCY JO VILLARREAL

A FULL PARDON AND RESTORATION OF FULL CIVIL RIGHTS OF CITIZENSHIP THAT MAY HAVE HERETOFORE BEEN LOST AS A RESULT OF HER CONVICTION OF THE OFFENSE ABOVE SET OUT IN A COURT IN CAUSE NO. 9508624, IN HARRIS COUNTY, TEXAS.

I HEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed hereon, this the 23rd day of December, 2020.

Greg Abbott, Governor

TRD-202005741

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Proclamation 41-3797

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2020, certifying under Section 418.014 of the Texas Government Code that the threats and incidents of violence starting on May 29, 2020, which have endangered public safety, constitute and pose an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, these events have caused or imminently threatened widespread or severe damage, injury, and property loss, among other harms, at a time when the State of Texas is responding to the novel coronavirus (COVID-19) disaster; and

WHEREAS, while all Americans are entitled to exercise their First Amendment rights, it is imperative that order is maintained, all persons are kept safe and healthy, and property is protected; and

WHEREAS, peaceful protestors, many of whom are responding to the senseless taking of life by the reprehensible actions of a few, should themselves be protected from harm; and

WHEREAS, the declaration of a state of disaster has facilitated and expedited the use and deployment of resources to enhance preparedness and response to the ongoing threats, including by ensuring that federal law enforcement officers can fully assist with the efforts; and

WHEREAS, a state of disaster continues to exist in all counties due to threats of widespread or severe damage, injury, and property loss, among other harms;

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 all counties in Texas.

Pursuant to Section 418.017, 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(a), I hereby continue the suspension of all relevant provisions within Chapter 1701 of the Texas Occupations Code, as well as Title 37, Chapters 211 - 229 of the Texas Administrative Code, to the extent necessary for the Texas Commission on Law Enforcement to allow federal law enforcement officers to perform peace officer duties in Texas. Additionally, pursuant to Section 418.016, 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 cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

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 December, 2020.

Greg Abbott, Governor

TRD-202005742

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Proclamation 41-3798

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the declination of office by the Honorable Drew Springer has caused a vacancy to exist in Texas State House of Representatives District No. 68, which consists of Childress, Collingsworth, Cooke, Cottle, Crosby, Dickens, Fisher, Floyd, Garza, Hall, Hardeman, Haskell, Jack, Kent, King, Montague, Motley, Stonewall, Throckmorton, Wheeler, Wilbarger, and Young 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 December 26, 2020, which, under Section 203.013(a), is within the 60 days immediately prior to the date of convening the 87th Regular Legislative Session; and

WHEREAS, Section 203.013(c) of the Texas Election Code provides that an expedited special election must be held on a Tuesday or Saturday occurring not earlier than the 21st day or later than the 45th day after the date 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 a special election to be held in Texas State House of Representatives District No. 68 on Saturday, January 23, 2021, for the purpose of electing a state representative to serve out the unexpired term of office declined by the Honorable Drew Springer.

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 Monday, January 4, 2021.

Early voting by personal appearance shall begin on Monday, January 11, 2021, in accordance with Sections 85.001(a) and (d) 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 House of Representatives District No. 68, 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 House of Representatives District No. 68 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 28th day of December, 2020.

Greg Abbott, Governor

TRD-202005743

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THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0390-KP

Requestor:

The Honorable J.M. Lozano

Chair, House Committee on Environmental Regulation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Sufficiency of an Open Meetings Act notice for a meeting of the Texas Windstorm Insurance Association (RQ-0390-KP)

Briefs requested by January 15, 2021

RQ-0391-KP

Requestor:

Mr. Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

333 Guadalupe, Suite 3-900

Austin, Texas 78701

Re: Authority of the Behavioral Health Executive Council to adopt a rule prohibiting certain discriminatory conduct by licensed social workers (RQ-0391-KP)

Briefs requested by January 15, 2021

RQ-0392-KP

Requestor:

The Honorable Larry Taylor

Chair, Senate Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of a municipality to establish development regulations for open enrollment charter schools that are different than regulations for other public schools (RQ-0392-KP)

Briefs requested by January 20, 2021

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

TRD-202005688
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: December 22, 2020

♦ ♦ ♦

Opinions

Opinion No. KP-0344

Mr. Mark Wolfe

Executive Director

Texas Historical Commission

Post Office Box 12276

Austin, Texas 78711-2276

Re: Whether Blinn College District may donate, convey, and transfer the Star of the Republic Museum to the Texas Historical Commission in light of section 442.062(b) of the Government Code (RQ-0358-KP)

S U M M A R Y

Senate Bill 2309 of the Eighty-sixth Legislature transferred the jurisdiction over and management of the Star of the Republic Museum and its contents, as well as all powers and duties of Blinn College District relating to the Museum, to the Texas Historical Commission. Subsection 442.062(b) of the Government Code continues the District's ownership of the real and personal property of the Museum. Neither subsection 272.001(l) of the Local Government Code nor section 130.0021 of the Education Code authorizes the District to donate, convey, and transfer Museum real and personal property to the Commission. However, subsections 11.151(c) and 11.154(a) of the Education Code authorize the District to convey the Museum real and personal property to the Commission so long as the transfer complies with article III, subsection 52(a) of the Constitution.

Opinion No. KP-0345

The Honorable Scott R. Peal

Chambers County Attorney

Post Office Box 1200

Anahuac, Texas 77514

Re: Authority to remove a county auditor and procedure to do so (RQ-0359-KP)

S U M M A R Y

A court would likely conclude that the removal of a county auditor rests within the sole discretion of the district judges. However, two avenues exist for judicial review of that decision. Pursuant to section 87.019 of the Local Government Code, applicable to county officers generally, a party to a removal action may appeal the final judgment to the court of appeals. Section 84.009 of that code, applicable to county auditors exclusively, establishes no administrative procedure to appeal the district judges' decision, but that does not foreclose the possibility of court review under certain circumstances, such as a mandamus action for abuse of discretion.

A court would likely conclude that a county auditor is entitled to written notice of possible removal and some type of forum in which the auditor may be heard by those conducting the fact-finding into the allegation underlying that removal.

Provided the district judges inquire into the facts in a formal, systematic, and appropriate manner, subsection 84.009(a)(1) does not preclude them from considering an independent investigative report procured by the county.

Judges considering the question of official misconduct under section 84.009 of the Local Government Code may rely on the definition of official misconduct in subsection 87.011(3) of that code.

Opinion No. KP-0346

The Honorable Mayes Middleton

Co-Chair, Joint Interim Committee to Study a Coastal Barrier System

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Extension of filing deadlines for elections postponed pursuant to the Governor's proclamation allowing for the postponement of the May 2020 local elections (RQ-0363-KP)

S U M M A R Y

In conjunction with his COVID-19 disaster declaration, Governor Abbott suspended provisions of the Election Code to allow political subdivisions to postpone their May 2, 2020 elections to November 3, 2020. Alongside the Governor's suspension, the Secretary of State's office simultaneously issued an Election Advisory Opinion explaining that the order to allow for postponing the May election did not reopen the candidate filing deadlines.

A court addressing your question would need to reconcile the language of the statutes tying the filing deadlines to election dates, the Secretary of State's express authority to apply and interpret election law in a uniform manner, and the lack of specific statutory instruction on the reopening of filing deadlines when an election is postponed after those deadlines pass. We cannot predict with certainty whether a court would accept the Secretary's conclusion, contained in Election Advisory Opinion 2020-12, that the candidate filing deadlines are not reopened by operation of the Governor's suspension of elections. To the extent the Legislature intends for election filing deadlines to move in such circumstances, the Legislature may choose to clarify in the forthcoming legislative session by amendment to the Election Code.

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

TRD-202005690
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: December 22, 2020

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

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 174. TELEMEDICINE

SUBCHAPTER A. TELEMEDICINE

22 TAC §174.5

The Texas Medical Board (Board) adopts, on an emergency basis, amendments to 22 TAC §174.5, effective January 2, 2021, at 12:01 a.m.

On March 13, the Governor of Texas certified COVID-19 as posing an imminent threat of disaster to the public health and safety and declared a state of disaster in all counties of Texas. On March 19, 2020, the Texas Governor issued a waiver suspending the strict enforcement of §174.5(e)(2)(A) which generally prohibits the utilization of telemedicine to prescribe scheduled drugs for the treatment of chronic pain. The waiver was issued in order to protect public health and curb the spread of COVID-19 by providing patients access to schedule drugs needed to ensure on-going treatment of chronic pain and avoid potential adverse consequences associated with the abrupt cessation of pain medication. On December 29, 2020, the Board adopted, on an emergency basis, amendments to 22 TAC §174.5. This rule is set to expire at 11:59 p.m. on March 2, 2021.

Therefore, the emergency amendment to §174.5(e) is immediately necessary to help the state's physicians, physician assistants and other health care professionals continue to mitigate the risk of exposure to COVID-19 and provide necessary medical services to related to issuance of prescriptions including controlled substances for patients. Pursuant to the Governor's declaration of disaster issued on March 13, 2020, related to COVID-19, physicians can continue to provide telephone refills for prescriptions for established patients after having an in-person or two audio and video communications telemedicine medical services within the last 90 days. This waiver and emergency rule include allowing a physician to issue a prescription for the treatment of chronic pain with scheduled medications.

The emergency amendment allows physicians to utilize telemedicine to issue refill prescriptions for scheduled medications to established chronic pain patients, if the physician has within the past 90 days seen a patient in-person, or via a telemedicine visit using two-way audio and video communication.

Pursuant to Section 2001.034 and 2001.036(a)(2) of the Texas Government Code, the amendment is adopted on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. The emergency amendment shall be in effect for only 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in response to the COVID-19 pandemic is in effect, whichever is shorter, pursuant to Section 2001.034 of the Texas Government Code.

The emergency rule amendments are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

Another statute affected by this rule is Chapter 111 of the Texas Occupations Code.

§174.5. Issuance of Prescriptions.

(a) The validity of a prescription issued as a result of a telemedicine medical service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(b) This rule does not limit the professional judgment, discretion or decision-making authority of a licensed practitioner. A licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telemedicine medical service.

(c) A valid prescription must be:

(1) issued for a legitimate medical purpose by a practitioner as part of patient-practitioner relationship as set out in §111.005, of Texas Occupations Code; and

(2) meet all other applicable laws before prescribing, dispensing, delivering or administering a dangerous drug or controlled substance.

(d) Any prescription drug orders issued as the result of a telemedicine medical service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) Treatment for Chronic Pain. For purposes of this rule, chronic pain has the same definition as used in §170.2(4) of this title (relating to Definitions).

(A) Treatment of chronic pain with scheduled drugs by telephone refill of an existing prescription is prohibited, unless: a patient is an established chronic pain patient of the physician and has been

seen by the prescribing physician or health professional defined under Chap 111.001(1) of Texas Occupations Code, in the last 90 days either:

(i) in-person; or

(ii) via telemedicine using audio and video two-way communication

(B) The emergency amendment of this rule effective January 2, 2021, at 12:01 A.M. shall be in effect for only 60 days or the duration of the time period that the Governor's disaster declaration of March 13, 2020, in response to the COVID-19 pandemic is in effect, whichever is shorter.

(2) Treatment for Acute Pain. For purposes of this rule, acute pain has the same definition as used in §170.2(2) of this title. Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law.

~~[(A) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law.]~~

~~[(B) Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law.]~~

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 December 29, 2020.

TRD-202005726
Scott Freshour
General Counsel
Texas Medical Board
Effective date: January 2, 2021
Expiration date: March 2, 2021
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 745. LICENSING

SUBCHAPTER X. EMERGENCY RULES

DIVISION 1. EMERGENCY CHILD CARE OPERATION

26 TAC §745.10005

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 745, Licensing, new §745.10005, concerning an emergency rule that establishes temporary requirements to ensure that child day-care operations follow health and safety guidelines from health authorities. The health, safety, and welfare of children will be at risk without adequate care and reasonable precautions. 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. An emergency rule 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 this Emergency Rule with Ongoing Requirements for Certain Day Care Operations in Response to COVID-19.

The purpose of the new emergency rule is to protect the health, safety, and welfare of children in day care operations and the public from the COVID-19 pandemic. The emergency rule will create specific requirements relating to health and safety standards and how to comply with recommendations from health authorities that have evolved since the pandemic began.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Human Resources Code §42.001 and §42.042. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Human Resources Code §42.001 states that it is the policy of the state to ensure the protection of all children under care in child-care facilities. In addition, Texas Human Resources Code §42.042 authorizes the Executive Commissioner of HHSC to adopt rules governing the regulation of child care facilities in Chapter 42.

The new section implements Texas Government Code §531.0055 and Texas Human Resources Code §42.001 and §42.042.

§745.10005. Emergency Rule with Ongoing Requirements for Certain Day Care Operations in Response to COVID-19.

(a) This section applies to the following operations:

(1) School-age programs;

(2) Before and after-school programs;

(3) Child-care centers;

(4) Licensed child-care homes; and

(5) Registered child-care homes.

(b) An operation must comply with the current CDC Guidance for Child Care Programs that Remain Open located at: www.cdc.gov/coronavirus/2019-ncov/community/schools-child-care/guidance-for-childcare.html.

(c) Regarding caregivers and other staff, an operation must:

(1) Ensure that all caregivers take the Special Considerations for Infection Control during COVID-19 training through the Texas A&M AgriLife Extension;

(2) Require all caregivers and other staff to notify the operation if they experience any illness or symptoms that may be related to COVID-19;

(3) Consult with the local or state health authority if a caregiver or other staff has been in close contact, as defined by CDC, with someone who has tested positive for COVID-19 and follow the local or state health authority's recommendations; and

(4) Encourage caregivers and other staff who are 65 years of age or older or who otherwise might be at higher risk for severe illness from COVID-19 to talk to their healthcare provider to assess their risk and determine if they should continue to be present at the operation.

(d) An operation must screen all persons and children according to CDC guidance before allowing entry into the operation, including checking the temperature of each person and child upon arrival at the operation each day and denying entry to any person who:

(1) Has a fever with a temperature of 100.4 degrees or higher;

(2) Demonstrates signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat, or other signs of illness;

(3) Has had close contact, as defined by the CDC, with someone who has a confirmed diagnosis of COVID-19 or someone who is under investigation for COVID-19 unless the local or state health authority has determined the person's presence at the operation would not put others at risk: www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/appendix.html#contact; or

(4) Has a confirmed diagnosis of COVID-19.

(e) An operation must not deny entry to persons performing official duties, unless the individual meets a screening criterion in subsection (d) of this section. The screening required by subsection (d) of this section does not apply to emergency services personnel entering the operation in an emergency situation.

(f) Regarding the pick-up and drop-off of children, an operation must:

(1) Limit the direct contact between parents and caregivers to the extent possible considering the age of the child; and

(2) Complete the pick-up and drop-off of children outside of the operation, unless the operation determines that there is a legitimate need for the parent to enter. If the operation determines that there is a legitimate need for a specific parent to enter, the operation must screen the parent as provided in subsection (d) of this section.

(g) Regarding the spread of germs:

(1) In addition to following the current minimum standards related to diapering:

(A) A caregiver must wash an infant's or toddler's hands and the caregiver's hands before changing a diaper;

(B) A caregiver must wear gloves when changing a diaper; and

(C) An operation must post diaper changing procedures in all diaper changing areas.

(2) Children and caregivers must have multiple changes of clothing available at an operation because any secretions on a child's clothes or bib or a caregiver's clothes will mean that the clothes or bib must be changed; and

(A) Contaminated clothes or bibs must be placed in a sealed plastic bag to be sent home with the child or caregiver or washed in a washing machine;

(B) The child's hands and the caregiver's hands must be washed after changing clothes; and

(C) A child must not be allowed to wear another child's clothing; and

(3) An operation must:

(A) Adjust the HVAC system, if possible, to allow fresh air to enter the operation;

(B) Not use machine washable cloth toys, or the toys must only be used by one child and then laundered before use by another child;

(C) Place posters describing handwashing steps near sinks used for handwashing. Developmentally appropriate posters in multiple languages are available from the CDC; and

(D) Require any caregiver or other staff who begins to exhibit symptoms of COVID-19 or any other contagious illness while at the operation to leave the operation immediately.

(h) Regarding food preparation, an operation:

(1) When using a sink for food preparation, must not use that sink for any other purpose; and

(2) Must not serve family style meals; each child must be provided individual meals and snacks.

(i) If this emergency rule is more restrictive than any minimum standard relating to the operations addressed by this rule, this emergency rule will prevail so long as this emergency rule is in effect.

(j) 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 minimum standard relating to the operations addressed in this emergency rule, the operations 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 December 21, 2020.

TRD-202005652
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 22, 2020
Expiration date: April 20, 2021
For further information, please call: (512) 438-3269

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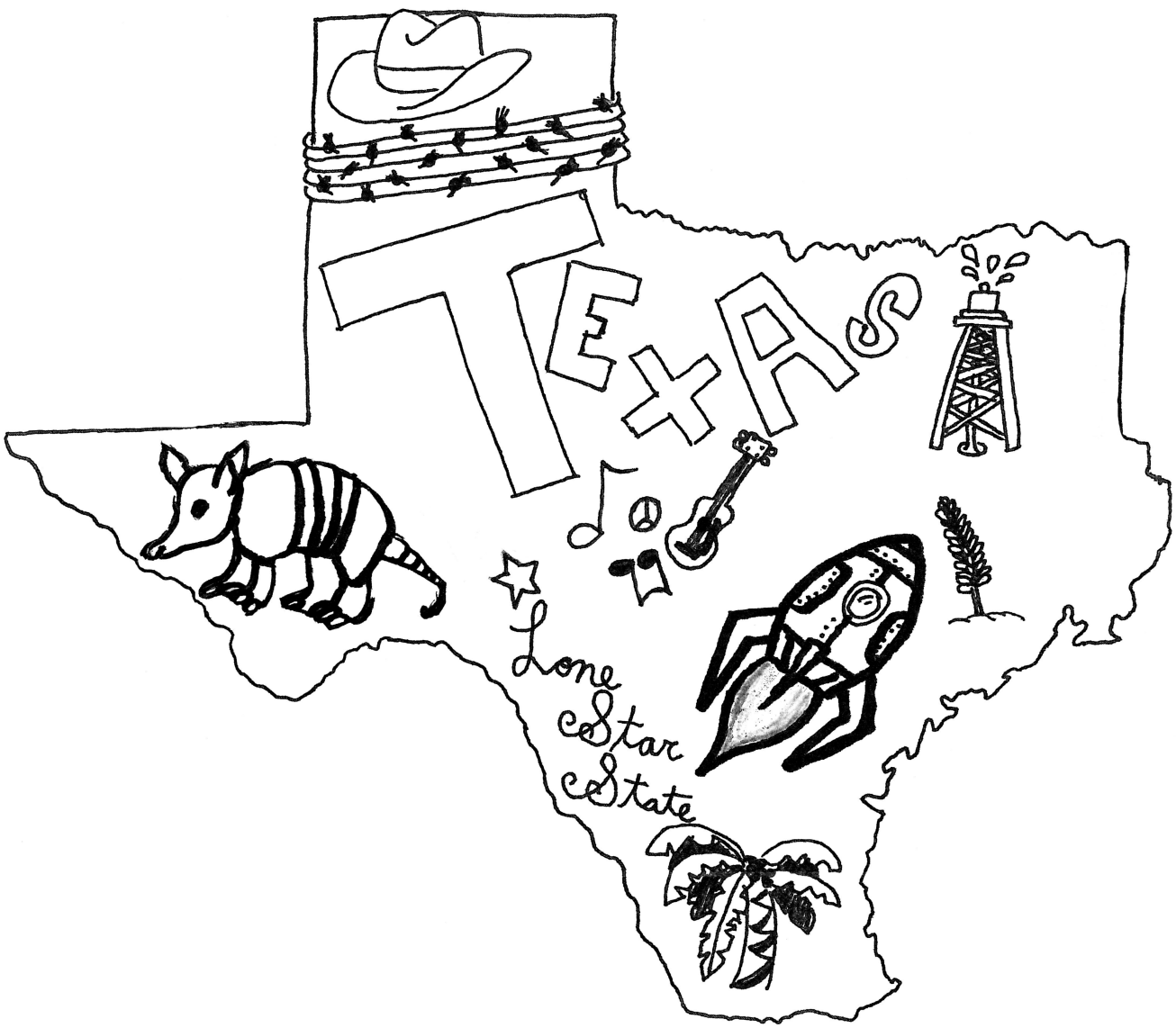
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Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons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

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

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 76. MISCELLANEOUS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rules in 7 Texas Administrative Code (TAC) Chapter 76: Subchapter A, §76.3; Subchapter D, §76.61; Subchapter E, §§76.71 - 76.73; and Subchapter G, §76.121. The commission further proposes amendments to existing rules in 7 TAC Chapter 76, as follows: Subchapter A, §§76.1, 76.2, 76.4 - 76.7, and 76.12; Subchapter B, §§76.21 - 76.26; Subchapter C, §§76.41 - 76.47; Subchapter F, §§76.91 - 76.97, 76.99 - 76.103, and 76.105 - 76.110; and Subchapter H, §76.122. This proposal and the rules as repealed or amended by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 76 partially implement Finance Code Subtitle C, the Texas Savings Bank Act. The proposed rules were identified during the department's periodic review of 7 TAC Chapter 76 conducted pursuant to Government Code §2001.039.

Notice to Consumers Changes

Existing §76.122, concerning Savings Bank Complaint Notices, requires Texas-chartered savings banks to make a disclosure to consumers concerning the department's regulatory oversight and the ability to file complaints with the department. The proposed rules, if adopted, would clarify the existing requirement directing a savings bank to make a disclosure on its website by clarifying that the requirement applies only to websites accessible by the public and further clarifying how to conspicuously display such notice on a website in order to comply with the rule.

Books and Records Changes

Existing §76.1, concerning Location of Books and Records, addresses how and where a savings bank keeps its books and records. The proposed rules, if adopted, would amend §76.1 to clarify that a savings bank must comply with the applicable requirements of federal law in making and keeping its books and records, and require that records be kept in accordance with established best practices of the Federal Financial Institution Examination Council. Amended §76.3 further clarifies that, while records may be kept at a location other than the savings bank's home office, the savings bank must ensure that a complete set of its records is readily accessible at the home office. The title of §76.1 is also amended to better reflect the subject matter of the rule as amended. Existing §76.3, concerning Reproduction and Destruction of Records, authorizes a savings bank to keep copies of its records, including by electronic means. The proposed rules, if adopted, would repeal existing §76.3, and consolidate its subject matter in amended §76.1, which provides that records may be kept in an electronic, digital, or magnetic format.

Changes Concerning Reports from a Holding Company

Existing §76.42, concerning Reports, requires holding companies and their subsidiaries to file reports with the commissioner including any reports or other information it is required to file with the appropriate federal banking agency. The proposed rules, if adopted, would clarify that a holding company need not file with the department's commissioner reports it has filed with the appropriate federal banking agency that are publicly available.

Change of Control Fee Changes

Existing §76.101, concerning Fee for Change of Control, establishes the fee for making an application for change of control of a savings bank in accordance with Finance Code Chapter 92, Subchapter L. The proposed rules, if adopted, would lower the applicable fee from $10,000 to $5,000.

Changes Concerning Hearings on Applications

Existing §§76.71 - 76.73, concerning Hearings Officer, Rules of Procedure for Contested Hearings, and Publication of Hearing Notice, respectively, establish certain processes and procedures governing adjudicative hearings (contested cases) on applications filed with the commissioner. The proposed rules, if adopted, would repeal the rules to coincide with a separate rulemaking action proposed for 7 TAC Chapter 75, wherein the subject matter of existing §§76.71 - 76.73 would, if the proposed changes to 7 TAC Chapter 75 are adopted, be addressed in such chapter.

Other Modernization and Update Changes

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Changes

The proposed rules include a repeal and amendments to existing rules in Subchapter A, Books, Records, Accounting Practices, Financial Statements and Reserves.

The proposed rules, if adopted, would amend §76.1, concerning Location of Books and Records. The title of the section is renamed Books and Records to better describe its subject matter as amended. The existing language of subsection (a) (implied) is eliminated and replaced. New subsection (a) differs from the requirements of existing subsection (a) by clarifying that a savings bank must create and maintain records of its operations. New

subsection (a) further differs from the requirements of existing subsection (a) by clarifying that records must be maintained in compliance with applicable federal law, and established industry best practices promoted by the Federal Financial Institution Examination Counsel. New subsection (a) further differs from the requirements of existing subsection (a) by clarifying that a savings bank's records maintained for examination purposes must be accurate, complete, current, legible, readily accessible, and readily sortable. New subsection (a) further differs from the requirements of existing subsection (a) by clarifying that, while a savings bank may store records offsite, it must ensure that a complete set of its books and records is readily accessible at its home office in order to facilitate its examination by the department's commissioner. (Books and Records Changes.)

The proposed rules, if adopted, would amend §76.2, concerning Accounting Practices, by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would repeal §76.3, concerning Reproduction and Destruction of Records. The subject matter of existing §76.3 is addressed in proposed new §76.1, concerning Books and Records, creating a consolidated rules section concerning the requirements for books and records, included in the proposed rules and discussed *supra*. (Books and Records Changes.)

The proposed rules, if adopted, would amend §76.4, concerning Financial Statements; Annual Reports; Audits. Subsection (a) (implied) is amended to clarify that the savings bank must submit to the department the results and findings of an independent audit. Subsection (a) is further amended to provide a specific citation to applicable federal law governing the requirements for conducting the audit. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.5, concerning Misdescription of Transactions, by restating language to improve clarity and readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.6, concerning Charging Off or Setting Up Reserves against Bad Debts. The title of the section is renamed to capitalize the word "against" in the title. Existing §76.6 is further amended by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.7, concerning Examinations. Existing subsection (b) is amended to eliminate a reference specifically identifying the Federal Deposit Insurance Corporation, and instead, use the term "appropriate federal banking agency," which also includes the Board of Governors of the Federal Reserve. Existing §76.7 is further amended by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.12, concerning Bylaws, by: replacing the term "articles of incorporation" with updated terminology (certificate of formation) from the Business and Commerce code; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules include amendments to existing rules in Subchapter B, Capital and Capital Obligations.

The proposed rules, if adopted, would amend §76.21, concerning Capital Requirements, by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.22, concerning Increase or Decrease of Minimum Capital Requirements, by: replacing the term "articles of incorporation" with updated terminology (certificate of formation) from the Business and Commerce code; capitalizing the term "commissioner" to improve readability; and restating existing language to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.23, concerning Business Plans, by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.24, concerning Capital Notes and Debnetures, by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.25, concerning Provisions for Issuance of Secured or Unsecured Capital Obligations, by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.26, concerning Joint Issuance of Capital Obligations, by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules include amendments to existing rules in Subchapter C, Holding Companies.

The proposed rules, if adopted, would amend §76.41, concerning Registration, by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.42, concerning Reports. Subsection (a) (implied) is amended to clarify that a holding company need not file with the department's commissioner reports it has filed with the appropriate federal banking agency that are publicly available. (Changes Concerning Reports from a Holding Company.) Existing §76.42 is further amended by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.43, concerning Books and Records. Subsection (a) is amended to clarify that books and records of a holding company must be created and maintained in accordance with the requirements of proposed amended §76.1, concerning Books and Records, included in the proposed rules and discussed *supra*. (Books and Records Changes.) Existing §76.43 is further amended by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.44, concerning Examinations, by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.45, concerning Agent for Service of Process, by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.46, concerning Registration by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.47, concerning Mutual Holding Companies. Subsection (a) is amended to restate the citations to the Finance Code. Subsection (a) is further amended to eliminate the existing requirement directing the applicant to provide multiple copies of documents as being unnecessary. Existing §76.47 is further amended by: replacing the term "articles of incorporation" with updated terminology (certificate of formation) from the Business and Commerce code; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules include a repeal in Subchapter D, Foreign Savings Banks.

The proposed rules, if adopted, would repeal §76.61, concerning Foreign Savings Banks as being unnecessary and outmoded in the modern era of interstate banking. (Other Modernization and Update Changes.)

The proposed rules include repeals and amendments to existing rules in Subchapter E, Hearings.

The proposed rules, if adopted, would repeal §76.71, concerning Hearings Officer. Existing §76.71 addresses a defunct provision in the Finance Code for the commission to hire a hearings officer. The requirements of existing §76.71 are therefore of no force or effect and can be eliminated. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would repeal §76.72, concerning Rules of Procedure for Contested Hearings. Existing §76.72 adopts by reference the commission's rules for contested cases contained in 7 TAC Chapter 9. The applicability of the commission's rules in 7 TAC 9 is not affected by the rule. Moreover, in a related rulemaking action the commission proposes to consolidate rule requirements governing contested case hearings pertaining to the department concerning savings banks and Finance Code Subtitle C within the department's rules contained in 7 TAC Chapter 75, entitled Applications. Taking the foregoing into consideration, existing §76.72 may be repealed. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would repeal §76.73, concerning Publication of Hearing Notice. Existing §76.73 addresses authority for the commissioner to modify the public notice an applicant is required to effect in connection with certain applications filed with the department's commissioner. As addressed in existing §76.73, the requirements governing such notices is dealt with in the department's rules contained in 7 TAC Chapter 75, and in a related rulemaking action the commission proposes to consolidate rule requirements governing the various procedures for filing applications with the department's commissioner in Chapter 75. Taking the foregoing into consideration, existing §76.73 may be repealed. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.91, concerning Fee for Charter Application, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "department" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.92, concerning Fee for Branch Office, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "department" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.93, Fee for Mobile Facility, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "department" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.94, Fee for Change of Name or of Location, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "department" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.95, Fee for Special Examination or Audit, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the terms "department" and "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.96, Fee for Charter and Bylaw Amendments. The title for §76.96 is renamed to Fee for Certificate of Formation and Bylaw Amendments to utilize updated terminology used in the Business and Commerce Code. Subsection (a) (implied) is further amended to also utilize such terminology, and to clarify that the application is a request for approval of such amendments. Existing §76.96 is further amended by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.97, Fee for Permission To Issue Capital Obligations, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.99, Fee for Reorganization, Merger, and Consolidation. Existing §76.99 is amended to restate and fully cite to the relevant sections of the Finance Code. Existing §76.99 is further amended by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.100, Fees for Expedited Applications, by reorganizing and breaking the list of fees described by the rule out into subparagraphs under existing subsection (a) (implied). Existing §76.100 is further amended by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.101, concerning Fee for Change of Control. Existing subsection (a) (implied) is amended to reduce the applicable fee amount for an application for change of control of a savings bank from $10,000 to $5,000, and is further amended to correct citations to the relevant sections of 7 TAC Chapter 75 pertaining to such application. Existing §76.101 is further amended by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.102, concerning Fee for Subsidiaries, by eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.103, concerning Fee for Charter Application under 7 TAC §75.36, by eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.105, concerning Fee for Conversion into a Savings Bank, by: reorganizing and breaking the list of fees described by the rule out into subparagraphs under existing subsection (a) (implied) to improve readability. Existing §76.105 is further amended by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.106, concerning Fee for Mutual to Stock Conversion, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.107, concerning Fee for Holding Company Registration, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.108, concerning Fees for Public Information Requests, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "department" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.109, concerning Fee for Protest Filing, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "department" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.110, concerning Fees Nonrefundable, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules include a repeal in Subchapter G, Statements of Policy.

The proposed rules, if adopted, would repeal §76.121, concerning Application of the Statutory Parity Provision. Existing §76.121 addresses what powers a savings bank enjoys relative to financial institutions organized under federal law or the laws of another state pursuant to Finance Code §93.008. Existing §76.121 describes such statutory provisions without offering additional clarity or guidance and is therefore unnecessary and may be repealed. (Other Modernization and Update Changes.)

The proposed rules include amendments to existing rules Subchapter H, Complaint Procedures.

The proposed rules, if adopted, would amend §76.122, concerning Savings Bank Complaint Notices. Existing §76.122 requires savings banks to make a disclosure to consumers concerning the department's regulatory oversight and of a consumer's ability to file complaints with the department. Subsection (b), para-

graph (4), subparagraph (C), which requires a savings bank to post the notice on its website, is amended to clarify that the requirement only applies to a website that is accessible by the public and used to conduct business, and further clarifies the manner in which the notice can be posted in order to comply with the rule. Subsection (b), paragraph (1) is amended to restate the department's contact information to use updated terminology and to refer to the department's base-level domain of its website in order to limit the potential need to amend the rule in the event the department later sees fit to alter its website and change the web address for the webpage maintained for purposes of allowing consumers to file complaints. (Notice to Consumers Changes.)

Fiscal Impact on State and Local Government

Antonia Antov, director of operations 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 local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five years the proposed rules are in effect there will be no foreseeable losses or increases in revenue to the state overall and that would impact the general revenue fund. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The foregoing notwithstanding, the director has further determined that for the first five-year period the proposed rules are in effect, there will be a probable decrease in revenue to the department in connection with the proposed rules related to Change of Control Fee Changes because, if the proposed rules are adopted, the department will collect fewer fees in connection with applications for change of control of a savings bank. The department, on average over the previous ten years, has received one application for change of control of a savings bank per year. Assuming the department continues to receive and process an average of one application for change of a control of a savings bank per year, the department estimates that it will realize a reduction in revenue of approximately $5,000 in each of the first five years the proposed rules are in effect, and $25,000 in the first five-year period the proposed rules are in effect. The anticipated reduction in fees collected by the department in connection with such applications will not hinder the department's operations or require increases in other fees imposed by the department, or commensurate reductions in staff or other resources of the department.

Public Benefits

Stephany Trotti, deputy commissioner and director of thrift for the department (deputy commissioner) 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 deputy commissioner 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 require an increase or decrease in fees paid to the agency. The proposed rules related to Change of Control Fee Changes lower the fee for filing an application for change of control of a savings bank from $10,000 to $5,000, thereby decreasing fees paid to the agency for such applications; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Books and Records Change create a new requirement directing a savings bank to comply with applicable federal law and the requirements of the appropriate federal banking agency with respect to making and maintaining its books and records. The requirement is a new rule requirement, but merely imposes by rule an existing requirement imposed by federal law and the appropriate federal banking agency; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Hearings on Applications repeal existing requirements within such rules governing contested cases, however, such requirements merely restate or reassert requirements existing elsewhere by rule or statute, and as a result, such requirements will continue to exist should the proposed rules be adopted. The proposed rules repeal the requirements of existing 7 TAC §76.61, concerning Foreign Savings Banks. The proposed rules repeal the requirements of existing §76.121, concerning Application of the Statutory Parity Provision, however, such requirements merely restate or reassert the statutory provisions of Finance Code §93.008, without providing any additional clarity or guidance; (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 proposed rules. 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 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.

SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

7 TAC §§76.1, 76.2, 76.4 - 76.7, 76.12

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §76.1 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (3) and (5) of that subsection; §92.201; and §96.056. 7 TAC §76.2 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (3) and (4) of that subsection; and §92.201. 7 TAC §76.4 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (7) and (11) of that subsection; §96.051; and §96.053. 7 TAC §76.5 is proposed under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters outlined in paragraph (11) of that subsection. 7 TAC §76.6 is proposed under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters outlined in paragraph (9) of that subsection. 7 TAC §76.7 is proposed under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters set forth in paragraph (11) of that subsection. 7 TAC §76.12 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (11) of that subsection; §92.051(b)(2); §92.058(c)(2); §92.062; §92.157; and §92.205.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.1. [~~Location of~~] Books and Records.

A savings bank must create and maintain books and records of its operations, including complete minutes of the meetings of its members and the board of directors, and actions taken by written consent in lieu of such meetings. Records must be maintained in compliance with the applicable requirements of the appropriate federal banking agency and established industry best practices promoted by the Federal Financial Institution Examination Counsel. Records must be accurate, complete, current, legible, readily accessible, and readily sortable. A state savings bank may store original records or copies of records at a location other than the home office; however, a savings bank must ensure that a complete set of its books and records is readily accessible at the home office at all times so as to facilitate the examination of the savings bank by the Commissioner at the home office. A savings bank may maintain copies of its books and records in an electronic, digital, or magnetic format. A true and correct copy of an original record stored in an electronic, digital, or magnetic format is deemed to be an original record.

[~~Unless otherwise authorized by the commissioner, a savings bank shall keep at its home office correct and complete books of account and minutes of the meeting of members and directors. Complete records of all business transacted at the home office shall be maintained at the home office. Records of business transacted at any branch or agency office may be kept at such branch or agency office; provided, that control records of all business transacted at any branch or agency office shall be kept at the home office. A savings bank may keep duplicate electronic records offsite as a part of its business continuity planning if done in a manner meets applicable regulatory requirements, including those provided by the Federal Deposit Insurance Corporation and the Federal Financial Institution Examination Council.~~]

§76.2. Accounting Practices.

Every savings bank must [~~shall~~] use such forms and observe such accounting principles and practices as the Commissioner [~~commissioner~~] may require from time to time.

§76.4. Financial Statements; Annual Reports; Audits.

For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank[~~, regardless of asset size,~~] is required to submit to the Department the results and findings of an independent audit of its financial statements and all correspondence reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of the FDIC set forth in 12 C.F.R. §363.2 and §363.3 [~~12 CFR~~], with the exception of any matters specifically addressed by this section, the Texas Savings Bank Act, or its related rules.

§76.5. Misdescription of Transactions.

No savings bank may [~~by any system of account or any device of bookkeeping shall~~], either directly or indirectly, knowingly make any entry on [~~upon~~] its books that is not accurate or otherwise fails to appropriately describe the transaction, or withholds information material to the transaction [~~truly descriptive of the transaction which causes the entry~~].

§76.6. Charging Off or Setting Up Reserves Against [~~against~~] Bad Debts.

The Commissioner [~~commissioner~~], after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance with Generally Accepted Accounting Principles (GAAP).

§76.7. Examinations.

(a) The Commissioner will [~~commissioner shall~~] examine every state savings bank once in each year, or more frequently if the Commissioner [~~commissioner~~] determines that the condition of the savings bank justifies more frequent attention to enforce the Texas Savings Bank Act. The Commissioner [~~commissioner~~] may defer an examination for not more than six months if the Commissioner [~~commissioner~~] considers the deferment appropriate to the efficient enforcement of the Texas Savings Bank Act and consistent with the safe and sound operation of the institution.

(b) An examination under this section may be performed jointly or in conjunction with an examination by the saving bank's appropriate federal banking agency. The Commissioner [~~Federal Deposit Insurance Corporation or any other federal depository institutions regulatory agency having jurisdiction over a savings bank, and/or the commissioner~~] may accept an examination made by such federal banking agency in lieu of an examination pursuant to this section.

§76.12. Bylaws

(a) The bylaws of a [~~state~~] savings bank must [~~shall~~] contain sufficient provisions to govern the institution in accordance with the Texas Savings Bank Act, the Texas Business Organizations Code, and other applicable laws, rules and regulations, or the certificate of formation [~~articles of incorporation~~]. Bylaws may contain a provision which permits such bylaws to be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board of directors of the savings bank. Bylaw amendments may not take effect before being filed with and approved by the Commissioner [~~commissioner~~].

(b) A [~~state~~] savings bank is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as contained in the Texas Business Organizations Code to the same extent permitted under state law for banks and savings and loan associations. Such bylaw provision is optional and within the discretion of the [~~state~~] savings bank.

(c) Other optional bylaws may be adopted by a state savings bank with the approval of the Commissioner [~~commissioner~~].

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 December 22, 2020.

TRD-202005669
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 475-1535

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7 TAC §76.3

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§76.3. Reproduction and Destruction of Records.

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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Department of Savings and Mortgage Lending
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SUBCHAPTER B. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§76.21 - 76.26

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §76.21 and §76.22 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters set forth in paragraphs (1) and (11) of that subsection; §92.052(b); §92.053(b); §92.054; §92.102; and §92.203. 7 TAC §76.23 is proposed under the authority of, and to implement, Finance Code: 96.002(a), for those specific subject matters set forth in paragraphs (1) and (11) of that subsection; §92.203; and Chapter 96, Subchapter C. 7 TAC §§76.24 - 76.26 is proposed under the authority of, and to implement, Finance Code: 96.002(a), for those subject matters set forth in paragraph (11); and §93.004(b).

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.21. Capital Requirements.

(a) Unless the context clearly indicates otherwise, when used in this chapter, "Capital" for a savings bank includes (as applicable) the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the savings bank's capital under Generally Accepted Accounting Principles) plus any retained earnings and additional paid-in capital as well as such other items as the Commissioner [~~commissioner~~] may approve in writing for inclusion as capital.

(b) Minimum capital requirement. Each savings bank must [~~shall~~] maintain capital at levels which are required for institutions whose accounts are insured by the Federal Deposit Insurance Corporation.

§76.22. Increase or Decrease of Minimum Capital Requirements.

(a) The Commissioner [~~commissioner~~] may increase or decrease the minimum capital requirement set forth in this chapter[,] upon written application by a savings bank or by supervisory directive if the Commissioner determines [~~commissioner shall have affirmatively found from the data available and/or the application and supplementary information submitted therewith~~] that:

(1) the savings bank's failure to meet the minimum capital requirement, if applicable, is not due to unsafe and unsound practices in the conduct of the affairs of the savings bank, a violation of any provision of the certificate of formation [~~articles of incorporation~~] or bylaws of the savings bank, or a violation of any law, rule, or supervisory action [~~order~~] applicable to the savings bank or any condition that the Commissioner [~~commissioner~~] has imposed on the savings bank by written order or agreement. For purposes of this chapter, unsafe and unsound practices means [~~shall mean~~], with respect to the operation of a savings bank, any action or inaction that is likely to cause insolvency or substantial dissipation of assets or earnings or to otherwise reduce the ability of the savings bank to timely satisfy withdrawal requests of savings account holders, including, without being limited to, excessive operating expenses, excessive growth, high-risk or undiversified investment positions [~~highly speculative ventures, excessive concen-~~

trations of lending in any one area], and non-existent or poorly followed lending and underwriting policies, procedures, and guidelines;

(2) the savings bank is well managed. In determining whether the [applying] savings bank is well managed, the Commissioner [commissioner] may consider:

(A) management's record of operating the savings bank;

(B) management's record of compliance with laws, regulations, directives, orders, and agreements;

(C) management's timely recognition and correction of regulatory violations, unsafe and unsound practices, or other weaknesses identified through the examination or supervisory process;

(D) management's ability to operate the savings bank in changing economic conditions; and

(E) such other factors as the Commissioner [commissioner] may deem necessary to properly evaluate the quality of the savings bank's management; and

(3) the savings bank has submitted a plan acceptable to the Commissioner [commissioner] for restoring capital within a reasonable period of time. Such plan must [shall] describe the means and schedule by which capital will be increased. The plan must [shall] also specifically address restrictions on dividend levels; compensation of directors, executive officers, or individuals having a controlling interest; asset and liability growth; and payment for services or products furnished by affiliated persons as defined in Chapter 77 of this title. The plan must [shall] provide for improvement in the savings bank's capital on a continuous or periodic basis from earnings, capital infusions, liability and asset shrinkage, or any combination thereof. A plan that projects no significant improvement in capital until near the end of the waiver or variance period or that does not appear to the Commissioner [commissioner] to be reasonably feasible will not be acceptable. The Commissioner [commissioner] may require modification of the savings bank's plan in order for the institution to receive or to continue to receive such waiver or variance.

(b) Any savings bank which receives an increase or decrease of its minimum capital requirement from the Commissioner [commissioner] must file quarterly progress reports regarding compliance with its capital plan. The Commissioner [commissioner] may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be submitted to the Commissioner [commissioner] for approval.

(c) With respect to the granting of any waiver or variance of the minimum capital requirement, the Commissioner [commissioner] may impose any condition, limitation, or restriction on such increase or decrease as the Commissioner [commissioner] may deem necessary to ensure compliance with law and regulations and to prevent unsafe and unsound practices.

(d) The Commissioner [commissioner] may withdraw or modify any increase or decrease granted pursuant to this section if:

(1) the institution fails to comply with its capital plan;

(2) the increase or decrease was granted contingent upon the occurrence of events that do not subsequently occur;

(3) the savings bank undergoes a change of control or a material change in management that was not approved by the Commissioner [commissioner];

(4) the savings bank engages in practices inconsistent with achieving its minimum capital requirement;

(5) information is discovered that was not made available to the Commissioner [commissioner] at the time that the increase or decrease was granted and that indicates that the increase or decrease should not have been granted;

(6) the savings bank engages in unsafe and unsound practices, violates any provision of its certificate of formation [articles of incorporation] or bylaws, or violates any law, rule, or supervisory order applicable to the savings bank or any condition that the Commissioner [commissioner] has imposed upon the savings bank by written order or agreement;

(7) the savings bank fails to submit the reports required by this section.

§76.23. Business Plans.

(a) All savings banks whose operations are considered by the Commissioner [commissioner] unsafe or unsound pursuant to the Texas Savings Bank Act or which have total capital less than the amount required under §76.21 of this title (relating to Capital Requirements) or §76.22 of this title (relating to Increase or Decrease of Minimum Capital Requirements) must [shall] develop a business plan and have such business plan available for review by the examiners. The period covered by the business plan must be at least one year [shall not be less than one year], but may be for so long as the Commissioner [any greater number of periods that the commissioner] may require.

(b) The savings bank's business plan will [shall] be reviewed to determine its continued viability in accordance with current economic conditions and approved or revised, as determined by its board of directors, at least annually.

§76.24. Capital Notes and Debentures.

No savings bank may issue and sell its capital notes or debentures without the prior written approval of the Commissioner [commissioner] and subject to any conditions the Commissioner [commissioner] may impose with regard to safety and soundness and maintenance of adequate financial condition particularly in areas of preservation of capital, quality of earnings, and adequacy of reserves.

§76.25. Provisions for Issuance of Secured or Unsecured Capital Obligations.

A savings bank may, by resolution of its board of directors and with prior approval of the Commissioner [commissioner], issue capital notes, debentures, bonds, or other secured or unsecured capital obligations, which may be convertible in whole or in part to shares of permanent reserve fund stock, or may be issued with warrants attached, to purchase at a future date, shares of permanent reserve fund stock of the issuing savings bank, provided:

(1) the savings bank provides adequate proof to the satisfaction of the Commissioner [commissioner] that the holders of such obligations will receive properly amortized payments of both principal and interest at regularly stated intervals, or that proper provision is made for sinking fund allocations to retire all principal of and interest on such obligations; and

(2) sufficient evidence is furnished to the Commissioner [commissioner] as to the need and utilization of such funds by the savings bank in a profitable manner.

§76.26. Joint Issuance of Capital Obligations.

On the same terms and conditions as stated in §76.25 of this title (relating to Provisions for Issuance of Secured or Unsecured Capital Obligations), a savings bank may, by resolution of its board of directors and with prior approval of the Commissioner [commissioner], join other

savings banks in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations if it meets the terms and conditions of §76.25 of this title.

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

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Iain A. Berry
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Department of Savings and Mortgage Lending
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SUBCHAPTER C. HOLDING COMPANIES

7 TAC §§76.41 - 76.47

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§76.41 - 76.47 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (11) and (15) of that subsection; and §97.002. 7 TAC §76.41 is further proposed under the authority of, and to implement, Finance Code §97.002. 7 TAC §76.42 is further proposed under the authority of, and to implement, Finance Code §97.004. 7 TAC §76.43 is further proposed under the authority of, and to implement, Finance Code §97.005. 7 TAC §76.44 is further proposed under the authority, and to implement, Finance Code §97.006. 7 TAC §76.45 is further proposed under the authority of, and to implement, Finance Code §97.007. 7 TAC §76.46 is further proposed under the authority of, and to implement, Finance Code §97.003. 7 TAC §76.47 is further proposed under the authority of, and to implement, Finance Code, Chapter 98, Subchapter B.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.41. Registration.

A holding company must [~~shall~~] register with the Commissioner [~~commissioner~~] on forms prescribed by the Commissioner [~~commissioner~~] within 90 days after the date of becoming a holding company. The forms must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the Commissioner [~~commissioner~~] finds necessary and appropriate. On application, the Commissioner [~~commissioner~~] may extend the time within which a holding company is required to [~~shall~~] register and file the required information.

§76.42. Reports.

Each holding company and each subsidiary of a holding company, other than a savings bank, must [~~shall~~] file with the Commissioner [~~commissioner~~] reports required by the Commissioner [~~commissioner~~]. The reports must be made under oath and must be in the form and for the periods prescribed by the Commissioner [~~commissioner~~]. Each report must contain information concerning the operations of the holding company and its subsidiaries as the Commissioner [~~commissioner~~] may require. A holding company must [~~shall~~] file with the Commissioner [~~commissioner~~] copies of any filings, documents, statements, or reports required to be filed with the appropriate federal banking agency, unless such filing, document, statement, or report is publicly available [~~regulatory authorities~~].

§76.43. Books and Records.

Each holding company must [~~shall~~] maintain books and records as may be prescribed by the Commissioner [~~commissioner~~]. The records must be created and maintained in accordance with the requirements of §76.1 of this title (relating to Books and Records), pertaining to savings banks.

§76.44. Examinations.

Each holding company and each subsidiary of a holding company is subject to examinations as the Commissioner [~~commissioner~~] may prescribe. The holding company must [~~shall~~] pay the cost of an examination. The confidentiality provisions of Tex. Fin. Code §96.356 [~~the Texas Savings Bank Act, §96.356, shall~~] apply to this section. The Commissioner [~~commissioner~~] may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States. For purposes of this section, the Commissioner [~~commissioner~~], to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

§76.45. Agent for Service of Process.

The Commissioner [~~commissioner~~] may require a holding company or a person, other than a corporation, connected with a holding company to execute and file a prescribed form of irrevocable appointment of agent for service of process.

§76.46. Release from Registration.

The Commissioner [~~commissioner~~] at any time, on the Commissioner's [~~commissioner's~~] own motion or on application, may release a registered holding company from a registration made by the company if the Commissioner [~~commissioner~~] determines that the company no longer controls a savings bank.

§76.47. Mutual Holding Companies.

(a) A savings bank may reorganize as a mutual holding company by complying with the provisions of Tex. Fin. Code §§97.051 - 97.053 [~~Finance Code Chapter 97, Subchapter B (Finance Code §97.051)~~]. The savings bank must [~~shall~~] provide to the Commissioner [~~commissioner~~] an application to reorganize in a form specified by the Commissioner [~~commissioner~~]. The applicant must [~~shall~~] provide one signed original and at least one copy of the application together with complete exhibits. The application must [~~shall~~] include:

(1) the proposed certificate of formation [~~two copies of the articles of incorporation~~] for the proposed subsidiary savings bank which must [~~shall~~] comply with the requirements of Tex. Fin. Code [~~Finance Code~~] §92.051 and §92.052 or §92.053, as applicable;

(2) the proposed [~~two copies of the~~] bylaws for the proposed subsidiary;

(3) [~~two copies of~~] the proposed restated certificate of formation [~~articles of incorporation~~] and bylaws of the mutual holding company;

(4) the complete plan of reorganization;

(5) a certification by the president or secretary as to how that the reorganization, including the amendments to the certificate of formation [~~articles of incorporation~~] and bylaws of the mutual holding company have been approved by a majority of the members or shareholders of the reorganizing savings bank in accordance with Finance Code Chapter 97, Subchapter B.

(6) A fee [~~which shall be~~] in the amount of the fee required for the conversion of a mutual savings bank into a stock savings bank under §76.106 of this title (relating to Fee for Mutual to Stock Conversion).

(b) On receipt of the application, the Commissioner [~~commissioner~~] may conduct an examination of the applicant savings bank.

(c) The Commissioner may [~~commissioner shall~~] approve the reorganization without a hearing if the Commissioner [~~commissioner~~] determines:

(1) that the resulting savings bank will be in sound condition and meets all requirements of Finance Code Chapter 92, Subchapter B, and relevant rules of the Commissioner [~~commissioner~~] and the Finance Commission; and

(2) the applicant has received all approvals required under federal law for the creation of a bank or thrift holding company.

(d) If the Commissioner [~~commissioner~~] denies an application to reorganize, the applicant may appeal in the same manner as provided in Tex. Fin. Code [~~Finance Code~~] §92.304.

(e) A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its savings bank subsidiary in accordance with the provisions of this subsection.

(1) The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the Commissioner [~~Department~~].

(2) For the purposes of Tex. Fin. Code [~~Finance Code~~] §97.053(a)(3) and (4), the subsidiary holding company will [~~shall~~] be treated as a savings bank issuing stock and must comply with [~~shall be subject to~~] the requirements of those sections. The mutual holding company parent must at all times own more than fifty percent (50%) of the outstanding stock of the subsidiary holding company.

(3) The certificate of formation [~~charter~~] and by-laws of a subsidiary holding company must be approved by the Commissioner [~~Department~~] and may only be amended with the prior approval of the Commissioner [~~Department~~].

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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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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SUBCHAPTER D. FOREIGN SAVINGS BANKS

7 TAC §76.61

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§76.61. Foreign Savings Banks.

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. HEARINGS

7 TAC §§76.71 - 76.73

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.71. Hearings Officer.

§76.72. Rules of Procedure for Contested Hearings.

§76.73. Publication of Hearing Notice.

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 F. FEES AND CHARGES

7 TAC §§76.91 - 76.97, 76.99 - 76.103, 76.105 - 76.110

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§76.91 - 76.97, 76.99 - 76.103, 76.105 - 76.110 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (2) of that subsection; §91.007; and 16.003(c). 7 TAC §76.91 is further proposed under the authority of, and to implement, Finance Code §92.051(a)(2). 7 TAC §76.92 is further proposed under the authority of, and to implement, Finance Code §92.063. 7 TAC §76.97 is further proposed under the authority of, and to implement, Finance Code §93.004(b). 7 TAC §76.107 is further proposed under the authority of, and to implement, Finance Code §97.001.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.91. Fee for Charter Application.

Applicants for new charters for savings banks must [~~shall~~] pay a fee of $10,000. [~~This fee shall be paid at the time of filing and shall include the cost of filing and processing of said application.~~] In addition, the applicant must [~~shall~~] pay the cost of a formal record and any cost incurred by the Department [~~department~~] in connection with the hearing, investigation, and travel expenses.

§76.92. Fee for Branch Office.

Applicants for branch offices under §75.33 of this title (relating to Branch Office Applications) must [~~shall~~] pay a fee of $1,500. [~~This fee shall be paid at the time of filing and shall include the cost of filing, and processing of said application.~~] In addition, the applicants must [~~shall~~] pay [~~the cost of a formal record and~~] any cost incurred by the Department [~~department~~] in connection with the hearing, investigation and travel expenses.

§76.93. Fee for Mobile Facility.

Applicants for a mobile facility under §75.35 of this title (relating to Mobile Facilities) must [~~shall~~] pay a fee of $500 plus $100 for each location. [~~This fee shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of said application.~~] In addition, the applicants must [~~shall~~] pay the cost of a formal record and any cost incurred by the Department [~~department~~] in connection with the hearing, investigation, and travel expenses.

§76.94. Fee for Change of Name or of Location.

Applicants for change of name or change of location of any branch office, approved or existing, [~~shall~~] pay a fee of $500. [~~This fee shall be paid at the time of filing and shall include the cost for filing, processing, and hearing of said application.~~] In addition, the applicants must [~~shall~~] pay [~~the cost of a formal record~~] and any cost incurred by the Department [~~department~~] in connection with the hearing, investigation and travel expenses.

§76.95. Fee for Special Examination or Audit.

Each savings bank subject to a special examination may be required to [~~shall~~] pay to the Department [~~department~~] an examination fee based upon a daily rate of $325 for each examiner engaged in the examination of the affairs of such institution. For the purposes of this section, a special examination includes [~~shall include~~] only those examinations which the Commissioner [~~commissioner~~] conducts or causes to have conducted after the institution has completed one annual examination or such other additional examinations as the Commissioner [~~commissioner~~] deems to be necessary. This special examination fee will [~~shall~~] not be charged for an institution's annual regular examination.

§76.96. Fee for Certificate of Formation [~~Charter~~] and Bylaw Amendments.

The Commissioner will [~~commissioner shall~~] collect a filing fee of $100 for each request for approval of amendments to the certificate of formation or [~~amendment to a charter or to~~] the bylaws of a savings bank.

§76.97. Fee for Permission To Issue Capital Obligations.

The Commissioner will [~~commissioner shall~~] collect a filing fee of $1,000 for each application by a savings bank for permission to issue capital notes, debentures, bonds, or other capital obligations to cover processing and investigation of such applications.

§76.99. Fee for Reorganization, Merger, and Consolidation.

(a) Any savings bank seeking to reorganize, merge, and/or consolidate, pursuant to the Texas Savings Bank Act, Subchapter H, and §§75.81 - 75.83, 75.85, 75.87 and 75.88 of this title must [~~shall~~] pay to the Commissioner [~~commissioner~~], at time of filing its plan, a fee of $2,500 for each financial institution involved in a plan of reorganization, merger and/or consolidation. For each financial institution involved in a plan filed for a purchase and assumption acquisition, a fee of $2,000 must [~~shall~~] be paid to the Commissioner [~~commissioner~~]. No fee is required for a reorganization, merger, or consolidation pursuant to §75.89 of this title (relating to Reorganization, Merger or Conversion to Another Financial Institution Charter) where the resulting institution is not a state savings bank. No additional fee is required for an interim charter to facilitate a transaction under §§75.81 - 75.83, 75.85, 75.87 and 75.88 of this title.

(b) The fee set forth in subsection (a) of this section covers [~~shall cover~~] the cost of filing and processing with respect to the plan. In addition, such savings bank must [~~shall~~] pay [~~the cost of a formal record, if applicable,~~] any cost incurred by the Department [~~department~~] in connection with the hearing, investigation, and travel expenses.

§76.100. Fees for Expedited Applications.

Applicants for expedited applications under §75.26 of this title (relating to Expedited Applications) must [~~shall~~] pay the following fees:

(1) branch office - $500;

(2) mobile facilities - $500;

(3) office relocation - $250;

(4) reorganization, merger or consolidation - $2,500; and

(5) purchase and assumption transactions - $2,000 [~~branch office $500; mobile facilities $500; office relocation $250; reorganization, merger or consolidation $2,500; and purchase and assumption transactions $2,000. All fees shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of said application~~]

§76.101. Fee for Change of Control.

The Commissioner will [~~commissioner shall~~] collect a filing fee of $5,000 [~~$10,000~~] for each change of control application filed pursuant to §75.122 [~~§§75.121 - 75.127~~] of this title (relating to Acquisition of a Savings Bank) [~~Change of Control) and $2,500 for rebuttal of control of a savings bank or rebuttal of concerted action~~].

§76.102. Fee for Subsidiaries.

The Commissioner will [~~commissioner shall~~] collect a fee of $1,500 for each application by a savings bank for permission to make an initial investment in a subsidiary corporation pursuant to §§77.91 - 77.95 of this title (relating to Authorized Loans and Investments) to cover the processing and investigation of such applications, and an additional fee of $100 for each office other than the home office of a subsidiary that is applied for. The Commissioner will [~~commissioner shall~~] collect a fee of $500 for service corporation application to engage in a new activity; $300 for redesignation of an operating subsidiary; and $100 for each application by a savings bank to change the name of a subsidiary or the location of a subsidiary office.

§76.103. Fee for Charter Application under 7 TAC §75.36.

The Commissioner will [~~commissioner shall~~] collect a filing fee of $500 for the processing of an application for a charter for a savings bank where the sole purpose of such application is the purchase of the assets, assumption of liabilities, and continuation of the business of any institution deemed by the Commissioner [~~commissioner~~] to be in an unsafe condition, pursuant to §75.36 of this title (relating to [~~Designation as and~~] Exemption for Supervisory Sale).

§76.105. Fee for Conversion into a Savings Bank.

The Commissioner will [~~commissioner shall~~] collect a filing fee for each application filed pursuant to §75.90 of this title (relating to Conversion into a Savings Bank) for conversion into a savings bank, as follows, based on the size of its total assets:

(1) $0 - 125 million - $2,500;

(2) $125 - 500 million - $5,000;

(3) $500 million - 1 billion - $10,000; and

(4) Over 1 billion - $15,000 [~~pursuant to the following schedule: $0 - 125 million $2,500; $125 - 500 million $5,000; $500 million - 1 billion $10,000; and Over 1 billion $15,000~~].

§76.106. Fee for Mutual to Stock Conversion.

The Commissioner will [~~commissioner shall~~] collect a filing fee of $7,500 for each application filed pursuant to §75.91 of this title (relating to Mutual to Stock Conversion) for conversion into a stock savings bank.

§76.107. Fee for Holding Company Registration.

The Commissioner will [~~commissioner shall~~] collect a filing fee of $2,000 for each application filed pursuant to §76.41 of this title (relating to Holding Companies) for [~~as~~] registration of a holding company.

§76.108. Fees for Public Information Requests.

(a) The fees for copies of records of the Department [~~department~~] which are subject to public examination pursuant to Chapter 552 of the Texas Government Code will be assessed [~~shall~~] in accordance with Tex. Gov't Code [~~Texas Government Code~~] §552.262, be those adopted by rules of the attorney general.

(b) All requests will be treated equally. Charges may be waived at the Commissioner's [~~commissioner's~~] discretion.

(c) If records are requested to be inspected instead of receiving copies, access will be by appointment only during regular business hours of the Department [~~department~~] and will be at the discretion of the Commissioner [~~commissioner~~].

(d) Confidential documents will not be made available for examination or copying except under court order or as otherwise permitted or required by a rule adopted under this title or other applicable law.

(e) All public information requests will be referred to the Commissioner's [~~commissioner's~~] designee before the Department [~~department~~] will release the information.

§76.109. Fee for Protest Filing.

[~~(a)~~] A person or entity filing a protest to an application must [~~shall~~] pay a fee of $2,500 simultaneously with such protest filing. The purpose of this fee is to partially offset the Department's [~~department's~~] increased cost of processing an application and reduce costs incurred by the applicant that result solely from the protest.

[~~(b) Additionally, the Administrative Law Judge for a contested hearing may allocate costs incurred by the department to the parties pursuant §76.72 of this title (relating to Rules of Procedure for Contested Hearings). In such cases, the fee paid pursuant to subsection (a) of this section shall be applied toward payment of the protestant's allocation of hearing costs; however, no amount will be refunded and any additional amounts will be billed.~~

~~(c) Notwithstanding the provisions of subsection (a) of this section, a member of the general public allowed to testify under oath or affirmation in a contested case, who is not deemed a party by the Administrative Law Judge under the provisions incorporated by §76.72 of this title is not subject to this fee.~~]

§76.110. Fees Nonrefundable.

All filing fees must be paid at the time of filing and are nonrefundable. Except for fees established by statute, the Commissioner [~~commissioner~~] may exercise discretion to reduce or waive any filing fee and will [~~shall~~] charge fees on a consistent and nondiscriminatory basis.

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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Iain A. Berry
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Department of Savings and Mortgage Lending
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SUBCHAPTER G. STATEMENTS OF POLICY

7 TAC §76.121

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.121. Application of the Statutory Parity Provision.

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 H. COMPLAINT PROCEDURES

7 TAC §76.122

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §76.122 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (11) of that subsection; §96.054; and Chapter 96, Subchapter C.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.122. Savings Bank Complaint Notices.

(a) Definitions.

(1) Privacy notice means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) Required notice means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by [~~U.S.~~] Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Phone [~~Telephone No.~~]: (877) 276-5550, Fax [~~No.~~]: (512) 936-2003, or through [~~via electronic submission on~~] the Department's website at www.sml.texas.gov [~~http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html~~].

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) The required notice must be posted on each website of the savings bank that is accessible by the public and either used to conduct banking activities or from which the savings bank advertises to solicit such business. The required notice is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page. [~~If a state savings bank maintains a website, the required notice must be included in a screen which the consumer must view whenever the site is accessed~~].

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

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CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §77.10

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to existing 7 TAC §77.10. This proposal and the rule as amended by this proposal are referred to collectively as the "proposed rule."

Explanation of and Justification for the Rule

Existing 7 TAC §77.10 partially implements Finance Code Subtitle C, the Texas Savings Bank Act, and specifically §94.002 of such act. The proposed rule was identified during the department's periodic review of 7 TAC Chapter 77 conducted pursuant to Government Code §2001.039.

Existing §77.10, concerning Non-Real Estate Commercial Loans, determines the circumstances under which and requirements for a savings bank to engage in commercial real estate loans. The proposed rule, if adopted, would amend the rule to clarify within the text of the rule that the rule pertains only to commercial loans.

Fiscal Impact on State and Local Government

Antonia Antov, director of operations for the department (director), has determined that for the first five-year period the proposed rule is 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 rule. The director has further determined that for the first five-year period the proposed rule is in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the proposed rule.

Public Benefits

Stephany Trotti, deputy commissioner and director of thrift for the department (deputy commissioner) has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to have a rule that is easier to understand.

Probable Economic Costs to Persons Required to Comply with the Proposed Rule

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

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

Local Employment Impact Statement

No local economies are substantially affected by the proposed 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 rule will not have an adverse effect on small or micro-businesses or rural communities because there are no substantial economic costs anticipated to persons 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 rule. 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 rule 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 §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §77.10 is also proposed under the authority of, and to implement Finance Code §94.002.

This proposal affects the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

§77.10. Non-Real Estate Commercial Loans.

A savings bank may lend and invest not more than 40% of its total assets in non-real estate commercial loans for business, corporate, or agricultural purposes. The amount of each letter of credit or other unfunded commitment to make a non-real estate commercial loan shall be included in computing this limitation. Prior to funding a loan under this section, a savings bank shall comply with the requirements of §77.31(a) of this title (relating to Loan Documentation).

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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Associate General Counsel
Department of Savings and Mortgage Lending
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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners (Board) proposes the repeal of 22 Texas Administrative Code (TAC) §1.69, new 22 TAC §1.69, and the amendment of 22 TAC §1.232.

These proposed rulemaking actions would implement changes to the Board's continuing education (CE) requirements as applied to architects. Previously, the Board adopted §1.69, which identifies the CE requirements for architects. Due to the need for substantial addition to and reorganization of existing rule language, the Board proposes to repeal the current rule and replace it in full with a revised version. This notice will summarize how proposed §1.69 differs from the current version of §1.69.

First, proposed §1.69 would implement new definitions to govern the application of the rule. Under proposed §1.69(a), the Board proposes the adoption of definitions for "Approved Subject Areas" "Health, Safety, or Welfare," "Structured Course Study," and "Self-Directed Study." The adoption of these definitions would assist registrants in understanding which activities satisfy the Board's requirements for acceptable CE credit. Additionally, the definitions for "Approved Subject Areas" and "Health, Safety, or Welfare," incorporate national standards for CE adopted by the National Council of Architectural Registration Boards (NCARB) and the American Institute of Architects (AIA). The adoption of these national standards would help to standardize CE requirements among regulatory jurisdictions, thereby encouraging licensure portability and lowering the regulatory burden on registrants. Additionally, this proposed adoption is consistent with the Board's authority in Tex. Occ. Code §1051.356 to recognize the CE programs of nationally acknowledged organizations involved in providing, recording, or approving postgraduate education and to require that registrants complete CE courses relating to health, safety, or welfare.

Proposed §§1.69(b) & (c) would retain the current requirement for registrants to complete 12 hours of qualifying CE hours per calendar year, including a minimum of one continuing education program hour (CEPH) relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design. These requirements implement Tex. Occ. Code §1051.356(b), which requires the Board's CE program to include courses relating to sustainable or energy-efficient design standards and authorizes the Board to include courses relating to barrier-free design.

Proposed §1.69(d) would retain the current requirement for registrants to complete at least eight hours of CEPH in structured course study, while implementing two changes. First, the proposed rule would require that at least 45 minutes of each claimed hour of structured course study directly relate to health, safety, or welfare. This is a change from the current standard that one CEPH equals a minimum of 50 minutes of actual course time. Adoption of the 45-minute standard would be consistent with NCARB and AIA guidelines, thus helping to ensure that CE approved by national bodies remains eligible for credit in Texas. Second, proposed §1.69(d) would supplement the current rule by specifically categorizing certain activities as structured course study. These examples are consistent with agency precedent and will help registrants to understand the types of CE that count toward structured course study, as opposed to self-directed study.

Proposed §1.69(e) would retain the current allowance that registrants may claim up to four hours of CEPH credit for self-directed study. However, the proposed rule adopts new guidance for registrants by specifically categorizing certain activities as self-directed study. These categories are consistent with agency precedent and will help registrants to understand the types of CE that are considered self-directed study, as opposed to structured course study.

Proposed §1.69(f) maintains currently-existing exemptions from CE requirements, with one notable change. Under current §1.69(f)(4), an architect who has an active registration in another jurisdiction with a mandatory CE program is exempt from Texas CE requirements if the architect satisfies the other jurisdiction's CE program requirements, provided that the other jurisdiction's registration requirements are substantially equivalent to Texas registration requirements. The Board has determined that the equivalence of registration requirements is not relevant to whether Texas should recognize the completion of another jurisdiction's CE requirements as an exemption from completing Texas CE requirements. Rather, the test of equivalency should relate to the similarity of CE requirements between the jurisdictions. For that reason, under the proposed rule, this exemption would be conditional on the completion of another jurisdiction's CE requirements that are substantially equivalent to Texas requirements. Additionally, the proposed exemption would not exempt a registrant from the generally-applicable Texas requirements to complete one CEPH relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design.

Proposed §1.69(g) would readopt current requirements regarding the maintenance of CE records, while identifying the required contents of those records in greater detail, consistent with current Board policy. Maintenance of CE records in compliance with the proposed rule will allow registrants to successfully demonstrate compliance with CE requirements in the event of an audit.

Proposed §1.69(h) addresses a registrant's attestation of compliance with CE requirements at the time of registration renewal. Under current and proposed §1.69, registrants are required to complete at least 12 hours of CEPH every calendar year, ending on December 31. However, registrants attest to the completion of these hours at the time of annual renewal, which is due by the end of the registrant's birth month during the following year. Under the current rule, one result of the asynchronous timing of these actions is that, if a registrant discovers at renewal that he or she did not complete CE requirements in the previous calendar year, there is no suitable remedy for the failure at the time of renewal. Current rules do allow the registrant an opportunity to "make-up" deficient CE after an audit, but doing so does not absolve the registrants of all violations of the Board's rules. For example, a registrant is eligible for a decreased penalty for failing to complete CE by completing "make-up" CE, but would still be subject to an administrative penalty if the registrant had falsely attested to compliance with CE requirements at the time of renewal. To address this issue, proposed §1.69(h) would al-

low registrants an opportunity, prior to renewal, to cure or avoid any violation resulting from a failure to complete CE in the previous year. Under proposed §1.69(h), a registrant who did not complete sufficient CE in the previous year would be allowed to attest to compliance and be considered compliant with CE requirements if (prior to renewal) the registrant completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year and completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement. Additionally, proposed §1.69 would eliminate the post-attestation opportunity to complete "make-up" CE, since registrants would instead be given an opportunity to complete deficient CE prior to renewal, without penalty. The Board expects that the opportunity to address a previous year's CE deficiency without disciplinary action will result in fewer disciplinary cases, thereby providing a benefit to registrants while increasing the rate of compliance with CE requirements.

Proposed §1.69(j) would identify the administrative penalties that a registrant would be subject to for violating CE requirements. Under current rules, the administrative penalties for violating CE requirements are identified in §1.232. The identification of administrative penalties within proposed §1.69(j) will result in greater centralization of information relating to CE, thereby increasing ease of use for registrants and other members of the public. Additionally, the administrative penalty amounts would be amended to be more responsive to the severity of the violation. For example, under the current rules, a failure to timely complete CE or failure to maintain a detailed record of CE activities are subject to administrative penalties of $500 and $700, respectively. Under proposed §1.69(j), a registrant would be subject to an administrative penalty of $100 per hour of deficiency or claimed hour for which the registrant is unable to provide proof of compliance, as applicable. Additionally, the proposed rule would implement a $500 penalty for falsely attesting to compliance with minimum CE requirements (a decrease from $700 in the current rule) and retain a $250 penalty for a failure to timely respond to or comply with a CE audit or verification. Proposed §1.69(k) clarifies that these administrative penalties are considered appropriate for a first-time violation of CE requirements and that second or subsequent CE violations could be subject to 2x penalties or suspension or revocation of registration. Proposed §1.69(l) clarifies that the administrative penalties in subsection (j) are to be applied to each individual violation of the Board's CE requirements, and that if a registrant has committed multiple violations, the registrant shall be subject to a separate administrative penalty for each violation. The Board finds that the changes to the administrative penalty structure will result in administrative penalties that are more closely tied to the severity of the violation. However, the Board does not expect that the overall amount collected in administrative penalties will differ significantly from collections under the current rule.

Proposed §1.69(i), (m), (n), and (o) would readopt existing rule policy related to CE record-keeping; auditing; the application of CE requirements to holders of multiple registrations; carryover of CE credit from a prior year; and extensions available to military service members. The readoption of these rule provisions is undertaken with minor, non-substantive changes relating to updated terminology and organization.

Proposed §1.232 would be amended to eliminate the identification of specific administrative penalty amounts for CE violations. Under the proposed amendments, this information would be relocated in proposed §1.69. This relocation will make it easier for registrants and other members of the public to find relevant information about the Board's CE requirements.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. Rather, the proposed rules would incorporate changes to a preexisting program mandated under Texas Occupations Code §1051.356. The adoption of the proposed rules would not result in the creation or elimination of employee positions. Implementation of the proposed rules is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rules would not increase fees paid to the Board. The proposed rules would not result in the adoption of new regulations. Rather, the proposed rules would constitute the readoption of existing regulations with changes. The proposed rules would not expand the Board's CE requirements, nor increase the number of individuals subject to those requirements. The proposed rules are not expected to have any impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rules will include increased consistency between Texas CE standards and those of national organizations, thereby positively impacting licensure portability and decreasing regulatory burden. Additionally, the proposed rules are expected to decrease the number of registrants drawn into disciplinary proceedings by creating a pathway for registrants to cure a failure to complete CE in a prior calendar year. This would benefit registrants by decreasing the number of administrative penalties imposed by the Board and benefit the public by increasing compliance with CE requirements. Additionally, the proposed rules would benefit registrants and other members of the public by centralizing information about CE requirements and providing additional guidance regarding the acceptable scope of CE activities and the proper application of these activities to structured course study and self-directed study.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule.

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

TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to

his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the board.

PUBLIC COMMENT

Comments on the proposed rules may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.69

STATUTORY AUTHORITY

The repeal of §1.69 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture; and Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration.

CROSS REFERENCE TO STATUTE

The proposed repeal does not affect any other statute.

§1.69. Continuing Education Requirements.

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 December 28, 2020.

TRD-202005709
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 305-8519

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22 TAC §1.69

STATUTORY AUTHORITY

The proposal of new §1.69 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture; Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration; Tex. Occ. Code §1051.451, which authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053; Tex. Occ. Code §1051.452, which requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation; Tex. Occ. Code §1051.501, which grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053; and Tex. Occ. Code §1051.751, which authorizes the Board to impose an administrative penalty on a person following a determination that a ground for discipline exists under Tex. Occ. Code §1051.752.

CROSS REFERENCE TO STATUTE

The proposed rule does not affect any other statute.

§1.69. Continuing Education Requirements.

(a) For the purposes of this Section, the following definitions shall apply:

(1) Approved Subject Areas--The following are the Approved Subject Areas for qualifying continuing education:

(A) Construction and Evaluation--Areas related to construction contract administration and post-occupancy evaluation of projects. Acceptable topics include, but are not limited to: Construction Contract Administration; Bidding and Negotiation; Post Occupancy Evaluation (POE); and Building Commissioning.

(B) Practice Management--areas related to the management of architectural practice and the details of running a business. Acceptable topics include, but are not limited to: Applicable Laws and Regulations; Ethics; Insurance to Protect Owner and Public; Business Management; Risk Management; Information Management; Design for Community Needs; and Supervisor Training.

(C) Programming and Analysis--Areas related to the evaluation of project requirements, constraints, and opportunities. Acceptable topics include, but are not limited to: Land-Use Analysis; Programming; Site Selection; Historic Preservation; Adaptive Reuse; Codes, Regulations, and Standards; Natural Resources; Environmental Impact and Ecosystem Risk Assessment; Hazardous Materials; Resilience to Natural and Human Impacts; Life Safety; and Feasibility Studies.

(D) Project Development and Documentation--Areas related to the integration and documentation of building systems, material selection, and material assemblies into a project. Acceptable topics include, but are not limited to: Construction Documents; Materials and Assemblies; and Fixtures, Furnishings, & Equipment.

(E) Project Management--areas related to the management of architectural projects through execution. Acceptable topics include, but are not limited to: Project Delivery Methods; Contract Negotiation; Pre-Design Services; Site and Soils Analysis; Consultant Management; Project Scheduling; Quality Control (QA/QC); Economic Assessment; and Value Engineering.

(F) Project Planning and Design--areas related to the preliminary design of sites and buildings. Acceptable topics include, but are not limited to: Building Systems; Urban Planning; Master Planning; Building Design; Site Design; Safety and Security Measures; Impacts, Adaptation and Mitigation of a Changing Climate; Energy Efficiency and Positive Energy Design; Sustainability; Indoor Air Quality; Ergonomics; Lighting; Acoustics; Accessibility; Construction Systems; and Budget Development.

(2) Health, Safety, or Welfare--Those aspects of professional practice that improve the physical, emotional, and social well-being of occupants, users, and any others affected by buildings and sites; those aspects of professional practice that protect occupants, users, and any others affected by buildings or sites from harm; and those aspects of professional practice that enable equitable access, elevate the human experience, encourage social interaction, and benefit the environment.

(3) Structured Course Study--Courses of study relevant to the Practice of Architecture, taught or otherwise provided by qualified individuals or organizations, delivered by direct, in-person contact or through distance learning methods, the completion of which results in the issuance of a certificate or other record of attendance to the Architect by the provider.

(4) Self-Directed Study--Time spent by an Architect developing knowledge and skills relevant to the Practice of Architecture that does not qualify as Structured Course Study.

(b) During each calendar year between January 1 and December 31, an Architect shall complete a minimum of 12 qualifying continuing education program hours (CEPH) according to the requirements of this section. Each hour of continuing education applied to this requirement shall directly relate to Health, Safety, or Welfare.

(c) Of the 12 qualifying CEPH, each Architect shall complete a minimum of one CEPH relating to Barrier-Free Design and one CEPH relating to Sustainable or Energy-Efficient Design.

(d) Of the 12 qualifying CEPH, each Architect shall complete a minimum of eight CEPH in Structured Course Study.

(1) Each hour of Structured Course Study shall address one or more Approved Subject Areas and at least 45 minutes of every hour of CEPH shall directly relate to Health, Safety, or Welfare.

(2) Examples of Structured Course Study include the following:

(A) Attendance at continuing education courses dealing with technical architectural subjects related to the Architect's profession, ethical business practices, or new technology.

(B) The completion of college or university credit courses addressing architectural subjects, ethical business practices or new technology. Each semester or quarter credit hour shall equal one CEPH.

(e) Of the 12 qualifying CEPH, each Architect may claim a maximum of four hours of Self-Directed Study. Examples of Self-Directed Study may include the following:

(1) Reading written material or reviewing audio, video, or digital media that develops knowledge and skills relevant to the Practice of Architecture but does not qualify as Structured Course Study;

(2) Time spent in architectural research for publication or formal presentation to the profession or public;

(3) Time spent in professional service to the general public that draws upon the Architect's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, code study committees, or educational outreach activities;

(4) Time spent preparing to teach or teaching architectural courses. An Architect may not claim credit for preparing for or teaching the same course more than once; and

(5) One CEPH may be claimed for attendance at one full-day session of a meeting of the Texas Board of Architectural Examiners.

(f) An Architect may be exempt from continuing education requirements for any of the following reasons:

(1) An Architect shall be exempt upon initial registration and upon reinstatement of registration through December 31st of the calendar year of his/her initial or reinstated registration;

(2) An inactive or emeritus Architect shall be exempt during any calendar year in which the Architect's registration is in inactive or emeritus status, but all continuing education credits for each period of inactive or emeritus registration shall be completed before the Architect's registration may be returned to active status;

(3) An Architect who is not a full-time member of the Armed Forces shall be exempt for any calendar year during which the Architect serves on active duty in the Armed Forces of the United States for a period of time exceeding 90 consecutive days;

(4) An Architect who has an active architectural registration in another jurisdiction shall be exempt from mandatory continuing education program requirements in Texas for any calendar year during which the Architect satisfies the other jurisdiction's continuing education program requirements, provided that the other jurisdiction's continuing education requirements are substantially equivalent to Texas requirements. Notwithstanding this exemption, the Architect shall complete one CEPH relating to Barrier-Free Design and one CEPH relating to Sustainable or Energy-Efficient Design; or

(5) An Architect who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in §61.003, Education Code, and who in such position is engaged in teaching architecture.

(g) An Architect shall maintain a detailed record of the Architect's continuing education activities, including all course completion certificates documenting completion of Structured Course Study and a record of Self-Directed Study including a date and description of the claimed activity, for a period of five years after the end of the calendar year for which credit is claimed.

(h) When renewing his/her annual registration, an Architect shall complete an attestation regarding the Architect's compliance with minimum continuing education requirements. An Architect may attest to compliance and shall be considered compliant with continuing education requirements if:

(1) The Architect fulfilled minimum continuing education program requirements during the immediately preceding calendar year according to the requirements of this Section; or

(2) The Architect failed to fulfill minimum continuing education program hours during the immediately preceding calendar year, but prior to renewing his/her registration in the current calendar year, the Architect:

(A) Completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year (which will be applied to the previous calendar year and cannot be applied to the current calendar year requirement); and

(B) Completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement.

(i) Upon written request, the Board may require an Architect to produce documentation to prove that the Architect has complied with the minimum continuing education program requirements.

(1) Board staff will review an Architect's response to such a request to determine whether the Architect is in compliance with this Section.

(2) If an Architect fails to provide acceptable documentation of compliance within 30 days of a request, the Architect will be presumed to have not complied with minimum continuing education requirements.

(3) The Board has final authority to determine whether to award or deny credit claimed by an Architect for continuing education activities.

(j) Violations of continuing education requirements and administrative penalties:

(1) Falsely attesting to compliance with minimum continuing education requirements shall be subject to an administrative penalty in the amount of $500;

(2) Failure to timely complete minimum continuing education requirements shall be subject to an administrative penalty in the amount of $100 for every hour of deficiency per calendar year;

(3) Failure to maintain a detailed record of continuing education activities shall be subject to an administrative penalty of $100 for every hour of claimed continuing education for which an Architect is unable to provide proof of compliance; and

(4) Failure to timely respond to or comply with a continuing education audit or verification shall be subject to an administrative penalty of $250 per failure.

(k) The administrative penalties identified in subsection (j) of this section are considered appropriate for a first-time violation of continuing education requirements. If an Architect was previously found to have violated the Board's continuing education requirements in a warning or Order of the Board, the Board may increase the penalty up to a factor of two for a second or subsequent violation, in addition to consideration of suspension or revocation of registration under §1.232 of the Board's rules.

(l) The administrative penalties identified in subsection (j) of this section are to be applied to each individual violation of the Board's continuing education requirements. If an Architect has committed multiple violations, the Architect shall be subject to a separate administrative penalty for each violation.

(m) If an Architect is registered to practice more than one of the professions regulated by the Board and the Architect completes a continuing education activity that is directly related to more than one of those professions, the Architect may submit that activity for credit for all of the professions to which it relates. The Architect must maintain a separate detailed record of continuing education activities for each profession.

(n) An Architect may receive credit for up to 24 CEPH earned during any single calendar year. A maximum of 12 CEPH that is completed in excess of the continuing education requirements for a calendar year may be carried forward to satisfy the continuing education requirements for the next calendar year.

(o) As the term is defined in §1.29(a) of the Board's rules, a military service member is entitled to two years of additional time to complete any CEPH requirements.

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 December 28, 2020.

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 305-8519

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SUBCHAPTER L. HEARINGS--CONTESTED CASES

22 TAC §1.232

STATUTORY AUTHORITY

The amendment of §1.232 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture; Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration; Tex. Occ. Code §1051.451, which authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053; Tex. Occ. Code §1051.452, which requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation; Tex. Occ. Code §1051.501, which grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053; and Tex. Occ. Code §1051.751, which authorizes the Board to impose an administrative penalty on a person following a determination that a ground for discipline exists under Tex. Occ. Code §1051.752.

CROSS REFERENCE TO STATUTE

The proposed amendment does not affect any other statute.

§1.232. Board Responsibilities.

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

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §1.232(j)
[~~Figure: 22 TAC §1.232(j)~~]

(k) - (m) (No change.)

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

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 305-8519

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CHAPTER 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners (Board) proposes the repeal of 22 Texas Administrative Code (TAC) §3.69, the adoption of new 22 TAC §3.69, and the amendment of 22 TAC §3.232.

These proposed rulemaking actions would implement changes to the Board's continuing education (CE) requirements as applied to landscape architects. Previously, the Board adopted §3.69, which identifies the CE requirements for landscape architects. Due to the need for substantial addition to and reorganization of existing rule language, the Board proposes to repeal the current rule and replace it in full with a revised version. This notice will summarize how proposed §3.69 differs from the current version of §3.69.

First, proposed §3.69 would implement new definitions to govern the application of the rule. Under proposed §3.69(a), the Board proposes the adoption of definitions for "Approved Subject Areas" "Health, Safety, and Welfare," "Structured Course Study," and "Self-Directed Study" The adoption of these definitions would assist registrants in understanding which activities satisfy the Board's requirements for acceptable CE credit. Additionally, the definitions for "Approved Subject Areas" and "Health, Safety, and Welfare," incorporate national standards for CE adopted by the Landscape Architecture Continuing Education System (LA CES), a collaboration of the American Society of Landscape Architects, Canadian Society of Landscape Architects, Council of Educators in Landscape Architecture, Council of Landscape Architectural Registration Boards, Landscape Architectural Accreditation Board, and Landscape Architecture Foundation (LAF). LA CES establishes, maintains, and enforces standards for evaluating professional development and continuing education programs for landscape architects. The adoption of these national standards would help to standardize CE requirements among regulatory jurisdictions, thereby encouraging licensure portability and lowering the regulatory burden on registrants. Additionally, this proposed adoption is consistent with the Board's authority in Tex. Occ. Code §1051.356 to recognize the CE programs of nationally acknowledged organizations involved in providing, recording, or approving postgraduate education and to require that registrants complete CE courses relating to health, safety, or welfare.

Proposed §3.69(b) and (c) would retain the current requirement for registrants to complete 12 hours of qualifying CE hours per calendar year, including a minimum of one continuing education program hour (CEPH) relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design. These requirements implement Tex. Occ. Code §1051.356(b), which requires the Board's CE program to include courses relating to sustainable or energy-efficient design standards and authorizes the Board to include courses relating to barrier-free design.

Proposed §3.69(d) would retain the current requirement for registrants to complete at least eight hours of CEPH in structured course study, while implementing two changes. First, the proposed rule would require that at least 45 minutes of each claimed hour of structured course study directly relate to health, safety, or welfare. This is a change from the current standard that one CEPH equals a minimum of 50 minutes of actual course time. Adoption of the 45-minute standard would be consistent with LA CES guidelines, thus ensuring that CE meeting national standards remains eligible for credit in Texas. Second, proposed §3.69(d) would supplement the current rule by specifically categorizing certain activities as structured course study. These examples are consistent with agency precedent and will help registrants to understand the types of CE that count toward structured course study, as opposed to self-directed study.

Proposed §3.69(e) would retain the current allowance that registrants may claim up to four hours of CEPH credit for self-directed study. However, the proposed rule adopts new guidance for registrants by specifically categorizing certain activities as self-directed study. These categories are consistent with agency precedent and will help registrants to understand the types of CE that are considered self-directed study, as opposed to structured course study.

Proposed §3.69(f) maintains currently-existing exemptions from CE requirements, with one notable change. Under current §3.69(f)(4), a landscape architect who has an active registration in another jurisdiction with a mandatory CE program is exempt from Texas CE requirements if the landscape architect satisfies the other jurisdiction's CE program requirements, provided that the other jurisdiction's registration requirements are substantially equivalent to Texas registration requirements. The Board has determined that the equivalence of registration requirements is not relevant to whether Texas should recognize the completion of another jurisdiction's CE requirements as an exemption from completing Texas CE requirements. Rather, the test of equivalency should relate to the similarity of CE requirements between the jurisdictions. For that reason, under the proposed rule, this exemption would be conditional on the completion of another jurisdiction's CE requirements that are substantially equivalent to Texas requirements. Additionally, the proposed exemption would not exempt a registrant from the generally-applicable Texas requirements to complete one CEPH relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design.

Proposed §3.69(g) would readopt current requirements regarding the maintenance of CE records, while identifying the required contents of those records in greater detail, consistent with current Board policy. Maintenance of CE records in compliance with the proposed rule will allow registrants to successfully demonstrate compliance with CE requirements in the event of an audit.

Proposed §3.69(h) addresses a registrant's attestation of compliance with CE requirements at the time of registration renewal. Under current and proposed §3.69, registrants are required to complete at least 12 hours of CEPH every calendar year, ending on December 31. However, registrants attest to the completion of these hours at the time of annual renewal, which is due by the end of the registrant's birth month during the following year. Under the current rule, one result of the asynchronous timing of these actions is that, if a registrant discovers at renewal that he or she did not complete CE requirements in the previous calendar year, there is no suitable remedy for the failure at the time of renewal. Current rules do allow the registrant an opportunity to "make-up" deficient CE after an audit, but doing so does not absolve the registrants of all violations of the Board's rules. For example, a registrant is eligible for a decreased penalty for failing to complete CE by completing "make-up" CE, but would

still be subject to an administrative penalty if the registrant had falsely attested to compliance with CE requirements at the time of renewal. To address this issue, proposed §3.69(h) would allow registrants an opportunity, prior to renewal, to cure or avoid any violation resulting from a failure to complete CE in the previous year. Under proposed §3.69(h), a registrant who did not complete sufficient CE in the previous year would be allowed to attest to compliance and be considered compliant with CE requirements if (prior to renewal) the registrant completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year and completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement. Additionally, proposed §3.69 would eliminate the post-attestation opportunity to complete "make-up" CE, since registrants would instead be given an opportunity to complete deficient CE prior to renewal without penalty. The Board expects that the opportunity to address a previous year's CE deficiency without disciplinary action will result in fewer disciplinary cases, thereby providing a benefit to registrants while increasing the rate of compliance with CE requirements.

Proposed §3.69(j) would identify the administrative penalties that a registrant would be subject to for violating CE requirements. Under current rules, the administrative penalties for violating CE requirements are identified in §3.232. The identification of administrative penalties within proposed §3.69(j) will result in greater centralization of information relating to CE, thereby increasing ease of use for registrants and other members of the public. Additionally, the administrative penalty amounts would be amended to be more responsive to the severity of the violation. For example, under the current rules, a failure to timely complete CE or failure to maintain a detailed record of CE activities are subject to administrative penalties of $500 and $700, respectively. Under proposed §3.69(j), a registrant would be subject to an administrative penalty of $100 per hour of deficiency or claimed hour for which the registrant is unable to provide proof of compliance, as applicable. Additionally, the proposed rule would implement a $500 penalty for falsely attesting to compliance with minimum CE requirements (a decrease from $700 in the current rule) and retain a $250 penalty for a failure to timely respond to or comply with a CE audit or verification. Proposed §3.69(k) clarifies that these administrative penalties are considered appropriate for a first-time violation of CE requirements and that second or subsequent CE violations could be subject to 2x penalties or suspension or revocation of registration. Proposed §3.69(l) clarifies that the administrative penalties in subsection (j) are to be applied to each individual violation of the Board's CE requirements, and that if a registrant has committed multiple violations, the registrant shall be subject to a separate administrative penalty for each violation. The Board finds that the changes to the administrative penalty structure will result in administrative penalties that are more closely tied to the severity of the violation. However, the Board does not expect that the overall amount collected in administrative penalties will differ significantly from collections under the current rule.

Proposed §3.69(i)(m)(n) and (o) would readopt existing rule policy related to CE record-keeping; auditing; the application of CE requirements to holders of multiple registrations; carryover of CE credit from a prior year; and extensions available to military service members. The readoption of these rule provisions is undertaken with minor, non-substantive changes relating to updated terminology and organization.

Proposed §3.232 would be amended to eliminate the identification of specific administrative penalty amounts for CE violations. Under the proposed amendments, this information would be relocated in proposed §3.69. This relocation will make it easier for registrants and other members of the public to find relevant information about the Board's CE requirements.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. Rather, the proposed rules would incorporate changes to a preexisting program mandated under Texas Occupations Code §1051.356. The adoption of the proposed rules would not result in the creation or elimination of employee positions. Implementation of the proposed rules is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rules would not increase fees paid to the Board. The proposed rules would not result in the adoption of new regulations. Rather, the proposed rules would constitute the readoption of existing regulations with changes. The proposed rules would not expand the Board's CE requirements, nor increase the number of individuals subject to those requirements. The proposed rules are not expected to have any impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rules will include increased consistency between Texas CE standards and those of national organizations, thereby positively impacting licensure portability and decreasing regulatory burden. Additionally, the proposed rules are expected to decrease the number of registrants drawn into disciplinary proceedings by creating a pathway for registrants to cure a failure to complete CE in a prior calendar year. This would benefit registrants by decreasing the number of administrative penalties imposed by the Board and benefit the public by increasing compliance with CE requirements. Additionally, the proposed rules would benefit registrants and other members of the public by centralizing information about CE requirements and providing additional guidance regarding the acceptable scope of CE activities and the proper application of these activities to structured course study and self-directed study.

Compliance with the proposed amendments is not expected to result in economic costs to persons who are required to comply with the rule.

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

TAKINGS IMPACT ASSESSMENT

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the board.

PUBLIC COMMENT

Comments on the proposed rules may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.69

STATUTORY AUTHORITY

The repeal of §3.69 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; and Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration.

CROSS REFERENCE TO STATUTE

The proposed repeal does not affect any other statute.

§3.69. Continuing Education Requirements.

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 December 28, 2020.

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 305-8519

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22 TAC §3.69

STATUTORY AUTHORITY

New §3.69 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration; Tex. Occ. Code §1051.451, which authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053; Tex. Occ. Code §1051.452, which requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation; Tex. Occ. Code §1051.501, which grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053; and Tex. Occ. Code §1052.251, which authorizes the Board to impose an administrative penalty on a person following a determination that a ground for discipline exists under Tex. Occ. Code §1052.252.

CROSS REFERENCE TO STATUTE

The proposal does not affect any other statute.

§3.69. Continuing Education Requirements.

(a) For the purposes of this Section, the following definitions shall apply:

(1) Approved Subject Areas - The following are the Approved Subject Areas for qualifying continuing education:

(A) Building codes;

(B) Code of ethics;

(C) Codes, acts, laws, and regulations governing the practice of Landscape Architecture;

(D) Construction administration, including construction contracts;

(E) Construction documents;

(F) Design of environmental systems;

(G) Environmental process and analysis;

(H) Erosion control methods;

(I) Grading;

(J) Horticulture;

(K) Irrigation methods;

(L) Land planning and land use analysis;

(M) Landscape preservation, landscape restoration and adaptive reuse;

(N) Lateral forces;

(O) Natural hazards - impact of earthquake, hurricane, fire, or flood related to site design;

(P) Pedestrian and vehicular circulation;

(Q) Planting design;

(R) Resource conservation and management;

(S) Roadway design principles;

(T) Site accessibility, including Americans with Disabilities Act standards for accessible site design;

(U) Site and soils analysis;

(V) Site design and engineering, including materials, methods, technologies, and applications;

(W) Site security and safety;

(X) Storm water management, surface and subsoil drainage;

(Y) Structural systems considerations;

(Z) Surveying methods and techniques as they affect Landscape Architecture;

(AA) Sustainable design, including techniques related to energy efficiency;

(BB) Use of site materials and methods of site construction;

(CC) Vegetative management;

(DD) Wetlands;

(EE) Zoning as it relates to the improvement and/or protection of the public health, safety, and welfare;

(FF) Other matters of law and ethics that contribute to the health, safety, and welfare of the public;

(2) Health, Safety, and Welfare - Subject matter applying to the principles of mathematical, physical, and social sciences in consultation, evaluation, planning, design (including, but not limited to the preparation and filing of plans, drawings, specifications, and other contract documents), and administration of contracts relative to projects principally directed at the functional and aesthetic use and preservation of land.

(3) Structured Course Study - Courses of study relevant to the practice of Landscape Architecture, taught or otherwise provided by qualified individuals or organizations, delivered by direct, in-person contact or through distance learning methods, the completion of which results in the issuance of a certificate or other record of attendance to the Landscape Architect by the provider.

(4) Self-Directed Study - Time spent by a Landscape Architect developing knowledge and skills relevant to the practice of Landscape Architecture that does not qualify as Structured Course Study.

(b) During each calendar year between January 1 and December 31, a Landscape Architect shall complete a minimum of 12 qualifying continuing education program hours (CEPH) according to the requirements of this section. Each hour of continuing education applied to this requirement shall directly relate to Health, Safety, and Welfare.

(c) Of the 12 qualifying CEPH, each Landscape Architect shall complete a minimum of one CEPH relating to Barrier-Free Design and one CEPH relating to Sustainable or Energy-Efficient Design.

(d) Of the 12 qualifying CEPH, each Landscape Architect shall complete a minimum of eight CEPH in Structured Course Study.

(1) Each hour of Structured Course Study shall address one or more Approved Subject Areas and at least 45 minutes of every hour of CEPH shall directly relate to Health, Safety, and Welfare.

(2) Examples of Structured Course Study include the following:

(A) Attendance at continuing education courses dealing with technical landscape architectural subjects related to the Landscape Architect's profession, ethical business practices, or new technology.

(B) The completion of college or university credit courses addressing landscape architectural subjects, ethical business practices or new technology. Each semester or quarter credit hour shall equal one CEPH.

(e) Of the 12 qualifying CEPH, each Landscape Architect may claim a maximum of four hours of Self-Directed Study. Examples of Self-Directed Study may include the following:

(1) Reading written material or reviewing audio, video, or digital media that develops knowledge and skills relevant to the practice of Landscape Architecture but does not qualify as Structured Course Study;

(2) Time spent in landscape architectural research for publication or formal presentation to the profession or public;

(3) Time spent in professional service to the general public that draws upon the Landscape Architect's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, code study committees, or educational outreach activities;

(4) Time spent preparing to teach or teaching landscape architectural courses. A Landscape Architect may not claim credit for preparing for or teaching the same course more than once; and

(5) One CEPH may be claimed for attendance at one full-day session of a meeting of the Texas Board of Architectural Examiners.

(f) A Landscape Architect may be exempt from continuing education requirements for any of the following reasons:

(1) A Landscape Architect shall be exempt upon initial registration and upon reinstatement of registration through December 31st of the calendar year of his/her initial or reinstated registration;

(2) An inactive or emeritus Landscape Architect shall be exempt during any calendar year in which the Landscape Architect's registration is in inactive or emeritus status, but all continuing education credits for each period of inactive or emeritus registration shall be completed before the Landscape Architect's registration may be returned to active status;

(3) A Landscape Architect who is not a full-time member of the Armed Forces shall be exempt for any calendar year during which the Landscape Architect serves on active duty in the Armed Forces of the United States for a period of time exceeding 90 consecutive days;

(4) A Landscape Architect who has an active landscape architectural registration in another jurisdiction shall be exempt from mandatory continuing education program requirements in Texas for any calendar year during which the Landscape Architect satisfies the other jurisdiction's continuing education program requirements, provided that the other jurisdiction's continuing education requirements are substantially equivalent to Texas requirements. Notwithstanding this exemption, the Landscape Architect shall complete one CEPH relating to Barrier-Free Design and one CEPH relating to Sustainable or Energy-Efficient Design; or

(5) A Landscape Architect who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in §61.003, Education Code, and who in such position is engaged in teaching Landscape Architecture.

(g) A Landscape Architect shall maintain a detailed record of the Landscape Architect's continuing education activities, including all course completion certificates documenting completion of Structured Course Study and a record of Self-Directed Study including a date and

description of the claimed activity, for a period of five years after the end of the calendar year for which credit is claimed.

(h) When renewing his/her annual registration, a Landscape Architect shall complete an attestation regarding the Landscape Architect's compliance with minimum continuing education requirements. A Landscape Architect may attest to compliance and shall be considered compliant with continuing education requirements if:

(1) The Landscape Architect fulfilled minimum continuing education program requirements during the immediately preceding calendar year according to the requirements of this Section; or

(2) The Landscape Architect failed to fulfill minimum continuing education program hours during the immediately preceding calendar year, but prior to renewing his/her registration in the current calendar year, the Landscape Architect:

(A) Completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year (which will be applied to the previous calendar year and cannot be applied to the current calendar year requirement); and

(B) Completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement.

(i) Upon written request, the Board may require a Landscape Architect to produce documentation to prove that the Landscape Architect has complied with the minimum continuing education program requirements.

(1) Board staff will review a Landscape Architect's response to such a request to determine whether the Landscape Architect is in compliance with this Section.

(2) If a Landscape Architect fails to provide acceptable documentation of compliance within 30 days of a request, the Landscape Architect will be presumed to have not complied with minimum continuing education requirements.

(3) The Board has final authority to determine whether to award or deny credit claimed by a Landscape Architect for continuing education activities.

(j) Violations of continuing education requirements and administrative penalties:

(1) Falsely attesting to compliance with minimum continuing education requirements shall be subject to an administrative penalty in the amount of $500;

(2) Failure to timely complete minimum continuing education requirements shall be subject to an administrative penalty in the amount of $100 for every hour of deficiency per calendar year;

(3) Failure to maintain a detailed record of continuing education activities shall be subject to an administrative penalty of $100 for every hour of claimed continuing education for which a Landscape Architect is unable to provide proof of compliance; and

(4) Failure to timely respond to or comply with a continuing education audit or verification shall be subject to an administrative penalty of $250 per failure.

(k) The administrative penalties identified in subsection (j) of this section are considered appropriate for a first-time violation of continuing education requirements. If a Landscape Architect was previously found to have violated the Board's continuing education requirements in a warning or Order of the Board, the Board may increase the penalty up to a factor of two for a second or subsequent violation, in addition to consideration of suspension or revocation of registration under §3.232 of the Board's rules.

(l) The administrative penalties identified in subsection (j) of this section are to be applied to each individual violation of the Board's continuing education requirements. If a Landscape Architect has committed multiple violations, the Landscape Architect shall be subject to a separate administrative penalty for each violation.

(m) If a Landscape Architect is registered to practice more than one of the professions regulated by the Board and the Landscape Architect completes a continuing education activity that is directly related to more than one of those professions, the Landscape Architect may submit that activity for credit for all of the professions to which it relates. The Landscape Architect must maintain a separate detailed record of continuing education activities for each profession.

(n) A Landscape Architect may receive credit for up to 24 CEPH earned during any single calendar year. A maximum of 12 CEPH that is completed in excess of the continuing education requirements for a calendar year may be carried forward to satisfy the continuing education requirements for the next calendar year.

(o) As the term is defined in §3.29(a) of the Board's rules, a military service member is entitled to two years of additional time to complete any CEPH requirements.

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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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §3.232

STATUTORY AUTHORITY

The amendment of §3.232 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration; Tex. Occ. Code §1051.451, which authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053; Tex. Occ. Code §1051.452, which requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation; Tex. Occ. Code §1051.501, which grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053; and Tex. Occ. Code §1052.251, which authorizes the Board to impose an administrative penalty on a person following a determination that a ground for discipline exists under Tex. Occ. Code §1052.252.

CROSS REFERENCE TO STATUTE

The proposed amendment does not affect any other statute.

§3.232. Board Responsibilities.

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

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §3.232(j)
[~~Figure: 22 TAC §3.232(j)~~]

(k) - (m) (No change.)

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

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (Board) proposes the repeal of 22 Texas Administrative Code (TAC) §5.79 and the adoption of new 22 TAC §5.79, concerning Continuing Education Requirements; and the amendment of 22 TAC §5.242, concerning Board Responsibilities.

These proposed rulemaking actions would implement changes to the Board's continuing education (CE) requirements as applied to registered interior designers. Previously, the Board adopted §5.79, which identifies the CE requirements for registered interior designers. Due to the need for substantial addition to and reorganization of existing rule language, the Board proposes to repeal the current rule and replace it in full with a revised version. This notice will summarize how proposed §5.79 differs from the current version of §5.79.

First, proposed §5.79 would implement new definitions to govern the application of the rule. Under proposed §5.79(a), the Board proposes the adoption of definitions for "Approved Subject Areas" "Health, Safety, and Welfare," "Structured Course Study," and "Self-Directed Study." The adoption of these definitions would assist registrants in understanding which activities satisfy the Board's requirements for acceptable CE credit. Additionally, the definition of "Health, Safety, and Welfare," incorporates national standards for CE adopted by the International Design Continuing Education Council (IDCEC). The adoption of these national standards would help to standardize CE requirements among regulatory jurisdictions, thereby encouraging licensure portability and lowering the regulatory burden on registrants. Additionally, this proposed adoption is consistent with the Board's authority in Tex. Occ. Code §1051.356 to recognize the CE programs of nationally acknowledged organizations involved in providing, recording, or approving postgraduate education and to require that registrants complete CE courses relating to health, safety, or welfare.

Proposed §5.79(b) and (c) would retain the current requirement for registrants to complete 12 hours of qualifying CE hours per calendar year, including a minimum of one continuing education program hour (CEPH) relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design. These requirements implement Tex. Occ. Code §1051.356(b), which requires the Board's CE program to include courses relating to sustainable or energy-efficient design standards and authorizes the Board to include courses relating to barrier-free design.

Proposed §5.79(d) would retain the current requirement for registrants to complete at least eight hours of CEPH in structured course study, while implementing two changes. First, the proposed rule would require that at least 45 minutes of each claimed hour of structured course study directly relate to health, safety, or welfare. This is a change from the current standard that one CEPH equals a minimum of 50 minutes of actual course time. Adoption of the 45-minute standard would be consistent with IDCEC guidelines, thus ensuring that CE meeting national standards remains eligible for credit in Texas. Second, proposed §5.79(d) would supplement the current rule by specifically categorizing certain activities as structured course study. These examples are consistent with agency precedent and will help registrants to understand the types of CE that count toward structured course study, as opposed to self-directed study.

Proposed §5.79(e) would retain the current allowance that registrants may claim up to four hours of CEPH credit for self-directed study. However, the proposed rule adopts new guidance for registrants by specifically categorizing certain activities as self-directed study. These categories are consistent with agency precedent and will help registrants to understand the types of CE that are considered self-directed study, as opposed to structured course study.

Proposed §5.79(f) maintains currently-existing exemptions from CE requirements, with one notable change. Under current §5.79(f)(4), a registered interior designer who has an active registration in another jurisdiction with a mandatory CE program is exempt from Texas CE requirements if the registered interior designer satisfies the other jurisdiction's CE program requirements, provided that the other jurisdiction's registration requirements are substantially equivalent to Texas registration requirements. The Board has determined that the equivalence of registration requirements is not relevant to whether Texas should recognize the completion of another jurisdiction's CE requirements as an exemption from completing Texas CE requirements. Rather, the test of equivalency should relate to the similarity of CE requirements between the jurisdictions. For that reason, under the proposed rule, this exemption would be conditional on the completion of another jurisdiction's CE requirements that are substantially equivalent to Texas requirements. Additionally, the proposed exemption would not exempt a registrant from the generally-applicable Texas requirements to complete one CEPH relating to barrier-free design and one CEPH relating to sustainable or energy-efficient design.

Proposed §5.79(g) would readopt current requirements regarding the maintenance of CE records, while identifying the required contents of those records in greater detail, consistent with current Board policy. Maintenance of CE records in compliance with the proposed rule will allow registrants to successfully demonstrate compliance with CE requirements in the event of an audit.

Proposed §5.79(h) addresses a registrant's attestation of compliance with CE requirements at the time of registration renewal. Under current and proposed §5.79, registrants are required to complete at least 12 hours of CEPH every calendar year, ending on December 31. However, registrants attest to the completion of these hours at the time of annual renewal, which is due by the end of the registrant's birth month during the following year. Under the current rule, one result of the asynchronous timing of these actions is that, if a registrant discovers at renewal that he or she did not complete CE requirements in the previous calendar year, there is no suitable remedy for the failure at the time of renewal. Current rules do allow the registrant an opportunity to "make-up" deficient CE after an audit, but doing so does not absolve the registrants of all violations of the Board's rules. For example, a registrant is eligible for a decreased penalty for failing to complete CE by completing "make-up" CE, but would still be subject to an administrative penalty if the registrant had falsely attested to compliance with CE requirements at the time of renewal. To address this issue, proposed §5.79(h) would allow registrants an opportunity, prior to renewal, to cure or avoid any violation resulting from a failure to complete CE in the previous year. Under proposed §5.79(h), a registrant who did not complete sufficient CE in the previous year would be allowed to attest to compliance and be considered compliant with CE requirements if (prior to renewal) the registrant completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year and completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement. Additionally, proposed §5.79 would eliminate the post-attestation opportunity to complete "make-up" CE, since registrants would instead be given an opportunity to complete deficient CE prior to renewal without penalty. The Board expects that the opportunity to address a previous year's CE deficiency without disciplinary action will result in fewer disciplinary cases, thereby providing a benefit to registrants while increasing the rate of compliance with CE requirements.

Proposed §5.79(j) would identify the administrative penalties that a registrant would be subject to for violating CE requirements. Under current rules, the administrative penalties for violating CE requirements are identified in §5.242. The identification of administrative penalties within proposed §5.79(j) will result in greater centralization of information relating to CE, thereby increasing ease of use for registrants and other members of the public. Additionally, the administrative penalty amounts would be amended to be more responsive to the severity of the violation. For example, under the current rules, a failure to timely complete CE or failure to maintain a detailed record of CE activities are subject to administrative penalties of $500 and $700, respectively. Under proposed §5.79(j), a registrant would be subject to an administrative penalty of $100 per hour of deficiency or claimed hour for which the registrant is unable to provide proof of compliance, as applicable. Additionally, the proposed rule would implement a $500 penalty for falsely attesting to compliance with minimum CE requirements (a decrease from $700 in the current rule) and retain a $250 penalty for a failure to timely respond to or comply with a CE audit or verification. Proposed §5.79(k) clarifies that these administrative penalties are considered appropriate for a first-time violation of CE requirements and that second or subsequent CE violations could be subject to 2x penalties or suspension or revocation of registration. Proposed §5.79(l) clarifies that the administrative penalties in subsection (j) are to be applied to each individual violation of the Board's CE requirements, and that if a registrant has committed multiple violations, the registrant shall be subject to a separate administrative penalty for each violation. The Board finds that the changes to the administrative penalty structure will result in administrative penalties that are more closely tied to the severity of the violation. However, the Board does not expect that the overall amount collected in administrative penalties will differ significantly from collections under the current rule.

Proposed §5.79(i)(m)(n) and (o) would readopt existing rule policy related to CE record-keeping; auditing; the application of CE requirements to holders of multiple registrations; carryover of CE credit from a prior year; and extensions available to military service members. The readoption of these rule provisions is undertaken with minor, non-substantive changes relating to updated terminology and organization.

Proposed §5.242 would be amended to eliminate the identification of specific administrative penalty amounts for CE violations. Under the proposed amendments, this information would be relocated in proposed §5.79. This relocation will make it easier for registrants and other members of the public to find relevant information about the Board's CE requirements.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. Rather, the proposed rules would incorporate changes to a preexisting program mandated under Texas Occupations Code §1051.356. The adoption of the proposed rules would not result in the creation or elimination of employee positions. Implementation of the proposed rules is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rules would not increase fees paid to the Board. The proposed rules would not result in the adoption of new regulations. Rather, the proposed rules would constitute the readoption of existing regulations with changes. The proposed rules would not expand the Board's CE requirements, nor increase the number of individuals subject to those requirements. The proposed rules are not expected to have any impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rules will include increased consistency between Texas CE standards and those of national organizations, thereby positively impacting licensure portability and decreasing regulatory burden. Additionally, the proposed rules are expected to decrease the number of registrants drawn into disciplinary proceedings by creating a pathway for registrants to cure a failure to complete CE in a prior calendar year. This would benefit registrants by decreasing the number of administrative penalties imposed by the Board and benefit the public by increasing compliance with CE requirements. Additionally, the proposed rules would benefit registrants and other members of the public by centralizing information about CE requirements and providing additional guidance regarding the acceptable scope of CE activities and the proper application of these activities to structured course study and self-directed study.

Compliance with the proposed amendments is not expected to result in economic costs to persons who are required to comply with the rule.

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

TAKINGS IMPACT ASSESSMENT

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the board.

PUBLIC COMMENT

Comments on the proposed rules may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.79

STATUTORY AUTHORITY

The repeal of §5.79 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of registered interior design; and Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration.

CROSS REFERENCE TO STATUTE

The proposed repeal does not affect any other statute.

§5.79. Continuing Education Requirements.

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 December 22, 2020.

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 305-8519

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22 TAC §5.79

STATUTORY AUTHORITY

New §5.79 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of registered interior design; Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration; Tex. Occ. Code §1051.451, which authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053; Tex. Occ. Code §1051.452, which requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation; Tex. Occ. Code §1051.501, which grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053; and Tex. Occ. Code §1053.251, which authorizes the Board to impose an administrative penalty on a person following a determination that a ground for discipline exists under Tex. Occ. Code §1053.252.

CROSS REFERENCE TO STATUTE

The proposal does not affect any other statute.

§5.79. Continuing Education Requirements.

(a) For the purposes of this Section, the following definitions shall apply:

(1) Approved Subject Areas - The following are the Approved Subject Areas for qualifying continuing education:

(A) Legal: laws, codes, zoning, regulations, standards, life-safety, accessibility, ethics, insurance to protect owners and public.

(B) Technical: structural, mechanical, electrical, communications, fire protection, controls.

(C) Environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, insulation.

(D) Occupant Comfort: air quality, lighting, acoustics, ergonomics.

(E) Materials and Methods: building systems, products, finishes, furnishings, equipment.

(F) Preservations: historic, reuse, adaptation.

(G) Pre-design: programming, project analysis, survey of existing conditions, including the materials and configuration of the interior space of a project.

(H) Design: interior building design, interior specifications, accessibility, safety, and security measures.

(I) Construction Documents: drawings, specifications and other materials within the definition of the term "Construction Document".

(J) Construction Administration: contract, bidding, and contract negotiations.

(2) Health, Safety, or Welfare - Continuing education course content covering knowledge and practice of interior design that is focused on protection of the public and the environment.

(3) Structured Course Study - Courses of study relevant to the practice of Interior Design, taught or otherwise provided by qualified individuals or organizations, delivered by direct, in-person contact or through distance learning methods, the completion of which results in the issuance of a certificate or other record of attendance to the Registered Interior Designer by the provider.

(4) Self-Directed Study - Time spent by a Registered Interior Designer developing knowledge and skills relevant to the practice of Interior Design that does not qualify as Structured Course Study.

(b) During each calendar year between January 1 and December 31, a Registered Interior Designer shall complete a minimum of 12 qualifying continuing education program hours (CEPH) according to the requirements of this section. Each hour of continuing education applied to this requirement shall directly relate to Health, Safety, or Welfare.

(c) Of the 12 qualifying CEPH, each Registered Interior Designer shall complete a minimum of one CEPH relating to Barrier-Free Design and one CEPH relating to Sustainable or Energy-Efficient Design.

(d) Of the 12 qualifying CEPH, each Registered Interior Designer shall complete a minimum of eight CEPH in Structured Course Study.

(1) Each hour of Structured Course Study shall address one or more Approved Subject Areas and at least 45 minutes of every hour of CEPH shall directly relate to Health, Safety, or Welfare.

(2) Examples of Structured Course Study include the following:

(A) Attendance at continuing education courses dealing with technical Interior Design subjects related to the Registered Interior Designer's profession, ethical business practices, or new technology.

(B) The completion of college or university credit courses addressing Interior Design subjects, ethical business practices or new technology. Each semester or quarter credit hour shall equal one CEPH.

(e) Of the 12 qualifying CEPH, each Registered Interior Designer may claim a maximum of four hours of Self-Directed Study. Examples of Self-Directed Study may include the following:

(1) Reading written material or reviewing audio, video, or digital media that develops knowledge and skills relevant to the practice of Interior Design but does not qualify as Structured Course Study;

(2) Time spent in Interior Design research for publication or formal presentation to the profession or public;

(3) Hours spent in professional service to the general public that draws upon the Registered Interior Designer's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, code study committees, or educational outreach activities;

(4) Time spent preparing to teach or teaching Interior Design courses. A Registered Interior Designer may not claim credit for preparing for or teaching the same course more than once; and

(5) One CEPH may be claimed for attendance at one full-day session of a meeting of the Texas Board of Architectural Examiners.

(f) A Registered Interior Designer may be exempt from continuing education requirements for any of the following reasons:

(1) A Registered Interior Designer shall be exempt upon initial registration and upon reinstatement of registration through December 31st of the calendar year of his/her initial or reinstated registration;

(2) An inactive or emeritus Registered Interior Designer shall be exempt during any calendar year in which the Registered Interior Designer's registration is in inactive or emeritus status, but all continuing education credits for each period of inactive or emeritus registration shall be completed before the Registered Interior Designer's registration may be returned to active status;

(3) A Registered Interior Designer who is not a full-time member of the Armed Forces shall be exempt for any calendar year during which the Registered Interior Designer serves on active duty in the Armed Forces of the United States for a period of time exceeding 90 consecutive days;

(4) A Registered Interior Designer who has an active interior design registration in another jurisdiction shall be exempt from mandatory continuing education program requirements in Texas for any calendar year during which the Registered Interior Designer satisfies the other jurisdiction's continuing education program requirements, provided that the other jurisdiction's continuing education requirements are substantially equivalent to Texas requirements. Notwithstanding this exemption, the Registered Interior Designer shall complete one CEPH relating to Barrier-Free Design and one CEPH relating to Sustainable or Energy-Efficient Design; or

(5) A Registered Interior Designer who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in §61.003, Education Code, and who in such position is engaged in teaching Interior Design.

(g) A Registered Interior Designer shall maintain a detailed record of the Registered Interior Designer's continuing education activities, including all course completion certificates documenting completion of Structured Course Study and a record of Self-Directed Study including a date and description of the claimed activity, for a period of five years after the end of the calendar year for which credit is claimed.

(h) When renewing his/her annual registration, a Registered Interior Designer shall complete an attestation regarding the Registered Interior Designer's compliance with minimum continuing education requirements. A Registered Interior Designer may attest to compliance and shall be considered compliant with continuing education requirements if:

(1) The Registered Interior Designer fulfilled minimum continuing education program requirements during the immediately preceding calendar year according to the requirements of this Section; or

(2) The Registered Interior Designer failed to fulfill minimum continuing education program hours during the immediately preceding calendar year, but prior to renewing his/her registration in the current calendar year, the Registered Interior Designer:

(A) Completed sufficient qualifying CEPH to correct any deficiency for the prior calendar year (which will be applied to the previous calendar year and cannot be applied to the current calendar year requirement); and

(B) Completed 12 hours of qualifying CEPH to be applied to the current calendar year requirement.

(i) Upon written request, the Board may require a Registered Interior Designer to produce documentation to prove that the Registered Interior Designer has complied with the minimum continuing education program requirements.

(1) Board staff will review a Registered Interior Designer's response to such a request to determine whether the Registered Interior Designer is in compliance with this Section.

(2) If a Registered Interior Designer fails to provide acceptable documentation of compliance within 30 days of a request, the Registered Interior Designer will be presumed to have not complied with minimum continuing education requirements.

(3) The Board has final authority to determine whether to award or deny credit claimed by a Registered Interior Designer for continuing education activities.

(j) Violations of continuing education requirements and administrative penalties:

(1) Falsely attesting to compliance with minimum continuing education requirements shall be subject to an administrative penalty in the amount of $500;

(2) Failure to timely complete minimum continuing education requirements shall be subject to an administrative penalty in the amount of $100 for every hour of deficiency per calendar year;

(3) Failure to maintain a detailed record of continuing education activities shall be subject to an administrative penalty of $100 for every hour of claimed continuing education for which a Registered Interior Designer is unable to provide proof of compliance; and

(4) Failure to timely respond to or comply with a continuing education audit or verification shall be subject to an administrative penalty of $250 per failure.

(k) The administrative penalties identified in subsection (j) of this section are considered appropriate for a first-time violation of continuing education requirements. If a Registered Interior Designer was previously found to have violated the Board's continuing education requirements in a warning or Order of the Board, the Board may increase the penalty up to a factor of two for a second or subsequent violation, in addition to consideration of suspension or revocation of registration under §5.242 of the Board's rules.

(l) The administrative penalties identified in subsection (j) of this section are to be applied to each individual violation of the Board's continuing education requirements. If a Registered Interior Designer has committed multiple violations, the Registered Interior Designer shall be subject to a separate administrative penalty for each violation.

(m) If a Registered Interior Designer is registered to practice more than one of the professions regulated by the Board and the Registered Interior Designer completes a continuing education activity that is directly related to more than one of those professions, the Registered Interior Designer may submit that activity for credit for all of the professions to which it relates. The Registered Interior Designer must maintain a separate detailed record of continuing education activities for each profession.

(n) A Registered Interior Designer may receive credit for up to 24 CEPH earned during any single calendar year. A maximum of 12 CEPH that is completed in excess of the continuing education requirements for a calendar year may be carried forward to satisfy the continuing education requirements for the next calendar year.

(o) As the term is defined in §5.39(a) of the Board's rules, a military service member is entitled to two years of additional time to complete any CEPH requirements.

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 December 22, 2020.

TRD-202005716
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 305-8519

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §5.242

STATUTORY AUTHORITY

The amendment of §5.242 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of registered interior design; Tex. Occ. Code §1051.356, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders, participation in which is a requirement of renewing a certificate of registration; Tex. Occ. Code §1051.451, which authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053; Tex. Occ. Code §1051.452, which requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation; Tex. Occ. Code §1051.501, which grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053; and Tex. Occ. Code §1053.251, which authorizes the Board to impose an administrative penalty on a person following a determination that a ground for discipline exists under Tex. Occ. Code §1053.252.

CROSS REFERENCE TO STATUTE

The proposed amendment does not affect any other statute.

§5.242. Board Responsibilities.

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

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §5.242(j)
[~~Figure: 22 TAC §5.242(j)~~]

(k) - (m) (No change.)

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

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

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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) proposes this amendment to 22 TAC §108.7, concerning the minimum standard of care. This amendment requires dentists to hold a Level 1 Minimal Sedation permit to administer Halcion (triazolam), and provides that dentists should administer Halcion (triazolam) in an in-office setting.

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

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

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

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

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

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

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

No statutes are implemented or affected by this proposed rule.

§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[~~.~~]; and

(17) hold a Level 1 permit (Minimal Sedation permit) issued by the Board before prescribing and/or administering Halcion (triazolam), and should administer Halcion (triazolam) in an in-office setting.

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 December 28, 2020.

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Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 305-8910

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22 TAC §108.8

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.8 Records of the Dentist. The proposed amendment specifies the maximum cost a dentist can charge a patient for duplication of the patient's CBCT scan.

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

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

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

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

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

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

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

No statutes are implemented or affected by this proposed rule.

§108.8. Records of the Dentist.

(a) The term dental records includes, but is not limited to: identification of the practitioner providing treatment; medical and dental history; limited physical examination; oral pathology examination; radiographs; dental and periodontal charting; diagnoses made; treatment plans; informed consent statements or confirmations; study models, casts, molds, and impressions, if applicable; cephalometric diagrams; narcotic drugs, dangerous drugs, controlled substances dispensed, administered or prescribed; anesthesia records; pathology and medical laboratory reports; progress and completion notes; materials used; dental laboratory prescriptions; billing and payment records; appointment records; consultations and recommended referrals; and post treatment recommendations.

(b) A Texas dental licensee practicing dentistry in Texas shall make, maintain, and keep adequate dental records for and upon each dental patient for reference, identification, and protection of the patient and the dentist. Records shall be kept for a period of not less than five years from the last date of treatment by the dentist. If a patient was younger than 18 years of age when last treated by the dentist, the records shall be maintained by the dentist until the patient reaches age 21 or for five years from the date of last treatment, whichever is longer. Dentists shall retain records for a longer period of time when mandated by other federal or state statute or regulation. Records must include documentation of the following:

(1) Patients name;

(2) Date of visit;

(3) Reason for visit;

(4) Vital signs, including but not limited to blood pressure and heart rate when applicable in accordance with §108.7 of this title.

(5) If not recorded, an explanation why vital signs were not obtained.

(c) Further, records must include documentation of the following when services are rendered:

(1) Written review of medical history and limited physical evaluation;

(2) Findings and charting of clinical and radiographic oral examination:

(A) Documentation of radiographs taken and findings deduced from them, including radiograph films or digital reproductions.

(B) Use of radiographs, at a minimum, should be in accordance with ADA guidelines.

(C) Documentation of the findings of a tactile and visual examination of the soft and hard tissues of the oral cavity;

(3) Diagnosis(es);

(4) Treatment plan, recommendation, and options;

(5) Treatment provided;

(6) Medication and dosages given to patient;

(7) Complications;

(8) Written informed consent that meets the provisions of §108.7(7) of this title;

(9) The dispensing, administering, or prescribing of all medications to or for a dental patient shall be made a part of such patient's dental record. The entry in the patient's dental record shall be in addition to any record keeping requirements of the DPS or DEA prescription programs;

(10) All records pertaining to Controlled Substances and Dangerous Drugs shall be maintained in accordance with the Texas Controlled Substances Act;

(11) Confirmable identification of provider dentist, and confirmable identification of person making record entries if different from provider dentist;

(12) When any of the items in paragraphs (1) - (11) of this subsection are not indicated, the record must include an explanation why the item is not recorded.

(d) Dental records are the sole property of the dentist who performs the dental service. However, ownership of original dental records may be transferred as provided in this section. Copies of dental records shall be made available to a dental patient in accordance with this section.

(e) A dentist who leaves a location or practice, whether by retirement, sale, transfer, termination of employment or otherwise, shall maintain all dental records belonging to him or her, make a written transfer of records to the succeeding dentist, or make a written agreement for the maintenance of records.

(1) A dentist who continues to maintain the dental records belonging to him or her shall maintain the dental records in accordance with the laws of the State of Texas and this chapter.

(2) A dentist who enters into a written transfer of records agreement shall notify the State Board of Dental Examiners in writing within fifteen (15) days of a records transfer agreement. The notification shall include, at a minimum, the full names of the dentists involved in the agreement, include the locations involved in the agreement, and specifically identify what records are involved in the agreement. The agreement shall transfer ownership of the records. A transfer of records agreement may be made by agreement at any time in an employment or other working relationship between a dentist and another entity. Such transfer of records may apply to all or any part of the dental records generated in the course of the relationship, including future dental records. A dentist who assumes ownership of the records pursuant to this paragraph shall maintain the records in a manner consistent with this section and is responsible for complying with subsections (f) and (g) of this section.

(3) A dentist who enters into a records maintenance agreement shall notify the State Board of Dental Examiners within fifteen (15) days of such event. The notification shall include the full names of the dentists involved in the agreement, the locations involved in the agreement, and shall identify what records are involved in the agreement. A maintenance agreement shall not transfer ownership of the dental records, but shall require that the dental records be maintained in accordance with the laws of the State of Texas and the Rules of the State Board of Dental Examiners. The agreement shall require that the dentist(s) performing the dental service(s) recorded in the records have access to and control of the records for purposes of copying and recording. The dentist transferring the records in a records maintenance agreement shall maintain a copy of the records involved in the records maintenance agreement. Such an agreement may be made by written agreement by the parties at any time in an employment or other working relationship between a dentist and another entity. A records maintenance agreement may apply to all or any part of the dental records generated in the course of the relationship, including future dental records.

(f) Dental records shall be made available for inspection and reproduction on demand by the officers, agents, or employees of the State Board of Dental Examiners. The patient's privilege against disclosure does not apply to the Board in a disciplinary investigation or proceeding under the Dental Practice Act. Copies of dental records submitted to the Board on demand of the officers, agents, or employees of the Board shall be legible and all copies of dental x-rays shall be of diagnostic quality. Non-diagnostic quality copies of dental x-rays and illegible copies of patient records submitted to the Board shall not fulfill the requirements of this section.

(g) A dentist shall furnish copies of dental records to a patient who requests his or her dental records. At the patient's option, the copies may be submitted to the patient directly or to another Texas dental licensee who will provide treatment to the patient. Requested copies, including radiographs, shall be furnished within 30 days of the date of the request. The copies may be withheld until copying costs have been paid. Records shall not be withheld based on a past due account for dental care or treatment previously rendered to the patient. Copies of dental records submitted in accordance with a request under this section shall be legible and all copies of dental x-rays shall be of diagnostic quality. Non-diagnostic quality copies of dental x-rays shall not fulfill the requirements of this section.

(1) A dentist providing copies of patient dental records is entitled to a reasonable fee for copying which shall be no more than $25 for the first 20 pages and $0.15 per page for every copy thereafter.

(2) Fees for radiographs, which if copied by an radiograph duplicating service, may be equal to actual cost verified by invoice.

(3) Reasonable costs for radiographs duplicated by means other than by a radiograph duplicating service shall not exceed the following charges:

(A) a full mouth radiograph series: $15.00;

(B) a panoramic radiograph: $15.00;

(C) a lateral cephalometric radiograph: $15.00;

(D) a single extra-oral radiograph: $5.00;

(E) a single intra-oral radiograph: $5.00; and[.]

(F) a CBCT scan: $30.00.

(4) State agencies and institutions will provide copies of dental health records to patients who request them following applicable agency rules and directives.

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 December 28, 2020.

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Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 305-8910

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SUBCHAPTER E. BUSINESS PROMOTION

22 TAC §108.54

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.54, concerning the advertisement of recognized dental specialties. This amendment will update the language to include recently recognized dental specialties as approved and adopted by the American Dental Association's National Commission on Recognition of Dental Specialties and Certifying Boards. The specialties include Oral Medicine, Dental Anesthesiology, and Orofacial Pain. The amendment also updates the language to show that the specialties are approved by ADA's National Commission on Recognition of Dental Specialties and Certifying Boards.

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

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

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

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

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

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

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

No statutes are implemented or affected by this proposed rule.

§108.54. Advertising of Specialties.

(a) Recognized Specialties. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services in recognized specialty areas that are:

(1) recognized by a board that certifies specialists in the area of specialty; and

(2) accredited by the Commission on Dental Accreditation of the American Dental Association.

(b) The following are recognized specialty areas and meet the requirements of subsection (a)(1) and (2) of this section:

(1) Endodontics;

(2) Oral and Maxillofacial Surgery;

(3) Orthodontics and Dentofacial Orthopedics;

(4) Pediatric Dentistry;

(5) Periodontics;

(6) Prosthodontics;

(7) Dental Public Health;

(8) Oral and Maxillofacial Pathology; [~~and~~]

(9) Oral and Maxillofacial Radiology;[~~.~~]

(10) Oral Medicine;

(11) Dental Anesthesiology; and

(12) Orofacial Pain.

(c) A dentist who wishes to advertise as a specialist or a multiple-specialist in one or more recognized specialty areas under subsection (a)(1) and (2) and subsection (b)(1) -(12) [~~(9)~~] of this section shall meet the criteria in one or more of the following categories:

(1) Educationally qualified is a dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the National Commission on Recognition of Dental Specialties and Certifying Boards. [~~Council on Dental Education of the American Dental Association.~~]

(2) Board certified is a dentist who has met the requirements of a specialty board referenced in subsection (a)(1) and (2) of this section, and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status, or has complied with the provisions of §108.56(a) and (b) of this subchapter (relating to Certifications, Degrees, Fellowships, Memberships and Other Credentials).

(3) A dentist is authorized to use the term 'board certified' in any advertising for his/her practice only if the specialty board that conferred the certification is referenced in subsection (a)(1) and (2) of this section, or the dentist complies with the provisions of §108.56(a) and (b) of this subchapter.

(d) Dentists who choose to communicate specialization in a recognized specialty area as set forth in subsection (b)(1) -(12) [~~(9)~~] of this section should use "specialist in" or "practice limited to" and should limit their practice exclusively to the advertised specialty area(s) of dental practice. Dentists may also state that the specialization is an approved by "ADA's National Commission on Recognition of Dental Specialties and Certifying Boards [~~recognized specialty~~]." At the time of the communication, such dentists must have met the current educational requirements and standards set forth by the American Dental

Association for each approved specialty. A dentist shall not communicate or imply that he/she is a specialist when providing specialty services, whether in a general or specialty practice, if he or she has not received a certification from an accredited institution. The burden of responsibility is on the practice owner to avoid any inference that those in the practice who are general practitioners are specialists as identified in subsection (b)(1) -(12) [~~(9)~~] of this section.

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

Filed with the Office of the Secretary of State on December 28, 2020.

TRD-202005703
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 305-8910

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CHAPTER 119. SPECIAL AREAS OF DENTAL PRACTICE

22 TAC §119.10

The State Board of Dental Examiners (Board) proposes new 22 TAC §119.10, concerning the recognition of Oral Medicine as a dental specialty. The proposed new rule recognizes the specialty of Oral Medicine as approved and adopted by the American Dental Association's National Commission on Recognition of Dental Specialties and Certifying Boards.

New rule §119.10, Oral Medicine is the specialty of dentistry responsible for the oral health care of medically complex patients and for the diagnosis and management of medically-related diseases, disorders and conditions affecting the oral and maxillofacial region.

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

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

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

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

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

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed new rule may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

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

No statutes are implemented or affected by this proposed rule.

§119.10. Oral Medicine.

Oral Medicine is the specialty of dentistry responsible for the oral health care of medically complex patients and for the diagnosis and management of medically-related diseases, disorders and conditions affecting the oral and maxillofacial region.

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 December 28, 2020.

TRD-202005705
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 305-8910

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22 TAC §119.11

The State Board of Dental Examiners (Board) proposes new 22 TAC §119.11, concerning the recognition of Dental Anesthesiology as a dental specialty. The proposed new rule recognizes the specialty of Dental Anesthesiology as approved and adopted by the American Dental Association's National Commission on Recognition of Dental Specialties and Certifying Boards.

New rule §119.11, Dental Anesthesiology is the specialty of dentistry and discipline of anesthesiology encompassing the art and science of managing pain, anxiety, and overall patient health during dental, oral, maxillofacial and adjunctive surgical or diagnostic procedures throughout the entire perioperative period. The specialty is dedicated to promoting patient safety as well as ac-

cess to care for all dental patients, including the very young and patients with special health care needs.

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

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

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

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

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

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed new rule may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

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

No statutes are implemented or affected by this proposed rule.

§119.11. Dental Anesthesiology.

Dental Anesthesiology is the specialty of dentistry and discipline of anesthesiology encompassing the art and science of managing pain, anxiety, and overall patient health during dental, oral, maxillofacial and adjunctive surgical or diagnostic procedures throughout the entire perioperative period. The specialty is dedicated to promoting patient safety as well as access to care for all dental patients, including the very young and patients with special health care needs.

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 December 28, 2020.

TRD-202005706
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 305-8910

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22 TAC §119.12

The State Board of Dental Examiners (Board) proposes new 22 TAC §119.12, concerning the recognition of Orofacial Pain as a dental specialty. The proposed new rule recognizes the specialty of Orofacial Pain as approved and adopted by the American Dental Association's National Commission on Recognition of Dental Specialties and Certifying Boards.

New rule §119.12, Orofacial Pain is the specialty of dentistry that encompasses the diagnosis, management and treatment of pain disorders of the jaw, mouth, face, head and neck. The specialty of Orofacial Pain is dedicated to the evidenced-based understanding of the underlying pathophysiology, etiology, prevention, and treatment of these disorders and improving access to interdisciplinary patient care.

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

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

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

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

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

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed new rule may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or emailed by midnight on the last day of the comment period.

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

No statutes are implemented or affected by this proposed rule.

§119.12. Orofacial Pain.

Orofacial Pain is the specialty of dentistry that encompasses the diagnosis, management and treatment of pain disorders of the jaw, mouth, face, head and neck. The specialty of Orofacial Pain is dedicated to the evidenced-based understanding of the underlying pathophysiology, etiology, prevention, and treatment of these disorders and improving access to interdisciplinary patient care.

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 December 28, 2020.

TRD-202005707
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 305-8910

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER L. PROCEDURES FOR PROTESTING COMPTROLLER PROPERTY VALUE STUDY AND AUDIT FINDINGS

34 TAC §§9.4301 - 9.4309, 9.4311 - 9.4317

The Comptroller of Public Accounts proposes the repeal of existing §§9.4301, 9.4302, 9.4303, 9.4304, 9.4305, 9.4306, 9.4307, 9.4308, 9.4309, 9.4311, 9.4312, 9.4313, 9.4314, 9.4315, 9.4316, and 9.4317, concerning requirements for submitting a petition initiating a protest of the comptroller's property value study, procedures governing the conduct of property value study protest hearings, procedures for the issuance of proposals for decisions, filing of exceptions to proposals for decisions, and filing of replies to exceptions for proposals for decisions. The comptroller repeals these existing rules in order to propose the adoption of new §§9.4301, 9.4302, 9.4303, 9.4304, 9.4305, 9.4306, 9.4307, 9.4308, 9.4309, 9.4311, 9.4312, 9.4313, 9.4314, 9.4315, and 9.4317, with revisions to improve clarity, organization and implementation of §403.303, Government Code. The comptroller will not propose the adoption of a new §9.4316 (Final Decision After Oral Hearing) as the language in this section will be incorporated into the new §9.4315 (Proposal for Decision After Oral Hearing). The repeal of will be effective as of the date the new §§9.4301, 9.4302, 9.4303, 9.4304, 9.4305, 9.4306, 9.4307, 9.4308, 9.4309, 9.4311, 9.4312, 9.4313, 9.4314, 9.4315, and 9.4317 take effect.

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

Mr. Currah also has determined that the proposed repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed repeal of §§9.4301, 9.4302, 9.4303, 9.4304, 9.4305, 9.4306, 9.4307, 9.4308, 9.4309, 9.4311, 9.4312, 9.4313, 9.4314, 9.4315, 9.4316, and 9.4317 and the proposed adoption of new §§9.4301, 9.4302, 9.4303, 9.4304, 9.4305, 9.4306, 9.4307, 9.4308, 9.4309, 9.4311, 9.4312, 9.4313, 9.4314, 9.4315, and 9.4317 would benefit the public by improving the clarity, organization and implementation of the sections. There would be no significant anticipated economic cost to the public. The proposed repeal would have no 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 repeal is proposed under Government Code, §403.303 (Protests), which requires the comptroller to adopt procedural rules governing the conduct of protests of comptroller findings certified under Government Code, §403.302(g) and (h).

The repeal implements Government Code, §403.303 (Protests).

§9.4301. Definitions.
§9.4302. General Provisions.
§9.4303. Changes in Preliminary Certification of Study Findings.
§9.4304. Extensions of Time.
§9.4305. Who May Protest.
§9.4306. Filing a Protest.
§9.4307. Dismissal.
§9.4308. Contents of Petition.
§9.4309. Insufficient Grounds for Objection.
§9.4311. Prehearing Exchange and Informal Conference.
§9.4312. Scheduling a Protest Hearing.
§9.4313. Conduct of Oral Hearing.

§9.4314. Administrative Law Judge's Powers.
§9.4315. Proposal for Decision After Oral Hearing.
§9.4316. Final Decision After Oral Hearing.
§9.4317. Effect of Final Decision and Certification of Changes.
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 December 21, 2020.

TRD-202005645
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 475-2220

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34 TAC §§9.4301 - 9.4309, 9.4311 - 9.4315, 9.4317

The Comptroller of Public Accounts proposes new §§9.4301, 9.4302, 9.4303, 9.4304, 9.4305, 9.4306, 9.4307, 9.4308, 9.4309, 9.4311, 9.4312, 9.4313, 9.4314, 9.4315, and 9.4317, concerning requirements for submitting a petition initiating a protest of the comptroller's property value study, procedures governing the conduct of property value study protest hearings, procedures for the issuance of proposals for decisions, filing of exceptions to proposals for decisions, and filing of replies to exceptions for proposals for decisions, in order to replace the existing §§9.4301, 9.4302, 9.4303, 9.4304, 9.4305, 9.4306, 9.4307, 9.4308, 9.4309, 9.4311, 9.4312, 9.4313, 9.4314, 9.4315, 9.4316, and 9.4317 being proposed for repeal by a separate filing.

New §9.4301 (Definitions) adds new terms as well as restates and revises terms from the existing §9.4301, proposed for repeal.

Paragraph (1) defines an "Agent" as being duly authorized to act on behalf of a petitioner protesting the property value study. Provisions in the definition for an Agent found in the existing section, proposed for repeal, are being relocated to new §9.4302 (General Provisions).

Paragraph (2) restates the definition of "ALJ" from the existing section, proposed for repeal.

Paragraph (3) regarding a "Clerical error" is revised from the existing section by adding that the error is specific to a school district and by referencing §9.101 (Conduct of the Property Value Study) of this title.

Paragraph (4) restates the definition of "Comptroller" from the existing §9.4301(10), proposed for repeal.

Paragraph (5) regarding "Division" is revised to specify that the division is the Property Tax Assistance Division of the Texas Comptroller of Public Accounts.

Paragraphs (6) and (7) are revised by shortening the definitions for "Division director" and "Eligible property owner" found in the existing §9.4301(5) and (6), proposed for repeal.

Paragraph (8) adds a new definition for "Findings" in terms of the certified findings in Government Code, §403.302 (g) and (h).

Paragraph (9) revises the definition of "Petition" found in paragraph (7) of the existing section, proposed for repeal. The Petition is defined as including three parts, Part A, Part B and Part C. Other provisions in the definition of a Petition found in the existing section, proposed for repeal, are being relocated to new §9.4302 (General Provisions).

Paragraph (10) revises the definition of "Petitioner" by shortening the definition and relocating provisions in the definition of Petitioner found in the existing section, proposed for repeal, to proposed new §9.4305 (Who May Protest).

Paragraph (11) revises the definition of "School district split" to reference the jurisdictional boundaries of appraisal districts rather than counties.

Paragraph (12) revises the definition of "SOAH" by removing provisions redundant with proposed new §9.4312 (a).

Paragraph (13) adds a new definition for a "Value determination" as a determination made by the division and utilized to arrive at finding of market value for property in the study.

New §9.4302 (General Provisions) revises provisions from and adds provisions to existing §9.4302, proposed for repeal, as follows:

Subsection (a) adds language memorializing that the subchapter governs the procedures for submitting a petition initiating a protest and procedures governing the conduct of protest hearings and procedures for filing exceptions and replies to exceptions for proposals for decisions on protests.

Subsections (b) and (c) restate the provisions from existing §9.4302, proposed for repeal.

Subsection (d) is revised from "Filing and serving documents" in existing §9.4302(d), proposed for repeal. Subsection (d) also divides language into paragraphs (1) through (5) as opposed to one paragraph in the existing section, proposed for repeal.

Subsection (e) revises and relocates language from existing §9.4301(1), proposed for repeal. Subsection (e) states that by signing a petition the superintendent of a protesting school district or protesting eligible property owner represents that designated agents are duly authorized under the laws of the State of Texas to act as agents, and that a petitioner may designate only one agent except as otherwise provided in the Subchapter L of this chapter.

Paragraph (1) relocates language found in existing §9.4301(1), proposed for repeal, regarding the authority of an agent to receive communications, resolve matters in a petition, and argue and present evidence in a hearing on the protest.

Paragraph (2) adds requirements if a chief appraiser or other employee of the appraisal district appraising property for a protesting school district is to be designated as an agent for the protesting school district.

Paragraph (3) provides that the designation of a new agent will automatically revoke the agency of a prior agent for protests pursuant to Government Code, §403.303.

Paragraph (4) provides that nothing in Subchapter L is to be construed as limiting a chief appraiser or other employee of an appraisal district appraising property for a protesting school district from acting as a witness or consultant.

Paragraph (5) provides that nothing in Subchapter L is to be construed as limiting a petitioner from being represented by an attorney or attorneys licensed to practice law in the State of Texas.

Subsection (f) limits petitioners to filing of one petition to protest property value study findings, except that they may file a separate petition solely to address self-report corrections.

Subsection (g) restates the existing §9.4302(e), proposed for repeal.

New §9.4303 (Changes in Preliminary Certifications of Findings) revises provisions from and adds provisions to existing §9.4303, proposed for repeal, as follows:

The word, "Study" is no longer needed in the section title as §9.4301(7) defines "Findings. "

Subsection (a) provides that preliminary findings certified under Government Code, §403.302(g) may be amended and certified by the comptroller at any time before findings are certified to the commissioner of education under Government Code, §403.302(j). Subsection (a) also clarifies and combines language from subsections (a) and (b) of the existing §9.4303, proposed for repeal.

Subsection (b) provides that if the comptroller amends preliminary findings for all school districts in a study, a petition initiating a protest of the findings must be filed within 40 calendar days of the date the amended findings are certified to the commissioner of education.

Subsection (c) clarifies and combines language from subsections (c), (d) and (e) of the existing §9.4303, proposed for repeal, by providing that if preliminary findings for a singular school district are amended, the particular school district must file a petition initiating a protest of the amended preliminary findings within 40 calendar days of the date the amended findings are certified to the commissioner of education.

New §9.4304 (Extensions of Time) revises existing §9.4304, proposed for repeal, by combining subsections and removing language. Proposed new §9.4304 states as follows:

Subsections (a), (e) and (f) from existing §9.4304, proposed for repeal, are not included in proposed new §9.4304.

Subsection (a) restates subsection (b) from existing §9.4304, proposed for repeal.

Subsection (b) revises subsection (c) from existing §9.4304, proposed for repeal, by removing references to deleted subsections.

Subsection (c) revises subsection (e) from existing §9.4304, proposed for repeal, by removing references to deleted subsections.

Subsection (d) revises existing §9.4304(d), proposed for repeal, by removing references to deleted subsections.

New §9.4305 (Who May Protest) revises existing §9.4305, proposed for repeal, as follows:

Subsection (a) clarifies that it is certified preliminary findings under Government Code, §403.302(g) that may be protested by a school district.

Subsection (b) clarifies that it is certified findings under Government Code, §403.302(h) that may be protested by a school district. The subsection does not incorporate language regarding revisions or denial of revisions resulting from an audit from the existing §9.4305(b), proposed for repeal.

Subsection (c) clarifies that it is certified preliminary findings under Government Code, §403.302(g) that may be protested by an eligible property owner.

Subsection (d) clarifies that it is certified findings under Government Code, §403.302(h) that may be protested by an eligible property owner. The subsection does not incorporate language regarding revisions or denial of revisions resulting from an audit from the existing §9.4305(d), proposed for repeal.

Subsection (e) from existing §9.4305, proposed for repeal, is not included in proposed new §9.4305.

Subsection (e) restates and revises the language in existing §9.4305(f), proposed for repeal, by changing the phrase, "A protest filed... " to, "A petition submitted... ".

Subsection (f) restates and revises the language in existing §9.4305(g), proposed for repeal, by removing the reference to a change in a district's certified tax roll as being eligible for self-report correction.

Subsection (g) restates and revises the language in existing §9.4305(h), proposed for repeal, by updating referenced subsections.

New §9.4306 (Filing a Petition Initiating a Protest) revises provisions from existing §9.4306, proposed for repeal, as follows:

Subsection (a) states that a protest under Government Code, §403.303(a) is initiated by filing a petition with the division not later than the 40th calendar day after the division certifies findings under Government Code, §403.302 (g) or (h). Language regarding the filing of self-report corrections from existing §9.4306(a), proposed for repeal, is not included in subsection (a) as it is redundant with language in proposed new §9.4305(f) (Self-report corrections).

Subsection (b) restates and revises the language in existing §9.4306(b), proposed for repeal. Subsection (b)(2) of the existing section proposed for repeal, is not included in subsection (b), as appraisal districts are not authorized to protest under the proposed new rules.

New §9.4307 (Dismissal) restates, reorganizes and revises provisions from existing §9.4307, proposed for repeal, as follows:

Subsection (a) requires dismissal for jurisdictional defects in a petition and prescribes the filing and serving of a motion to dismiss by the division. Examples of jurisdictional defects found in existing §9.4307(a), proposed for repeal, are not included in subsection (a). Provisions in existing §9.4307(a), proposed for repeal, regarding the filing and service of responses to motions to dismiss and replies to responses for motions to dismiss, have been reorganized in subsections (b) and (c) of the proposed new section.

Subsection (d) relocates language from existing §9.4307(a), proposed for repeal, concerning the limitation of argument to the jurisdictional issue presented in the motion to dismiss, and also relocates language from existing §9.4307(a), proposed for repeal, concerning the prohibition on parties from submitting new information or evidence for consideration by an ALJ on a motion to dismiss.

Paragraphs (1) and (2) also clarify that the existing opportunity for oral argument on a motion to dismiss is through a motion filed pursuant to §9.4314(c) (Administrative Law Judge's Powers), and that any hearing on a motion for oral argument shall be decided based on written submissions.

Subsection (e) relocates language from existing §9.4307(a), proposed for repeal, concerning the ALJ's proposal for decision and issuance of the proposal for decision to the deputy comptroller.

Subsection (e) also revises the time frame for the issuance of the proposal for decision from seven business days to fourteen calendar days, and combines and relocates language from existing §9.4307(b) and (c), proposed for repeal, regarding reasons for the proposal for decisions and service of the proposal for decision, adding the electronic filing systems used by SOAH.

Subsections (f) and (g) relocate and reorganize language found in existing §9.4307(d), proposed for repeal, regarding the filing and service of exceptions to a proposal for decision on a motion to dismiss and replies to the exceptions.

Subsection (h) combines existing §9.4307(e), (f) and (g), proposed for repeal, concerning the issuance of a final order by the deputy comptroller on a dismissal.

Subsections (i) and (j) restate existing §9.4307(h) and (i), proposed for repeal.

New §9.4308 (Contents of Petition) reorganize, clarify and revise existing §9.4308, proposed for repeal, as follows:

Subsection (a) reorganizes existing §9.4308(a), proposed for repeal, by breaking out the prescribed contents in numbered paragraphs and adding clarifying language prescribing in which part of the petition the contents are required to be reported.

Subsection (b) reorganizes existing §9.4308(b), proposed for repeal, by breaking out the prescribed contents in numbered paragraphs and replacing "...errors in value determinations..." with, "...inaccuracies in value determinations... ". Subsection (b) adds clarifying language prescribing in which part of the petition the contents are required to be reported. Subsection (b) also adds clarifying and conforming language with the definitions of "Value determinations" and "Findings" proposed in paragraphs (7) and (13) of the proposed new §9.4301(Definitions).

Subsections (c) and (d) revise existing §9.4308(c), proposed for repeal, by clarifying what may not be included as a value determination for purposes of new §9.4308, thereby conforming with the definition of "Value determinations" proposed in paragraph (13) of the proposed new §9.4301(Definitions), and providing numbered paragraphs for a non-exclusive list of what may be included.

Subsections (e) and (f) revise existing §9.4308(d), proposed for repeal, by prescribing that multiple claims of inaccuracies cannot be combined in the same ground for objection, and that multiple properties cannot be combined for the same claim of an inaccuracy, but must be stated as separate grounds for objection.

Subsection (g) revises existing §9.4308(e), proposed for repeal, by stating that the relief sought must be stated with sufficient specificity on the prescribed part of the petition to allow the comptroller or an ALJ to make a determination regarding the requested relief based solely on the petition.

Subsection (h) revises existing §9.4308(f), proposed for repeal, by clarifying the requirements for submission of documentary evidence and which parts of the petition are to be referenced for the submission of documentary evidence.

Subsections (i) and (j) restate existing §9.4308(h) and (i), proposed for repeal.

New §9.4309 (Insufficient Grounds for Objection) reorganizes, clarifies, and revises existing §9.4309, proposed for repeal, as follows:

Subsection (a) changes "may" to "shall" and does not include the word "petition" from the existing §9.4309(a), proposed for repeal, as redundant with language in subsection (c).

Subsection (b) is shortened from the existing §9.4309(b), proposed for repeal, to remove redundancies with subsections (d) and (e) concerning procedures for grounds not rejected in a petition, and new §9.4311(a)(1) concerning agreements with grounds for objection.

Subsection (c) combines subsections (c) through (f) of existing §9.4309, proposed for repeal, as numbered paragraphs. Subsection (c) adds the ability to use electronic filing and service systems utilized by SOAH for all filings required to be filed with SOAH. Subsection (c) also makes the following revisions:

Paragraph (1) revises the deadline for a petitioner to request referral to SOAH after the division sends petitioner notice of rejection from seven to fifteen calendar days.

Paragraph (4) revises the time within which an ALJ shall make a decision on a referral based on a rejection.

New §9.4311 (Prehearing Exchanges and Informal Conference Regarding Petition) reorganizes, clarifies and revises existing §9.4311, proposed for repeal, as follows:

Subsection (a) breaks out paragraph (1) and adds paragraph (2) which prescribes that at any time a response by the division results in a valid finding for a school district, all protests for that school district are finally resolved.

Subsection (b) revises the time period for petitioner replies to division responses to grounds for objection, found in existing §9.4311(b), proposed for repeal, from "a reasonable period of time, but no less than 15 calendar days," to "not later than 15 calendar days." Subsection (b) also requires petitioner replies to be on Part B of the petition. Subsection (b) is also shortened and broken out in numbered paragraphs as follows:

Paragraph (1) requires a petitioner's reply to each of the division's responses to each ground for objection with either agreement or notification that the petitioner will continue to protest the ground for objection.

Paragraph (2) prescribes a deemed agreement to the division's responses and final resolution of all grounds for objection if a petitioner fails to timely reply.

Paragraph (3) prescribes that a failure to reply to a ground for objection on an otherwise timely reply to the division's responses is deemed agreement to the division's response to that ground for objection.

Paragraph (4) restates language from existing §9.4311(b), proposed for repeal, that no response from the petitioner to a rejection is permitted.

Subsection (c) restates and revises the provisions in existing §9.4311(b), proposed for repeal, relating to the filing of supplemental evidence by the petitioner and designations and identification of witnesses. Subsection (c) does not include the statement in existing §9.4311(b), proposed for repeal, that no witness identification for a chief appraiser or other employee of an appraisal district appraising property for a protesting school district. Additionally, Subsection (c) does not include filing instructions for supplemental evidence found in existing §9.4311(b), proposed for repeal, as the general requirements found in proposed new §9.4302(d) apply to supplemental evidence filed under proposed new §9.4311. Subsection (c) does not include instructions for

organizing and labeling supplemental evidence found in existing §9.4311(b), proposed for repeal, as the requirements for the contents of the petition found in proposed new §9.4308(h) prescribes the requirements for filing and organizing evidence and is referenced in new §9.4311(c)(1). Requirements in existing §9.4311(b), proposed for repeal, concerning labeling documents as exhibits is redundant with language found in proposed new §9.4311(h) and has been removed from language in subsection (c).

Subsection (d) restates and revises the last two sentences of existing §9.4311(c), proposed for repeal, by stating that all documents required to be filed pursuant to subsection (c) must be filed at the same time as petitioner's reply as required by subsection (b).

Subsection (e) restates and revises existing §9.4311(c), proposed for repeal. Subsection (e), restates the 15 day deadline for the division's supplementation of evidence and states the requirements for the designation and identification of witnesses in paragraphs (1) and (2). New Subsection (e) also does not include the provision that comptroller employees do not have to be designated and identified. New Subsection (e) also removes the organization requirements for supplemental evidence submitted by the division.

Subsection (f) provides that employees of the division and the chief appraiser or employees of the appraisal district hired by the chief appraiser to appraise property for the protesting school district are deemed qualified for purposes of the subchapter.

Subsection (g) restates and reorganizes existing §9.4311(d), proposed for repeal, into paragraphs (1) through (4).

Subsection (h) restates and reorganizes existing §9.4311(e), proposed for repeal.

Subsections (i) and (j) restate and revise existing §9.4311(f) and (g), proposed for repeal. Subsections (i) and (j) add a requirement that referrals to SOAH must be for unresolved grounds for objections submitted on Part B of the petition, and a written request for referral must specifically identify each ground for objection by numbered objection from Part B of the petition.

New §9.4312 (Scheduling a Protest Hearing) reorganizes, clarifies and revises existing §9.4312, proposed for repeal. Filing and service of documents has been updated to include filing and service via electronic filing systems utilized by SOAH. Proposed new §9.4312 has otherwise been reorganized, clarified and revised as follows:

Subsection (a) restates the first sentence of existing §9.4312(a), proposed for repeal.

Subsection (b) restates and revises the remainder of existing §9.4312(a), proposed for repeal, by using more concise language and removing paragraphs (6) and (7) of the existing section proposed for repeal, as this information can be provided without being required.

Subsection (c) restates existing §9.4312(b), proposed for repeal, updating references from subsection (a)(1) through (7) to subsection (b)(1) through (5).

Subsection (d) restates existing §9.4312(c), proposed for repeal.

Subsection (e) restates, reorganizes and revises existing §9.4312(d), proposed for repeal, by adding paragraphs (1) through (4). Paragraphs (3) and (4) revise the time within which a SOAH ALJ may schedule a hearing from "...not later than 30 calendar days after the date of referral; and no later than 20 calendar days prior to the hearing... " to scheduling a protest hearing not later than 45 calendar days after the date of referral, with notice of the hearing delivered no later than 14 calendar days before the scheduled hearing.

New §9.4313 (Conduct of Oral Hearing) revises the existing rule proposed for repeal, as follows:

Subsection (b) does not include the requirement in existing §9.4313(b), proposed for repeal, that a petitioner provide a copy of a transcript to the comptroller, and adds a 10 day written notice requirement for the petitioner to inform the ALJ and the comptroller if the petitioner wants to record the hearing.

Subsection (c) does not include the ability of the comptroller to direct closure of a hearing in existing §9.4313(c), proposed for repeal, but retains the ability of the ALJ to close a hearing or the parties to move to close a hearing to the public.

Subsection (f) does not include the authority of an ALJ to admit evidence not otherwise submitted in accordance with the requirements of the subchapter for good cause shown in existing §9.4313(f), proposed for repeal. The parties can file motions and the ALJ has the authority to rule on motions and the admissibility of evidence in both proposed new and existing §9.4314(c)(1).

Subsection (g) does not include the language regarding witnesses providing background concerning governing law or standards or explanation relating to documentary evidence in existing §9.4313(g), proposed for repeal. Proposed new subsection (d) retains the ability of an ALJ to apply evidentiary principles found in the Texas Rules of Evidence as a tool in evidentiary determinations in protest hearings.

Subsection (h) does not include the directive to the ALJ found in existing §9.4313(h), proposed for repeal, concerning how the ALJ should rule on challenges to qualifications when the rules state the witnesses are to be considered qualified.

Subsection (l) of the existing §9.4313, proposed for repeal, is not included in the proposed new §9.4313 as redundant with language in subsection (e).

Subsection (l) restates and revises existing §9.4313(m), proposed for repeal, by adding agents and representatives that appear at a protest hearing to argue and present evidence to the individuals who may not provide testimony.

New §9.4314 (Administrative Law Judge's Powers) revises existing §9.4314, proposed for repeal, as follows:

Subsection (c) restates existing §9.4314(c), proposed for repeal, but does not include paragraphs (2) and (3) relating to joining protests and conducting a single hearing and renumbers subsequent paragraphs.

Additionally, paragraph (6) does not include the language found in existing §9.4314(c)(8), proposed for repeal, concerning an ALJ's authority to refuse to hear arguments that constitute mere personal criticism as the ALJ has such authority under paragraph (2).

Paragraph (7) revises language found in existing §9.4314(c)(9), proposed for repeal, by changing language from, "accept and note" to "accept and record".

Subsection (d) revises language found in existing §9.4314(d), proposed for repeal, by adding language allowing an ALJ to take official notice of statutes, codes and administrative rules of the State of Texas.

New §9.4315 (Proposal for Decision After Oral Hearing) reorganizes and revises existing §9.4315, proposed for repeal, as follows:

Subsection (a) adds paragraphs (1) and (2) including language previously found in existing §9.4315(b), proposed for repeal, and clarifies requirements for issuing the proposal for decision with the deputy comptroller by filing with the comptroller's Special Counsel for Tax Hearings. Subsection (a) also provides for filing and service by email and electronic filing systems utilized by SOAH.

Subsection (b) restates and revises language in existing §9.4315(c), proposed for repeal, regarding filing exceptions. Subsection (b) requires filing exceptions with the deputy comptroller by filing with the comptroller's Special Counsel for Tax Hearings. Subsection (b) also provides for filing and service by email and electronic filing systems utilized by SOAH.

Subsection (c) restates and revises language in existing §9.4315(c), proposed for repeal, regarding filing replies to exceptions. Subsection (c) requires filing replies to exceptions with the deputy comptroller by filing with the comptroller's Special Counsel for Tax Hearings. Subsection (c) also provides for filing and service by email and electronic filing systems utilized by SOAH.

Subsection (d) restates and revises language in existing §9.4316, proposed for repeal, regarding the final decision after oral hearing.

New §9.4317 (Effect of Final Decision and Certification of Changes) revises existing §9.4317, proposed for repeal, as follows:

Subsection (a) revises existing §9.4317(a), proposed for repeal, by removing references to Tax Code, §5.10 (Ratio Studies).

Subsection (b) revises existing §9.4317(b), proposed for repeal, by removing references to Tax Code, §5.10 (Ratio Studies) and removing the requirement for reports to school districts for informational purposes only.

New §9.4317 does not include subsection (c) of existing §9.4317, proposed for repeal, as appraisal districts are no longer authorized to file a petition initiating a protest of the study under the proposed new rules.

Subsection (c) restates and revises existing §9.4317(d), proposed for repeal, by changing the provision for certification of changes to findings from August 15 of the year following the year of the study, to August 31 or as soon thereafter as practicable of the year following the year of the study.

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

Mr. Currah also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by improving the clarity, organization and implementation of existing §§9.4301, 9.4302, 9.4303, 9.4304, 9.4305, 9.4306, 9.4307, 9.4308, 9.4309, 9.4311, 9.4312, 9.4313, 9.4314, 9.4315, 9.4316, and 9.4317, proposed for repeal by a separate posting. The new rules would implement Government Code, §403.303 (Protests). There would be no significant anticipated economic cost to the public. The proposed new rules would have no 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 new rules under Government Code, §403.303 (Protests) which requires the comptroller to adopt procedural rules governing the conduct of protests of comptroller findings certified under Government Code, §403.302(g) and (h).

The new rules implement Government Code, §403.303.

§9.4301. Definitions.

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

(1) Agent--A duly authorized individual designated to act as agent on behalf of the petitioner in a protest of the comptroller's findings in compliance with this subchapter.

(2) ALJ--An Administrative Law Judge employed by the State Office of Administrative Hearings.

(3) Clerical error--A numerical error, specific to a school district, that is or results from a mistake or failure in writing, copying, transcribing, entering or retrieving computer data, computing, or calculating. In this subchapter, "clerical error" does not include an error that is or results from a mistake in judgment or reasoning. In this subchapter, "clerical error" does not include any claim regarding the conduct of the study as prescribed by §9.101 of this title (relating to Conduct of the Property Value Study).

(4) Comptroller--The Texas Comptroller of Public Accounts and employees and designees of the Comptroller.

(5) Division--The Property Tax Assistance Division of the Texas Comptroller of Public Accounts.

(6) Division director--The director of the Property Tax Assistance Division or their designee.

(7) Eligible property owner--A property owner in a school district or school district split whose property is included in the study conducted by the comptroller under Government Code, §403.302 and whose tax liability on such property is $100,000 or more.

(8) Findings--The preliminary findings certified to the commissioner of education under Government Code, §403.302(g) or the findings of an audit certified to the commissioner of education under Government Code, §403.302(h).

(9) Petition--The documents consisting of three parts, Part A (Form 50-210-a), Part B (Form 50-210-b) and Part C (Form 50-210-c), submitted by a petitioner in accordance with this subchapter to initiate a protest of the comptroller's findings under Government Code, §403.302(g) or (h).

(10) Petitioner--A school district or eligible property owner who submits a petition in accordance with this subchapter to protest the comptroller's findings certified under Government Code, §403.302(g) or (h).

(11) School district split--The portion of a school district located within the jurisdictional boundaries of a single appraisal district if the school district boundaries overlap the jurisdictional boundaries of two or more appraisal districts. As used in this subchapter, unless the context clearly indicates otherwise, "school district" means an applicable school district split for a school district with boundaries overlapping the jurisdictional boundaries of two or more appraisal districts.

(12) SOAH--The State Office of Administrative Hearings.

(13) Value determination--A determination made by the division and utilized by the division to reach a finding of market value for an individual property, or in the case of property in Category J an individual company, or in the case of property in category D the land's productivity value.

§9.4302. General Provisions.

(a) Scope of rules. The rules in this subchapter shall govern the procedures for submitting a petition initiating a protest of the comptroller's findings under Government Code, §403.302(g) or (h) and the conduct of protest hearings and the filing of exceptions and replies to exceptions for proposals for decision. The Texas Administrative Procedures Act, the Texas Rules of Civil Procedure, the Texas Rules of Evidence, and the State Office of Administrative Hearings (SOAH) procedural rules do not apply to protests of the comptroller's findings conducted pursuant to Government Code, §403.303. Nothing in this subsection shall preclude general application by a SOAH Administrative Law Judge of evidentiary principles addressed in the Texas Rules of Evidence as an advisory tool in making evidentiary determinations in protests of the comptroller's findings conducted pursuant to Government Code, §403.303.

(b) Construction. Unless otherwise provided, this subchapter shall be construed as provided by the Code Construction Act, Government Code, Chapter 311.

(c) Computation of time. In computing a period of time prescribed or allowed by the rules in this subchapter, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or Texas state or federal holiday on which the comptroller's office is closed, the period is extended to include the next day that is not a Saturday, Sunday, or Texas state or federal holiday on which the comptroller's office is closed.

(d) Submitting and serving documents.

(1) Unless otherwise provided, every document relating to a protest including, but not limited to, a petition, shall be delivered to the division director by one of the following methods:

(A) Hand delivery to the attention of the Director, Property Tax Assistance Division, delivered to 1711 San Jacinto, 3rd Floor, Austin, Texas 78701.

(i) A petition delivered to the division director by hand delivery is timely submitted only if it is physically received by the division director on or before 5:00 p.m. CST on the 40th day after the date on which the comptroller's preliminary findings are certified to the commissioner of education.

(ii) Division reserves the right to require delivery by a method other than hand delivery if physical receipt by the division is not practicable.

(B) United States Postal Service regular first-class mail or common or contract carrier, in a properly addressed and sufficiently stamped envelope or package, addressed to Director, Property Tax Assistance Division, 1711 San Jacinto, 3rd Floor, Austin, Texas 78701.

(i) A petition delivered to the division director by regular first class mail is timely submitted if it bears a post office cancellation mark indicting a date not later than the 40th day after the date on which the comptroller's preliminary findings are certified to the commissioner of education and is physically received by the division director not later than the 47th day after the date the comptroller's preliminary findings are certified to the commissioner of education.

(ii) A petition delivered to the division director by common or contract carrier is timely submitted if it bears a receipt mark indicating a date not later than the 40th day after the date on which the comptroller's preliminary findings are certified to the commissioner of education and is physically received by the division director not later than the 47th day after the date the comptroller's preliminary findings are certified to the commissioner of education.

(C) Electronic mail (email) sent to PTADAppeals@cpa.texas.gov. Delivery by email will only be accepted if all documents being delivered by email are attached in Microsoft Word® or portable document format (pdf) compatible with the latest version of Adobe Acrobat® in a file size that can be accommodated by the division's computer system at the time of delivery. A petition delivered to the division director by electronic mail is timely submitted if all emails and documents attached to emails, including the petition, are received by the division not later than the 40th day after the date on which the comptroller's preliminary findings are certified to the commissioner of education.

(D) Electronic files sent by comptroller file transfer protocol (FTP) or ad hoc reporting website. Delivery by FTP or ad hoc reporting website will only be accepted if requested by email sent to PTADAppeals@cpa.texas.gov before 4:00 p.m. CST on the 40th day after the date on which the comptroller's preliminary findings are certified to the commissioner of education. All documents being delivered by FTP or ad hoc reporting website must be in Microsoft Word® or portable document format (pdf) compatible with the latest version of Adobe Acrobat® in a file size that can be accommodated by the division's system at the time of delivery. A petition delivered to the division director by FTP or ad hoc reporting website is timely submitted if all documents, including the petition, are received by the division not later than the 40th day after the date on which the comptroller's preliminary findings are certified to the commissioner of education.

(2) The petitioner is responsible for verifying receipt by the division of all documents delivered regardless of the method of delivery. A petitioner shall have the burden to prove a document was timely filed.

(3) All documents delivered to the division director, regardless of method of service, must be legible.

(4) Except as otherwise expressly provided in this subchapter, the division may deliver written correspondence and other documents to a petitioner by hand delivery, United States Postal Service regular first-class mail, common or contract carrier, or email.

(5) All information contained in documents submitted to the division that is confidential by law must be marked as confidential. Multi-page documents that are confidential in their entirety must be marked as confidential on each page. By filing a protest, the petitioner certifies that all confidential information submitted to the division has been clearly identified as confidential.

(e) Designation and Authority of Agents. By signing the petition, the superintendent of a protesting school district, or a protesting eligible property owner, represents to the division that the agent designated in the petition is duly authorized under the laws of the State of

Texas to act on behalf of the petitioner. Except as otherwise provided in this subsection, a petitioner may designate only one agent per protest.

(1) The agent must be authorized to perform the following activities on behalf of petitioner:

(A) receive all notices, orders, decisions, exceptions, replies to exceptions, and any other communications regarding the petitioner's protest;

(B) resolve any matter raised in petitioner's protest; and

(C) argue and present evidence at any hearing on petitioner's protest.

(2) A chief appraiser or other employee of an appraisal district that appraises property for a school district protesting the comptroller's property value study findings may not be designated as the agent for the protesting school district unless:

(A) the governing body of the appraisal district authorizes the chief appraiser or other employee of the appraisal district to act as agent for the protesting school district;

(B) the governing body of the protesting school district authorizes the chief appraiser or other employee of the appraisal district to act as agent for the school district; and

(C) the superintendent of the protesting school district signs the petition representing that the chief appraiser or other employee of the appraisal district has been properly authorized pursuant to this subchapter and the laws of the State of Texas to act as agent for the school district.

(3) The designation of a new agent will automatically revoke the agency of the prior agent for purposes of protesting the comptroller's findings pursuant to Government Code, §403.303.

(4) Nothing in this subchapter shall be construed to prevent the chief appraiser or other employee of the appraisal district that appraises property for a school district protesting the study from acting as a witness or consultant for the protesting school district.

(5) Nothing in this subchapter shall be construed to prevent or limit a petitioner from being represented by an attorney or attorneys admitted to practice law in the State of Texas.

(f) Limitations on Number of Petitions. A petitioner is limited to one petition to protest property value study findings, except that a petitioner may file a separate petition solely to address self-report corrections pursuant to §9.4308(i) of this title (relating to Contents of Petition).

(1) If a petitioner files one petition to protest property value study findings and a separate petition to address self-report corrections pursuant to §9.4308(i) of this title, the petitioner may designate different agents for each petition.

(2) If a petitioner files one petition to protest both property value study findings and to address self-report corrections pursuant to §9.4308(i) of this title, the petitioner may designate only one agent for the petition.

(g) Except as otherwise provided in this subchapter, the division director has independent discretion to impose deadlines and schedule hearing dates as reasonable or necessary to timely and efficiently manage the protest process.

§9.4303. Changes in Preliminary Certification of Findings.

(a) At any time before the date on which the final taxable value of each school district is certified to the commissioner of education under Government Code, §403.302(j), the comptroller may certify amended preliminary findings to the commissioner of education under Government Code, §403.302(g).

(b) If the comptroller amends preliminary findings for all school districts in a study, eligible school districts and eligible property owners may protest the amended preliminary findings in the manner required by this subchapter. A petition protesting the comptroller's amended preliminary findings must be filed within 40 calendar days after the date the comptroller certifies the amended preliminary findings to the commissioner of education.

(c) If the comptroller amends preliminary findings for a singular school district in a study, the affected school district and eligible property owners within that school district may protest the amended preliminary findings in the manner required by this subchapter. A petition protesting the comptroller's amended preliminary findings pursuant to this subsection must be filed within 40 calendar days after the date the comptroller certifies the amended preliminary findings to the commissioner of education.

(d) In addition to the restrictions stated in this section, all provisions in this subchapter relating to standing apply to protests of amended preliminary findings.

§9.4304. Extensions of Time.

(a) At any time before a referral to SOAH, a petitioner may request an extension of time for any deadline, except the deadline to file a petition, by submitting a request for extension to the division director.

(b) A request for an extension of time must be submitted in writing and received by the division director at least five calendar days in advance of the original deadline for which the extension is requested. If requested in writing by the petitioner and for good cause shown, the division director may waive the requirement that the request for the extension be made five calendar days in advance of the deadline.

(c) A request for an extension of time must be for good cause shown. Good cause does not include petitioner's neglect, indifference, or lack of diligence. Good cause does not include a claim that the time periods established in this subchapter are insufficient.

(d) An extension of time under this section may not extend the deadline for more than ten calendar days.

§9.4305. Who May Protest.

(a) A school district may protest the comptroller's preliminary findings certified under Government Code, §403.302(g).

(b) A school district may protest the comptroller's certified findings of an audit conducted under Government Code, §403.302(h).

(c) A property owner eligible under Government Code, §403.303(a) may protest the comptroller's preliminary findings certified under Government Code, §403.302(g).

(d) An eligible property owner in a school district may protest the comptroller's certified findings of an audit conducted under Government Code, §403.302(h).

(e) A petition submitted by a property owner will not be considered for any purposes to be a protest filed by a school district.

(f) Self-report corrections. A school district may seek correction of an error in the comptroller's preliminary findings certified under Government Code, §403.302(g) caused by an error in the school district's annual report of property value by timely filing a self-report correction pursuant to §9.4308(i) of this title (relating to Contents of Petition).

(g) No petition initiating a protest of the comptroller's preliminary findings published under Government Code, §403.302(g), other

than self-report corrections submitted pursuant to §9.4308(i) of this title, may be filed by any party in a school district in a year in which a study is not conducted.

§9.4306. Filing a Petition Initiating a Protest.

(a) A protest under Government Code, §403.303(a) shall be initiated by timely filing a petition with the division.

(1) A petition initiating a protest of the comptroller's preliminary findings must be submitted not later than the 40th day after the date on which the comptroller's findings are certified to the commissioner of education under Government Code, §403.302(g).

(2) A petition initiating a protest of the comptroller's findings under Government Code, §403.302(h) must be filed not later than the 40th day after the date on which the comptroller's findings are certified to the commissioner of education under Government Code, §403.302(h).

(b) A petition must be signed by:

(1) the superintendent of the school district, if it is a petition filed by a school district, and the school district's duly authorized designated agent, if the school district designates an agent; or

(2) the property owner, if it is a petition filed by a property owner and the property owner's duly authorized designated agent, if the property owner designates an agent.

§9.4307. Dismissal.

(a) A protest shall be dismissed if there is any jurisdictional defect in submission of the petition. If a petition is filed and there is a jurisdictional defect, the division may file a motion to dismiss with the State Office of Administrative Hearings (SOAH) and a request to docket. Following receipt of the request to docket, SOAH shall assign the case a docket number and assign an Administrative Law Judge (ALJ). On the same date as the date the division files the motion to dismiss with SOAH, the division shall serve a copy of the motion to dismiss with the petitioner via hand delivery, overnight delivery service, facsimile, email or an electronic filing and service system utilized by SOAH.

(b) The petitioner may file a response with SOAH no later than seven calendar days from the date the motion to dismiss is filed. On the same date the petitioner files a response to the division's motion to dismiss, petitioner shall serve a copy of the response to the division director and legal counsel for the division via hand delivery, overnight delivery service, facsimile, email or an electronic filing and service system utilized by SOAH.

(c) The division will have seven calendar days from the date petitioner files a response to file a reply to the response with SOAH. On the same date the division files its reply to petitioner's response, the division shall serve a copy of the reply to the petitioner via hand delivery, overnight delivery service, facsimile, email or an electronic filing and service system utilized by SOAH.

(d) Arguments shall be limited to the jurisdictional issues presented in the motion to dismiss filed with SOAH. Neither the division nor the petitioner shall be permitted to submit any additional information or evidence for consideration by the ALJ.

(1) No oral hearing will be held, except upon a ruling by an ALJ pursuant to §9.4314(c) of this title (relating to Administrative Law Judge's Powers).

(2) Motions for oral hearing shall be decided solely upon the written motions for oral hearing and responses, if any, submitted to the ALJ for ruling pursuant to §9.4314(c) of this title.

(e) After time for the division to file a reply has expired, the assigned ALJ shall consider the motion, any timely filed response, and any timely filed reply, and no later than 14 calendar days after time for the division to file a reply has expired, issue a proposal for decision to the deputy comptroller stating the ALJ's recommendation for a final decision on the motion and the reasons for the proposed decision.

(1) The ALJ's proposal for decision shall be issued to the deputy comptroller by filing the proposal for decision with the comptroller's Special Counsel for Tax Hearings via hand delivery, overnight delivery service, facsimile, email or an electronic filing and service system utilized by SOAH.

(2) On the same date the ALJ issues the proposal for decision to the deputy comptroller, the ALJ shall serve a copy of the proposal for decision on all other parties via hand delivery, overnight delivery service, facsimile, email or an electronic filing and service system utilized by SOAH

(f) A party to the protest may, within seven calendar days after the date the proposed final decision is served, file with the deputy comptroller exceptions to the proposal for decision.

(1) Exceptions to the proposal for decision, if any, shall be filed with the deputy comptroller by filing the exceptions with the comptroller's Special Counsel for Tax Hearings via hand delivery, overnight delivery service, facsimile, or email.

(2) On the same date as the date exceptions to the proposal for decision are filed, the excepting party shall serve a copy of the exceptions on all other parties via hand delivery, overnight delivery service, facsimile, or email.

(g) Within seven calendar days after the exceptions are filed and served in accordance with subsection (f) of this section, all parties not filing exceptions may file replies to the exceptions with the deputy comptroller.

(1) Replies to the exceptions to the proposal for decision, if any, shall be filed with the deputy comptroller by filing the replies with the comptroller's Special Counsel for Tax Hearings via hand delivery, overnight delivery service, facsimile, or email.

(2) On the same date the replies to exceptions to the proposal for decision are filed with the deputy comptroller, the party filing the replies shall serve a copy of the replies to all other parties via hand delivery, overnight delivery service, facsimile, or email.

(h) After considering all timely filed exceptions and timely filed replies to exceptions, the deputy comptroller shall issue a final order and, in doing so, may adopt, amend, or reject the ALJ's proposal for decision. A decision is final on the date signed by the deputy comptroller. The deputy comptroller shall deliver written notice of the final decision to each party to the protest via hand delivery, overnight delivery service, facsimile, or email.

(i) The petitioner bears the burden of proof on all jurisdictional matters.

(j) If a motion to dismiss is denied, the petition will be otherwise processed in accordance with this subchapter.

§9.4308. Contents of Petition.

(a) A petition shall contain the following:

(1) the petitioner's name;

(2) the designated agent of the petitioner, if any;

(3) the mailing address of the petitioner and any designated agent for the petitioner;

(4) the physical address of the petitioner and any designated agent for the petitioner;

(5) the email address of the petitioner and any designated agent for the petitioner;

(6) the facsimile number of the petitioner and any designated agent for the petitioner;

(7) the petitioner's grounds for objection, stated with specificity on Part B of the petition and as required by this subchapter;

(8) the petitioner's value claimed to be correct for each objection, stated with specificity on Part B of the petition and as required by this subchapter;

(9) documentary evidence provided in Part C of the petition, organized and identified for each objection stated on Part B of the petition and as required by this subchapter;

(10) the property identification stated with specificity on Part B of the petition for each objection and as required by this subchapter; and

(11) all other information required to be reported on Part B of the petition.

(b) To protest the comptroller's findings, a petitioner must identify inaccuracies in value determinations made by the division in the course of arriving at a value for a property, or in the case of property in Category J, a value for a company, or in the case of property in Category D, the productivity value.

(1) On Part B of the petition, the petitioner shall separately list each ground for objection the petitioner contends resulted in an inaccuracy in a value determination. The grounds for objection shall be listed numerically and sequentially per property category.

(2) On Part B of the petition, for each separately and sequentially listed ground for objection, the petitioner shall separately identify the property for which the petitioner asserts the ground for objection. Each property shall be separately identified by property identification number, or in the case of Category J property by company identification number, or in the case of category D property by land class.

(3) On Part B of the petition, for each objection listed, the petitioner shall state the following:

(A) the change sought by the objection;

(B) the value determination alleged by petitioner to be inaccurate;

(C) the basis of the allegation that the value determination is inaccurate;

(D) the valued claimed by petitioner to be correct; and

(E) the documentary evidence provided in Part C of the petition, identified by title or description, that supports the objection.

(c) For purposes of this section, a value determination may include, but is not limited to:

(1) a sale utilized in the study;

(2) the sale's price of a property included in the study;

(3) construction quality;

(4) effective age;

(5) percent of depreciation;

(6) capitalization rate;

(7) market rent;

(8) expenses;

(9) gross rent multiplier;

(10) land value;

(11) land value per acre;

(12) type of lease;

(13) fencing expense, and other components; or

(14) other elements of an appraisal.

(d) For purposes of this section, a value determination does not include:

(1) the resulting ratio for a property, category or company reported by the comptroller as a finding; or

(2) the final market value for a property or company, or productivity value reported by the comptroller as a finding without identifying the specific basis or underlying inaccuracy in the appraisal that causes the value to be inaccurate.

(e) Multiple claims of inaccuracies in value determinations regarding the same property, company, or land class cannot be combined in the same ground for objection, but must be stated and listed as separate objections pursuant to this section.

(f) Multiple properties, companies or land classes cannot be combined for the same claim of an inaccuracy in a value determination, but must be stated and listed in separate objections.

(g) For each ground for objection identified on Part B of the petition, the petitioner must state on Part B of the petition, the relief sought with sufficient specificity such that the comptroller or an ALJ can grant the relief requested by making the change requested based solely on the petition.

(h) All documentary evidence submitted by petitioner shall be filed in Part C of the petition, organized and separated by cover sheets, with each cover sheet clearly identifying the property category, numbered ground for objection, and the property, company or land class as reported on Part B of the petition to which the evidence corresponds. If documents are included as evidence for more than one ground for objection, the documents may be submitted only once, but all property categories, grounds for objections, and properties, companies or land classes to which the documents correspond must be identified on the cover sheet. Separate documents must be labeled as separate exhibits.

(i) Self-report corrections. Self-report corrections are limited to changes in the comptroller's preliminary findings under Government Code, §403.302(g) that were caused by an error in a district's annual report of property value, or by clerical errors in a district's local value made by the division. All self-report corrections must be asserted in sequentially numbered grounds for objection. Grounds for objection must be set forth by written requests and be supported by documentation as identified in this subsection.

(1) To seek a self-report correction regarding changes of values reflected in the School District Report of Property Value (Form 50-108), a petitioner must identify "SR" as the category identification, include a written request that the preliminary findings be revised in accordance with an updated School District Report of Property Value (Form 50-108), and identify and include with the protest the following documentation: School District Report of Property Value (Form 50-108) or documentation that provides substantially the same information set forth in School District Report of Property Value (Form 50-108) with a recap that includes a breakdown of value by category,

a breakdown of exemptions and other value deductions, and a breakdown by land class of agricultural and timber land acreage and value. All values reflected on the documentation that differ from the division's preliminary findings will be considered to be changes sought by way of the protest.

(2) To seek a self-report correction regarding value lost due to school tax limitations, a petitioner must identify "SR" as the category identification, include a written request that the preliminary findings be revised in accordance with an updated Report on Value Lost Because of the School Tax Limitation on Homesteads of the Elderly/Disabled (Form 50-253), and identify and include with the protest the documentation listed in subparagraphs (A) and (B) of this paragraph. All values reflected on the documentation that differ from the division's preliminary findings will be considered to be changes sought by way of the protest.

(A) Report on Value Lost Because of the School Tax Limitation on Homesteads of the Elderly/Disabled (Form 50-253) or documentation that provides substantially the same information set forth in Report on Value Lost Because of the School Tax Limitation on Homesteads of the Elderly/Disabled (Form 50-253) and with a recap, if available, showing the total appraised value of residential homesteads subject to a tax ceiling, the total dollar amount of mandatory exemptions on residence homesteads subject to a tax ceiling, the total dollar amount of local optional exemptions on residence homesteads subject to a tax ceiling, the total taxable value of residence homesteads subject to a tax ceiling, and the total actual levy on residence homesteads subject to a tax ceiling; and

(B) a listing by account number in Excel®-compatible format of tax ceilings created in 2006 or a prior year and that still existed in the property value study (PVS) year, if a change or correction to such information is requested, including the year the ceiling was established, the ceiling in 2007, and the ceiling in the PVS year, if the total loss of all such combined accounts is different than that reported in the division's preliminary findings. If the total loss of all such combined accounts is not different than that reported in the division's preliminary findings, the listing identified in this subparagraph need not be submitted. This information is only required if a change or correction to such information is requested.

(3) To seek a self-report correction concerning value limitations provided by Tax Code, Chapter 313, a petitioner must identify "SR" as the category identification, include a written request that the preliminary findings be revised in accordance with an updated Report on Value Lost Because of Value Limitations Under Tax Code, Chapter 313 (Form 50-767), and identify and include with the protest the following documentation: Report on Value Lost Because of Value Limitations Under Tax Code, Chapter 313 (Form 50-767) with a listing by account number of the market value, exemptions, and taxable value of the property subject to the value limitation. All values reflected on the documentation that differ from the division's preliminary findings will be considered to be changes sought by way of the protest.

(4) To seek a self-report correction concerning value lost due to participation in tax increment financing, a petitioner must identify "SR" as the category identification, include a written request that the preliminary findings be revised in accordance with an updated Report on Value Lost Because of School District Participation in Tax Increment Financing (Form 50-755), and include with the protest the following documentation: Report on Value Lost Because of School District Participation in Tax Increment Financing (Form 50-755) with a listing of each property in the TIF zone identified by account number and showing the appraised and taxable value for the PVS year and appraised and taxable value for the zone's base year. All values reflected on the documentation that differ from the division's preliminary findings will be considered to be changes sought by way of the protest.

(5) To seek a self-report correction concerning a change or correction in deferred taxes pursuant to Tax Code, §33.06 or §33.065, if not otherwise included in a self-report correction under paragraph (1) of this subsection, a petitioner must identify "SR" as the category identification, include a written request that the preliminary findings be revised in accordance with an updated listing of deferred taxes, and include with the protest a listing by account of the unpaid deferred taxes that does not include penalties or interest. All values reflected on the documentation that differ from the division's preliminary findings will be considered to be changes sought by way of the protest.

(6) Notwithstanding paragraphs (1), (2), (3), (4), and (5) of this subsection, a petitioner may seek a self-report correction by identifying "SR" as the category identification, including a written request identifying findings sought to be revised, and identifying and including with the protest information necessary to support the requested corrections.

(j) The petition must contain a statement by the school district's or property owner's authorized agent or, if no agent has been designated, by the school district superintendent or the property owner as applicable, that, to the best of the person's knowledge, the statements contained in the petition and the evidence attached to the petition are true and correct.

§9.4309. Insufficient Grounds for Objection.

(a) Any ground for objection that does not comply with §9.4308 of this title (relating to Contents of Petition) does not adequately specify the grounds for objection as required by Government Code, §403.303(a) and shall be rejected by the division director without further review.

(b) If the division director determines that a ground for objection asserted in a petition does not comply with §9.4308 of this title, the division will notify the petitioner that the ground for objection has been rejected pursuant to this section. No additional information or evidence may be submitted by a petitioner after a determination of rejection has been made by the division director.

(c) If all grounds for objection in a petition are rejected resulting in the petition being rejected in its entirety, the petitioner may request referral of the petition to SOAH for a hearing on the rejections.

(1) The petitioner must request the referral to SOAH within 15 calendar days of the date the division sends petitioner notice of the rejections.

(2) Upon a timely written request for referral from the petitioner, the division will file a request to docket with SOAH together with a copy of the division's notice to the petitioner that the petition has been rejected in its entirety pursuant to this subchapter.

(3) Following receipt of the request to docket, SOAH shall assign the case a docket number and assign an ALJ.

(A) Arguments before the ALJ shall be limited to the reasons for the rejections reported by the division to the petitioner, and the petitioner shall not be permitted to submit any additional information or evidence for consideration by the ALJ.

(B) No oral hearing on the rejections shall be held, except upon a ruling by the ALJ pursuant to §9.4314(c) of this title (relating to Administrative Law Judge's Powers). Motions for oral hearing shall be decided based solely upon the written motions and replies, if any, submitted to the ALJ for ruling pursuant to §9.4314(c) of this title.

(4) The ALJ shall consider the petition and make a determination as to whether each ground for objection included in the petition complies with §9.4308 of this title. A ground for objection that does not comply with §9.4308 of this title will not provide the ALJ with sufficient information to identify a specific change to the study findings.

(A) If the ALJ determines that a ground for objection does not comply with §9.4308 of this title, the ALJ shall, within 14 calendar days after referral, issue a proposal for decision to reject that ground for objection.

(B) If the ALJ determines that a ground for objection complies with §9.4308 of this title, the ALJ shall, within 30 calendar days after referral, issue a proposal for decision stating the ALJ's recommendation for specific changes to the study findings as to that ground for objection.

(5) The ALJ shall issue a proposal for decision, stating the ALJ's reasons for the proposed decision, under this section to the deputy comptroller by filing the proposal for decision with the comptroller's Special Counsel for Tax Hearings via hand delivery, overnight delivery service, facsimile, email or an electronic filing and service system utilized by SOAH. On the same date the ALJ issues the proposal for decision to the deputy comptroller, the ALJ shall serve a copy of the proposal for decision on all other parties via hand delivery, overnight delivery service, facsimile, email or an electronic filing and service system utilized by SOAH.

(6) A party to the protest that is adversely affected by the proposal for decision may, within seven calendar days after the date the proposed final decision is served, file with the deputy comptroller exceptions to the proposal for decision. To file with the deputy comptroller, exceptions must be filed with the comptroller's Special Counsel for Tax Hearings via hand delivery, overnight delivery service, facsimile, or email. On the same date as the exceptions to the proposal for decision are filed, the excepting party shall serve a copy of the exceptions with all other parties via hand delivery, overnight delivery service, facsimile, or email.

(7) Within seven calendar days after the exceptions are filed and served in accordance with this subsection, all other parties may file replies to the exceptions with the deputy comptroller. To file with the deputy comptroller, replies must be filed with the comptroller's Special Counsel for Tax Hearings via hand delivery, overnight delivery service, facsimile, or email. On the same date as the replies to exceptions to the proposal for decision are filed with the deputy comptroller, the party filing the replies shall serve a copy of the replies with all other parties via hand delivery, overnight delivery service, facsimile, or email.

(8) The deputy comptroller shall issue a final order and, in doing so, may adopt, amend, or reject the ALJ's proposal for decision. A decision is final on the date signed by the deputy comptroller. The deputy comptroller shall deliver written notice of the final decision to each party to the protest via hand delivery, overnight delivery service, facsimile, or email.

(d) If one or more, but not all, of the grounds for objection included in the petition are rejected as set forth in this section, the grounds for objection that have not been rejected will be processed as otherwise set forth in this subchapter. After conclusion of the informal conference required in §9.4311(g) of this title (relating to Prehearing Exchanges and Informal Conference Regarding Petition), the petitioner may request referral of the rejected grounds for objections as set forth in §9.4311(i) and (j) of this title.

(e) If all grounds for objection in a petition other than those that have been rejected have been finally resolved by agreement, the petitioner may request referral of rejected objections in accordance with the provisions of subsection (c) of this section applicable to a petition rejected in its entirety.

§9.4311. Prehearing Exchanges and Informal Conference Regarding Petition.

(a) After reviewing the petition, the division will send petitioner responses to each of the petitioner's grounds for objection. The division's responses may include agreement, disagreement, disagreement with modification, or rejection as set forth in this subchapter.

(1) An agreement by the division to the relief requested or the amount claimed to be correct in a ground for objection is a final resolution as to that ground for objection.

(2) If at any time a response by the division results in a valid finding for a school district, the protest shall be finally resolved for the protesting school district and all eligible property owners protesting property in the school district, and there shall be no further consideration of the petitions.

(b) Not later than 15 calendar days after the division delivers its responses to the petitioner, the petitioner must reply to the division utilizing Part B of the petition.

(1) The petitioner's reply must either agree to all of the division's responses, thereby waiving further consideration of the petition, or notify the division as to each ground for objection the petitioner disagrees and will continue to protest.

(2) A petitioner's failure to timely reply as provided in this subsection will be deemed agreement to the division's responses and will constitute final resolution of the petitioner's protest.

(3) In an otherwise timely-filed reply, a petitioner's failure to indicate on Part B of the petition an agreement or disagreement to the division's response will be deemed agreement to the division's response as to the ground for objection and will constitute final resolution as to the ground for objection.

(4) The petitioner may not reply to a rejection of a ground for objection. The petitioner may only request referral of the petition to SOAH for a hearing on the rejection pursuant to §9.4309 of this title (relating to Insufficient Grounds for Objection).

(c) For each ground for objection with which petitioner does not agree with the division's response, petitioner must file with the division director:

(1) any supplemental evidence not already submitted at the time the petition was filed, with any such supplemental evidence organized, separated and identified pursuant to §9.4308(h) of this title (relating to Contents of Petition); and

(2) a written designation of witnesses who may testify at the hearing on each unresolved ground for objection with witnesses identified by name and with the professional qualifications of each identified witness.

(d) All documents required pursuant to subsection (c) of this section must be filed with, and at the same time as, petitioner's reply submitted under subsection (b) of this section.

(e) Within 15 calendar days after receipt of petitioner's reply and supplemental evidence, if any, the division shall:

(1) supplement the documents created, collected, and utilized by the division in conducting the study or performing the audit, as applicable, including any rebuttal evidence regarding each ground for objection to which petitioner has not agreed; and

(2) provide a written designation of witnesses who may testify at the hearing on each unresolved ground for objection, with witnesses identified by name and with the professional qualifications of each witness identified.

(f) For purposes of this subchapter, employees of the division and the chief appraiser of the appraisal district that appraised property for a protesting school district, as well as employees of the chief appraiser appraising property for the protesting school district employed pursuant to Tax Code, §6.05(d), are deemed qualified to testify as witnesses.

(g) The division will either provide notice of the date, time, and place of an informal conference regarding the petition to be held for consideration of petitioner's remaining grounds for objection, or the division may provide the petitioner with revised recommendations to the division's initial responses for any unresolved grounds for objections.

(1) No later than seven calendar days after being provided the division's revised recommendations, a petitioner may agree to the division's revised recommendations, and waive further consideration of the petition, thereby finally disposing of the protest, or request an informal conference be held for consideration of petitioner's remaining grounds for objection.

(2) Notwithstanding the referral of rejections to SOAH under §9.4309 of this title, appearance and participation in an informal conference regarding the petition is a jurisdictional prerequisite for referral of grounds for objection to SOAH for hearing.

(3) Failure to appear in the scheduled informal conference will be deemed agreement by the petitioner to the division's recommendations or revised recommendations, constitute final resolution and waive further consideration of petitioner's petition, thereby finally disposing of the protest.

(4) Notice under this subsection will be made by U.S. first class mail, overnight delivery service, facsimile, or email.

(h) If the division has identified any failure of petitioner to properly comply with the requirements of labeling and organizing evidence, at the time of the informal conference the petitioner will be notified of such failure and given the opportunity to correct such failure through identification of evidence that was intended to correspond to grounds for objection that remain unresolved and subject to referral to SOAH. This subsection does not permit a petitioner to submit any additional information, documentation, or evidence.

(i) After completing the informal conference, the petitioner may request a referral for a hearing before a SOAH Administrative Law Judge (ALJ) for all remaining unresolved grounds for objection submitted on Part B of the petition.

(j) A petitioner's request for a referral to SOAH for a hearing on the unresolved grounds for objection shall be made by filing a written request with the division director no later than seven calendar days after the informal conference.

(1) The petitioner's written request must specifically identify each ground for objection for which the referral is requested by numbered objection as reported on Part B of the petition.

(2) The petitioner's written request must identify the individuals who will present argument and introduce evidence on behalf of the petitioner before SOAH.

§9.4312. Scheduling a Protest Hearing.

(a) Referral of any matter to SOAH may only be made by the division.

(b) Subsequent to receiving a valid request for a referral from a petitioner under §9.4311 of this title (relating to Prehearing Exchanges and Informal Conference Regarding Petition), the division may file a request to docket a hearing with SOAH. At the time a request to docket is filed, the division shall also provide to SOAH:

(1) a list of the grounds for objection being referred;

(2) a copy of the documents delivered by the division pursuant to §9.4311(e) of this title;

(3) a copy of the portions of the petition relating to the grounds for objection being referred;

(4) a copy of any documentary evidence and supplemental documentary evidence timely submitted by petitioner pursuant to this subchapter for grounds for objections being referred; and

(5) a copy of witness designations and identifications timely submitted by petitioner pursuant to this subchapter for grounds for objections being referred.

(c) The documents submitted pursuant to subsection (b)(1) - (5) of this section will be submitted in an organized manner to facilitate reference to such documents by the ALJ.

(d) At the discretion of the division director, the director may join matters referred to SOAH pursuant to this section for purposes of the hearing.

(e) Following receipt of the request to docket pursuant to this section, SOAH shall:

(1) assign the case a docket number;

(2) assign an ALJ;

(3) schedule the protest for hearing to be held not later than 45 calendar days after the date of the referral; and

(4) no later than 14 calendar days before the scheduled hearing, deliver notice of the date, time, and location of the hearing to the parties identified in the request to docket. Hearings scheduled pursuant to this section shall be held at a location designated by SOAH. Notice under this subsection will be made by U.S. first class mail, facsimile, email, or via an electronic filing and service system utilized by SOAH.

(f) Following receipt of the notice of the hearing date, time, and location from SOAH pursuant to this section, the division shall deliver to petitioner a copy of all documents that were submitted to SOAH pursuant to subsection (a) of this section. Such copies of documents submitted to SOAH must be delivered, unless otherwise agreed by the parties, not later than ten calendar days before the date of the hearing. Service under this subsection will be made by U.S. first class mail, facsimile, email or via an electronic filing and service system utilized by SOAH.

§9.4313. Conduct of Oral Hearing.

(a) Except as otherwise provided in this subchapter, the ALJ shall convene a hearing for a protest.

(b) All oral hearings under this subchapter shall be recorded. The comptroller or petitioner will be provided a copy of the recording after a written request and payment of a cost-based fee to SOAH. Upon written notice provided to the ALJ and comptroller, and at least ten calendar days prior to a scheduled hearing, a petitioner may make arrangements for and bear the cost of having a hearing recorded and transcribed by a court reporter.

(c) Oral hearings are generally open to the public and shall be held in Austin. The ALJ may close a hearing on the ALJ's own motion

or on the motion of a party to the protest if confidential information will be disclosed during the hearing.

(d) Hearings shall be conducted in accordance with this subchapter. The Texas Administrative Procedures Act, the Texas Rules of Civil Procedure, the Texas Rules of Evidence, and the SOAH procedural rules do not apply. Nothing in this subsection shall preclude general application by an ALJ of evidentiary principles addressed in the Texas Rules of Evidence as an advisory tool in making evidentiary determinations in protests of the comptroller's findings under Government Code, §403.302(g) and (h).

(e) Except as otherwise provided by this subchapter, the comptroller shall present its evidence and argument prior to each petitioner. After each petitioner has presented its evidence and argument, the comptroller shall be given the opportunity to present rebuttal evidence and argument. The ALJ may otherwise establish the order of proceeding and is responsible for closing the record.

(f) No party may offer documentary evidence at the hearing that was not filed and served in accordance with the requirements of this subchapter. No evidence may be submitted to SOAH on any ground for objection of a protest of the comptroller's findings under Government Code, §403.302(g) and (h) except as identified and submitted by the comptroller.

(g) Testimony of witnesses shall be confined to the documentary evidence that has been timely submitted pursuant to the terms of this subchapter and identified and submitted to SOAH according to subsection (f) of this section.

(h) The following individuals are considered qualified to testify in a hearing before SOAH conducted pursuant to this subchapter: comptroller employees, chief appraisers, and individuals registered as Class IV Appraisers with the Texas Department of Licensing and Regulation.

(i) Argument shall be confined to the evidence for the grounds for objection identified and submitted by the comptroller and to the arguments of the other parties.

(j) Admissions, proposals, offers, or agreements made or reached in the compromise of disputed issues prior to referral to SOAH may not be admitted in a hearing. Admissions, proposals, offers, or agreements made or reached in the compromise of disputed issues regarding other protests or prior study years may not be admitted in a hearing.

(k) Unless permitted by the ALJ, no more than two representatives for each party shall present argument and introduce evidence at a hearing.

(l) An attorney, agent or other representative who appears at a protest hearing to argue and present evidence on behalf of a petitioner shall not testify at the hearing.

§9.4314. Administrative Law Judge's Powers.

(a) The ALJ shall conduct a hearing on a protest of the comptroller's findings under Government Code, §403.302 (g) or (h) in a manner ensuring fairness, the reliability of evidence, and the timely completion of the hearing. The ALJ shall have the authority necessary to receive and consider evidence as provided under this subchapter and propose decisions only on the grounds for objection identified and referred by the comptroller.

(b) The comptroller has the burden to prove the accuracy of the comptroller's findings under Government Code, §403.302(g) or (h).

(c) The ALJ's authority includes, but is not limited to, the following:

(1) rule on motions and the admissibility of evidence;

(2) conduct oral hearings in an orderly manner and expel from any proceeding any individuals who, after an appropriate warning, fail to comport themselves in a manner befitting the proceeding and continue with the proceeding, hear evidence, and render a decision on the protest;

(3) administer oaths to all persons presenting testimony;

(4) examine witnesses and comment on the evidence;

(5) ensure that evidence, argument, and testimony are introduced and presented expeditiously;

(6) refuse to hear arguments that are repetitious, not confined to grounds for objection identified and submitted by the comptroller to SOAH pursuant to this subchapter, or not related to the evidence;

(7) accept and record any waiver of any right prescribed in this subchapter;

(8) limit each oral hearing to two hours for presentation of evidence and argument or extend the two-hour time limit in the interest of a full and fair hearing; and

(9) exercise any other powers necessary or convenient to carry out the ALJ's responsibilities and to ensure timely certification of changes in preliminary findings to the commissioner of education.

(d) The ALJ shall take official notice of the written policies and procedures of the comptroller pertaining to the property value study and may take official notice of any statutes, codes and administrative rules of the State of Texas.

(e) The ALJ may entertain motions for dismissal at any time as requested by the comptroller. Grounds for dismissal shall include, but are not limited to, the following:

(1) failure to prosecute;

(2) unnecessary duplication of proceedings or res judicata;

(3) withdrawal of protest;

(4) moot questions or obsolete petition; or

(5) the comptroller has certified amended preliminary findings pursuant to this subchapter.

(f) The ALJ may grant a request to postpone an oral protest hearing if good cause is shown and doing so would not prevent timely certification of changes in preliminary findings to the commissioner of education. A request to postpone must be in writing, show good cause for the postponement, and be delivered five calendar days before the date the protest hearing is scheduled to begin. Good cause does not include a claim that the time periods established in Government Code, §403.303(a) or in this subchapter are insufficient. If requested in writing by the petitioner and for good cause shown, the ALJ may waive the requirement that the request for postponement be made five calendar days in advance of the deadline.

(g) Except as otherwise provided in this subchapter, the ALJ assigned to a protest may not communicate outside of the protest hearing, directly or indirectly, with any agency, person, petitioner, petitioner's witness or petitioner's agent regarding any issue of fact or law relating to the protest unless all parties to the protest have notice and opportunity to participate.

§9.4315. Proposal for Decision After Oral Hearing.

(a) The ALJ shall prepare a proposal for decision that includes the ALJ's recommendations for a final decision and the reasons for the proposed decision.

(1) The ALJ shall issue the proposal for decision to the deputy comptroller within 30 calendar days of the date the hearing is conducted.

(2) The ALJ's proposal for decision shall be issued to the deputy comptroller by filing the proposal for decision with the comptroller's Special Counsel for Tax Hearings via hand delivery, overnight delivery service, facsimile, email or an electronic filing and service system utilized by SOAH.

(3) On the same date the ALJ issues the proposal for decision to the deputy comptroller, the ALJ shall serve a copy of the proposal for decision on all other parties via hand delivery, overnight delivery service, facsimile, email, or an electronic filing and service system utilized by SOAH

(b) A party to the protest that is adversely affected by the proposal for decision may, within seven calendar days after the date the proposed final decision is served, file with the deputy comptroller exceptions to the proposal for decision.

(1) Exceptions to the proposal for decision, if any, shall be filed with the deputy comptroller by filing the exceptions with the comptroller's Special Counsel for Tax Hearings via hand delivery, overnight delivery service, facsimile, or email.

(2) On the same date the exceptions to the proposal for decision are filed, the excepting party shall serve a copy of the exceptions to all other parties via hand delivery, overnight delivery service, facsimile, or email.

(c) Within seven calendar days after the exceptions are filed and served in accordance with subsection (b) of this section, all other parties not filing exceptions may file replies to the exceptions with the deputy comptroller.

(1) The replies to the exceptions, if any, shall be filed with the deputy comptroller by filing the replies with the comptroller's Special Counsel for Tax Hearings via hand delivery, overnight delivery service, facsimile, or email.

(2) On the same date the replies to exceptions are filed with the deputy comptroller, the party filing the replies shall serve a copy of the replies with all other parties via hand delivery, overnight delivery service, facsimile, or email.

(d) The deputy comptroller shall issue a final order and, in doing so, may adopt, amend, or reject the ALJ's proposal for decision. A decision is final on the date signed by the deputy comptroller. The deputy comptroller shall deliver written notice of the final decision to each party to the protest via hand delivery, overnight delivery service, facsimile, or email.

§9.4317. Effect of Final Decision and Certification of Changes.

(a) A final decision ordering changes to findings made as a result of a school district's protest or other final resolution of the protest under this subchapter resulting in changes to preliminary findings arising from a school district's protest will change findings pursuant to Government Code, §403.302 for the school district regarding which the protest was filed.

(b) A final decision ordering changes to findings made as a result of a property owner's protest or other final resolution of the protest under this subchapter resulting in changes to preliminary findings arising from a property owner's protest will change findings pursuant to Government Code, §403.302 for the school district(s) regarding which the protest was filed.

(c) Certification of changes to preliminary findings. Unless the comptroller determines that circumstances require otherwise, the comptroller shall certify to the commissioner of education all changes to Government Code, §403.302(g) preliminary findings by August 31 of the year following the year of the study or as soon thereafter as practicable.

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

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 2. DEFINITIONS

34 TAC §20.25

The Comptroller of Public Accounts proposes amendments to §20.25, concerning definitions.

These amendments are to clarify the procurement rules in Chapter 20. The purpose of including definitions in §20.25 is to define terms used in Chapter 20. The amendments change references in subsections (a) and (b) from "this section" to "this chapter." These changes will ensure the uniform application of the definitions throughout Chapter 20.

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

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

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:00 a.m., Central Time, on Thursday, January 28, 2021. To access the online public meeting by web browser, please enter the

following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=m75ff5c30bb07a248b14aee4af1a0edc3.

To join the meeting by computer or cell phone using the Webex app, use the access code 146 822 3618. If prompted for a password enter 34TAC2025. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by January 27, 2021.

In addition, comments on the proposal may be submitted to Scott Stalnaker, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Scott.Stalnaker@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register.*

These amendments are proposed under Government Code, §2155.0012, which authorizes the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

These amendments implement Government Code, §§2151.003, 2155.001 and 2155.0011, which outline the general procurement responsibility of the comptroller.

§20.25. Definitions.

(a) As used throughout this chapter, words and terms defined in the State Purchasing and General Services Act, Government Code, Title 10, Subtitle D, and the Code Construction Act, Government Code, Chapter 311 shall have the same meaning as defined therein, and each word or term listed in this chapter [~~section~~] shall have the meaning set forth herein, unless:

(1) its use clearly requires a different meaning; or

(2) a different definition is prescribed for a particular chapter or portion thereof.

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

(1) Act--The State Purchasing and General Services Act, Government Code, Title 10, Subtitle D, Chapter 2151, et seq, including any amendments thereto that may be made from time to time.

(2) Advisory groups--A group that advises and assists the standards and specification program in establishing specifications. The advisory group may include representatives from federal, state and local governments, user groups, manufacturers, vendors and distributors, bidders, associations, colleges, universities, testing laboratories, and others with expertise and specialization in particular product area.

(3) Agent of record--An employee or official designated by a qualified cooperative entity as the individual responsible to represent the qualified entity in all matters relating to the program.

(4) Approved products list--The list is also referred to as the approved brands list or qualified products list. It is a specification developed by evaluation of brands and models of various manufacturers and listing those determined to be acceptable to meet the minimum level of quality. Testing is completed in advance of procurement to determine which products comply with the specifications and standards requirements.

(5) Award--The act of accepting a bid, thereby forming a contract between the state and a bidder.

(6) Bid--An offer to contract with the state, submitted in response to a bid invitation issued by the comptroller.

(7) Bid deposit--A deposit required of bidders to protect the state in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the state. Acceptable forms of bid deposits are limited to: cashier's check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas and entered on the United States Department of the Treasury's listing of approved sureties; a surety or blanket bond from a company chartered or authorized to do business in Texas.

(8) Bidder--An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees, and representatives.

(9) Blanket bond--A surety bond which provides assurance of a bidder's performance on two or more contracts in lieu of separate bonds for each contract. The amount for a blanket bond shall be established by the comptroller based on the bidder's annual level of participation in the state purchasing program.

(10) Brand name--A trade name or product name which identifies a product as having been made by a particular manufacturer.

(11) Centralized master bidders list (CMBL)--A list maintained by the comptroller containing the names and addresses of prospective bidders and catalog information systems vendors.

(12) Comptroller--The Comptroller of Public Accounts of the State of Texas or the designated and authorized representative of the Comptroller of Public Accounts of the State of Texas.

(13) Contract value or the value of a contract--The estimated dollar amount that a state agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions and renewals of the contract.

(14) Contractor--A vendor that contracts to provide goods or services to the state under the Act and all successors-in-interest to that contractor.

(15) Cooperative purchasing program--A program to provide purchasing services to qualified cooperative entities, as defined herein.

(16) Customer choice--Customer choice as the term is defined under Utilities Code, §31.002(4).

(17) Debarment--An exclusion from contracting or subcontracting with state agencies on the basis of any cause set forth in the Act or these rules, commensurate with the seriousness of the offense, performance failure, or inadequacy to perform.

(18) Director--The director of the division.

(19) Distributor purchase--Purchase of repair parts for a unit of major equipment that are needed immediately or as maintenance contracts for laboratory/medical equipment.

(20) Division--The organizational division within the office of the Comptroller of Public Accounts for the State of Texas performing the responsibilities identified in the Act for and under the direction of the comptroller.

(21) Emergency procurement--A situation requiring the state agency to make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state.

(22) Environmentally sensitive products--Products that protect or enhance the environment, or provide less risk to the environment than traditionally available products.

(23) Equivalent product--A product that is comparable in performance and quality to the specified product.

(24) Electronic State Business Daily (ESBD)--A business daily made available on the Internet at an electronic procurement marketplace to which state agencies post contract opportunities that will exceed $25,000 in value.

(25) Formal bid--A written bid submitted in a sealed envelope in accordance with a prescribed format, or an electronic data interchange transmitted to the comptroller in accordance with procedures established by the comptroller.

(26) Group purchasing program--A purchasing program that offers discount prices to two or more state agencies, which is formed as a result of interagency or interlocal cooperation and follows all applicable statutory standards for purchases.

(27) Historically Underutilized Business or HUB--A historically underutilized business as defined by Government Code, Chapter 2161 and Subchapter D, Division 1 of these rules.

(28) Informal bid--An unsealed, competitive bid submitted by letter, telephone, or other means.

(29) Invitation for bids (IFB)--A written request for submission of a bid; also referred to as a bid invitation.

(30) Invoice--A document presented by a contractor for payment, which includes information necessary for payment processing, and is received by mail, hand delivery, electronically, or by facsimile transmission.

(31) Late bid--A bid that is received at the place designated in the bid invitation after the time set for bid opening.

(32) Level of quality--The ranking of an item, article, or product in regard to its properties, performance, and purity.

(33) Local government--A county, municipality, special district, school district, junior college district, regional planning commission, or other political subdivision of the state pursuant to Local Government Code, §271.101.

(34) Manufacturer's price list--A price list published in some form by the manufacturer and available to and recognized by the trade. The term does not include a price list prepared especially for a given bid.

(35) Multiple award contract (as it applies to Multiple Award Schedule Contracts)--An award of a contract for an indefinite amount of one or more similar goods or services from a vendor.

(36) Multiple award contract procedure--A purchasing procedure by which the comptroller establishes one or more levels of quality and performance and makes more than one award at each level.

(37) Non-competitive purchase--A purchase of goods or services (also referred to as "spot purchase") that does not exceed the amount stated in §20.82 of this title (relating to Delegated Purchases).

(38) Notice of award--A letter signed by the comptroller or the designee which awards and creates a term contract.

(39) Open market purchase--A purchase of goods, usually of a specified quantity, made by buying from any available source in response to an open market requisition.

(40) Performance bond--A surety bond which provides assurance of a bidder's performance of a certain contract. The amount for the performance bond shall be based on the bidder's annual level of potential monetary volume in the state purchasing program. Acceptable forms of bonds are those described in the definition for "bid deposit."

(41) Perishable goods--Goods that are subject to spoilage within a relatively short time and that may be purchased by agencies under delegated authority.

(42) Post-consumer materials--Finished products, packages, or materials generated by a business entity or consumer that have served their intended end uses, and that have been recovered or otherwise diverted from the waste stream for the purpose of recycling.

(43) Pre-consumer materials--Materials or by-products that have not reached a business entity or consumer for an intended end use, including industrial scrap material, and overstock or obsolete inventories from distributors, wholesalers, and other companies. The term does not include materials and by-products generated from, and commonly reused within, an original manufacturing process or separate operation within the same or a parent company.

(44) Prescribed form--The entry screens available in the ESBD.

(45) Proprietary--Products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law. A product or service is proprietary if it has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services.

(46) Public utility or utility--A public utility or utility as the term is defined under Utilities Code, §11.004.

(47) Purchase orders--A document issued by a qualified ordering entity to make a purchase under a term contract issued by the comptroller by these rules.

(48) Purchasing functions--The development of specifications, receipt and processing of requisitions, review of specifications, advertising for bids, bid evaluation, award of contracts, and inspection of merchandise received. The term does not include invoice, audit, or contract administration functions.

(49) Qualified cooperative entity--An entity that qualifies for participation in the cooperative purchasing program and includes:

(A) a local government;

(B) a mental health and mental retardation community center identified in Government Code, §2155.202, that receive grants-in-aid under the provisions of Health and Safety Code, Chapter 534, Subchapter B;

(C) an assistance organization as defined in Government Code, §2175.001, that receive any state funds; and

(D) a political subdivision, as defined by Government Code, Chapter 791.

(50) Qualified Ordering Entity--An entity that is either:

(A) a state agency; or

(B) a qualified cooperative entity that has registered with the comptroller to participate in the cooperative purchasing program as defined in Local Government Code, Subchapter D, §271.081.

(51) Recycled material content--The portion of a product made with recycled materials consisting of pre-consumer materials (waste), post-consumer materials (waste), or both.

(52) Recycled materials--Materials, goods, or products that contain recyclable material, industrial waste, or hazardous waste that may be used in place of raw or virgin materials in manufacturing a new product.

(53) Recycled product--A product, including recycled steel that meets the requirements for recycled material content as prescribed by the rules established by the Texas Commission on Environmental Quality in consultation with the comptroller.

(54) Registered agent--A representative designated by each state agency responsible for posting eligible procurement opportunities in the ESB.

(55) Remanufactured product--A product that has been repaired, rebuilt, or otherwise restored to meet or exceed the original equipment manufacturer's (OEM) performance specifications; provided, however, the warranty period for a remanufactured product may differ from the OEM warranty period.

(56) Request for proposal--A written request for offers concerning goods or services the state intends to acquire by means of the competitive sealed proposal procedure.

(57) Requisition--

(A) Open market purchase requisition. An initiating request from an agency describing needs and requesting the comptroller to purchase goods or services to satisfy those needs.

(B) Term contract purchase requisition. A request from a qualified ordering entity for delivery of goods under an existing term contract.

(58) Resolution--Document of legal intent adopted by the governing body of a qualified cooperative entity that evidences the qualified cooperative entity's participation in the cooperative purchasing program.

(59) Respondent--A person that submits a response to a solicitation.

(60) Retail electric provider--A retail electric provider as the term is defined under Utilities Code, §31.002(17).

(61) Reverse auction--A real time bidding procedure that is Internet dependent and which is conducted at a pre-scheduled time and Internet location in which multiple suppliers, anonymous to each other, submit bids for designated goods or services.

(62) Schedule--A list of multiple award contracts from which agencies may purchase goods and services.

(63) Sealed bid--A formal written bid.

(64) Solicitation--An invitation for bids or a request for proposals or any other document issued by a state agency for the purpose of soliciting offers in any form from a vendor to sell goods or services to the state and that includes at a minimum the information identified in Government Code, §2155.083(g).

(65) Specification--A concise statement of a set of requirements to be satisfied by a product, material or service, indicating whenever appropriate the procedures to determine whether the requirements are satisfied.

(66) Standard specification--A description of what the purchaser requires and what a bidder or proposer must offer.

(67) State agency--A state agency as the term is defined under Government Code, Title 10, §2151.002.

(68) Successor-in-interest--Any business entity that acquires or otherwise obtains the controlling ownership of a business entity.

(69) Tabulation of bids--The recording of bids and bidding data for purposes of bid evaluation and recordkeeping.

(70) Term contract purchase--A purchase by a qualified ordering entity under a term contract, which established a source of supply for particular goods at a given price for a specified period of time.

(71) Testing--An element of inspection involving the determination, by technical means, of the properties or elements of item(s) or component(s), including function operation.

(72) Texas uniform standards and specifications--Standards and specifications prepared and published by the standards and specifications program of the comptroller.

(73) Unit price--The price of a selected unit of a good or service, e.g., price per ton, per labor hour, or per foot.

(74) Using agency--An agency of government that requisitions goods or services through the comptroller.

(75) Vendor--A person that offers goods and services in the state.

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

Filed with the Office of the Secretary of State on December 21, 2020.

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Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION
DIVISION 1. PRIMARY AND DELEGATED PROCUREMENT AUTHORITY

34 TAC §20.81

The Comptroller of Public Accounts proposes an amendment to §20.81, concerning general purchasing provisions. This rule is found in Chapter 20 (Statewide Procurement and Support Services), Subchapter B (Public Procurement Authority and Organization), Division 1 (Primary and Delegated Procurement Authority).

The amendment adds new subsection (d), which describes the authority of the comptroller related to purchasing by state agencies. New subsection (d) restates the limitation on the comptroller's authority in Government Code, §2155.140. Specifically, the comptroller's authority does not apply to purchases from a gift or grant in support of research.

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

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

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:30 a.m., Central Time, on Thursday, January 28, 2021. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=m4f69186fc19f425784f349fea14e99d0.

To join the meeting by computer or cell phone using the Webex app, use the access code 146 976 2215. If prompted for a password enter 34TAC2081. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by January 27, 2021.

In addition, comments on the proposal may be submitted to Scott Stalnaker, Comptroller of Public Accounts, at P.O. Box 13528 Austin, Texas 78711 or Scott.Stalnaker@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Government Code, §2155.0012, which authorizes the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

The amendment implements Government Code, §§2151.003, 2155.001 and 2155.0011, which outline the general procurement responsibility of the comptroller.

§20.81. General Purchasing Provisions.

(a) Chapter 20 of this title applies to purchases of goods and services by the comptroller pursuant to the authority of the Act.

(b) Chapter 20 of this title applies to any state agency delegated the authority to purchase goods and services pursuant to the Act and these rules.

(c) A retail electric provider serving an area with customer choice is not a public utility. The purchase of retail electric service in an area with customer choice is subject to procurement requirements under the Act and Chapter 20 of this title.

(d) A purchase of goods or services from a gift or grant in support of research is not subject to the comptroller's purchasing authority.

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 December 21, 2020.

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Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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DIVISION 3. CONTRACT MANAGEMENT GUIDE AND TRAINING

34 TAC §20.133

The Comptroller of Public Accounts proposes an amendment to §20.133, concerning training and certification program. This rule is found in Chapter 20 (Statewide Procurement and Support Services), Subchapter B (Public Procurement Authority and Organization), Division 3 (Contract Management Guide and Training).

This amendment corrects an inconsistency. Subsection (i) states that a procurement professional must obtain 24 hours of continuing education every three years; in contrast, subsection (j)(3) refers to 12 hours of required continuing education. These amendments make it clear that a procurement professional must obtain 24 hours of continuing education every three years.

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

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

Comments on the proposal may be submitted to Ms. Tosca M. McCormick, Comptroller of Public Accounts, at P.O. Box 13186 Austin, Texas 78701-3186 or Tosca.McCormick@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

These amendments are proposed under Government Code, §656.051.

These amendments implement Government Code, §§656.051, 656.052, and 656.054 which provides the comptroller with the authority to adopt rules relating to the administration of the training and certification of state agency purchasing and contract management personnel.

§20.133. Training and Certification Program.

(a) Purpose. The purpose of these rules is to provide a uniform procedure through which the division will train and certify individuals who conduct government procurement functions.

(b) Definitions. The following words and terms when used in this section shall have the following meanings.

(1) Purchasing--The receipt and processing of requisitions, development of specifications, development of scope of work, the issuance of purchase orders against existing cooperative or agency contracts, and the verification of the inspection of merchandise or receipt of services by the agency. The term does not include the development of solicitations and contract awards that must be posted to the Electronic State Business Daily or in the *Texas Register.*

(2) Contract development--The term applies to actions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation of and advertising solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. The term does not include invoice or audit functions.

(3) Contract management--The term applies to actions taken following contract execution, including the assessment of risk, verification of contractor performance, monitoring compliance with deliverable and reporting requirements, enforcement of contract terms, monitoring and reporting of vendor performance, and ensuring that contract performance and practices are consistent with applicable rules, laws and the State of Texas Procurement Manual and Contract Management Guide.

(4) Procurement--The performance of any purchasing, contract development, or contract management functions.

(c) Training required.

(1) Purchasing requirements. A state agency employee must complete the division's Texas Purchasing Course to engage in purchasing functions on behalf of a state agency if the employee:

(A) has the job title of "purchaser";

(B) performs purchasing functions as 15% or more of their job functions; or

(C) makes a purchase in excess of $5,000.

(2) Certified Texas Contract Developer requirements.

(A) A state agency employee must be certified as a Certified Texas Contract Developer to engage in contract development functions on behalf of a state agency and issues a solicitation or contract award required to be posted to the Electronic State Business Daily or in the *Texas Register*.

(B) A Certified Texas Contract Developer may conduct purchasing functions.

(3) Certified Texas Contract Manager requirements. A state agency employee must be certified as a Certified Texas Contract Manager to engage in contract management functions on behalf of a state agency if the employee:

(A) has the job title of "contract manager" or "contract administration manager" or "contract technician";

(B) performs contract management functions as 50% or more of their job functions; or

(C) manages any contract in excess of $5,000,000.

(4) Certified Texas Contract Manager exemption. In accordance with Government Code, §656.052(h)(2), a contract manager whose contract management duties primarily relate to contracts described by Government Code, §2262.002(b) is exempt from the contract management certification requirements of this section.

(5) Licensed attorneys exemption. A licensed attorney employed by a state agency performing procurement or contract management functions described by this section is exempt from the certification requirements of this section.

(d) Eligible applicants. To be eligible to apply for and receive a certification, an applicant must be:

(1) a current Texas state or local government employee; or

(2) at the sole discretion of the director, a student:

(A) currently enrolled in an accredited Texas university or community college; or

(B) who has graduated within the last three years from an accredited Texas university or community college.

(e) Requirements to receive certification.

(1) To be a Certified Texas Contract Developer, an eligible applicant must:

(A) complete the Texas Contract Developer Certification training course provided by the division;

(B) complete the division approved Texas Contract Developer Certification examination with a score of 80% or higher;

(C) have completed payment for the course and the examination; and

(D) be issued a Texas Contract Developer Certification.

(2) To be a Certified Texas Contract Manager, an eligible applicant must:

(A) complete the Texas Contract Manager Certification training course provided by the division;

(B) complete the division approved Texas Contract Manager Certification examination with a score of 80% or higher;

(C) have completed payment for the course and the examination; and

(D) be issued a Texas Contract Manager Certification.

(f) Training completion. To complete any training required in this section, an eligible applicant must:

(1) register for the applicable training using the electronic registration provided by the division on the official comptroller website;

(2) provide documentation of eligibility acceptable to the director;

(3) attend the applicable training course; and

(4) receive confirmation of course completion from the director.

(g) Certification examinations.

(1) To take any certification examination required in this section, an eligible applicant must register to take the examination using the electronic registration provided by the division on the official comptroller website within:

(A) three months of confirmation of completion of the applicable course by the director; or

(B) the time period determined at the sole discretion of the director with documented extenuating circumstances not to exceed twelve months from confirmation of completion of the applicable course.

(2) If an applicant receives a score of less than 80% following completion of the course, the applicant shall have two additional attempts to obtain a score of 80% or higher during a time period not to exceed six months following completion of the course.

(3) If the applicant does not obtain a score of 80% or higher after three attempts, the applicant must retake the applicable training course prior to retaking the examination.

(h) Certification issuance.

(1) To be issued any certification in this section, eligible applicants must within three months of the issuance of examination completion with a score of 80% or higher, submit:

(A) an application provided by the division on the official comptroller website; and

(B) any other documents required by the director.

(2) If the director determines that all applicable requirements have been satisfied, a certification will be issued to the applicant.

(i) Continuing education.

(1) A procurement professional certified in this section must complete twenty-four hours of in-person or online continuing education every three years, one hour of which must be ethics, to maintain certification. Twenty-three hours of the required hours must be division-sponsored training and one hour may be an elective selected by the professional, subject to division approval. The ethics requirement must be satisfied by division-sponsored training.

(2) A procurement professional dual certified in this section must complete thirty-six hours of in-person or online continuing education every three years, one hour of which must be ethics, to maintain dual certification. Thirty-four hours of the required hours must be division-sponsored training and two hours may be elective courses selected by the professional, subject to division approval. The ethics requirement must be satisfied by division-sponsored training.

(3) A procurement professional certified in this section is required to take the Renewal Refresher course offered by division once every three years in order to maintain certification. The Renewal Refresher course does not count towards continuing education hours.

(4) The Renewal Refresher course must be completed no earlier than two years following the date of initial certification or last renewal. Renewal Refresher courses completed prior to two years following the date of initial certification or last renewal will not be considered applicable to the Renewal Refresher requirement.

(5) Division-sponsored or elective course continuing education will be counted as credit with the completion of the course and approval of the continuing education course credit application. The division will email a certificate of completion to the certified procurement professional upon approval of the continuing education course credit application. The same course may not be taken more than once per renewal period for credit.

(j) Certification renewal.

(1) Certifications issued in this section expire three years following the date of issuance.

(2) Procurement professionals certified in this section must submit an application for certification renewal at least thirty calendar days prior to the expiration date of their certification.

(3) The application must include a certificate of completion of the applicable Renewal Refresher course, and certificates of completion [~~for twelve hours~~] of the division sponsored continuing education required under this rule [~~, one hour of which must be ethics~~].

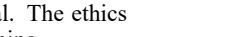
(4) If a certified procurement professional allows the certification to expire, an extension may be requested within thirty calendar days from the date of expiration. If the division approves the extension, the certified procurement professional has sixty calendar days from the date of extension approval to complete the requirements for renewal. If the certified procurement professional does not complete the requirements during the extension period, the initial certification requirements must be completed to receive a new certification.

(5) Certifications awarded or renewed under previous requirements are valid until the date of first renewal.

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 December 21, 2020.

TRD-202005654
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 475-2220



SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING
DIVISION 4. UNIFORM GRANT AND CONTRACT STANDARDS

34 TAC §§20.456 - 20.467

The Comptroller of Public Accounts proposes the repeal of §§20.456 - 20.467, concerning Uniform Grants and Contract Management. This repeals Chapter 20, Subchapter E, Division 4 in its entirety.

The comptroller repeals these sections because the new Texas Grant Management Standards include updated guidance on these issues and supersede the guidance currently in rule. Government Code, Chapter 783 requires the comptroller to establish uniform assurances and standard financial management conditions for certain grants. However, no statute requires or expressly authorizes the comptroller to adopt that guidance as rules.

Tom Currah, Chief Revenue Estimator, has determined that the proposed repeal of these rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed repeals would benefit the public by improving the clarity, organization and implementation of the section. There would be no significant anticipated economic cost to the public.

Mr. Currah also has determined during the first five years that the proposed rule repeals are in effect, the repeals: 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 repeals existing rules.

The proposed rule repeals would have no fiscal impact on small businesses or rural communities.

Comments on the repeals may be submitted to Gerard MacCrossan, Statewide Procurement Division, at Gerard.MacCrossan@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days following the date of publication of the proposal in the *Texas Register.*

The repeals are proposed under Government Code, §403.011, which outlines the general powers of the comptroller, and §783.004, which designates the comptroller as the state agency for uniform grant and contract management.

The repeals affect Government Code, §§783.001 - 783.010.

§20.456. Introduction.

§20.457. Purpose, Applicability, and Scope.

§20.458. Effective Date.

§20.459. Adoption by Reference.

§20.460. Grants and Contracts.

§20.461. Standard Assurances.

§20.462. Variance from Standards.

§20.463. Obtaining Copies of Standards.

§20.464. Recommendations for Change.

§20.465. Uniform Cost Principles and Cost Allocation Plan.

§20.466. Uniform Administrative, Accounting, Reporting and Auditing Standard.

§20.467. State of Texas Single Audit Circular.

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 December 21, 2020.

TRD-202005653
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: February 7, 2021
For further information, please call: (512) 475-2220

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 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission withdraws the proposed amendment to §50.1, which appeared in the October 23, 2020, issue of the *Texas Register* (45 TexReg 7513).

Filed with the Office of the Secretary of State on December 18, 2020.

TRD-202005643
J.R. Johnson
General Counsel
Texas Ethics Commission
Effective date: December 18, 2020
For further information, please call: (512) 463-5800

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS

SUBCHAPTER C. TOBACCO LAWSUIT SETTLEMENT FUNDS

19 TAC §6.74

The Texas Higher Education Coordinating Board withdraws the proposed amendment to §6.74, which appeared in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8445).

Filed with the Office of the Secretary of State on December 18, 2020.

TRD-202005644
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: December 18, 2020
For further information, please call: (512) 427-6206

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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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §355.112, concerning Attendant Compensation Rate Enhancement, and §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs. The amendments to §355.112 and §355.723 are adopted without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5717). Therefore, the rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments to §355.112 and §355.723 is to ensure compliance with the 21st Century Cures Act, which added section 1903(l) to the Social Security Act to require all states to implement the use of electronic visit verification (EVV). Section 1903(l) requires that EVV be used for all Medicaid personal care services requiring an in-home visit by a service provider. EVV is a computer-based system that verifies that a service is provided and electronically documents information about the service visit such as the name of the individual who received the service, the name of the service provider, the date and time the service begins and ends, and the location at which the service was provided.

Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) providers currently bill both day habilitation (DH) respite using service codes that do not distinguish between in-home and out-of-home services. The amendments establish separate service codes for in-home and out-of-home DH and respite to allow HHSC to compare service claims for in-home DH and in-home respite with the information in the EVV aggregator regarding the provision of those services. Furthermore, the amendments establish multiple service codes for out-of-home respite based on the location in which the service is provided to allow HHSC to collect appropriate service cost and claims information. HHSC is currently working to transition HCS and TxHmL claims processing to the Texas Medicaid & Healthcare Partnership. The changes to service codes will be effective when that transition is complete.

COMMENTS

The 31-day comment period ended on September 21, 2020. During this period, HHSC received comments regarding the proposed amendments from one entity: Senior Helpers. A summary of the comments relating to the rules and HHSC's response follows.

Comment: The commenter stated that the current reimbursement rates fall short of providing adequate compensation to caregivers and urged that the rate be increased to at least $22.00 per hour.

Response: This comment is outside the scope of the rule project; however, HHSC will conduct a public hearing in compliance with Texas Human Resources Code §32.0282 prior to the implementation of the new service codes. No changes were made to the rules in response to this comment.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2020.

TRD-202005650
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 10, 2021
Proposal publication date: August 21, 2020
For further information, please call: (512) 424-6637

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SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR

INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.723

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2020.

TRD-202005651
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 10, 2021
Proposal publication date: August 21, 2020
For further information, please call: (512) 424-6637

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 110. ATHLETIC TRAINERS

16 TAC §110.24, §110.25

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 110, §110.24 and §110.25, regarding the Athletic Trainers Program, without changes to the proposed text as published in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6660). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 110 implement Texas Occupations Code, Chapter 451.

The adopted rules are necessary to implement House Bill (HB) 2059, 86th Legislature, Regular Session (2019). HB 2059 requires athletic trainers and other health care practitioners to complete a human trafficking prevention training course in order to renew their license. The Executive Commissioner of the Health and Human Services Commission (HHSC) approves human trafficking prevention courses, including at least one course that is available without charge, and posts a list of approved courses on the HHSC website. The statutory provisions created by HB 2059 are located in Texas Occupations Code, Chapter 116. The adopted rules implement this training requirement and allow the training to count toward the required minimum continuing education for athletic trainers.

The adopted change to §110.24 was presented to and discussed by the Advisory Board of Athletic Trainers (Advisory Board) at its meeting on June 22, 2020. The Advisory Board did not make any changes to the proposed amendment. The Advisory Board voted and recommended that the proposed change to §110.24 be published in the *Texas Register* for public comment. Additionally, the Advisory Board discussed allowing the training to count toward continuing education requirements.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §110.24 by requiring athletic trainers to complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116 and to provide proof of completion as prescribed by the Department.

The adopted rules amend §110.25 by allowing an HHSC-approved human trafficking prevention training course to count toward continuing education requirements. The adopted rules would allow licensees to claim one clock-hour of credit for each clock-hour spent on the training course.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6660). The deadline for public comments was October 26, 2020. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Athletic Trainers Advisory Board met on November 2, 2020, to discuss the proposed rules. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on December 8, 2020, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 451, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 451. No other statutes, articles, or codes are affected by the proposed 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 December 22, 2020.

TRD-202005666

Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: January 15, 2021
Proposal publication date: September 25, 2020
For further information, please call: (512) 475-4879

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §66.15

The State Board of Education (SBOE) adopts an amendment to §66.15, concerning state adoption and distribution of instructional materials. The amendment is adopted without changes to the proposed text as published in the October 9, 2020 issue of the *Texas Register* (45 TexReg 7122) and will not be republished. The amendment addresses penalties for failure to comply with state law and rule governing review and adoption of instructional materials.

REASONED JUSTIFICATION: Rules in 19 TAC Chapter 66, Subchapter A, address the requirement for registers, procedures governing violations of statutes, and administrative penalties.

At the April 2020 SBOE meeting, SBOE members expressed concern about publishers making changes to adopted products without obtaining SBOE approval and asked staff to provide options to address this concern. At the June-July 2020 SBOE meeting, the Committee on Instruction discussed possible amendments to rules in Chapter 66 related to administrative penalties to address this issue. At the September 2020 SBOE meeting, the board approved a proposed amendment to 19 TAC §66.15 for first reading and filing authorization.

The adopted amendment adds new §66.15(f)(3) to impose stricter penalties for instructional materials containing factual errors if the errors occur due to updates to instructional materials and the publisher did not submit the proposed updates for review in accordance with requirements imposed by the SBOE.

The SBOE approved the proposed amendment for first reading and filing authorization at its September 11, 2020 meeting and for second reading and final adoption at its November 20, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2021-2022 school year. The earlier effective date will enable the amended rule to apply to publishers immediately and will support higher quality instructional materials for students. The effective date is 20 days after filing as adopted with the *Texas Register*.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began October 9, 2020, and ended November 13, 2020. The SBOE also provided an opportunity for registered oral and written comments at its November 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment: A community member stated that climate change should be addressed in the science TEKS.

Response: This comment is outside the scope of the current rule proposal.

Comment: A parent expressed opposition to including information about LGBTQ issues in the health education TEKS.

Response: This comment is outside the scope of the current rule proposal.

Comment: A parent stated that school districts should be allowed to choose whether to incorporate sex education into health curriculum.

Response: This comment is outside the scope of the current rule proposal.

Comment: A parent stated that sex education curriculum should be related to biology and follow traditional science.

Response: This comment is outside the scope of the current rule proposal.

Comment: A parent stated that sex education curriculum should be age appropriate.

Response: This comment is outside the scope of the current rule proposal.

Comment: A parent and a community member expressed support for abstinence education.

Response: This comment is outside the scope of the current rule proposal.

Comment: Two community members expressed support for including language that supports the needs of LGBTQ youth in the proposed health education TEKS.

Response: This comment is outside the scope of the current rule proposal.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §31.002, which defines open education resource instructional material; TEC, §31.003, which authorizes the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.023, which requires the SBOE to adopt a list of instructional materials that meet applicable physical specifications, contain material covering at least half of the applicable Texas Essential Knowledge and Skills (TEKS) in the student version and in the teacher version, are suitable for the subject and grade level for which the instructional material was submitted, and have been reviewed by academic experts in the subject and grade level for which the instructional material was submitted; TEC, §31.035, which allows the SBOE to adopt supplemental instructional materials that are not on the adopted list if the material covers one or more primary focal points or topics of a subject in the required curriculum, is not designed to serve as the only instructional material for the course, meets applicable physical specifications, is free from factual errors, is suitable for the subject and grade level for which the instructional material was submitted, and has been reviewed by academic experts in the subject and grade level for which the instructional material was submitted. The statute

requires the SBOE to identify the TEKS that are covered by the supplemental instructional material and requires the material to comply with the review and adoption cycle provisions; and TEC, §31.151(b), which authorizes the SBOE to impose a reasonable administrative penalty against a publisher who knowingly violates a requirement imposed on a publisher or manufacturer of instructional materials by TEC, §31.151(a), and ensure the penalty is of sufficient amount to deter a future violation.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§31.002, 31.003, 31.023, 31.035, and 31.151(b).

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 December 22, 2020.

TRD-202005658
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: January 11, 2021
Proposal publication date: October 9, 2020
For further information, please call: (512) 475-1497

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CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SEVERANCE PAYMENTS

19 TAC §105.1021

The Texas Education Agency (TEA) adopts an amendment to §105.1021, concerning severance payment reporting and reductions in Foundation School Program (FSP) funding. The amendment is adopted without changes to the proposed text as published in the October 16, 2020 issue of the *Texas Register* (45 TexReg 7373) and will not be republished. The adopted amendment removes obsolete language relating to recapture and updates a reference to Texas Education Code (TEC), Chapter 42, which was recodified by House Bill (HB) 3, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: Section 105.1021 defines a severance payment and the requirements of the board of trustees of an independent school district when an amount paid to a superintendent on early termination of the superintendent's contract exceeds the amount earned by the superintendent under the contract as of the date of termination. It also describes when and how the terms of the severance payment are to be reported to TEA and that the district's FSP funding will be reduced by the amount that the severance payment to the superintendent exceeds one year's salary and benefits under the superintendent's terminated contract.

The adopted amendment implements HB 3, 86th Texas Legislature, 2019, by removing obsolete language in subsection (c)(2) that could potentially result in an incorrect recapture adjustment for some schools.

The adopted amendment also updates a cross reference to TEC, Chapter 42, in subsection (c)(3). HB 3 recodified TEC, Chapter 42, as Chapter 48.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 16, 2020, and ended November 16, 2020. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §11.201(c), which requires that the local school board of trustees that makes a severance payment to a superintendent to report the terms of the severance payment to the Texas Education Agency (TEA). It also requires TEA to reduce the district's Foundation School Program funding by the amount that the severance payment to the superintendent exceeds one year's salary and benefits under the superintendent's terminated contract.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §11.201(c).

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 December 22, 2020.

TRD-202005659
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: January 11, 2021
Proposal publication date: October 16, 2020
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER R. ADVISORY COMMITTEES

25 TAC §37.350

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts an amendment to §37.350, concerning the Texas School Health Advisory Committee (committee).

The amendment to §37.350 is adopted with changes to the proposed text as published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6020) and will be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to review and update §37.350 in accordance with Texas Government Code, §2001.039 regarding Agency Review of Existing Rules. The amendment updates the statutory reference establishing the committee and clarifies committee composition, roles, and responsibilities.

COMMENTS

The 31-day comment period ended September 28, 2020.

During this period, DSHS received comments regarding the proposed rule from twenty-one commenters, including the Texas Counseling Association and the Texas School Counselor Association, and nineteen individuals. A summary of comments relating to the rule and DSHS's responses follows.

Comment: Regarding §37.350(d)(1)(E), multiple commenters requested retaining the original rule language to ensure school counselor representation on the committee. The commenters stated that school counselors are uniquely qualified to support the mission of the committee and should be guaranteed representation on the committee.

Response: DSHS agrees and changes the language to specify that only those working as school counselors with certification as a school counselor may apply for membership in this category.

Comment: Regarding §37.350(d)(1)(E), multiple commenters stated that the proposed language does not align with the requirements of House Bill (H.B.) 18, 86th Legislature, Regular Session, 2019, which amended Texas Education Code, §28.004(d)(2), and separately lists "certified school counselors" as members of the local school health advisory council (SHAC). The commenters stated that the committee should align, to the best extent possible, with the structure and duties of the SHAC.

Response: DSHS agrees and changes the language to specify that only those working as school counselors with certification as a school counselor may apply for membership in this category.

Comment: Regarding §37.350(d)(1)(E), multiple commenters stated that the proposed mental health professionals listed in the proposal should not be appointed to replace or supplant school counselors, as they do not hold the same credentials, training, or experience as school counselors.

Response: DSHS agrees and removes school psychologist, school social worker, and other school-based mental health professional from the rule.

Comment: Regarding §37.350(d)(1)(E), one commenter stated that the proposed changes to §37.350(d)(1)(E) do not follow the same pattern as the proposed changes to §37.350(d)(1)(A) and §37.350(d)(1)(B), as those individuals are licensed or certified by the State Board of Education and the Texas Board of Nursing. For §37.350(d)(1)(E), only school counselors are certified by the State Board for Educator Certification. The proposed additional individuals are not certified as school counselors.

Response: DSHS agrees and changes the language to specify that only those working as school counselors with certification as a school counselor may apply for membership in this category.

Comment: Regarding §37.350(d)(1)(E), multiple commenters stated that the proposed titles "school social worker" and "school psychologist" do not exist in Texas rules or statutes, which could lead to confusion and should be removed.

Response: DSHS agrees and removes school psychologist, school social worker, and other school-based mental health professional from the rule.

Comment: Regarding §37.350(d)(1)(E), multiple commenters stated that the new Texas Essential Knowledge and Skills for Health Education specifically cite "school counselors" as resources for behavioral health and emotional growth and should be included on the committee. Inclusion of school counselors on the committee will help ensure consistency as the committee works with SHACs.

Response: DSHS agrees and changes the language to specify that only those working as school counselors with certification as a school counselor may apply for membership in this category.

Comment: Regarding §37.350(d)(1)(E), multiple commenters stated H.B. 18 directs SHACs to integrate "comprehensive school counseling programs" into health education to address physical and mental health concerns. The commenters stated that school counselors hold the knowledge and training on comprehensive school counseling programs.

Response: DSHS agrees and changes the language to specify that only those working as school counselors with certification as a school counselor may apply for membership in this category.

Comment: Regarding §37.350(d)(1)(E), one commenter stated that "other school-based mental health professional" is vague and should be removed. The commenter also stated that substituting this individual for a school counselor does not align with H.B. 18.

Response: DSHS agrees and removes school psychologist, school social worker, and other school-based mental health professional.

Comment: Regarding §37.350(d)(1)(E), one commenter stated that if other behavioral health professionals are included in the committee, they could possibly be added to §37.350(d)(1)(F). Adding other behavioral health professionals to §37.350(d)(1)(E) could result in losing the voice and expertise of certified school counselors.

Response: DSHS agrees and changes the language in §37.350(d)(1)(E) to specify that only those working as school counselors with certification in school counseling may apply for membership in this category. Other mental health professionals may apply under §37.350(d)(1)(F) if they so choose.

The statement "report of committees' activities" is replaced with "report of committee's activities" for grammar construction in §37.350(m).

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §1001.0711 which requires a rule to establish a committee to provide assistance to DSHS in establishing a leadership role for DSHS in support for and delivery of coordinated school health programs and school health services. This amendment is also authorized by Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS, and for the administration of Texas Health and Safety Code, Chapter 1001.

§37.350. Texas School Health Advisory Committee.

(a) The committee. The Texas School Health Advisory Committee (committee) shall be appointed under and governed by this section.

(b) Applicable law. Texas Government Code, §2110.008, does not apply to a committee created under this section. The committee is subject to the Texas Health and Safety Code, §1001.0711, concerning the School Health Advisory Committee and the Texas Education Code, §38.104(c).

(c) Purpose. The purpose of the committee is to provide assistance in establishing a leadership role for the Department of State Health Services (department) in support for and delivery of coordinated school health programs and school health services. In addition, the committee is to review the analysis of the required student physical fitness assessment adopted by the Texas Education Agency (TEA) and develop recommendations as outlined in Texas Education Code, §38.104(c).

(d) Composition.

(1) The committee shall be composed of one representative from the Texas Department of Agriculture (TDA), appointed by the Commissioner of Agriculture; one representative from TEA, appointed by the Commissioner of Education; the department's School Health Program Coordinator or other department representative; and 17 members appointed by the Executive Commissioner of the Health and Human Services Commission (commission) which shall consist of:

(A) two individuals representing school superintendents, assistant superintendents, school principals, assistant principals, or school district board members;

(B) one registered nurse working in a school as a school nurse or school nurse administrator;

(C) five consumer members who are parents of school-age children with at least one parent of a child with special needs;

(D) one physician, or physician's assistant, or nurse practitioner currently providing health services to school-aged children;

(E) one representative working in a school as a school counselor with certification as a school counselor;

(F) four members representing a nonprofit or not-for-profit entity directly working with schools or school-aged children to support student learning, development, mental health, substance abuse, and health-related activities with no more than one member representing an institution of higher education;

(G) one representative working in a school as a physical educator or physical education administrator with certification as a physical educator;

(H) one representative working in a school as a health educator or health education administrator with certification as a health educator; and

(I) one representative working in the school setting as part of the district's school nutrition program.

(2) In an effort to build a committee reflective of the current Texas population, special consideration will be given to:

(A) race, gender, age, and ethnic diversity;

(B) urban, rural, and suburban diversity; and

(C) a broad statewide geographic representation whenever possible.

(3) Membership appointments shall include one alternate member for each appointed position. The alternate will automatically be appointed as a member if the designated appointee is unable or unwilling to fulfill that role; or, whenever there is a vacancy. The appointed alternate will perform the same duties and have the same privileges as the appointed member in fulfilling the unexpired term.

(e) Terms of office. The term of office of each member shall be four years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on July 31 of each year.

(2) A member whose term is expiring has the option to apply for appointment for one additional term.

(f) Officers. The committee members shall elect a presiding officer and an assistant presiding officer to begin serving a two-year term on August 1 of their term.

(1) Each officer shall serve until July 31 of their two-year term.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as, necessary. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall act for the presiding officer during the presiding officer's absence and shall assume the office of presiding officer in the event of a vacancy.

(4) If the office of assistant presiding officer becomes vacant, it may be filled by a vote of the committee.

(5) A member shall serve no more than two terms as an officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(g) Meetings. The committee shall meet at least twice each year.

(1) A meeting may be called by agreement of the department staff and either the presiding officer or at least three members of the committee.

(2) The department shall make meeting arrangements and shall contact committee members to determine availability for a meeting date and place.

(3) Meetings shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least ten working days before the meeting.

(5) A simple majority of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(h) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term, is absent for more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three

consecutive committee meetings. If the absences are determined to be reasonable, the member shall remain on the committee.

(3) If a member is removed from the committee before the end of the member's term, the alternate appointee for the position will serve out the remaining portion of the term.

(4) The validity of an action of the committee is not affected by the fact that it is taken when grounds for removal of a member exist.

(i) Staff. The department shall provide administrative support for the committee.

(j) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any committee action must be approved with a quorum present and by a majority vote or consensus of the members present.

(2) Any committee recommendations must be adopted pursuant to a simple majority vote on a motion duly made and seconded.

(3) Each member shall have one vote.

(4) A member may not authorize another individual to represent the member by proxy with the exception of the TDA, TEA, and department representatives appointed by the commissioners of these agencies. The commissioners of these agencies may appoint alternates to attend and vote.

(5) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(6) Minutes of each committee meeting shall be taken by the department staff.

(A) After approval by the committee, the minutes shall be signed by the presiding officer.

(B) A copy of the minutes approved by the committee and signed by the presiding officer shall be posted to the department's website at dshs.texas.gov within 30 days of approval and signature. Committee members will receive minutes of each meeting at least five days before the following meeting.

(k) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall ask for volunteers and appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each of its meetings or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(l) Statement by members.

(1) The commission, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the commission, department, or committee.

(2) The committee and its members may not participate in legislative or advocacy activities in the name of the commission, the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process. The committee will make recommendations per statutory requirements.

(m) Reports to commissioner of the department. The committee shall file an annual written report of the committee's activities to the commissioner according to department policy. The committee shall post the meeting dates of the committee and any subcommittees, meeting agendas, and meeting minutes on the department's website at dshs.texas.gov.

(n) Reimbursement for expenses. In accordance with the requirements set forth in the Texas Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) Each member who is eligible to be reimbursed for expenses shall submit to department staff the member's receipts for allowable expenses as determined by school health program guidelines, and any required official forms not later than 14 days after each committee meeting.

(4) Requests for reimbursement of expenses shall be made on official state vouchers prepared by department staff.

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 December 22, 2020.

TRD-202005663
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: January 11, 2021
Proposal publication date: August 28, 2020
For further information, please call: (512) 776-7279

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 302. IDD-BH TRAINING

SUBCHAPTER A. MENTAL HEALTH FIRST AID

26 TAC §§302.1, 302.5, 302.7, 302.9

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §302.1, concerning Purpose; §302.5, concerning Definitions; §302.7, concerning Mental Health First Aid Training Protocols; and

§302.9, concerning Local Mental Health Authority Responsibilities. The amendments to §§302.1, 302.5, 302.7, and 302.9 are adopted without changes to the proposed text as published in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6662). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to include Local Behavioral Health Authorities (LBHAs), in addition to Local Mental Health Authorities (LMHAs), in the mental health first aid training requirements and add language to ensure consistency between statutory and rule requirements. The language clarifies the role of the LMHA and the LBHA in providing the training, provides guidelines for the LMHA and LBHA, and aligns with statute.

COMMENTS

The 31-day comment period ended October 26, 2020. During this period, HHSC did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §1001.201-207 which authorizes HHSC to administer the Mental Health First Aid Program and sets forth program requirements.

The amendments affect Texas Government Code §531.0055 and Texas Health and Safety Code Chapter §§1001.201-1001.207.

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 December 21, 2020.

TRD-202005649
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: January 10, 2021
Proposal publication date: September 25, 2020
For further information, please call: (512) 656-6585

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 69. RESOURCE PROTECTION

SUBCHAPTER C. WILDLIFE REHABILITATION PERMITS

31 TAC §§69.43 - 69.52

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 26, 2020, adopted amendments to §§69.43 - 69.52, concerning Wildlife Rehabilitation Permits. Sections 69.43 - 69.47, 69.51, and 69.52 are adopted with changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4951). These rules will be republished. Sections 69.48 - 69.50 are adopted without change and will not be republished.

The changes to the rules as proposed are numerous, resulting from extensive public comment, especially from the regulated community.

The change to §69.43, concerning Definitions, would add definitions for "final disposition," "satellite rehabilitation facility," and "supervisory permittee," and retain the current definition for "volunteer."

The department has determined that because the rules as adopted contain log and reporting requirements, a distinction must be made between intermediate forms of disposition, such as transfers to other rehabilitation permit holders, and final disposition, in which rehabilitation efforts have ceased due to mortality, transfer, or release. Therefore, the definition of "final disposition" is "the terminal status of wildlife rehabilitation efforts due to transfer, retention, mortality, or euthanasia."

The definition of "satellite rehabilitation facility" is "a facility registered with the department and operated by a subpermittee under the supervision of a permittee." The department was persuaded by public comment that the proposed provision requiring all subpermittees to perform rehabilitation activities at the permittee's registered facility should be relaxed to allow a subpermittee to conduct activities at a registered location other than the permittee's registered facility. Therefore, a definition of that term is necessary for reasons of administration, compliance, and enforcement.

The definition of "supervisory permittee" is "a permittee who is responsible for the activities of the subpermittees listed on the permittee's permit and volunteers at the permittee's or subpermittee's facility or satellite facility, as applicable." Because the rules as adopted allow subpermittees to engage in permitted activities at locations other than the permittee's facility and impose recordkeeping and reporting requirements, it is necessary to create a distinction between permittees who operate their own facility and permittees with subpermittees who operate satellite facilities.

The definition of "volunteer" is being retained because the department, based on public comment, has been persuaded that volunteers play a critical role in many permittees' operations, so much so that the proposed prohibition on volunteers, if adopted, would have been problematic to the point of being impractical in light of the magnitude of rehabilitation activities currently being undertaken with aid of volunteers. Therefore, the department has determined that volunteers can be utilized, subject to additional provisions addressed later in this preamble.

The change to §69.44, concerning General Provisions, consists of several components. The change alters proposed subsection (a) by removing references to facilities registered with the department via a department-designated application, as the change to proposed subsection (b) sets forth a universal requirement for facility registration and that requirement need not be stated in more than one place.

The change to subsection (b) creates a facility registration provision that is applicable to both permittees and subpermittees, which is necessary because the rules as adopted allow a sub-

permittee to conduct rehabilitation activities at a satellite rehabilitation facility under the supervision of a permittee. The change also includes language relocated from proposed subsection (a) that stipulates the methodology for facility registration.

The change inserts new subsection (c) to allow subpermittees to possess sick or injured wildlife while not in the presence of the permittee, which is necessary to accommodate changes discussed elsewhere in this preamble that provide for subpermittees to operate satellite rehabilitation facilities and retrieve injured or sick wildlife while not in the presence of the supervisory permittee.

The change also inserts new subsection (d) to address volunteers. As mentioned previously in this preamble, the rules as proposed would have eliminated rehabilitation activities by volunteers. In response to public comment, the department has been persuaded to allow the continued use of volunteers, under certain conditions. The rules as adopted will allow permittees to utilize volunteers in rehabilitation activities, provided the permittee maintains a daily log of volunteer utilization and the permittee or a subpermittee is present (if the permittee or subpermittee is not present, volunteers would be limited to purely custodial activities such as feeding, watering, and cleaning). In this way, the department has a record of persons who came into contact with specific animals in cases where epidemiological contact tracing is necessary.

The change to proposed subsection (k) would: insert language in paragraph (2) to restrict the rehabilitation of white-tailed and mule deer to fawns only; require fawns accepted for rehabilitation to be released, transferred, or euthanized by the time they are no longer fawns; reword a provision prohibiting the removal of required tags from a living deer; prescribe reporting requirements in lieu of the proposed requirements; and provide for CWD testing as directed by the department. As proposed, the rules would have allowed for the rehabilitation of deer at any age. In concert with the proposed amendment to §69.52, concerning Release of Rehabilitated Wildlife, which would have required all releases of deer to occur on acreage enclosed by a fence of at least seven feet high, the intent of the department was to create an acceptable disease management risk with respect to the release of rehabilitated deer. Public comment from the regulated community indicated that finding suitable release sites would be problematic. The department has determined that restricting rehabilitation activities to fawns, requiring such fawns to be transferred, released, or euthanized by one year of age, and allowing their release only to sites within the county where they were first acquired or within five miles of the site where they were first acquired would reduce the potential for spreading CWD by means of rehabilitated deer, provided CWD testing is performed when directed by the department. The department considers the risk of free-ranging deer in areas where CWD has not been detected to contract CWD within the first few months of life to be relatively low, and requiring deer to be released to the vicinity of where they were found is not likely to introduce disease to an area where it does not already exist. Adult deer present a greater disease risk, so the removal of the seven-foot fence height requirement in §69.52 necessitates the additional requirement for deer to be transferred, released, or euthanized within the year of birth or the growth of adult pelage (hair). The change also rewords proposed subsection (k)(4) to clearly state that the removal of a required tag from a deer is an offense. Additionally, the change alters the reporting requirements in proposed subsection (k)(5) to provide for direct notification of the department's wildlife rehabilitation program coordinator in the event of a deer mortality. As proposed, the provision prescribed the use of a department electronic application, which the department has subsequently discovered cannot be integrated at the present time with the desired function contemplated in the proposed rule. Finally, the change adds a provision to allow the department to require any deer to be tested for CWD, which the department believes is necessary to accommodate other changes within the subsection and provide additional assurance that CWD is not spread as a result of wildlife rehabilitation activities.

The change to proposed subsection (m) eliminates the proposed 72-hour retention limit for wildlife that has died or been euthanized, as well as the requirement for CWD testing of deer older than six months of age. Public comment has persuaded the department that wildlife rehabilitators are a significant source of specimens for research and education and should be allowed to hold deceased wildlife indefinitely for eventual use in those activities. The CWD testing requirement for deer older than one year of age is removed because it is no longer germane given changes that restrict rehabilitation activities to fawns, as discussed elsewhere in this preamble.

The change also adds new subsection (o) to liberalize provisions governing the acceptable methods for disposing of deceased wildlife. As proposed, the rules would have required deceased wildlife to either be transferred to a person authorized to receive it or disposed of in a Type 1 landfill. Public comment from the regulated community indicated that many rehabilitators have the independent ability to safely incinerate or inter deceased wildlife. The department has determined that such methods are acceptable and do not present a disease propagation risk, provided the activities are conducted in accordance with all applicable local, state, and federal law regarding carcass disposal and do not involve open pit or burn-pile disposal, which are not acceptable from a disease-management perspective.

The change to §69.45, concerning Permit Required, adds generic language to subsection (a) in order to accommodate changes made elsewhere in the rulemaking concerning volunteers, who, under the rules as adopted, are allowed under specific conditions to engage in rehabilitation activities without a permit. The change also removes the 48-hour retention limit for veterinarians holding wildlife for emergency care. Public comment persuaded the department that there are situations in which veterinarians may need to hold injured wildlife for longer than 48 hours, and because veterinarian are regulated at the state and local levels there is no need for a time limit.

Finally, the change would insert new subsection (c) to provide for the conduct of rehabilitation activities at satellite facilities by subpermittees. As discussed previously in this preamble, the rules as proposed would have restricted the conduct of rehabilitation activities by subpermittees to the registered facility of a permittee. Public comment indicated that the logistical implications of such a provision would have caused significant perturbations in the delivery of rehabilitation services, convincing the department to allow subpermittees under specific conditions to conduct rehabilitation activities at a registered satellite facility located at a physical location different from that of the supervisory permittee. The proposed rules were intended by the department to create a meaningful regulatory structure for the activities of subpermittees, an issue that has become increasingly problematic because of their large numbers, sometimes unknown locations, and variable facility conditions, caseloads, and activities. The department has concluded that the goal of the proposed rule can be achieved while allowing rehabilitation activities to be con-

ducted by a subpermittee at a location other than that of the supervisory permittee, but only under provisions that allow the department to direct, monitor, and document those activities. The proposed new provision would therefore provide for satellite facilities to be operated by subpermittees (limiting each subpermittee to one satellite facility and one supervisory permittee), require the facilities to be registered with the department, require the satellite facility to be in compliance with the facility standards of the subchapter as well as any permit provisions established by the department for the supervisory permittee, and any permit provisions established by the department specifically for the satellite facility, all of which is necessary to ensure that regulatory oversight of satellite facilities is consistent with that of facilities operated by permittees. Additionally, the new subsection would explicitly provide that a supervisory permittee who authorizes a subpermittee to conduct permitted activities at a satellite facility is responsible for the conduct of the subpermittee with respect to activities governed by the subchapter, require the supervisory permittee to visit each satellite facility no less frequently than every 120 days to verify compliance with the provisions of the subchapter. The department believes that if a permittee chooses to allow a subpermittee to establish a satellite facility under the permittee's supervision, the supervisory permittee should be liable for the subpermittee's actions with respect to activities governed by the subchapter. Additionally, the department has determined that it is necessary to restrict subpermittees to a single satellite facility under a single supervisory permittee for both reasons of administrative efficiency and because persons who desire to engage in rehabilitation activities at multiple locations have demonstrated a level of engagement that necessitates obtaining a permit in their name.

The change to §69.46, concerning Application for Permit, inserts language in subsection (c)(1) to include department-approved training courses other than those offered by International Wildlife Rehabilitation Coalition, the National Wildlife Rehabilitator's Association (the two largest national organizations dedicated to wildlife rehabilitation) as acceptable to meet the required training criteria for permit issuance. Public comment proved to the department's satisfaction that there are a number of organizations and entities in addition to the well-known national groups that offer viable and effective continuing education opportunities; therefore, the rule as adopted allows the department to consider such training.

The change to §69.48, concerning Permit Renewals, inserts language in subsection (b)(1) to include department training courses other than those offered by the International Wildlife Rehabilitation Coalition, the National Rehabilitator's Association as acceptable to meet the training requirements for permit renewal for the reasons previously stated in this preamble.

The change to §69.51, concerning Release of Rehabilitated Wildlife, modifies proposed subsection (c) to add a reference to subsection (e) to accommodate changes made to subsection (e) regarding release of white-tailed or mule deer and clarifies that department authorization for releases to fenced or enclosed areas that prevent the animal from leaving at will must be in writing. As discussed previously in this preamble, the department in response to public comment has made changes with respect to the release of rehabilitated white-tailed and mule deer. The change in this section alters proposes subsection (e) to make provisions governing the release of white-tailed and mule deer consistent with other changes as noted previously in this preamble. In addition to the changes discussed earlier, those changes to subsection (e) eliminate the requirement that release sites be surrounded by a fence of at least seven feet in height and be registered with the department via an electronic application designated for that purpose. The change to the proposed text also requires release sites to be either in the county where the deer was discovered prior to intake or within five miles of the location where the deer was discovered prior to intake, for reasons discussed earlier in this preamble.

The change to §69.52, concerning Reports and Recordkeeping, makes a number of alterations related to changes discussed earlier in this preamble related to the use of volunteers and the conduct of rehabilitation activities at satellite facilities. The change would alter subsection (a) to include subpermittees in the applicability of requirements for a daily log of all activities, including the addition of qualifying text to the effect that the sex of an acquired animal is required only if it is possible to ascertain. The change to subsection (a) also includes clarified reporting requirements, to include a reference identifier assigned to acquired wildlife by the permittee or subpermittee, the RFID tag number assigned to deer, and more detailed information regarding final disposition. Public comment indicated that permittees use a variety of software to track the wildlife entering and leaving their operations. In lieu of imposing a standardized data format for reporting, the department instead is developing a process by which data can be imported in the permittee's native software application; however, the department notes that if this approach proves to be unwieldy or problematic, additional rulemaking may be necessary for purposes of administrative standardization and efficiency. The proposed rules would have required white-tailed deer and mule deer accepted for rehabilitation to be tagged with an RFID tag for purposes of disease management. The change to subsection (a) would clarify that the RFID number assigned to each deer must be recorded on the daily log, which is necessary for the department to be able identify the provenance of deer for contact tracing purposes in the event that CWD is detected in a mortality. Additionally, the change would require additional final disposition data for each animal, to include the cause of final disposition, the GPS coordinates of release sites, identification data for owner of the sites where releases occur, and the name, address, phone number, email address, and permit number (if applicable) of any person to whom wildlife is transferred, if wildlife is transferred. The department seeks to establish clarity as to the exact information required to allow the department to conduct efficacious contact tracing in the event that an epidemiological investigation must be conducted.

The change also adds new paragraph (a)(2) to establish a daily log requirement to document the use of volunteers. As discussed previously in this preamble, the department has been persuaded by public comment not to eliminate the use of volunteers in wildlife rehabilitation activities; however, the department must be able to monitor and track interactions between volunteers and regulated wildlife for purposes of disease management. The department has concluded that volunteers can be allowed to engage in rehabilitation activities provided the department is able to direct, monitor, and document those activities.

The proposed rule would have retained the annual reporting requirement stipulated in current rule; however, public comment has caused the department instead to adopt a quarterly reporting system to make administrative compliance easier for permittees. The change also introduces reporting requirements for subpermittees who operate a satellite facility, which is necessary because, as discussed elsewhere in this preamble, the rules as adopted allow subpermittees to operate satellite facilities. Finally, the change implements a single requirement that all regis-

trations, reports, and notifications required by the subsection be made via email to the administrator of the department's wildlife rehabilitation program. As proposed, the rules contained various provisions relating to the use of internet applications for reporting and notification purposes. The department has subsequently discovered this cannot be integrated at the present time with the desired function contemplated in the proposed rule.

In response to the emergence of CWD in both free-ranging and captive populations of indigenous species of deer over the last five years, the department has acted to implement CWD management and control strategies by rule with respect to the movement of deer held under various department permits. A major component of that strategy has been to implement regulatory identification, reporting, and recordkeeping requirements to make epidemiological investigations easier, more efficient, and more productive. As part of this continuing effort, the department has identified wildlife rehabilitation activities involving deer as an area of concern. The amendments therefore contain specific provisions regarding facility and CWD testing requirements for deer. Further informing this rulemaking is the impact and causality of the SARS-CoV-2 (COVID-19) pandemic, which has introduced additional dimensions of concern, since it originated as a wildlife disease before jumping to human populations. Because it is obvious that the possibility that disease outbreaks in indigenous wildlife could pose a threat to other indigenous wildlife, livestock, and human health and safety, the department has determined that it is both prudent and necessary to amend the rules governing wildlife rehabilitation to put a number of proactive measures in place to address that possibility and facilitate management and control activities should such a situation arise in the future, including provisions applicable to unpermitted individuals who are allowed to engage in permitted activities, to identify the specific facilities and places where permitted activities take place, the initiation of electronic reporting requirements (including a daily log), requirements regarding the release, retention, and disposition of rehabilitated wildlife, the use of regulated medications and biologicals, improvements to training and certification standards, and transfer of wildlife to other rehabilitators. The amendments make several repetitive, nonsubstantive changes throughout the rulemaking, such as replacing "permit holder" with "permittee," "rehabilitation" with "activities authorized under a permit issued under this subchapter," and so forth.

The rules as adopted are intended to function collectively to address issues and concerns relating generally to wildlife disease control and response, and specifically to the detection and management of chronic wasting disease (CWD), a neurodegenerative disease that is fatal to white-tailed and mule deer, which has been confirmed in multiple locations in this state in both captive and free-ranging herds. Additionally, the amendments effect housekeeping-type changes to standardize and modernize the rules, the majority of which were last amended in 1997. The department notes that references to subsections in this portion of the preamble are to provisions as published in the proposed rulemaking; as a result of the changes to the rules addressed previously in this preamble, those provisions have been redesignated as necessary.

The amendment to §69.43, concerning Definitions, adds a definition for "wildlife," alters the definition for "subpermittee," and eliminates the definitions of "release to the wild, "supervisory responsibility," and "transportation." The definition of "release to the wild" is superfluous, since the common and ordinary meaning of "release" is sufficient for the purpose of the rules and the various provisions of the subchapter prescribe the conditions and requirements for the release of rehabilitated protected wildlife. The definition of "supervisory responsibility" is eliminated because the department is replacing it with a definition of "supervisory permittee," for reasons discussed earlier in this preamble with respect to changes regarding the use of subpermittees. The definition of "transportation" is eliminated because the department has determined that the plain and ordinary meaning of the word is sufficient for the purposes of the rules. The definition of "subpermittee" is altered to conform the definition with references to supervisory responsibility, which is necessary because the amendments define persons lawfully allowed to conduct permitted activities. Finally, the term "wildlife" is defined as "protected wildlife" for purposes of consistency. Parks and Wildlife Code, Chapter 43, Subchapter C defines and employs the term "protected wildlife," while the current rules use the terms "wildlife" and "protected wildlife" interchangeably. The alteration is intended to eliminate confusion. Under Parks and Wildlife Code, Chapter 43, Subchapter C, no person may collect, hold, possess, display, transport, release, or propagate protected wildlife for the purposes of rehabilitation without a permit issued by the department.

The amendment to §69.44, concerning General Provisions, consists of several actions. The amendment alters subsection (a) to require facilities where rehabilitation activities take place to be registered with the department. One of the critical components of effective disease outbreak response is to be able to quickly perform contact tracing, meaning the identification of the specific places that specific animals may have come into contact with other animals or people. In concert with other provisions of this rulemaking that impose recordkeeping and reporting requirements for certain subpermittees and volunteers, require registration of facilities, impose marking requirements for deer, the provisions allow the department to maintain a real-time inventory of persons, places, and animals, which eliminates both the impediment of incomplete data (because there is no daily reporting requirement under the current rules) and the burden of a time-consuming manual review of paper documentation in the event of the need for contact tracing. This approach has been proven to be quite effective in the efforts to manage the spread of CWD from and between deer breeding facilities.

Under current rules a permittee may designate subpermittees and allow subpermittees to supervise rehabilitation activities by unnamed volunteers at multiple locations unknown to the department. The provisions are almost 30 years old. Parks and Wildlife Code, Chapter 43, Subchapter C prohibits wildlife rehabilitation for profit, and at one time, the department sought to allow rehabilitators maximum latitude in obtaining and utilizing human resources. This approach has led to a proliferation of unnamed volunteers in unknown locations. This is extremely problematic from a disease management perspective, for a variety of reasons. When a disease outbreak occurs, it is important to quickly identify the origin of the outbreak, or "index case." From that point the movement of animals and people into and away from the index case (traceback and trace forward) must be identified. When there is no chain of documentation to follow, disease response and management is hampered if not stymied. The amendment to §69.44(b) requires all subpermittees to conduct activities either at a registered facility or a registered satellite facility. In concert with reporting and recordkeeping requirements, this allows the department in a disease emergency to quickly identify the people, places, and animals that have come into contact with each other.

The amendment to §69.44(c) makes nonsubstantive changes to references.

The amendment to §69.44(d) prohibits the commingling of domestic pets, livestock, exotic livestock, exotic fowl, or non-indigenous wildlife with animals being rehabilitated, which is necessary to reduce the probability that wildlife will transmit disease to or acquire disease from external sources.

The amendments to §69.44(e)- (g) make nonsubstantive changes to improve accuracy and clarity.

The amendment to §69.44(h) makes nonsubstantive changes and prohibits the conduct of rehabilitation activities on the same property as a deer breeding facility, which is already a provision of the rules under current subsection (d) but is being stated explicitly for purposes of clarity to emphasize the necessity of preventing the accidental spread of disease to confined populations.

The amendment to §69.44(i) makes nonsubstantive changes and creates a new requirement that requests to retain non-releasable wildlife (wildlife that cannot survive on their own) be accompanied by a statement from veterinarian that the animal cannot be released and the reasons why. The new provisions also stipulate that the department will not authorize the retention of an animal that because of a disease or condition poses a danger to humans, other animals, or itself. The department lacks the resources to evaluate an increasing number of requests to retain wildlife. Requiring a statement from a veterinarian will assist the department in evaluating each case. The amendment also eliminates current subsection (i)(2), a grandfather clause that is no longer applicable.

The amendment to §69.44 also alters current subsection (i) to specify that all medical treatment, including vaccinations, be performed in accordance with applicable laws governing the extra-label use of medications and biologicals. Veterinarians may prescribe medications and biologicals for animal uses not addressed in the product labelling of the medication or biological; however, such usage is regulated by federal law. The amendment clarifies that such regulation also applies to wildlife rehabilitation and rehabilitators.

The amendment to §69.44 alters current subsection (j) to prescribe the modalities of final disposition of wildlife. Current rules do not specify the destination for final disposition of mortalities that are not donated or transferred to other types of permittees for other purposes. Diseases can be spread by incomplete or inadequate disposal techniques such as shallow interment, interment in contact with groundwater resources, partial incineration, and so forth. Accordingly, the department believes it is prudent to require that all expired wildlife that cannot be transferred to another person permitted to receive the specimens be disposed of in a manner that prevents or mitigates disease transmission.

The amendment to §69.44 adds new subsection (k), which requires all permittees who rehabilitate deer to attach permanent identification to each deer. Permanent identification and the reporting and tracking of deer transfers are all critical components of epidemiological efficacy of department actions to manage CWD.

Finally, the amendment adds new subsection (p) to provide that the department may designate a manual process in lieu of any electronic application requirement of the subchapter if for whatever reason the electronic application is unavailable. The department recognizes that there may be circumstances under which technological systems may be unavailable and believes it is prudent to provide for an alternative method of compliance by permittees.

The amendment to §69.45, concerning Permit Required, prohibits the rehabilitation of any wildlife by persons except as authorized under the subchapter. All wildlife resources are critical components of functioning ecosystems, as well as being the property of the people of the state, and the department has determined that as such, medical treatment of that wildlife should not be attempted by or entrusted to persons who do not possess adequate training, guidance, or regulatory oversight to do so. The department notes that this provision does not affect any person's legal ability, in accordance with existing rules, to possess nongame species that are not injured or sick. The amendment also eliminates a reference to a permittee's choice of consulting veterinarian and includes various nonsubstantive alterations and conforming changes necessitated by amendments to other sections.

The amendment to §69.46, concerning Application for Permit, incorporates provisions from current §69.47, concerning Qualifications, with modifications. Under current rules, the qualifications for applicants are enumerated in two sections (§69.46 and §69.47) and state that wildlife rehabilitation permits may be issued only to qualified individuals who are at least 18 years of age, provide letters of recommendation from two persons who are conservation scientists or game wardens currently employed by the department, licensed veterinarians, or permitted wildlife rehabilitators who have known the applicant for at least two years, and one of the following: completion of a training course offered by the International Wildlife Rehabilitation Coalition or the National Wildlife Rehabilitator's Association within the preceding three years; attendance at a national wildlife rehabilitation conference within the preceding three years; membership in a state or national wildlife rehabilitation organization; or a test score of 80 or above on a department-administered wildlife rehabilitation examination. The amendment places all provisions governing permit application and qualifications in a single section, with modifications. The amendment retains the minimum age requirement and requires applicants to have completed a training course offered by the International Wildlife Rehabilitation Coalition or the National Wildlife Rehabilitator's Association (plus changes discussed earlier in this preamble), but would eliminate the provisions allowing attendance at a national wildlife rehabilitation conference within the preceding three years or membership in a state or national wildlife rehabilitation organization to be options for initial permit issuance in lieu of the required training (they would, however, be acceptable for purposes of permit renewal). The department has concluded, in light of recent developments concerning wildlife diseases, that it is appropriate to professionalize the requirements for issuance of wildlife rehabilitation permits; therefore, the amendment requires certification for initial permit issuance and allows continuing education activities to be considered for permit renewals. The amendment also replaces the current standard of an 80 percent grade on a department test with a 100% standard. The department believes that permittees should know the rules governing wildlife rehabilitation and the rudiments of the activity, and further notes that applicants make take the test as many times as necessary to achieve a passing score.

The amendment to §69.47, concerning Qualifications, retitles the section as Refusal of Permit Issuance or Renewal; Review, which is necessary to make the title germane to the contents of the section. As noted previously in this preamble, the amendment removes the contents of current subsection (a) and relo-

cates them, with modifications, to §69.46, concerning Application for Permit. The amendment also corrects an erroneous reference to Parks and Wildlife Code, Chapter 88, replacing it with a reference to Chapter 43. Chapter 88 governs endangered, threatened, and protected native plants.

The amendment to §69.48, concerning Permit Renewals, establishes the criteria for permit renewal, which consist of an applicant satisfying one of three requirements: completion of a specified training course in wildlife rehabilitation, evidence of certification by an accepted professional association germane to wildlife rehabilitation, or attendance at a national wildlife rehabilitation conference within the previous three years. The department believes that continuing education and professional development are important components of efficacious wildlife rehabilitation efforts involving a public resource that should be required by rule.

The amendment to §69.49, concerning General Facilities Standards, establishes specific facility requirements for the rehabilitation of deer. As noted earlier in this preamble, CWD is a fatal neurological disease that affects and is transmissible by and between white-tailed and mule deer, among other species. Other department regulations governing the holding of deer in captivity and the human-caused movement of deer under department permits stipulate that deer held in captivity must be kept in enclosures that prevent both escape and contact with other susceptible species. To prevent the spread of CWD, the department believes it is prudent to impose this standard on deer being rehabilitated as well.

The amendment to §69.50, concerning Transfers, makes nonsubstantive changes and prohibits the transfer of deer to rehabilitators in other states. The interstate movement of CWD susceptible species is highly regulated at the federal and state levels, and the department sees potential risk of disease spread in allowing deer to be transferred to other states.

The amendment to §69.51, concerning Release of Rehabilitated Wildlife, makes nonsubstantive changes, clarifies that causing or allowing the release of wildlife is considered by the department to be the same thing as personally acting to release wildlife, imposes requirements for sites where deer are released after rehabilitation, and clarifies that the rules governing release of rehabilitated wildlife do not supersede applicable provisions of local, state, or federal law. Current rule prohibits a permittee from releasing wildlife likely to become a nuisance, a disease threat, or a depredation threat. Although a permittee is ultimately responsible for the disposition of all wildlife in possession, the department would like to clarify that release provisions are not limited to the personal actions of a permittee, but to any actions by any person under or at the direction of the permittee. As discussed elsewhere in this preamble, the department is concerned and has acted to impose a disease management strategy to prevent the spread of CWD in deer populations. The amendment applies the strategy to rehabilitated deer, specifying the reporting of release site data to the department, which is necessary to provide the minimum assurance that the department is able to conduct efficacious epidemiological investigations if necessary. Finally, the amendment clarifies that no provision in the section absolves any person from the requirements of applicable local, state, or federal law. Other governmental entities have various legal authorities to regulate the possession and movement of different animals, such as the Department of State Health Services with respect to rabies control, the Animal Health Commission for various communicable livestock diseases, and so forth. The department wishes to be abundantly clear that a rehabilitation permit does not override or preclude any person's legal obligation to comply with such laws, when applicable.

The amendment to §69.52, concerning Reports, retitles the section as "Reports and Recordkeeping" to make the title of the section more accurate and creates a daily log requirement. In concert with other provisions of this rulemaking that govern the use of volunteers and restrict rehabilitation activities to permittees and subpermittees at registered facilities, the daily log allows the department to maintain a real-time inventory of persons and animals that have come into contact and the places and times where and when those contacts occurred, which eliminates both the impediment of incomplete data (because there is no daily reporting requirement under the current rules) and the burden of a time-consuming manual review of paper documentation in the event of the need for contact tracing. This approach has been proven to be quite effective in the efforts to manage the spread of CWD from and between deer breeding facilities, and the department believes that prevention of potential spread of CWD warrants requiring wildlife rehabilitators to comply with similar reporting and recordkeeping standards.

The department received 17 comments opposing adoption of all or part of the proposed amendments. Most of the comments took the form of lengthy discussions of multiple aspects of wildlife rehabilitation in general, whether germane to the substance of the rulemaking or not. Therefore, the department has synthesized the comments by category and responded as necessary. Those comments, accompanied by the department's response to each, follow.

Five comments opposed the proposed elimination of the use of volunteers and provided a variety of rationales for opposition. The department agrees that the elimination of the use of volunteers in rehabilitation activities would have introduced significant perturbations in rehabilitation activities and has made changes to allow the use of volunteers under specific circumstances.

Four comments opposed the proposed requirement that all rehabilitation activities conducted by subpermittees be undertaken at the registered facility of the permittee. The department agrees that the proposed provision would have introduced significant perturbations in rehabilitation activities and has made changes to allow subpermittees to conduct rehabilitation activities at a registered satellite facility under the supervision of the permittee, and to retrieve sick or injured wildlife without the permittee being present.

Five comments opposed the proposed provision that would have required subpermittees to become permittees within two years or cease rehabilitation activities. The department agrees with the comments and has made changes accordingly. The department is persuaded that prolonged or permanent subpermittee status can be beneficial to permittees and wildlife resources, provided compliance with the rules as adopted is maintained.

One comment opposed adoption and stated that coursework/training from organizations and entities other than the International Wildlife Rehabilitation Council and the National Wildlife Rehabilitation Association should be accepted by the department to satisfy the initial and continuing education requirements of the rules. The department agrees with the comment and has made changes accordingly.

One comment opposed adoption and stated that the supervisory responsibility of permittees over subpermittees should not be eliminated. The department disagrees that the rules as proposed would have eliminated the supervisory responsibilities of

permittees over subpermittees. No changes were made as a result of the comment.

One comment opposed adoption and stated that the training requirements contained in the proposed rules should be grandfathered and that requiring training courses rather than "evidence of staying current on wildlife care practices" would present a financial hardship to rehabilitators. The department disagrees with the comment and responds that one of the goals of the proposed rules was to professionalize the delivery of wildlife rehabilitation in Texas. By requiring evidence of acceptable training from established organizations and entities to be a condition for permit issuance, the department believes that the rules create a baseline level of competent effort that prevents amateurs and well-intentioned but untrained persons from engaging in wildlife rehabilitation. The department also notes that wildlife rehabilitation permits are not a right but a privilege. Wildlife resources are owned by the people of the state and the department has a statutory duty to ensure that the privilege of rehabilitating those resources is granted only to those able to demonstrate the ability to do so, represented by initial and continuing educational standards. The department also notes that engaging in wildlife rehabilitation is strictly voluntary and the permit is free; the department believes that requirement to obtain minimum accreditation or education is not burdensome. Finally, the department responds that there is no need to grandfather any of the training or continuing education standards created by the rules as adopted, as the implementation timeline for the rules precludes transitional conflict. No changes were made as a result of the comment.

Three comments opposed adoption and stated that the rules as proposed would result in a reduction in the number of rehabilitators, causing the general public to do their own wildlife rehabilitation, which will defeat the department's goal of documenting the movement of sick and injured wildlife through the rehabilitation process. The department disagrees with the comment and responds that it is illegal to engage in wildlife rehabilitation without a permit and that compliance with the rules as adopted will not be difficult for persons with a bona fide interest in wildlife rehabilitation. No changes were made as a result of the comments.

Two comments opposed adoption and stated that it is impossible to assign unique identifiers to every songbird and small mammal that is accepted for rehabilitation, that getting personal information from persons who bring in sick or injured wildlife is problematic, and that the recordkeeping and reporting requirements of the proposed rules are burdensome and unnecessary because the data is not used by the department. The department disagrees with the comments and responds that rehabilitation inherently requires the employment of some system to track individual wildlife from intake to final disposition; the department therefore doesn't believe such tracking is impossible. Additionally, the department responds that members of the public who bring sick or injured wildlife to a rehabilitator are obviously interested in the welfare of that wildlife and will provide the basic information required by the rules when requested; however, they cannot be forced to provide such information and the department realizes that fact. Finally, the department responds that in order to provide a more robust ability to conduct contact tracing in the event of disease investigations and ensure that public resources are possessed and treated in a systematic, humane, and biologically defensible manner during rehabilitation, the reporting and recordkeeping provisions of the rules as adopted are necessary and justified. No changes were made as a result of the comments.

One comment opposed adoption and stated that subpermittees who receive wildlife from a permittee for rehabilitation at a satellite facility should not be subject to the quarterly reporting requirements if the supervisory permittee does the reporting upon intake. The department disagrees with the comment and responds that the prevalent historical model for rehabilitation activities by subpermittees is the independent intake of wildlife by the subpermittee, subject to any limitations imposed by the department on the supervisory permittee. Attempting to implement a two-tiered system of satellite facility reporting predicated on whether wildlife is received from the supervisory permittee or someone else would create a non-linear, non-unique mixture of datasets that would require additional department resources to administer, maintain, and interrogate. The department believes that having a single reporting requirement applicable to all satellite facilities is efficient and effective and does not present insuperable difficulties to supervisory permittees. No changes were made as a result of the comment.

One comment opposed adoption and stated that the requirement for initial permit issuance of a test score of 100 on a department-administered test is unrealistic. The department disagrees with the commenter and responds that the test is open-book and an applicant may take the test repeatedly until achieving a test score of 100. The department believes the provision is an effective way of achieving minimum confidence that applicants are aware of the rules and statutes governing wildlife rehabilitation. No changes were made as a result of the comment.

One comment opposed adoption and stated that it is impossible to obtain the GPS coordinates identifying the location of discovery for every animal accepted for care. The department agrees that it may not be possible in every case to obtain GPS coordinates but believes it is important to require permittees and subpermittees to attempt to obtain the most accurate location information possible. No changes were made as a result of the comment.

One comment opposed adoption and stated that rehabilitators are not funded by the department yet are subjected to stifling regulations and requirements while performing a valuable public service. The department agrees the wildlife rehabilitators perform a public service, but notes that the decision to obtain a wildlife rehabilitation is strictly voluntary and should be made with the full understanding that the department does not and never has funded or offered to fund wildlife rehabilitation activities, has no obligation statutory or otherwise to do so, and has never implied such. The department additionally responds that the rules as adopted are not stifling and are intended to ensure that the public interest with respect to the possession of live wildlife resources is protected. No changes were made as a result of the comment.

One comment opposed adoption and stated that just because the rules have not been revised in 30 years doesn't make them wrong. The department agrees with the comment and responds that the length of time since the last revision of the rules is not in and of itself a justification for either retaining or modifying them. No changes were made as a result of the comment.

One comment opposed adoption and stated that the rules appear to treat wildlife rehabilitation as a for-profit activity. The department disagrees with the comment and responds that by statute and by rule the wildlife resources held under the provisions of the subchapter are at all times the property of the people of the state and clearly provide that it is illegal to engage in

wildlife rehabilitation in exchange for money or anything of value. No changes were made as a result of the comment.

One comment opposed adoption and stated that the rules constitute a punishment imposed on all rehabilitators to fix problems for a small minority that the department isn't investigating or revoking permits for. The department disagrees with the comment and responds that no aspect of the rules as adopted are or are intended to be punitive, and that the department investigates and takes all appropriate actions when violations of the rules occur. No changes were made as a result of the comment.

One comment opposed adoption and stated that the rules impose administrative burdens on small businesses and nonprofits. The department disagrees with the comments and responds that the rules impose administrative requirements on persons who choose voluntarily to obtain a free permit for the privilege of possessing a public resource for purposes of engaging in wildlife rehabilitation and do not regulate any business. No changes were made as a result of the comment.

One comment opposed adoption and stated that the rules would require subpermittees to obtain federal permits for the rehabilitation of birds. The department disagrees with the comment and responds that any federal requirements are independent of the rules as adopted, noting also that the rules as adopted expressly state that no provision of the subchapter shall be construed to relieve any person of any requirement imposed by federal law, such as requiring a federal permit to possess a bird protected under the Migratory Bird Treaty Act of 1918. No changes were made as a result of the comment.

One comment opposed adoption and stated that the identification requirements for deer constitute an unfunded mandate. The department disagrees with the comment and responds that although it is unclear what is meant by the term "unfunded mandate," the department does not and has never funded the wildlife rehabilitation activities of any person in this state and is under no obligation statutory or otherwise to do so. The decision to obtain a free wildlife rehabilitation permit and engage in activities involving the possession of a public resource is voluntary. No changes were made as a result of the comment.

One comment opposed adoption and stated that requiring a statement from a veterinarian attesting that an animal cannot be released is burdensome. The department disagrees with the comment and responds that as an ethical matter, wildlife that cannot be released should be euthanized unless there is a demonstrable scientific or practical benefit to be obtained, such as educational use. Therefore, a veterinary opinion provides absolute assurance to the department that any given animal is, in fact, unreleasable and is not being retained for reasons of sentimental attachment. No changes were made as a result of the comment.

One comment opposed adoption and stated that there are other efficacious modes of carcass disposal in addition to Type 1 landfills. The department agrees with the comment and has made changes accordingly, as noted earlier in this preamble.

One comment opposed adoption and stated that the training and testing requirements of the proposed rules be made optional, as they impose unnecessary costs on permittees, and that in lieu of the requirements, the rules "should require that the applicant works/volunteers under an experienced rehabilitator before being permitted." The department disagrees with the comment and responds that the department believes the education and training components of the rules are essential; persons entrusted with the care of a public resource should be required to obtain some sort of training in providing that care. The department also notes there are a variety of low and no-cost continuing education opportunities available to interested persons and that in any case, the costs associated with continuing education are not unreasonable. Finally, the department notes that "experienced" rehabilitators do not become "experienced" in a vacuum, they are required under current rule to obtain training and education in order to be and continue to be permitted. No changes were made as a result of the comment.

One comment opposed adoption and stated that the requirements for release sites receiving deer were problematic. The department agrees with the comments and responds that changes have been made accordingly, as noted earlier in this preamble.

One comment opposed adoption and stated that permittees should not be required to maintain daily logs on a form provided or approved by the department but instead allowed to submit the daily log information "with the information listed in the logs without individual approval." The department disagrees with the comment to the extent that the meaning of the comment can be parsed and responds that the requirement to maintain and submit log information on a form supplied or approved by the department is intended to standardize the way data is recorded and submitted in order to make records uniform and easily searchable in the event investigations become necessary. No changes were made as a result of the comment.

One comment opposed adoption and stated that requiring permittees to record the time of final disposition is unnecessary. The department disagrees with the comment and responds that in the event that a criminal or epidemiological investigation becomes necessary, the exact date and time at which an act is alleged or claimed to have occurred are important. No changes were made as a result of the comment.

The department received two comments supporting adoption of the rules as proposed.

Organizations providing comments were All Things Wild Rehabilitation, Inc., Last Chance Forever, and Houston SPCA Wildlife Center of Texas.

The amendments are adopted under Parks and Wildlife Code, §43.022, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation and authorizes the department to issue a permit to a qualified person to collect, hold, possess, display, transport, release, or propagate protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

§69.43. Definitions.

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

(1) Education--Activities that encourage management and conservation of wildlife resources or that are intended to increase the public's awareness and understanding of aspects of wildlife biology.

(2) Final disposition--The terminal status of wildlife rehabilitation efforts due to transfer, retention, mortality, or euthanasia.

(3) Fostering--Using a captive animal to rear young animals of the same species.

(4) Holding--Retaining in captivity.

(5) Human imprinting or human bonding--A dependency or fixation upon humans as parent substitutes or companions.

(6) Non-releasable animal--An animal which, after rehabilitation, is determined by the department to be unlikely to survive in the wild if released.

(7) Propagate--To allow animals to produce offspring.

(8) Rehabilitation--The temporary caring for injured, orphaned, or sick wildlife until such animals can be released to the wild.

(9) Satellite rehabilitation facility (satellite facility)--A facility registered with the department and operated by a subpermittee under the supervision of a permittee.

(10) Socialize--Using a captive animal to teach wild behaviors to juvenile animals of the same species.

(11) Subpermittee--A person authorized by a permittee to conduct activities governed by this subchapter.

(12) "Wildlife Protected" wildlife--as defined by Parks and Wildlife Code, Chapter 43, Subchapter C.

(13) Supervisory permittee--A permittee who is responsible for the activities of subpermittees listed on the permittee's permit and volunteers at the permittee's or subpermittee's facility or satellite facility, as applicable.

(14) Volunteer--An individual who is not a permittee or subpermittee and works with permitted wildlife in the presence of the permittee or subpermittee.

§69.44. General Provisions.

(a) Activities authorized by a permit issued under this subchapter shall be conducted only by the permittee and/or subpermittees named on the permit or volunteers in compliance with the requirements of this subchapter.

(b) Except as provided in subsection (c) of this section, activities authorized by a permit issued under this subchapter shall be conducted only at a rehabilitation facility or satellite facility registered with the department via an electronic application designated by the department for that purpose.

(c) A permittee or subpermittee may possess sick or injured wildlife while not at a registered facility or satellite facility only for the amount of time necessary to stabilize and transport the wildlife to a registered facility or satellite facility.

(d) A volunteer may engage in permitted activities if:

(1) the volunteer is identified on the daily volunteer log as required under §69.52 of this title (relating to Reports and Recordkeeping); and

(2) the supervisory permittee or a subpermittee is present. At any time that the supervisory permittee or a subpermittee is not present, volunteer activity must be limited to feeding, watering, cleaning of cages and enclosures, and other custodial activities that involve only incidental contact with wildlife.

(e) Wildlife held under the authority of a permit issued under this subchapter may not be sold, bartered, or exchanged for any consideration. A permit issued under this subchapter shall not authorize a person, firm, or corporation to engage in the propagation or commercial sale of wildlife.

(f) Wildlife held under the authority of a permit issued under this subchapter shall not be commingled with domestic pets, livestock, exotic livestock, exotic fowl, or non-indigenous wildlife.

(g) A permittee shall conduct rehabilitation in an environment which minimizes human contact and prevents human and domestic animal imprinting or bonding.

(h) Except for permitted educational purposes, wildlife possessed under a rehabilitation permit shall not come in contact with anyone other than the permittee and/or subpermittees, volunteers, licensed veterinarians, or the staff of licensed veterinarians.

(i) A permittee shall not allow the viewing, exhibit, or display to the public of animals possessed under a rehabilitation permit unless specifically authorized by permit provision.

(j) A permittee shall not conduct activities governed under this subchapter on the same property as a fur-bearing animal propagation facility or deer breeding facility unless specifically authorized in writing by the department.

(k) Non-releasable wildlife shall be euthanized except as provided by this subsection.

(1) Permission to retain non-releasable wildlife may be granted only to permittees who have at least three years' experience as a permitted wildlife rehabilitator.

(2) The department may permit the retention of non-releasable wildlife for approved educational, fostering, or socialization purposes, or for transfer to zoological, scientific, or educational permittees. Requests must be made in writing to the department and no transfer shall take place until the department has approved the request. A request to retain non-releasable wildlife under this subsection shall include a statement from a licensed veterinarian that the animal is non-releasable and the reasons why the animal is non-releasable. The department will not authorize the retention of an animal that because of a disease or condition poses a danger to humans, other animals, or itself.

(l) Permittees possessing non-releasable raptors shall band the raptors with markers supplied by the department.

(m) Wildlife rehabilitation of white-tailed deer and mule deer is restricted to fawns only. No permittee or subpermittee may accept or possess a white-tailed or mule deer that is in adult pelage (no spots). All white-tailed or mule deer received by a permittee shall immediately be identified by the attachment to the pinna of either ear of:

(1) a Radio Frequency Identification Device (RFID) button tag approved by the department; and

(2) a "dangle" type tag bearing the unique identifier assigned to the deer by the department.

(3) The RFID tag required by this subsection must have an associated 15-digit animal identification number conforming to the 840 standards of the United States Department of Agriculture, which number shall be reported to the department in accordance with the applicable provisions of §65.92 of this title (relating to Reports and Recordkeeping).

(4) It is an offense for any person to remove or allow the removal of a tag required by this subsection from a living white-tailed or mule deer.

(5) A permittee or subpermittee who transfers a white-tailed or mule deer shall notify the administrator of the wildlife rehabilitation program at least 24 hours but not more than 48 hours prior to and following the completion of the transfer.

(6) Deer must be released, transferred, or euthanized by the end of the calendar year in which they were born or at the time they grow adult pelage, whichever occurs first.

(7) The department may require any deer held under a permit issued under this subchapter to be tested for chronic wasting disease.

(n) All medical treatment, including vaccinations, shall be performed in consultation with a licensed veterinarian and in accordance with all applicable laws regarding extra-label use of medications and biologicals.

(o) Euthanized wildlife and wildlife that has died while under the care of a permittee shall be:

(1) transferred to a person authorized by law to receive such wildlife;

(2) disposed of in a Type 1 landfill; or

(3) interred or incinerated onsite in compliance with any applicable local, state, or federal law regarding animal carcass burial or disposal.

(4) Open-pit disposal and burn-pile incineration are prohibited.

(p) This subchapter does not apply to department personnel, or transport by animal control officers or peace officers in the performance of official duties.

(q) The department may temporarily waive any provision of this subchapter during a wildlife health crisis.

(r) The department may designate a manual process in lieu of any electronic application requirement of this subchapter if for whatever reason the electronic application is unavailable.

§69.45. Permit Required.

(a) Except as may be otherwise provided by this subchapter, no person may possess wildlife for purposes of rehabilitation unless the person possesses a valid permit issued under the provisions of this subchapter.

(b) Except as otherwise provided under Chapter 65, Subchapter B, of this title (relating to Disease Detection and Response), licensed veterinarians may hold, possess, and transport wildlife to provide emergency medical care or stabilization care until they are stabilized and able to be transferred, at which time the wildlife must be transferred to a permitted rehabilitator.

(c) A person may possess protected wildlife for rehabilitation purposes at a satellite facility, provided:

(1) the person is listed as a subpermittee on the valid permit of a supervisory permittee and possesses a copy of the valid permit at the satellite facility;

(A) the supervisory permittee has registered the facility with the department;

(B) the facility is in compliance with the facility standards set forth in §69.49 of this title (relating to General Facilities Standards) and any additional standards or requirements set forth in the permit provisions of the supervisory permittee; and

(C) the subpermittee engages only in the rehabilitation activities authorized by the department to be undertaken at the satellite facility, including but not limited to restrictions on numbers and kinds of animals, life stages, and any other restrictions deemed necessary by the department.

(2) A permittee who registers a satellite facility with the department shall be responsible for the conduct of the subpermittee at the satellite facility with respect to all activities governed under this subchapter and applicable permit provisions and shall visit each satellite facility no less frequently than once per 120 days to verify that the satellite facility is compliant with the provisions of this subchapter and applicable permit provisions. The department may prescribe alternatives to physical visitation for permittees with a demonstrated history of compliance.

(3) The department will not authorize the registration of more than one satellite facility per subpermittee.

(4) No person may be a subpermittee for more than one permittee.

(d) No permittee shall change facility location or receive unauthorized species, or conduct unauthorized activities unless the permittee possesses an amended permit authorizing such activity.

(e) Permits issued under this section may be issued for any period of time not exceeding three years from the date of issuance.

§69.46. Application for Permit.

(a) An applicant for a permit under this subchapter must be at least 18 years of age.

(b) Applications shall be made on forms supplied or approved by the department. Incomplete applications will not be processed.

(c) Applications must be accompanied by:

(1) a copy of the certificate of completion, within the preceding three years, of a training course offered by the International Wildlife Rehabilitation Coalition, the National Wildlife Rehabilitator's Association, or other organization or entity approved by the department;

(2) a letter of recommendation from a licensed veterinarian and/or permitted wildlife rehabilitator with at least three years' experience as a permitted wildlife rehabilitator who has known the applicant for at least two years; and

(3) a test score of 100 on a department-administered wildlife rehabilitation examination.

(d) Permits for the taking or holding of federally protected species shall not be valid unless the permittee also possesses a valid federal permit authorizing possession of those species.

(e) Except for persons authorized to do so under the terms of zoological permits, no person holding a permit authorizing the propagation for sale of wildlife shall be authorized to rehabilitate those species.

§69.47. Refusal of Permit Issuance or Renewal; Review.

(a) The department may refuse permit issuance or renewal to any person who has been finally convicted of, pleaded nolo contendere to, or received deferred adjudication or been assessed an administrative penalty for a violation of:

(1) Parks and Wildlife Code, Chapter 43;

(2) a provision of the Parks and Wildlife Code that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony; or

(3) the Lacey Act (16 U.S.C. §§3371-3378).

(b) The department may prohibit any person from acting as an agent of any permittee if the person has been convicted of, pleaded nolo contendere to, received deferred adjudication, or assessed an administrative penalty for an offense listed in subsection (a) of this section.

(c) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this section from engaging in permitted activities.

(d) The department may refuse to issue or renew a permit to any person who is not in compliance with applicable reporting or recordkeeping requirements.

(e) An applicant for a permit or permit renewal may request a review of a decision of the department to refuse issuance of a permit or permit renewal (as applicable).

(f) An applicant seeking review of a decision of the department with respect to permit issuance must request the review within 10 working days of being notified by the department that the application for a permit or permit renewal has been denied.

(1) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(2) The department shall conduct the review within 30 days of receipt of the request required by subsection (g) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.

(3) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the subject of the permit, appointed or approved by the executive director, or designee.

(4) The decision of the review panel is final.

§69.51. Release of Rehabilitated Wildlife.

(a) A permittee shall release all wildlife capable of surviving in the wild in accordance with the provisions of this section, unless specifically authorized in writing by the department to do otherwise.

(b) A permittee shall not release, or cause or allow the release of wildlife in such a manner or at such a location so that the released animals are likely to become a nuisance, a disease threat, or a depredation threat.

(c) Except as specifically authorized in writing by the department, releases shall not be made in or to fenced or enclosed areas that prevent the animal from leaving at will.

(d) Wildlife shall be released only to habitat appropriate for the species.

(e) No person may release or allow the release of white-tailed deer or mule deer held under the provisions of this subchapter unless the release site is either:

(1) within five miles of the location where the deer was discovered prior to intake; or

(2) within the county where the deer was discovered prior to intake.

(f) Permittees may not release wildlife on department property without the permission of the department.

(g) A permittee commits an offense if the permittee releases or effects the release of wildlife held under the provisions of this subchapter on property without having on their person the written permission of the landowner, lessee, or operator to release the wildlife on that property.

(h) Nothing in this section shall be construed to exempt any person from any applicable provision of local, state, or federal law.

§69.52. Reports and Recordkeeping.

(a) Each permittee and each subpermittee who operates a satellite facility shall maintain, on a form provided or approved by the department:

(1) a daily log of all animals acquired or received for rehabilitation. The daily log shall, at a minimum, consist of the following:

(A) the species and sex (if possible) of each animal acquired or received;

(B) the date and time that each animal was acquired or received;

(C) the name, address, phone number, and, if possible, an email address for each person from whom an animal is acquired or received;

(D) the approximate or exact geographical location where each animal was found before being acquired or obtained;

(E) a reference identifier assigned to the wildlife;

(F) the RFID tag number assigned to a white-tailed or mule deer; and

(G) final disposition data for each animal, including:

(i) the cause of final disposition;

(ii) the date and time of final disposition; and

(iii) the method and location of disposition, including but not limited to:

(I) GPS coordinates for any release location;

(II) the name, address, phone number, and email address of the landowner of a property where wildlife is released; and

(III) the name, address, phone number, email address, and permit number (if applicable) of any person to whom wildlife is transferred, if wildlife is transferred; and

(2) a daily log of all volunteers who engage in permitted activities at the permittee's facility. The daily volunteer log shall record:

(A) the first and last name of each volunteer;

(B) a valid phone number and email address for each volunteer;

(C) the date the volunteer arrived at the facility;

(D) the time the volunteer arrived at the facility; and

(E) the time the volunteer departed the facility.

(b) Each permittee and each subpermittee who operates a satellite facility shall complete and submit quarterly reports to the administrator of the department's rehabilitation program until the department designates an electronic application for that purpose, at which time the quarterly reports required by this section shall be filed via electronic application. The reports required by this section must be received by the department by January 15, April 15, July 15, and October 15 of each year.

(1) For permittees, the reports shall include the activities conducted at the permittee's registered facility by all individuals listed on the permit, not to include activities conducted by subpermittees at satellite facilities.

(2) For subpermittees who operate a satellite facility, the report shall include the activities conducted at the satellite facility.

(3) The quarterly reports required by this section must be filed even if no permitted activities took place during the quarterly period.

(c) The following shall be retained at the permitted facility and kept available for inspection by the department for a period of two years from generation:

(1) copies of all reports required by this section;

(2) the daily logs required by this section; and

(3) the written landowner permission to release wildlife required under the provisions of 69.51(g) of this title (relating to Release of Rehabilitated Wildlife).

(d) The registrations, reports, and notifications required by this subchapter shall be submitted via email to the administrator of the department's wildlife rehabilitation program until the department designates an electronic application for that purpose, at which time all reports and notifications shall be filed via the electronic application.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 705. ADULT PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS) adopts new §§705.101, 705.103, 705.105, 705.107, 705.301, 705.303, 705.501, 705.701, 705.703, 705.705, 705.901, 705.903, 705.1101, 705.1103, 705.1301, 705.1303, 705.1305, 705.1307, 705.1309, 705.1311, 705.1501, 705.1503, 705.1505, 705.1507, 705.1509, 705.1511, 705.1513, 705.1515, 705.1517, 705.1519, 705.1521, 705.1523, 705.1525, 705.1527, 705.1529, 705.1531, 705.1533, 705.1901, 705.1903, 705.1905, 705.1907, 705.1909, 705.1911, 705.1913, 705.1915, 705.1917, 705.1919, 705.1921, 705.1923, and 705.1925; and the repeal of §§705.1001, 705.1003, 705.1005, 705.1007, 705.1009, 705.1011, 705.2101, 705.2103, 705.2105, 705.2107, 705.3101, 705.3102, 705.4101, 705.4103, 705.4105, 705.4107, 705.4109, 705.4111, 705.5101, 705.6101, 705.7101, 705.7103, 705.7105, 705.7107, 705.7109, 705.7111, 705.7113, 705.7115, 705.7117, 705.7119, 705.7121, 705.7123, 705.8101, and 705.9001 in 40 TAC Chapter 705, concerning Adult Protective Services. The rules, except for §705.1907, are adopted without changes to the proposed text as published in the September 11, 2020, issue of the *Texas Register* (45 TexReg 6341) and will not be republished. Section 705.1907 is adopted with changes and will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the rule changes is as follows:

First, these changes update the rules to reflect the current scope and authority of the Adult Protective Services (APS) program as a result of Senate Bill (SB) 200, 84th Legislature, R.S. (2015) and the resulting transfer of the former APS Provider Investigations program to the Health and Human Services Commission (HHSC). The rules in Title 40, Texas Administrative Code, Chapter 705 contained many terms and provisions that pertained to both the APS program and the former APS Provider Investigations program. The adopted changes make the rules applicable to only the APS program.

The adopted changes include copying the Employee Misconduct Registry (EMR) rules from 40 TAC, Chapter 711, Subchapter O, into the APS Chapter, 40 TAC Chapter 705, with minor updates to reflect the legislative transfer of the Provider Investigations program to HHSC. While the changes appear far-reaching, they simply involve moving the rules to the APS Chapter and making minor edits to reflect the current structure of the APS program. As the rules in Subchapter O apply to both the APS program at DFPS and the Provider Investigations program at HHSC, HHSC will be transferring the rules to Title 26 in a separate rule packet.

More substantive changes have been made to the definitions of abuse, neglect, and exploitation. Currently, Human Resources Code (HRC) section 48.002(a)(2),(3),(4) provides definitions of abuse, neglect and exploitation; HRC section 48.002(c) also gives APS authority to adopt definitions of abuse, neglect, and exploitation as an alternative to the definitions found in section 48.002(a). In FY2012, APS used this authority to expand its definitions in rule. While this expansion allowed APS to incorporate paid caretakers into its definitions, it also led to some overlap between definitions of physical abuse, emotional abuse, and neglect. This overlap caused confusion for staff when conducting investigations. The differing statute and rule definitions also caused some confusion for providers and the general public. In the adopted rules, APS has clarified and simplified definitions for abuse, neglect, and exploitation while still capturing the intent and mirroring the definitions found in statute.

Finally, adopted rule §705.1923 more specifically implements HRC section 48.102 (Reports of Investigations in Schools), which requires the adoption of rule concerning who receives APS investigation reports related to alleged maltreatment of an adult with a disability by school personnel.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that state agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). All sections of Chapter 705 were reviewed. The proposed rule review was published in the September 11, 2020, issue of the *Texas Register* (45 TexReg 6381). DFPS determined that reasons for adoption of the sections continue to exist with the exception of §705.9001 (relating to What is the purpose of the pilot program?). The remaining rule sections are required to comply with statutory requirements and effectively operate the Adult Protective Services program. As such, the content was retained and reorganized for clarity and to better align with the practice and structure of the APS

program and its investigations. The adopted rule review is published in this edition of the *Texas Register.*

COMMENTS

The 30-day comment period ended October 11, 2020. DFPS reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. DFPS received comments from Disability Rights Texas (DRTx) and the Texas Council for Developmental Disabilities (TCDD). The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of the comments.

Comments concerning §705.101 (relating to How are the terms in this chapter defined?): DRTx and TCDD support the definition of caretaker to include a person who by act, words, or course of conduct has acted so as to cause a reasonable person to conclude that the person has accepted the responsibility for protection, food, shelter, or care for an alleged victim. DRTx commented that the expanded definition allows for APS to investigate and intervene in circumstances that on occasion were previously not addressed. TCDD commented that the expanded definition would further reflect TCDD's call for the State and other agencies to place a greater emphasis on safety in community living by appropriating and allocating sufficient resources for that purpose.

Response: The rule combines the definitions of paid caretaker into the caretaker definition as both caretaker and paid caretaker assume responsibility for the client and there is no need to distinguish based on monetary compensation. DFPS is adopting this rule without change.

Comments concerning §705.501 (relating to How are allegations prioritized?): DRTx commented that the criteria for the priorities are listed but not the timeframe in which an investigation is initiated (by a face-to-face interview). DRTx acknowledged that timeframes for priorities are listed on the DFPS website and requested their inclusion in rule in order to better inform the public about the investigatory process. TCDD requests the addition of specific timeframes for response to an allegation for Priorities 1-4, stating that this information is of overriding importance to individuals who may have been abused, neglected, or exploited.

Response: To clarify, it is not the face-to-face interview that initiates an investigation. The following explanation of when an investigation is initiated is located on the same webpage as the timeframes for face-to-face interviews, http://www.dfps.state.tx.us/Adult_Protection/Investigations_and_Services.asp: "The specialist initiates an investigation of all reports within 24 hours of receipt of the report by the department. Case initiation (also known as the 24-hour contact) is defined as contact with a person who has current and reliable information about the alleged victim's situation. The case initiation allows the specialist to gain further knowledge of the situation and determine whether immediate intervention is required." DFPS acknowledges that the commenters would like to see face-to-face timeframes in rule. DFPS respectfully declines to make the amendments the commenters suggest. DFPS is adopting this rule without change.

Comments concerning §705.1303, (relating to Does the designated perpetrator have the right to appeal?): DRTx commented that failure to inform the alleged victim of the outcome of the investigation denies the victim of their right to explore other due process actions. Additionally, DRTx commented that the alleged victim should be provided the same opportunity to appeal the outcome of the investigation as the designated perpetrator is provided. TCDD similarly commented and pointed out that because the designated perpetrator's right to appeal is related to matters of employment, and is therefore civil in character, APS should follow the general model established in civil law by allowing the alleged victim to request an administrative review for a finding (appeal).

Response: During a meeting with representatives from DFPS on October 16, 2020, DRTx and TCDD commenters clarified that their concerns are centered on investigations that involve an alleged perpetrator.

In regard to notifying the alleged victim of the outcome of the investigation, current policy allows for a client to be notified of the case closure in person, by letter, by phone, or by informing another adult involved in the client's care (who is not a designated perpetrator) on the client's behalf, if the client lacks the capacity to consent to closure or is not available when contacted. The policy is silent on notifying the client of the investigative finding. DFPS will consider expanding the information provided with the case closure notification to include investigative findings and how to access the investigative report. In regard to allowing the alleged victim to appeal the outcome of the investigation and to request an administrative hearing, DFPS may consider the comment in a future rulemaking action.

Adding new rules not required by statute is outside of the scope of this rulemaking action. DFPS is adopting this rule without changes.

Comments concerning §705.1311 (relating to Who is notified of a confidential decision?): DRTx commented that there is no language in the rule that specifies who is informed of the original findings of the investigation. DRTx strongly recommends the addition of this step and that language be added to the rules to clarify that the alleged victim and their LAR, if any, are notified when the investigation is concluded, what the result of the investigation is, including information about how the individual can access the investigative report. TCDD agreed with the notifications recommended by DRTx with the addition of a notification about how to request an administrative review (appeal).

Response: In regard to who is informed of the original findings in the investigation, see the DFPS response to comments concerning §705.1303 (relating to Does the designated perpetrator have the right to appeal?). Additionally, DFPS will consider editing the case closure notification letter to include a copy to the client's legal authorized representative. DFPS is adopting this rule without changes.

Comments concerning §705.1907, relating to (Who has the right to obtain all or part of confidential case records maintained by DFPS?): DRTx requests the following language be added throughout the rule as it pertains to whom DFPS makes the case records or portions of case records available: "If the Protection and Advocacy System represents the victim or alleged victim or is authorized by law to represent the victim or alleged victim, DFPS is required to make available the case records and/or investigation records for a living or deceased APS client in accordance with Federal law." TCDD requested that previous explicit language regarding the authority of DRTx to access records be reinstated.

Response: Upon request and to the extent required by state or federal law, DFPS makes case records or portions of case records for an APS client (living or deceased) available after appropriate redactions to the client's Disability Rights Texas rep-

resentative. DFPS agrees to add this clarification to the rule. DFPS is adopting this rule with changes.

Comments concerning §705.1923, relating to (Who receives copies of reports of investigations in schools?): DRTx recommended adding to this rule a section that DFPS informs the alleged victim (and the alleged victim's LAR, as appropriate) of the initiation of an investigation, the completion of an investigation, and the outcome of the investigation. Also, DRTx recommended adding that the alleged victim or the alleged victim's LAR has the right to appeal the outcome of the investigation and describing the appeal process. TCDD's comments were in agreement with those of DRTx with the addition of requiring DFPS to notify an alleged victim or the alleged victim's LAR when an allegation has been made (in cases in which the allegation is made by another individual).

Response: The comments received are outside of the scope of this section, which is limited to the distribution of copies of reports. DFPS is adopting this rule without changes.

SUBCHAPTER A. DEFINITIONS

40 TAC §§705.101, 705.103, 705.105, 705.107

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

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.

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Tiffany Roper
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3397

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SUBCHAPTER C. APS PROGRAM OVERVIEW

40 TAC §705.301, §705.303

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER E. ALLEGATION PRIORITIES

40 TAC §705.501

This new rule is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new section implements the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

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.

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SUBCHAPTER G. ELIGIBILITY

40 TAC §§705.701, 705.703, 705.705

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as

well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

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.

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SUBCHAPTER I. FAMILY VIOLENCE

40 TAC §705.901, §705.903

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

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.

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SUBCHAPTER K. INVESTIGATIONS

40 TAC §705.1101, §705.1103

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

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.

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SUBCHAPTER M. RELEASE HEARINGS

40 TAC §§705.1301, 705.1303, 705.1305, 705.1307, 705.1309, 705.1311

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER O. EMPLOYEE MISCONDUCT REGISTRY

40 TAC §§705.1501, 705.1503, 705.1505, 705.1507, 705.1509, 705.1511, 705.1513, 705.1515, 705.1517, 705.1519,

705.1521, 705.1523, 705.1525, 705.1527, 705.1529, 705.1531, 705.1533

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER S. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §§705.1901, 705.1903, 705.1905, 705.1907, 705.1909, 705.1911, 705.1913, 705.1915, 705.1917, 705.1919, 705.1921, 705.1923, 705.1925

These new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted new sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

§705.1907. Who has the right to obtain all or part of confidential case records maintained by DFPS?

(a) Upon request and to the extent required by state or federal law, DFPS makes the case records or portions of case records for a living APS client available after appropriate redactions to the following persons:

(1) the APS client;

(2) the court appointed guardian of an APS client;

(3) an attorney, attorney ad litem, or other court appointed legal representative of an APS client;

(4) the APS client's Disability Rights Texas representative;

(5) an alleged or designated perpetrator of abuse, neglect, or financial exploitation of an APS client. The perpetrator is only entitled to those portions of the investigation records that relate to the alleged or designated perpetrator; and

(6) a person, including a reporter, interviewed as a part of an investigation of abuse, neglect, or financial exploitation. The person is only entitled to that portion of the investigation record that relates to that person's interview.

(b) Upon request and to the extent required by state or federal law, DFPS makes the case records or portions of case records for a deceased APS client available after appropriate redactions to the following persons:

(1) the legally appointed representative of the deceased APS client's estate;

(2) the parents of a deceased APS client with a disability, if parental rights were not terminated and no estate exists requiring the appointment of a legal representative for the deceased APS client, and either:

(A) the case records requested relate to events precipitating the death of the APS client; or

(B) DFPS determines that the case records should be made available in the interest of justice;

(3) a person who was guardian at the time of death of the APS client;

(4) the APS client's Disability Rights Texas representative;

(5) an alleged or designated perpetrator of abuse, neglect, or financial exploitation of an APS client. The perpetrator is only entitled to those portions of the investigation records that relate to the alleged or designated perpetrator; and

(6) a person, including a reporter, interviewed as a part of an investigation of abuse, neglect, or financial exploitation. The person is only entitled to that portion of the investigation record that relates to that person's interview.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER A. DEFINITIONS

40 TAC §§705.1001, 705.1003, 705.1005, 705.1007, 705.1009, 705.1011

STATUTORY AUTHORITY

These repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family

and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

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.

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SUBCHAPTER D. ELIGIBILITY

40 TAC §§705.2101, 705.2103, 705.2105, 705.2107

These repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The repealed sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER G. FAMILY VIOLENCE

40 TAC §705.3101, §705.3102

These repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

No other statutes, articles, or codes are affected by the adopted rules.

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For further information, please call: (512) 438-3397

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SUBCHAPTER J. RELEASE HEARINGS

40 TAC §§705.4101, 705.4103, 705.4105, 705.4107, 705.4109, 705.4111

These repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

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 December 22, 2020.

TRD-202005683
Tiffany Roper
General Counsel
Department of Family and Protective Services
Effective date: February 1, 2021
Proposal publication date: September 11, 2020
For further information, please call: (512) 438-3397

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SUBCHAPTER K. TRAINING AND EDUCATION

40 TAC §705.5101

This repeal is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed section implements the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

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.

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Tiffany Roper
General Counsel
Department of Family and Protective Services
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SUBCHAPTER L. RISK ASSESSMENT

40 TAC §705.6101

This repeal is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed section implements the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

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.

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General Counsel
Department of Family and Protective Services
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SUBCHAPTER M. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §§705.7101, 705.7103, 705.7105, 705.7107, 705.7109, 705.7111, 705.7113, 705.7115, 705.7117, 705.7119, 705.7121, 705.7123

These repeals are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed sections implement the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

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.

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Tiffany Roper
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3397

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SUBCHAPTER N. PUBLIC AWARENESS

40 TAC §705.8101

This repeal is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repeal section implements the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

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 December 22, 2020.

TRD-202005687

Tiffany Roper
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3397

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SUBCHAPTER O. PILOT PROGRAM

40 TAC §705.9001

This repeal is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted repealed section implements the requirements of Texas Government Code section 2001.039 regarding rule review as well as Texas Human Resources Code section 48.102. They also reflect changes resulting from SB 200 of the 84th Legislature (2015).

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 December 22, 2020.

TRD-202005689
Tiffany Roper
General Counsel
Department of Family and Protective Services
Effective date: February 1, 2021
Proposal publication date: September 11, 2020
For further information, please call: (512) 438-3397

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Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Board of Professional Geoscientists

Title 22, Part 39

In accordance with Texas Government Code §2001.039, the Texas Board of Professional Geoscientists (TBPG) files this notice of intent to review and consider for readoption, amendment, or repeal of 22 TAC Chapters 850 and 851, as follows:

Chapter 850

Subchapter A (Authority and Definitions)

Subchapter B (Organization and Responsibilities)

Subchapter C (Fees)

Subchapter D (Advisory Opinions)

Chapter 851

Subchapter A (Definitions)

Subchapter B (P.G. Licensing, Firm Registration, and GIT Certification)

Subchapter C (Code of Professional Conduct)

Subchapter D (Compliance and Enforcement)

Subchapter E (Hearings--Contested Cases and Judicial Review)

The Texas Board of Professional Geoscientists will determine whether the reasons for adopting the sections under review continue to exist.

Any interested person may submit comments regarding these chapters and subchapters. In order to give the Board adequate time to consider your input, please submit written comments regarding the rule review to TBPG by February 8, 2021. Comments should be directed to Mr. Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, P.O. Box 13225, Austin, Texas 78711, or send e-mail to *rtruan@tbpg.texas.gov.*

Any proposed changes to these chapters as a result of this review will be published in the Proposed Rules section of the *Texas Register.* The proposed rules will be open for a standard 30-day public comment period prior to adoption by TBPG.

TRD-202005667

Rene D. Truan
Executive Director
Texas Board of Professional Geoscientists
Filed: December 22, 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 51, Charter Applications; Chapter 53, Additional Offices; Chapter 57, Change of Office Location or Name; Chapter 61, Hearings; Chapter 63, Fees and Charges; Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints; Chapter 65, Loans and Investments; Chapter 67, Savings and Deposit Accounts; Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion; Chapter 71, Change of Control; Chapter 73, Subsidiary Corporations; Chapter 75, Applications; Chapter 76, Miscellaneous; and Chapter 77, Loans, Investments, Savings and Deposits.

The review of 7 TAC Chapters 51, 53, 57, 61, 63 - 65, 67, 69, 71, 73, and 75 - 77 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 51, 53, 57, 61, 63 - 65, 67, 69, 71, 73, and 75 - 77.

TRD-202005678
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Filed: December 22, 2020

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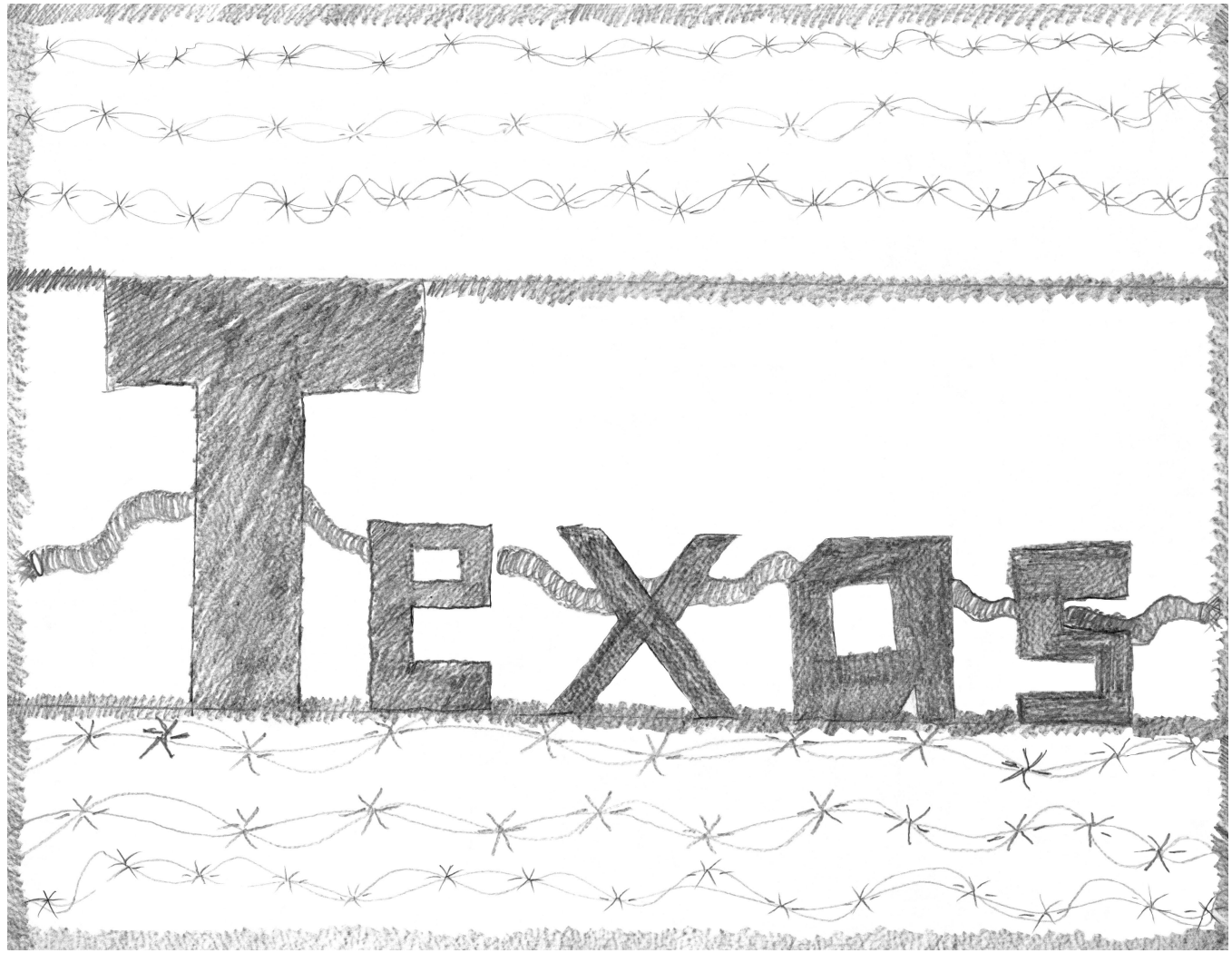
TEXAS

TABLES & GRAPHICS

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: 22 TAC §1.232(j)

Violation	**Rule or Statutory Citation**	**Recommended Penalty**
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§1.62	Administrative penalty
Unlawful practice of architecture while registration is on emeritus status	§1.67(b)	Administrative penalty
Practice of architecture while registration is inactive	§1.68 or §1.82(b)	Administrative penalty
Failure to fulfill mandatory continuing education requirements	§1.69	Administrative penalty[~~, suspension, or both~~]
Failure to timely complete required continuing education program hours	§1.69[~~(b)~~]	Administrative penalty[~~of $500; subject to higher penalties or suspension for second or subsequent offenses~~]
Falsely reporting compliance with mandatory continuing education requirements	§1.69[~~(g)~~]	Administrative penalty[~~ of $700; subject to higher penalties or suspension for second or subsequent offenses~~]
Failure to maintain a detailed record of continuing education activities	§1.69[~~(g)(1)~~]	Administrative penalty[~~ of $700; subject to higher penalties for second or subsequent offenses~~]
Use of non-compliant seal by registrant	§1.102	Administrative penalty
Failure to seal or sign documents	§1.103 §1.105 §1.122(c),(e)	Administrative penalty
Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required	§1.103(b)	Administrative penalty
Sealing or authorizing the sealing of a document prepared by another without Supervision and Control or Responsible Charge – “plan stamping”	§1.104(a) §1.122(c) or (e)	Administrative penalty and either suspension or revocation

Failure to take reasonable steps to notify sealing Architect of intent to modify that architect's sealed documents	§1.104(d)	Administrative penalty
Failure to indicate modifications or additions to a document prepared by another Architect	§1.104(b) and (d)	Administrative penalty, suspension, or both
Removal of seal after issuance of documents	§1.104(e)	Administrative penalty
Failure to maintain a document for 10 years as required	§1.103(g) §1.105(b) §1.122(d)	Administrative penalty
Unauthorized use of a seal or a copy or replica of a seal	§1.104(c)	Administrative penalty, suspension, or both
Failure to comply with requirements relating to preparation of only a portion of a document	§1.104(b)	Administrative penalty, suspension, or both
Violation of requirements regarding prototypical design	§1.105	Administrative penalty, suspension, or both
Failure to provide Statement of Jurisdiction	§1.106	Administrative penalty
Failure to enter into a written agreement of association when required	§1.122	Administrative penalty
Failure to exercise Supervision and Control over the preparation of a document as required	§1.122(c)	Administrative penalty, and either suspension or revocation
Failure to exercise Responsible Charge over the preparation of a document as required	§1.122(e)	Administrative penalty, and either suspension or revocation
Failure of a firm, business entity, or association to register	§1.124(a) and (b)	Administrative penalty
Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide architecture	§1.124(c)	Administrative penalty, suspension, or both
Offering or rendering the Practice of Architecture by and through a firm, business entity or association that is not duly registered	§1.124 §1.146(a)(2)(B)	Administrative penalty

Gross incompetency	Tex. Occ. Code §1051.752(4), §1.142	Administrative penalty, and either suspension or revocation
Recklessness	Tex. Occ. Code §1051.752(5) §1.143	Administrative penalty, and either suspension or revocation
Dishonest practice	Tex. Occ. Code §1051.752(6)§1.144(a) or (b)	Administrative penalty, and either suspension or revocation
Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work	§1.144(c)	Administrative penalty and either suspension or revocation, and payment of restitution
Conflict of interest	§1.145	Administrative penalty and either suspension or revocation
Participating in a plan, scheme or arrangement to violate the Act or rules of the Board	§1.146(a)	Administrative penalty, suspension, and/or revocation
Failure to provide information regarding an Applicant upon request; failure to report lost, stolen or misused architectural seal	§1.146(b), (c)	Administrative penalty
Submission or solicitation of a competitive bid or direct or indirect disclosure of fee information in violation of the Board's Rule implementing the Professional Services Procurement Act	§1.147	Administrative penalty and either suspension or revocation
Unauthorized practice or use of title "architect"	§1.123 §1.148	Administrative penalty, denial of registration, or refusal to renew, reinstate, or reactivate registration
Criminal conviction	§1.149	Suspension or revocation
Gross incompetence caused by substance abuse	§1.150	Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety, followed by probated suspension if appropriate
Violation by Applicant regarding unlawful use title "architect",	§1.148 §1.149 §1.151	Administrative penalty, suspension, revocation, denial of application, denial of

unlawful practice, or criminal convictions		reapplication for up to five years, and/or probationary initial registration
Failure to submit a document as required by the Architectural Barriers Act	Tex. Occ. Code §1051.752(2), §1.170	Administrative penalty
Failure to respond to a Board inquiry	§1.171	Administrative penalty
Giving false or forged evidence to the Board or a Board member in obtaining or assisting another person to obtain a certificate of registration	Tex. Occ. Code §1051.752(7)	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Aiding or abetting an unregistered person in violating Occupations Code Chapters 1051, 1052, or 1053	Tex. Occ. Code §1051.752(8)	Administrative penalty equivalent to that which would be appropriate for the underlying conduct by the unregistered person, and/or suspension or revocation
Using or attempting to use as the person's own the certificate of registration of another person.	Tex. Occ. Code §1051.752(9)	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Unregistered individual engaging in construction observation for a nonexempt building	§1.217	Administrative penalty, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Failure to report course of action likely to have material adverse effect on safe use of building or failure to refuse to consent to the course of action	§1.216	Administrative penalty and either suspension or revocation

Figure: 22 TAC §3.232(j)		
Violation	**Rule or Statutory Citation**	**Recommended Penalty**
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§3.62	Administrative penalty
Unlawful practice of landscape architecture while registration is on emeritus status	§3.67(b)	Administrative penalty
Practice of landscape architecture while registration is inactive or expired	§3.68	Administrative penalty
Failure to fulfill mandatory continuing education requirements	§3.69	Administrative penalty[~~, suspension, or both~~]
Failure to timely complete required continuing education program hours	§3.69[~~(b)~~]	Administrative penalty[~~ of $500; subject to higher penalties or suspension for second or subsequent offenses~~]
Falsely reporting compliance with mandatory continuing education requirements	§3.69[~~(g)~~]	Administrative penalty[~~ of $700; subject to higher penalties or suspension for second or subsequent offenses~~]
Failure to maintain a detailed record of continuing education activities	§3.69[~~(g)(1)~~]	Administrative penalty[~~ of $700; subject to higher penalties for second or subsequent offenses~~]
Use of non-compliant seal by registrant	§3.102	Administrative penalty
Failure to seal or sign documents	§3.103 §3.105 §3.122(c), (e)	Administrative penalty
Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required	§3.103(b)	Administrative penalty
Sealing or authorizing the sealing of a document prepared by another without Supervision and Control or Responsible Charge – “plan stamping”	§3.104(a) and (b) §3.122(c) and (e)	Administrative penalty and either suspension or revocation
Failure to take reasonable steps to notify sealing Landscape Architect of intent to modify that Landscape Architect’s sealed documents	§3.104(d)	Administrative penalty

Failure to indicate modifications or additions to a document prepared by another Landscape Architect	§3.104(e)	Administrative penalty, suspension, or both
Removal of seal after issuance of documents	§3.104(e)	Administrative penalty
Failure to maintain a document for 10 years as required	§3.103(g) §3.105(b) §3.122(d)	Administrative penalty
Unauthorized use of a seal or a copy or replica of a seal	§3.104(c)	Administrative penalty, suspension, or both
Failure to comply with requirements relating to preparation of only a portion of a document	§3.104(b)	Administrative penalty, suspension, or both
Violation of requirements regarding prototypical design	§3.105	Administrative penalty, suspension, or both
Failure to provide Statement of Jurisdiction	§3.106	Administrative penalty
Failure to report a course of action taken against the landscape architect's advice as required	§3.106(d)	Administrative penalty and either suspension or revocation
Failure to enter into a written agreement of association when required	§3.122	Administrative penalty
Failure to exercise Supervision and Control over the preparation of a document as required	§3.122(c)	Administrative penalty, and either suspension or revocation
Failure to exercise Responsible Charge over the preparation of a document as required	§3.122(e)	Administrative penalty, and either suspension or revocation
Failure of a firm, business entity, or association to register	§3.124(a) and (b)	Administrative penalty
Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide landscape architecture	§3.124(c)	Administrative penalty, suspension, or both
Offering or rendering Landscape Architecture by and through a firm, business entity or association that is not duly registered	§3.124 §3.146(a)(2)(B)	Administrative penalty
Gross incompetency	Tex. Occ. Code §1052.252(7) §3.142	Administrative penalty and either suspension or revocation

Recklessness	Tex. Occ. Code §1052.252(7) §3.143	Administrative penalty and either suspension or revocation
Dishonest practice	Tex. Occ. Code §1052.252(9) §3.144(a), (b)	Administrative penalty and either suspension or revocation
Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly-funded work	§3.144(c)	Administrative penalty, suspension, and/or revocation, and payment of restitution
Conflict of interest	§3.145	Administrative penalty and either suspension or revocation
Participating in a plans, scheme or arrangement to violate the Act or the rules of the Board	§3.146(a)	Administrative penalty, suspension and/or revocation
Failure to provide information regarding an Applicant upon request; failure to report lost, stolen or misused landscape architectural seal	§3.146(b), (c)	Administrative penalty
Unauthorized practice or use of title "landscape architect"	§3.123 §3.148	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Criminal conviction	§3.149	Suspension or revocation
Gross incompetence caused by substance abuse	§3.150	Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety, followed by probated suspension if appropriate
Violation by Applicant regarding unlawful use of title “landscape architect”, unlawful practice, or criminal convictions	§3.148 §3.149 §3.151	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Failure to submit a document as required by the Architectural Barriers Act	Tex. Occ. Code §1052.252(8) §3.170	Administrative penalty
Failure to respond to a Board inquiry	§3.171	Administrative penalty

Using fraud or deceit in obtaining a certificate of registration, or giving false or forged evidence to the Board or a Board member in obtaining or assisting another person to obtain a certificate of registration	Tex. Occ. Code §1052.252(2) or (3)	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Using or attempting to use as the person's own the certificate of registration of another person.	Tex. Occ. Code §1052.252(4)	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Use of the term “engineer,” “professional engineer,” or related term or otherwise creating the impression that one is authorized to practice engineering unless the person is registered under Occupations Code Chapter 1001	Tex. Occ. Code §1052.252(5)	Administrative Penalty
Use of the term “surveyor” or related term or otherwise creating the impression that one is authorized to practice surveying unless the person is registered under Occupations Code Chapter 1071	Tex. Occ. Code §1052.252(6)	Administrative Penalty
Aiding or abetting an unregistered person in violating Occupations Code Chapters 1051, 1052, or 1053	Tex. Occ. Code §1052.252(10)	Administrative penalty equivalent to that which would be appropriate for the underlying conduct by the unregistered person, and/or suspension or revocation

Figure: 22 TAC §5.242(j)

Violation	**Rule or Statutory Citation**	**Recommended Penalty**
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§5.72	Administrative penalty
Using the title "Registered Interior Designer" while on emeritus status	§5.77(b)	Administrative penalty
Practice of Interior Design while registration is inactive or expired	§5.78 or §5.92(b)	Administrative penalty
Failure to fulfill mandatory continuing education requirements	§5.79	Administrative penalty[or suspension]
Failure to timely complete required continuing education program hours	§5.79[~~(b)~~]	Administrative penalty[~~ of $500; subject to higher penalties or suspension for second or subsequent offenses~~]
Falsely reporting compliance with mandatory continuing education requirements	§5.79[~~(g)~~]	Administrative penalty[~~ of $700; subject to higher penalties for second or subsequent offenses~~]
Failure to maintain a detailed record of continuing education activities	§5.79[~~(g)(1)~~]	Administrative penalty[~~ of $700; subject to higher penalties for second or subsequent offenses~~]
Use of non-compliant seal by registrant	§5.112 §5.114(c)	Administrative penalty
Failure to sign or seal documents	§5.113 §5.132(c) and (e)	Administrative penalty
Failure to mark documents issued for purposes other than regulatory approval, permitting or construction as required	§5.113(b)	Administrative penalty
Sealing or authorizing the sealing of a document prepared by another without Supervision and Control or Responsible Charge – "plan stamping"	§5.114(a) and (b) §5.132(c) and (e)	Administrative penalty and either suspension or revocation
Failure to take reasonable steps to notify sealing Registered Interior Designer of intent to modify sealed documents	§5.114(d)	Administrative penalty
Failure to indicate modifications to or portion of document prepared by Registered Interior Designer	§5.114(b) and (d)	Administrative penalty, suspension, or both

Removal of seal after issuance of documents	§5.114(e)	Administrative penalty
Failure to maintain a document for 10 years as required	§5.113(c) §5.132(d)	Administrative penalty
Unauthorized use of a seal or a copy or replica of a seal	§5.114(c)	Administrative penalty, suspension, or both
Failure to comply with requirements relating to preparation of only a portion of a document	§5.115(b)	Administrative penalty, suspension, or both
Failure to provide Statement of Jurisdiction	§5.115(a)	Administrative penalty
Failure to report a course of action taken against the interior designer's advice as required	§5.115(d)	Administrative penalty and either suspension or revocation
Failure to enter into a written agreement of association when required	§5.132	Administrative penalty
Failure to exercise Supervision and Control over the preparation of a document as required	§5.132(c)	Administrative penalty and either suspension or revocation
Failure to exercise Responsible Charge over the preparation of a document as required	§5.132(e)	Administrative penalty and either suspension or revocation
Failure of a firm, business entity, or association to register	§5.134(a) and (b)	Administrative penalty
Failure to timely notify the Board upon dissolution of a business entity or association or upon loss of lawful authority to use the title "registered interior designer"	§5.134(c)	Administrative penalty
Representing an unregistered firm, business entity or association as a Registered Interior Designer firm	§5.134	Administrative penalty
Gross incompetency	§5.152	Administrative penalty and either suspension or revocation
Recklessness	§5.153	Administrative penalty and either suspension or revocation
Dishonest practice	§5.154(a), (c)	Administrative penalty and either suspension or revocation

Offering, soliciting or receiving anything or any service as an inducement to be awarded publicly funded work	§5.154(b)	Administrative penalty and either suspension or revocation and payment of restitution
Conflict of interest	§5.155	Administrative penalty and either suspension or revocation
Participating in a plan, scheme, or arrangement to violate the Act or rules of the Board	§5.156(a)	Administrative penalty, suspension, and/or revocation
Failure to provide information regarding an Applicant upon request; failure to report lost, stolen, or misused registered interior design seal	§5.156(b), (c)	Administrative penalty
Unauthorized practice or use of title "registered interior designer"	§5.133 §5.157	Administrative penalty, denial of registration, or refusal to renew, reinstate, or reactive registration
Criminal conviction	§5.158	Suspension or revocation
Gross incompetency caused by substance abuse	§5.159	Indefinite suspension until respondent demonstrates terminating suspension will not imperil public safety, followed by probated suspension if appropriate
Violation by Applicant regarding unlawful use of the title “registered interior designer,” unlawful practice or criminal convictions	§5.157 §5.158 §5.160	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Failure to submit a document as required by the Architectural Barriers Act	Tex. Occ. Code §1053.252(8) §5.180	Administrative penalty
Failure to respond to a Board inquiry	§5.181	Administrative penalty
Using fraud or deceit in obtaining a certificate of registration, or giving false or forged evidence to the Board or a Board member in obtaining or assisting another person to obtain a certificate of registration	Tex. Occ. Code §1053.252(3) or (9)	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Practicing in a manner detrimental to the public health, safety, or welfare	Tex. Occ. Code §1053.252(5)	Administrative penalty, suspension, or revocation

Using or attempting to use as the person's own the certificate of registration of another person.	Tex. Occ. Code §1053.252(10)	Administrative penalty, suspension, revocation, denial of application, denial of reapplication for up to five years, and/or probationary initial registration
Advertising in a manner that tends to deceive or defraud the public	Tex. Occ. Code §1053.252(6)	Administrative penalty, suspension, or revocation
Aiding or abetting an unregistered person in violating Occupations Code Chapters 1051, 1052, or 1053	Tex. Occ. Code §1053.252(7)	Administrative penalty equivalent to that which would be appropriate for the underlying conduct by the unregistered person, and/or suspension or revocation

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Correction of Error

On December 2, 2020, the Department of Aging and Disability Services filed the adoption of an amendment to 40 TAC §9.553 for publication in the December 18, 2020, issue of the *Texas Register.* This filing was assigned docket number TRD-202005179. Due to an error by the Texas Register, the adoption was published with the wrong effective date. The correct effective date for amended 40 TAC §9.553 is December 22, 2020.

TRD-202005729

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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, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/28/20 - 01/03/21 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 12/28/20 - 01/03/21 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/21 - 01/31/21 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/21 - 01/31/21 is 5.00% for commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202005664
Leslie L Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 22, 2020

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Notice of Rate Ceilings

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/04/21 - 01/10/21 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 01/04/21 - 01/10/21 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-202005727
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 29, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 10, 2021**. 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 **February 10, 2021.** 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: BARI GROUP, INCORPORATED dba Mini Mart; DOCKET NUMBER: 2020-1027-PST-E; IDENTIFIER: RN101432847; LOCATION: Palestine, Anderson 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: $4,062; ENFORCEMENT COORDINATOR: Terrany Binford, (512) 567-3302; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: BASF TOTAL Petrochemicals LLC; DOCKET NUMBER: 2020-0894-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY:

petrochemical maunfacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 41945, PSDTX950, and N018, Special Conditions Number 1, Federal Operating Permit Number O2629, General Terms and Conditions and Special Terms and Conditions Number 15, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: $26,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $10,500; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Carlisle Construction Materials, LLC; DOCKET NUMBER: 2020-0729-AIR-E; IDENTIFIER: RN104728795; LOCATION: Terrell, Kaufman County; TYPE OF FACILITY: foam panels production plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), New Source Review Permit Number 145720, Special Conditions Numbers 1 and 9.A, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate and failing to comply with the emissions limits; PENALTY: $42,188; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Fredericksburg; DOCKET NUMBER: 2019-1766-MSW-E; IDENTIFIER: RN102211844; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: municipal solid waste (MSW) landfill; RULES VIOLATED: 30 TAC §330.139(1) and (2) and MSW Permit Number 1995, Site Operating Plan (SOP), Control of Windblown Solid Waste and Litter, by failing to control windblown waste and litter from the active working face of the landfill; and 30 TAC §330.165(g) and MSW Permit Number 1995, SOP, Erosion of Cover, by failing to repair erosion of intermediate cover within five days of detection; PENALTY: $4,401; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: City of Rochester; DOCKET NUMBER: 2020-1020-PWS-E; IDENTIFIER: RN101192243; LOCATION: Rochester, Haskell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e) and §290.115(e), by failing to provide the results of nitrate and Stage 2 Disinfection Byproducts sampling to the executive director (ED) for the October 1, 2019 - December 31, 2019, monitoring period; 30 TAC §290.109(d)(4)(B) and §290.122(c)(2)(A) and (f), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive sample on July 20, 2018, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to collect a raw groundwater sample during the month of July 2018; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2016 - December 31, 2018, monitoring period; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for the 2017 and 2018 calendar years; PENALTY: $846; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: Colt G & P (North Texas) L.P. f/k/a Midcoast G & P (North Texas) L.P.; DOCKET NUMBER: 2020-0917-AIR-E; IDENTIFIER: RN100226414; LOCATION: Springtown, Parker County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 72046, Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, Special Conditions Number (h)(3), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: GB Biosciences LLC; DOCKET NUMBER: 2020-0463-IWD-E; IDENTIFIER: RN100238492; LOCATION: Houston, Harris County; TYPE OF FACILITY: pesticides and agriculture chemical production plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0000749000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Number 001, by failing to comply with permitted effluent limitations; PENALTY: $37,057; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Leigh Water Supply Corporation; DOCKET NUMBER: 2020-1069-PWS-E; IDENTIFIER: RN101454288; LOCATION: Karnack, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes (TTHM), based on the locational running annual average, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the MCL of 0.080 mg/L for TTHM for Stage 2 Disinfection Byproducts at Site 3 for the first quarter of 2020; PENALTY: $1,725; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Maverick Tube Corporation dba TenarisConroe; DOCKET NUMBER: 2020-0979-AIR-E; IDENTIFIER: RN100543131; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: fabricated pipe and pipe fittings manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O1686, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O1686, GTC and Special Terms and Conditions Number 10, and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $7,275; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,910; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: SUNNI'S MARKETING CORP. dba Kwik Stop; DOCKET NUMBER: 2020-1028-PST-E; IDENTIFIER: RN102842457; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $3,339; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Texas Health and Human Services Commission; DOCKET NUMBER: 2020-1061-PST-E; IDENTIFIER: RN101815587; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and §334.8(c)(4)(C), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership or operator change; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated USTs; PENALTY: $3,751; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 756-3999; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(12) COMPANY: Total Petrochemicals & Refining USA, Incorporated; DOCKET NUMBER: 2020-0348-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: polypropylene plastic manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Number 3908B, Special Conditions (SC) Number 14, Federal Operating Permit (FOP) Number O1293, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 14, and Texas Health and Safety Code (THSC), §382.085(b), by failing to continuously monitor and record the oxygen concentration when waste gas is directed to the thermal oxidizer; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 21538, SC Number 17, FOP Number O1293, GTC and STC Number 14, and THSC, §382.085(b), by failing to comply with the minimum removal efficiency; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 21538, SC Number 1, FOP Number O1293, GTC and STC Number 14, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: $150,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $60,000; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: TS Investments LLC dba Neighborhood Mart; DOCKET NUMBER: 2020-0953-PST-E; IDENTIFIER: RN101914307; LOCATION: Longview, Gregg 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 in manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Courtney Atkins, (512) 534-6862; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2020-0727-PWS-E; IDENTIFIER: RN101256857; LOCATION: Rosharon, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's ground storage tank annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's pressure tank annually for the years 2018 and 2019, and failing to inspect the interior of the facility's pressure tank at least once every five years; and 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; PENALTY: $7,130; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Vic & Jee LLC dba Z Mart; DOCKET NUMBER: 2020-0732-PST-E; IDENTIFIER: RN106007040; LOCATION: Cedar Creek, Bastrop County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum underground storage tank (UST); and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $1,205; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-202005720
Charmaine Backens
Deputy Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 29, 2020

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Enforcement Orders

An agreed order was adopted regarding Baronox, LLC, Docket No. 2019-1480-PWS-E on December 29, 2020 assessing $100 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, 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 Forestar (USA) Real Estate Group Inc., Docket No. 2019-1510-EAQ-E on December 29, 2020, assessing $5,625 in administrative penalties with $1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Garney Companies, Inc., Docket No. 2020-0025-WQ-E on December 29, 2020, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, 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 SKILL S CORPORATION dba Rozis Mini Mart, Docket No. 2020-0046-PST-E on December 29, 2020, assessing $6,945 in administrative penalties with $1,389 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, 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 City of Meadow, Docket No. 2020-0373-PWS-E on December 29, 2020, assessing $2,298 in admin-

istrative penalties with $459 deferred. 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 VILLAGE FARMS, L.P., Docket No. 2020-0413-PWS-E on December 29, 2020, assessing $3,194 in administrative penalties with $638 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, 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 EAST LAMAR WATER SUPPLY CORPORATION, Docket No. 2020-0429-PWS-E on December 29, 2020, assessing $3,383 in administrative penalties with $676 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, 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 HAZARA ENTERPRISES, INC. dba Kenefick General Store, Docket No. 2020-0482-PST-E on December 29, 2020, assessing $3,496 in administrative penalties with $699 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, 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 H4WR Phase 3A, LLC, Docket No. 2020-0492-EAQ-E on December 29, 2020, assessing $1,250 in administrative penalties with $250 deferred. 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.

An agreed order was adopted regarding City of Paint Rock, Docket No. 2020-0536-PWS-E on December 29, 2020, assessing $1,036 in administrative penalties with $207 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, 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 City of Thorndale, Docket No. 2020-0720-MWD-E on December 29, 2020, assessing $6,750 in administrative penalties with $1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LBC Houston, L.P., Docket No. 2020-0737-AIR-E on December 29, 2020, assessing $5,275 in administrative penalties with $1,055 deferred. 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 Victoria Port Power LLC, Docket No. 2020-0815-AIR-E on December 29, 2020, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Edward Wilson, Docket No. 2020-0827-PST-E on December 29, 2020, assessing $5,250 in administrative penalties with $1,050 deferred. Information concerning any aspect of this order may be obtained by contacting Terrany Binford, 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 LINDA'S SAND & GRAVEL, LLC, Docket No. 2020-0862-WQ-E on December 29, 2020, assessing $5,000 in administrative penalties with $1,000 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.

An agreed order was adopted regarding Trecora Chemical, Inc., Docket No. 2020-0910-AIR-E on December 29, 2020, assessing $3,413 in administrative penalties with $682 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.

A field citation was adopted regarding C Cooper Custom Homes Inc., Docket No. 2020-1038-WQ-E on December 29, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202005731
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 30, 2020

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Notice of District Petition

Notice issued December 23, 2020

TCEQ Internal Control No. D-10052020-008; Robert M. Tiemann (Petitioner) filed a petition for creation of Lakeside Municipal Utility District No. 9 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is only one lienholder, International Bank of Commerce, on the property to be included in the proposed District; (3) the proposed District will contain approximately 107.743 acres located within Williamson County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Pflugerville. By Resolution No. 1699-19-05-28-0622, passed and adopted on May 28, 2019, the City of Pflugerville, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Peti-

tioners that the cost of said project will be approximately $15,420,000 ($11,225,000 for water, wastewater, and drainage plus $845,000 for recreation plus $3,350,000 for roads).

INFORMATION SECTION

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.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202005728
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 29, 2020

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Notice of Public Meeting on Air Quality Standard Permit for Concrete Batch Plants Proposed Registration No. 162413

Application. Rhino Ready Mix, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 162413, which would authorize construction of a permanent concrete batch plant located at 9230 Winfield Road, Houston, Harris County, Texas 77050. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.898888&lng=-95.255555&zoom=13&type=r. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

This application was submitted to the TCEQ on August 18, 2020. The executive director has completed the administrative and technical reviews of the application and determined that the application meets all of the requirements of a standard permit authorized by 30 TAC §116.611, which would establish the conditions under which the plant must operate. The executive director has made a preliminary decision to issue the registration because it meets all applicable rules.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, January 26, 2021 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 807-972-155. 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, (631) 992-3221 and enter access code 269-957-231. 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 public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and the High Meadows Branch Library, 4500 Aldine Mail Route,

Houston, Harris County, Texas. If the public viewing place is closed the application may be viewed at the following weblink: https://www.aarcenv.com/Shares/Rhino-Ready-Mix-Air-Permit-Application-and-Submissions.pdf. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit. Further information may also be obtained from Rhino Ready Mix, LLC, 6638 Madden Lane, Houston, Texas 77048-2203 or by calling Mr. Akash Kansal, Environmental Specialist, AARC Environmental, Inc. at (713) 974-2272.

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.

Notice Issuance Date: December 30, 2020

TRD-202005732
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 30, 2020

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Notice of Water Rights Application

Notice issued December 21, 2020

APPLICATION NO. 13733; North Texas Municipal Water District, (Applicant), P.O. Box 2408, Wylie, Texas 75908, seeks a temporary water use permit to divert and use not to exceed 139,040 acre-feet of water within a period of three years from anywhere along the perimeter of Lake Lavon on the East Fork Trinity River, Trinity River Basin for municipal purposes within the applicant's service area in those portions of Collin, Fannin, Hunt, Grayson, Kaufman, Rockwall, Van Zandt, Dallas, and Denton Counties located in the Trinity River Basin. More information on the application and how to participate in the permitting process is given below. The application and fees were received on June 16, 2020. Additional information and fees were received on July 17, and August 6, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 30, 2020. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and maintenance of an accounting plan. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: *www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice.* Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. 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, by January 08, 2021. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by January 08, 2021. The Executive Director may approve the application unless a written request for a contested case hearing is filed by January 08, 2021.

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;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will 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 or electronically at *http://www.tceq.texas.gov/about/comments.html* by entering WRTP 13733 in the search field. 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 o por el internet al *http://www.tceq.texas.gov.*

TRD-202005679
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 22, 2020

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the TCEQ on December 18, 2020, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. Shrishubh, LLC dba Super Food Mart; SOAH Docket No. 582-20-3433; TCEQ Docket No. 2017-0898-PST-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Shrishubh, LLC dba Super Food Mart on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Mehgan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-202005734
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 30, 2020

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Texas Facilities Commission

Request for Proposal (RFP) #303-2-20705

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-2-20705. TFC seeks a five (5) or ten (10) year, lease of approximately 8,854 square feet of office space in Grand Prairie, Texas.

The deadline for questions is January 21, 2021, and the deadline for proposals is March 2, 2021 at 3:00 p.m. The award date is April 15, 2021. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Jenny Ruiz, at jenny.ruiz@tfc.state.tx.us. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://www.txsmartbuy.com/esbddetails/view/303-2-20705.

TRD-202005724
Rico Gamino
Procurement Director
Texas Facilities Commission
Filed: December 29, 2020

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Texas Health and Human Services Commission

Notice of Stakeholder Engagement Meetings on Potential Medicaid Payment Rates

The Texas Health and Human Services Commission (HHSC) will conduct stakeholder engagement meetings on January 21, 2021, beginning at 9:00 a.m. CST, to receive comments on Medicaid payment rates that may be addressed at the May 2021 rate hearings. Note that HHSC will not be publishing any proposed rates at this time, and the stakeholder engagement meetings are solely to take commentary on the topics listed below.

The stakeholder engagement meetings will be held as follows:

1. Acute Care Services: **January 21, 2021, 9:00 a.m. - 11:00 a.m.**

2. Long-Term Services & Supports: **January 21, 2021, 12:30 p.m. - 2:30 p.m.**

3. Hospital Services: **January 21, 2021, 3:00 p.m. - 5:00 p.m.**

HHSC may limit speakers' time in order to ensure all attendees wishing to present public comment are afforded an opportunity to do so.

HHSC reserves the right to end an engagement meeting if no participants have registered to present public comments within the first 30 minutes of the meeting.

Due to the declared state of disaster stemming from COVID-19, these meetings will be conducted online only. Physical entry to the meetings will not be permitted.

Please register for HHSC Provider Finance Department Stakeholder Engagement Meetings on January 21, 2021 at:

https://attendee.gotowebinar.com/register/8977546937378429453

Webinar ID: 353-156-171

After registering, you will receive a confirmation email containing information about joining the webinar.

HHSC will record the meetings. The recording will be archived and can be accessed on demand at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

Agenda. The topics for the Stakeholder Engagement Meetings are below. Please note that the topics listed in this notice comprise a provisional list of topics to be presented at the May 2021 rate hearing. The final list of topics to be presented at the May 2021 rate hearing is at the discretion of HHSC.

Acute Care Services

1. Durable Medical Equipment "E" Codes

2. Any Combination of 1/2/I/T

3. Non-Clinical Labs (5/I/T)

4. "S" Codes

5. Physician Administered Drugs - Oncology

6. Physician Administered Drugs - Vaccines & Toxoids

7. Physician Administered Drugs - Non-Oncology

8. Physician Administered Drugs - NDCX list

9. Telemedicine, Telehealth & Telemonitoring

10. Outpatient Behavioral Health Services

11. Indian Health Services

12. Access to Care

13. Medicine (Other)

14. Gastroenterology

15. Noninvasive Vascular Diagnostic Studies

16. Cardiovascular Services including Cardiography & Echocardiography

17. Dialysis Services

18. Medical Nutrition Therapy

19. Ophthalmological Services

20. Respiratory System Surgery

21. Respiratory Therapists

22. Diagnostic Radiology

23. Evaluation and Management (E&M)

24. Medical and Surgical Supplies

25. Quarterly Healthcare Common Procedure Coding System (HCPCS) Updates

Long-Term Services & Supports

1. Community First Choice (CFC), Title XX, STAR+PLUS and STAR Kids Emergency Response Services (ERS)

2. The Deaf-blind with Multiple Disabilities (DBMD) Waiver Program

--Assisted Living Services (18 hours or less)

--Licensed Assisted Living Services (19-24 hours)

--Licensed Home Health Assisted Living Services (19-24 hours)

3. Youth Empowerment Services (YES) Waiver Program, Out-of-Home Respite (OHR) in a Camp Setting

Hospital Services

1. Children's Hospitals

2. Rural Hospitals

3. SDA Add-on

4. Updated Rates

An agenda will be made available at https://rad.hhs.texas.gov/rate-packets by January 14, 2021. Interested parties may also obtain a copy of the agenda on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RateAnalysisDept@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed topics may be submitted in lieu of, or in addition to, oral comments until 5:00 p.m. the day following the meetings, January 22, 2021. Written comments may be sent by U.S. mail, overnight mail, fax, or e-mail:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail

Texas Health and Human Services Commission

Attention: Provider Finance, Mail Code H-400

Brown-Heatly Building

4900 North Lamar Blvd.

Austin, Texas 78751

Fax

Attention: Provider Finance at (512) 730-7475

E-mail

RateAnalysisDept@hhsc.state.tx.us

Preferred Communication. E-mail or telephone communication is preferred due to the current state of the COVID-19 disaster. This will ensure the fastest possible response and will help reduce the transmission of infection.

TRD-202005708
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 28, 2020

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Department of State Health Services

Amendment Placing Oliceridine in Schedule II

The Drug Enforcement Agency issued an interim final rule placing oliceridine, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such is possible, in schedule II of the Controlled Substances Act. This action was published in the October 30, 2020 edition of the *Federal Register,* volume 85, number 211, pages 68749-68753. This action was based on the following:

1. Oliceridine has a high potential for abuse similar to the schedule II substance morphine;

2. Oliceridine has a currently accepted medical use in the United States; and

3. Abuse of oliceridine may lead to severe psychological or physical dependence.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the *Federal Register.* In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order the substance oliceridine be placed into schedule II.

Schedule II opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Carfentanil;

(6) Dextropropoxyphene, bulk (nondosage form);

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphacetylmethadol (Other names: levo-a-acetylmethadol; levomethadyl acetate, LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone Intermediate (Other name: 4-cyano-2-dimethylamino-4,4-diphenyl butane);

(17) Moramide Intermediate (Other name: 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid);

*(18) Oliceridine (Other name: N-[(3-methoxythiophen-2-yl)methyl] ({2-[(9R)-9-(pyridin-2-yl)-6-oxaspiro [4.5]decan-9-yl]ethyl}) amine fumarate);

(19) Pethidine (meperidine);

(20) Pethidine Intermediate-A (Other name: 4-cyano-1-methyl-4-phenylpiperidine);

(21) Pethidine Intermediate-B (Other name: ethyl-4-phenylpiperidine-4-carboxylate);

(22) Pethidine Intermediate-C (Other name: 1-methyl-4-phenylpiperidine-4-carboxylic acid);

(23) Phenazocine;

(24) Piminodine;

(25) Racemethorphan;

(26) Racemorphan;

(27) Remifentanil;

(28) Sufentanil;

(29) Tapentadol; and

(30) Thiafentanil (Other name: methyl 4-(2-methoxy-N-phenylacetamido)-1-(2-(thiophen-2-yl)ethyl)piperidine-4-carboxylate).

TRD-202005665
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: December 22, 2020

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Texas Department of Insurance

Company Licensing

Application for Aetna Better Health of Texas, Inc., a domestic Health Maintenance Organization (HMO), d/b/a Aetna Better Health of Texas. The home office is in Dallas, Texas.

Application for incorporation in the state of Texas for Centene Venture Insurance Company of Texas, a domestic life, accident and/or health company. The home office is in Austin, Texas.

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-202005733
James Person
General Counsel
Texas Department of Insurance
Filed: December 30, 2020

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Texas Lottery Commission

Correction of Error

The Texas Lottery Commission published the game procedure for Scratch Ticket Game Number 2311 TRIPLE RED 777 SUPER TICKET™ in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9332). Due to an error by the Texas Register, the trademark symbol was omitted from the name of the game throughout the notice. The correct name of Scratch Ticket Game Number 2311 is TRIPLE RED 777 SUPER TICKET™.

TRD-202005660

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Scratch Ticket Game Number 2258 "MEGA LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2258 is "MEGA LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2258 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2258.

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: THE ARMADILLO SYMBOL, THE BAT SYMBOL, THE BICYCLE SYMBOL, THE BLUEBONNET SYMBOL, THE BOAR SYMBOL, THE BUTTERFLY SYMBOL, THE CACTUS SYMBOL, THE CARDINAL SYMBOL, THE CHERRIES SYMBOL, THE CHILE PEPPER SYMBOL, THE CORN SYMBOL, THE COVERED WAGON SYMBOL, THE COW SYMBOL, THE COWBOY HAT SYMBOL, THE COWBOY SYMBOL, THE DESERT SYMBOL, THE FIRE SYMBOL, THE FOOTBALL SYMBOL, THE GEM SYMBOL, THE GUITAR SYMBOL, THE HEN SYMBOL, THE HORSE SYMBOL, THE HORSESHOE SYMBOL, THE JACKRABBIT SYMBOL, THE LIZARD SYMBOL, THE LONE STAR SYMBOL, THE MARACAS SYMBOL, THE MOCKINGBIRD SYMBOL, THE MOONRISE SYMBOL, THE MORTAR PESTLE SYMBOL, THE NEWSPAPER SYMBOL, THE OIL RIG SYMBOL, THE PECAN TREE SYMBOL, THE PIÑATA SYMBOL, THE RACE CAR SYMBOL, THE RATTLESNAKE SYMBOL, THE ROADRUNNER SYMBOL, THE SADDLE SYMBOL, THE SHIP SYMBOL, THE SHOES SYMBOL, THE SOCCERBALL SYMBOL, THE SPEAR SYMBOL, THE SPUR SYMBOL, THE STRAWBERRY SYMBOL, THE SUNSET SYMBOL, THE WHEEL SYMBOL, THE WINDMILL SYMBOL, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $200, $500, $1,000 and $5,000.

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. 2258 - 1.2D

PLAY SYMBOL	CAPTION
THE ARMADILLO SYMBOL	THEARMADILLO
THE BAT SYMBOL	THE BAT
THE BICYCLE SYMBOL	THE BICYCLE
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE BOAR SYMBOL	THE BOAR
THE BUTTERFLY SYMBOL	THEBUTTERFLY
THE CACTUS SYMBOL	THE CACTUS
THE CARDINAL SYMBOL	THECARDINAL
THE CHERRIES SYMBOL	THECHERRIES
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE CORN SYMBOL	THE CORN
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE COW SYMBOL	THE COW
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE COWBOY SYMBOL	THECOWBOY
THE DESERT SYMBOL	THE DESERT
THE FIRE SYMBOL	THE FIRE
THE FOOTBALL SYMBOL	THEFOOTBALL
THE GEM SYMBOL	THE GEM
THE GUITAR SYMBOL	THE GUITAR
THE HEN SYMBOL	THE HEN
THE HORSE SYMBOL	THE HORSE
THE HORSESHOE SYMBOL	THEHORSESHOE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE LIZARD SYMBOL	THELIZARD
THE LONE STAR SYMBOL	THELONESTAR
THE MARACAS SYMBOL	THEMARACAS
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE MOONRISE SYMBOL	THEMOONRISE
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE

THE NEWSPAPER SYMBOL	THENEWSPAPER
THE OIL RIG SYMBOL	THEOILRIG
THE PECAN TREE SYMBOL	THEPECANTREE
THE PIÑATA SYMBOL	THE PIÑATA
THE RACE CAR SYMBOL	THERACECAR
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE ROADRUNNER SYMBOL	THEROADRUNNER
THE SADDLE SYMBOL	THESADDLE
THE SHIP SYMBOL	THE SHIP
THE SHOES SYMBOL	THE SHOES
THE SOCCERBALL SYMBOL	THESOCCERBALL
THE SPEAR SYMBOL	THE SPEAR
THE SPUR SYMBOL	THE SPUR
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE SUNSET SYMBOL	THE SUNSET
THE WHEEL SYMBOL	THE WHEEL
THE WINDMILL SYMBOL	THEWINDMILL
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$5,000	FVTH

E. Serial Number - A unique 13 (thirteen) 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 24 (twenty-four) 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 14 (fourteen) digit number consisting of the four (4) digit game number (2258), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2258-0000001-001.

H. Pack - A Pack of the "MEGA LOTERIA" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

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 "MEGA LOTERIA" Scratch Ticket Game No. 2258.

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, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly 72 (seventy-two) Play Symbols. A prize winner in the "MEGA LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: PLAYBOARDS 1 & 2: 1) The player completely scratches the CALLER'S CARD area to reveal 28 symbols. 2) The player scratches ONLY the symbols on both PLAYBOARDS that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line on either PLAYBOARD, the player wins the prize for that line. BONUS GAMES: The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 2 symbols in the same GAME, the player wins the PRIZE for that GAME. TABLAS DE JUEGO: 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 28 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en las dos TABLAS DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa, horizontal, vertical o diagonal en cualquiera TABLA DE JUEGO, el jugador gana el premio para esa línea. JUEGOS DE BONO: El jugador SOLAMENTE raspa los símbolos en los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 2 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. 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 72 (seventy-two) 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 72 (seventy-two) 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 72 (seventy-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 72 (seventy-two) 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 de-

fective 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: A Ticket can win up to eight (8) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAYBOARDS/TABLAS DE JUEGO: No matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARDS/TABLAS DE JUEGO: At least fourteen (14) but no more than twenty-six (26) Play Symbols will match a Play Symbol on either PLAYBOARD/TABLA DE JUEGO play area.

E. PLAYBOARDS/TABLAS DE JUEGO: CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will have a random distribution on the Ticket, unless restricted by other parameters, play action or prize structure.

F. PLAYBOARDS/TABLAS DE JUEGO: No matching Play Symbols are allowed on the same PLAYBOARD/TABLA DE JUEGO play area.

G. BONUS GAMES/JUEGOS DE BONO: Every BONUS GAME/JUEGO DE BONO Grid will match at least one (1) Play Symbol to the CALLER'S CARD/CARTA DEL GRITÓN play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "MEGA LOTERIA" Scratch Ticket Game prize of $10.00, $15.00, $20.00, $30.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $100, $200 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 "MEGA LOTERIA" Scratch Ticket Game prize of $1,000, $5,000 or $250,000, the claimant must sign the winning Scratch Ticket and 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 "MEGA LOTERIA" 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 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 "MEGA LOTERIA" 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 "MEGA LOTERIA" 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 Ticket Prizes. There will be approximately 39,000,000 Scratch Tickets in Scratch Ticket Game No. 2258. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2258 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10	4,290,000	9.09
$15	1,560,000	25.00
$20	1,560,000	25.00
$30	2,340,000	16.67
$50	780,000	50.00
$100	390,000	100.00
$200	78,000	500.00
$500	8,125	4,800.00
$1,000	1,950	20,000.00
$5,000	270	144,444.44
$250,000	18	2,166,666.67

*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 3.54. 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. 2258 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 Instant 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. 2258, 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-202005662
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 22, 2020

♦ ♦ ♦

Scratch Ticket Game Number 2320 "LIMITED EDITION"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2320 is "LIMITED EDITION". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2320 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2320.

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, 07, 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, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, MONEY BAG SYMBOL, SAFE SYMBOL, $5.00, $10.00, $20.00, $30.00, $50.00, $60.00, $100, $150, $300, $1,000, $2,000, $10,000 and $250,000.

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. 2320 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
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
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON

52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
MONEY BAG SYMBOL	DBL
SAFE SYMBOL	TRP
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$60.00	SXTY$
$100	ONHN
$150	ONFF
$300	THHN
$1,000	ONTH
$2,000	TOTH
$10,000	10TH
$250,000	250TH

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 (2320), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2320-0000001-001.

H. Pack - A Pack of the "LIMITED EDITION" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

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 "LIMITED EDITION" Scratch Ticket Game No. 2320.

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 "LIMITED EDITION" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-eight (78) 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 "MONEY BAG" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "SAFE" Play Symbol, the player wins TRIPLE 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 seventy-eight (78) 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 seventy-eight (78) 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 seventy-eight (78) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-eight (78) 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: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: The $5 Prize Symbol will only appear on winning Tickets in which the $5 prize is part of a winning pattern.

D. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 10 and $10).

E. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

G. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

H. KEY NUMBER MATCH: A Ticket may have up to five (5) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

I. KEY NUMBER MATCH: The "MONEY BAG" (DBL) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

J. KEY NUMBER MATCH: The "SAFE" (TRP) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "LIMITED EDITION" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $30.00, $50.00, $60.00, $100, $150 or $300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $60.00, $100, $150 or $300 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 "LIMITED EDITION" Scratch Ticket Game prize of $1,000, $2,000, $10,000 or $250,000, 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 "LIMITED EDITION" 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 "LIMITED EDITION" 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 "LIMITED EDITION" 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 10,080,000 Scratch Tickets in Scratch Ticket Game No. 2320. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2320 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10.00	1,108,800	9.09
$20.00	705,600	14.29
$30.00	504,000	20.00
$50.00	201,600	50.00
$100	120,960	83.33
$150	25,200	400.00
$300	9,576	1,052.63
$1,000	75	134,400.00
$10,000	8	1,260,000.00
$250,000	5	2,016,000.00

*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 3.77. 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. 2320 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. 2320, 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-202005661

Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 22, 2020

♦ ♦ ♦

North Central Texas Council of Governments

Request for Proposals for Professional Services to Support Transit Accounting Models

The North Central Texas Council of Governments (NCTCOG) is seeking an individual or firm to perform professional services for transit agencies that are subrecipients of NCTCOG in the Dallas-Fort Worth Metropolitan Area. The individual or firm will evaluate accounting systems, establish allocation methodologies, and train administrative staff on use of these systems and models to ensure transit agencies are implementing appropriate and effective accounting procedures that combine accounting needs for multiple operational programs and meet

federal and state requirements. NCTCOG's role and interest is to provide resources to assist subrecipients in federal compliance responsibilities and to streamline reimbursement documentation.

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday February 5, 2021, to Melany Dennis, Grants and Contracts Supervisor, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to *TransRFPs@nctcog.org.* The Request for Proposals will be available at *www.nctcog.org/rfp* by the close of business on Friday, January 8, 2021.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202005648
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: December 21, 2020

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on December 18, 2020, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Border to Border Communications, Inc. to Recover Funds from the Texas Universal Service Fund Under PURA §56.025 and 16 TAC §26.406 for Calendar Year 2020, Docket Number 51645.

The Application: Border to Border Communications, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Border to Border Communications for calendar year 2020. Border to Border Communications requests that the Commission allow recovery of funds from the TUSF in the amount of $1,201,823 for calendar year 2020 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission 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. A deadline for intervention in this proceeding will be established. 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 51645.

TRD-202005719
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 2020

♦ ♦ ♦

Supreme Court of Texas

Final Approval of Amendments to Texas Rules of Civil Procedure 47, 99, 169, 190, 192, 193, 194, 195, 196, 197, and 198

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9153

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULES OF CIVIL PROCEDURE 47, 99, 169, 190, 192, 193, 194, 195, 196, 197, AND 198

ORDERED that:

1. On August 21, 2020, in Misc. Dkt. No. 20-9101, the Court preliminarily approved amendments to Rules 47, 169, 190, 192, 193, 194, and 195 of the Texas Rules of Civil Procedure to comply with Act of May 27, 2019, 86th Leg., R.S., ch. 696 (SB 2342), and invited public comment. Following public comment, the Court made revisions to those rules and also revised Texas Rules of Civil Procedure 99, 196, 197, and 198. This Order incorporates the revisions and contains the final version of the rules, effective January 1, 2021.

2. The amendments apply to cases filed on or after January 1, 2021, except for those filed in justice court. The rules amended by this Order continue to govern procedures and limitations in cases filed before January 1, 2021.

3. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

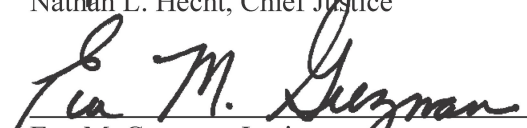
   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

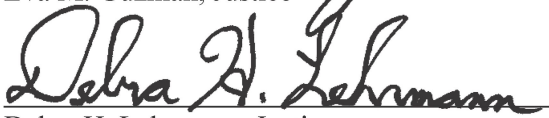
   d. submit a copy of the Order for publication in the *Texas Register*.

Dated: December 23, 2020

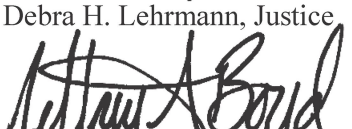
Nathan L. Hecht, Chief Justice



Eva M. Guzman, Justice

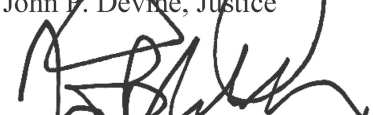


Debra H. Lehrmann, Justice

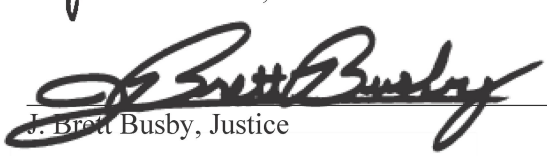


Jeffrey S. Boyd, Justice

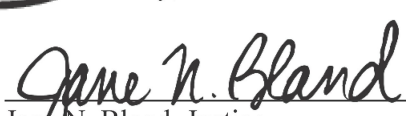
John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

Rebeca A. Huddle, Justice

RULE 47. CLAIMS FOR RELIEF

An original pleading which sets forth 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 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~~or

(5) only non-monetary relief; 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 99. ISSUANCE AND FORM OF CITATION

* * *

b. **Form.** The citation shall (1) be styled "The State of Texas," (2) be signed by the clerk under seal of court, (3) contain name and location of the court, (4) show date of filing of the petition, (5) show date of issuance of citation, (6) show file number, (7) show names of parties, (8) be directed to the defendant, (9) show the name and address of attorney for plaintiff, otherwise the address of plaintiff, (10) contain the time within which these rules

require the defendant to file a written answer with the clerk who issued citation, (11) contain address of the clerk, ~~and~~ (12) ~~shall~~ notify the defendant that in case of failure of defendant to file and answer, judgment by default may be rendered for the relief demanded in the petition, and (13) notify the defendant that the defendant may be required to make initial disclosures. The citation shall direct the defendant to file a written answer to the plaintiff's petition on or before 10:00 a.m. on the Monday next after the expiration of twenty days after the date of service thereof. The requirement of subsections 10, ~~and~~ 12, and 13 of this section shall be in the form set forth in section c of this rule.

c. **Notice.** The citation shall include the following notice to the defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org."

* * *

RULE 169. EXPEDITED ACTIONS

(a) *Application.*

~~(1)~~ The expedited actions process in this rule applies to a 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 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 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. To ensure uniformity, and pursuant to section 22.004(b) of the Texas Government Code, Rule 169's application is not limited to suits filed in county courts at law; any suit that falls within the definition of subsection (a) is subject to the provisions of the rule. However, certain suits are exempt from Rule 169's application by statute. *See, e.g.*, TEX. ESTATES CODE §§ 53.107, 1053.105. The discovery limitations for expedited actions are set out in Rule 190.2, which is also amended to implement section 22.004(h-1) of the Texas Government Code.

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~~the first initial disclosures are due and continues ~~until~~for 180 days ~~after the date the first request for discovery of any kind is served on a party~~.

(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~~the first 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~~the first 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. 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 on another party until after the other party's 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.

* * *

193.6 Failing to Timely Respond - Effect on Trial

(a) **Exclusion of evidence and exceptions.** A party who fails to make, amend, or supplement a discovery response, including a required disclosure, in a timely manner may not introduce in evidence the material or information that was not timely disclosed, or offer the testimony

of a witness (other than a named party) who was not timely identified, unless the court finds that:

(1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or

(2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties.

(b) **Burden of establishing exception.** The burden of establishing good cause or the lack of unfair surprise or unfair prejudice is on the party seeking to introduce the evidence or call the witness. A finding of good cause or of the lack of unfair surprise or unfair prejudice must be supported by the record.

(c) **Continuance.** Even if the party seeking to introduce the evidence or call the witness fails to carry the burden under paragraph (b), the court may grant a continuance or temporarily postpone the trial to allow a response to be made, amended, or supplemented, and to allow opposing parties to conduct discovery regarding any new information presented by that response.

* * *

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), (c), 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.** If a party does not produce copies of all responsive documents, electronically stored information, and tangible things with the response, the response must state a reasonable time and method for the production of these items. The responding party must produce the items at the time and in the method 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 within 30 days after the filing of the first answer or general appearance 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 or general appearance 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;

(~~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, annulment, or to declare a marriage void, a party must, without awaiting a discovery request, provide to the other party the following, for the past two years or since the date of marriage, whichever is less:

(A) all deed and lien information on any real property owned and all lease information on any real property leased;

(B) all statements for any pension plan, retirement plan, profit-sharing plan, employee benefit plan, and individual retirement plan;

(C) all statements or policies for each current life, casualty, liability, and health insurance policy; and

(D) all statements 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) information regarding 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;

(3) a petition for habeas corpus;

(4) an action under the Family Code filed by or against the Title IV-D agency in a Title IV-D case;

(5) a child protection action under Subtitle E, Title 5 of the Family Code;

(6) a protective order action under Title 4 of the Texas Family Code;

(7) other actions involving domestic violence; and

(8) an action on appeal from a justice court.

~~**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.

~~**A 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.

(c) **Proceedings Exempt from Pretrial Disclosure.** An action arising under the Family Code filed by or against the Title IV-D agency in a Title IV-D case is exempt from pretrial disclosure, but a court may order the parties to make particular disclosures and set the time for disclosure.

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. 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 193.1, 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~~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 19~~4~~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) except when the expert is the responding party's attorney and is testifying to attorney fees, 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.

(c) **Expert Communications Protected.** Communications between the party's attorney and any testifying expert witness in the case are protected from discovery, regardless of the form of the communications, except to the extent that the communications:

(1) relate to compensation for the expert's study or testimony;

(2) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(3) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(d) **Draft Expert Reports and Disclosures Protected.** A draft expert report or draft disclosure required under this rule is protected from discovery, regardless of the form in which the draft is recorded.

* * *

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). New Rules 195.5(b) and (c) are based on Federal Rules of Civil Procedure 26(b)(4)(B) and (C) and are added to clarify protections available.

RULE 196. REQUESTS FOR PRODUCTION AND INSPECTION TO PARTIES; REQUESTS AND MOTIONS FOR ENTRY UPON PROPERTY

* * *

196.2 Response to Request for Production and Inspection.

(a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the request~~, except that a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request~~.

* * *

196.7 Request of Motion for Entry Upon Property.

* * *

(c) **Response to request for entry.**

(1) **Time to respond.** The responding party must serve a written response on the requesting party within 30 days after service of the request~~, except that a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request~~.

* * *

RULE 197. INTERROGATORIES TO PARTIES

* * *

197.2 Response to Interrogatories.

(a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the interrogatories~~, except that a defendant served with interrogatories before the defendant's answer is due need not respond until 50 days after service of the interrogatories~~.

* * *

RULE 198. REQUESTS FOR ADMISSIONS

* * *

198.2 Response to Requests for Admissions.

(a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the request~~, except that a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request~~.

* * *

TRD-202005730
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: December 29, 2020

♦ ♦ ♦

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9148

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULES OF CIVIL PROCEDURE 106 AND 108a

ORDERED that:

1. On August 21, 2020, in Misc. Docket No. 20-9103, the Court preliminarily approved amendments to Texas Rules of Civil Procedure 106 and 108a, to be effective December 31, 2020, and invited public comment.

2. The Court has reviewed all comments received, and no additional changes have been made to the rules. This Order gives final approval to the amendments set forth in Misc. Docket No. 20-9103.

3. The Clerk is directed to:

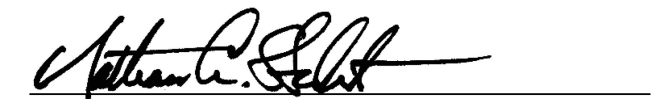
   a. file a copy of this Order with the Secretary of State;

   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*;

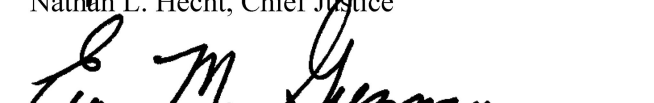
   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of the Order for publication in the *Texas Register*.

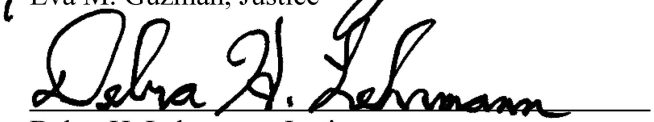
Dated: December 18, 2020



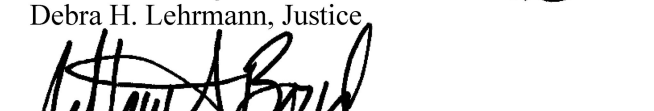
Nathan L. Hecht, Chief Justice



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

Rebeca A. Huddle, Justice

TRD-202005657

Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: December 21, 2020

♦ ♦ ♦

Preliminary Approval of Amendments to Texas Rules of Civil Procedure 145, 502.3, and 506.4 and to the Form Statement of Inability to Afford Payment of Court Costs

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9154

PRELIMINARY APPROVAL OF AMENDMENTS TO TEXAS RULES OF CIVIL PROCEDURE 145, 502.3, AND 506.4 AND TO THE FORM STATEMENT OF INABILITY TO AFFORD PAYMENT OF COURT COSTS

ORDERED that:

1. The Court preliminarily approves amendments to Texas Rules of Civil Procedures 145, 502.3, and 506.4 and to the form Statement of Inability to Afford Payment of Court Costs.

2. The amendments make two sets of substantive changes to Rule 145.

   - First, paragraph (d) has been amended to clarify that certain categories of evidence are prima facie proof of the declarant's inability to afford costs. Paragraph (e) now requires that a contest by a court reporter satisfy the same conditions as a contest by the clerk or a party. These changes are intended to reduce frivolous challenges to a Statement, which cost time and resources.

   - Second, paragraph (f)(4) has been amended to require that an order directing the declarant to pay costs include notice of the declarant's right to appeal.

   Additional stylistic changes have resulted in some paragraphs being rearranged or renumbered. This order includes both a clean copy of the amended rule and a rough redline demonstrating the changes. In the event of a conflict between the two, the clean copy controls.

3. Rule 502.3 is amended to update a reference to Rule 145 in paragraph (c). A few other changes are made for conformity and readability. The changes to this rule are demonstrated in redline only.

4. Rule 506.4 is amended to correct a typographical error in the heading of paragraph (c). This change is demonstrated in redline only.

5. The form Statement has been amended to give the declarant the option of making an affidavit before a notary rather than a declaration under penalty of perjury. Other wordsmithing changes have been made. Only a clean version of the amended form is included. The Office of Court Administration is directed to prepare a bilingual form

Statement, which will be posted at https://www.txcourts.gov/rules-forms/forms/ when available.

6. The Court will issue a final approval order at least 60 days after publication of the amendments in the February edition of the *Texas Bar Journal*. The amendments may change in response to public comments.

7. Comments should be sent to rulescomments@txcourts.gov. The Court requests that comments be sent by April 2, 2021.

8. The Clerk is directed to:

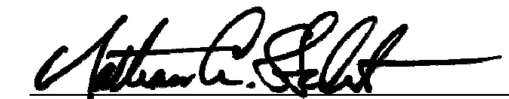
   a. file a copy of this Order with the Secretary of State;

   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*;

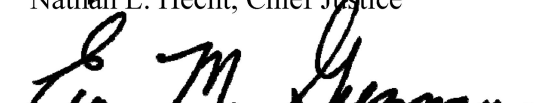
   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of the Order for publication in the *Texas Register*.

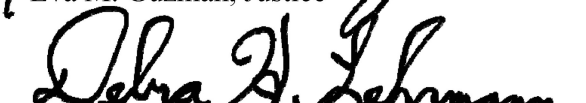
Dated: December 23, 2020



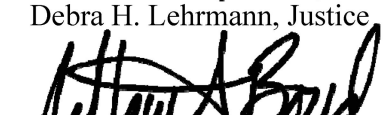
Nathan L. Hecht, Chief Justice



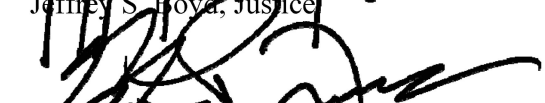
Eva M. Guzman, Justice



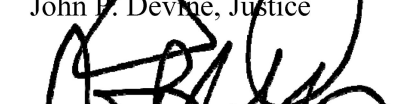
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice

J. Brett Busby, Justice

Jane N. Bland, Justice

Rebeca A. Huddle, Justice

RULE 145. PAYMENT OF COSTS NOT REQUIRED
(Clean, As Amended)

(a) *Costs Defined.* "Costs" mean any fee charged by the court or an officer of the court that could be taxed in a bill of costs, including, but not limited to, filing fees, fees for issuance and service of process, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.

(b) *Sworn Statement Required.* A party who cannot afford payment of court costs must file the Statement of Inability to Afford Payment of Court Costs approved by the Supreme Court or another sworn document containing the same information. A "sworn" Statement is one that is signed before a notary or made under penalty of perjury. In this rule, "declarant" means the party filing the Statement.

(c) *Duties of the Clerk.* The clerk:

(1) must make the Statement available to any person for free;

(2) may return a Statement for correction only if it is not sworn—not for any other reason;

(3) must, on the filing of a sworn Statement, docket the case, issue citation, and provide any other service that is ordinarily provided to a party; and

(4) may, without delaying compliance with (3), ask the court to direct the declarant to correct or clarify a sworn Statement that contains a material defect.

(d) *Prima Facie Evidence of Inability to Afford Payment of Costs.* The declarant should submit with the Statement any available evidence of the declarant's inability to afford payment of costs. An attachment demonstrating any of the following is prima facie evidence:

(1) the declarant receives benefits from a means-tested government entitlement program;

(2) the declarant is being represented in the case by an attorney who is providing free legal services to the declarant through:

(A) a provider funded by the Texas Access to Justice Foundation;

(B) a provider funded by the Legal Services Corporation; or

(C) a nonprofit that provides civil legal services to persons living at or below 200% of the federal poverty guidelines published annually by the United States Department of Health and Human Services; or

(3) the declarant has applied for free legal services for the case through a provider listed in (2) and was determined to be financially eligible but was declined representation.

(e) *Motion to Require Payment of Costs*. A motion to require the declarant to pay costs must comply with this paragraph.

(1) *By the Clerk, the Reporter, or a Party.* A motion filed by the clerk, the court reporter, or a party must contain sworn evidence—not merely allegations—either that the Statement was materially false when made or that because of changed circumstances, it is no longer true.

(2) *By the Court*. The court on its own may require the declarant to prove the inability to afford costs when evidence comes before the court that the declarant may be able to afford costs or when an officer or professional must be appointed in the case.

(f) *Notice; Hearing; Requirements of Order.* When a Statement has been filed, the declarant must not be ordered to pay costs unless these procedural requirements have been satisfied:

(1) *Notice and Hearing.* The declarant must not be required to pay costs without an oral evidentiary hearing. The declarant must be given 10 days' notice of the hearing. Notice must either be in writing and served in accordance with Rule 21a or given in open court. At the hearing, the burden is on the declarant to prove the inability to afford costs.

(2) *Findings Required.* An order requiring the declarant to pay costs must be supported by detailed findings that the declarant can afford to pay costs.

(3) *Partial and Delayed Payment.* The court may order that the declarant pay the part of the costs the declarant can afford or that payment be made in installments. But the court must not delay the case if payment is made in installments.

(4) *Order Must State Notice of Right to Appeal.* An order requiring the declarant to pay costs must state in conspicuous type: "You may challenge this order by filing a motion in the court of appeals within 10 days after the date this order is signed. See Texas Rule of Civil Procedure 145."

(g) *Review of Trial Court Order.*

(1) *Only Declarant May Challenge; Motion.* Only the declarant may challenge an order issued by the trial court under this rule. The declarant may challenge the order by motion filed in the court of appeals with jurisdiction over an appeal from the judgment in the case. The declarant is not required to pay any filing fees related to the motion in the court of appeals.

(2) *Time for Filing; Extension.* The motion must be filed within 10 days after the trial court's order is signed. The court of appeals may extend the deadline by 15 days if the declarant demonstrates good cause for the extension in writing.

(3) *Record.* After a motion is filed, the court of appeals must promptly send notice to the trial court clerk and the court reporter requesting preparation of the record of all trial court proceedings on the declarant's claim of indigence. The court may set a deadline for filing the record. The record must be provided without charge.

(4) *Court of Appeals to Rule Promptly.* The court of appeals must rule on the motion at the earliest practicable time.

(h) *Judgment.* The judgment must not require the declarant to pay costs, and a provision in the judgment purporting to do so is void, unless the court has issued an order that complies with (f), or the declarant has obtained a monetary recovery, and the court orders the recovery to be applied toward payment of costs.

Notes and Comments

Comment to 2016 Change: The rule has been rewritten. Access to the civil justice system cannot be denied because a person cannot afford to pay court costs. Whether a particular fee is a court cost is governed by this rule, Civil Practice and Remedies Code Section 31.007, and case law.

The issue is not merely whether a person can pay costs, but whether the person can afford to pay costs. A person may have sufficient cash on hand to pay filing fees, but the person cannot afford the fees if paying them would preclude the person from paying for basic essentials, like housing or food. Experience indicates that almost all filers described in (e)(1)-(3), and most filers described in (e)(4), cannot in fact afford to pay costs.

Because costs to access the system—filing fees, fees for issuance of process and notices, and fees for service and return—are kept relatively small, the expense involved in challenging a claim of inability to afford costs often exceeds the costs themselves. Thus, the rule does not allow the clerk or a party to challenge a litigant's claim of inability to afford costs without sworn evidence that the claim is false. The filing of a Statement of Inability to Afford Payment of Court Costs—which may either be sworn to before a notary or made under penalty of perjury, as permitted by Civil Practice and Remedies Code Section 132.001—is all that is needed to require the clerk to provide ordinary services without payment of fees and costs. But evidence may come to light that the claim was false when made. And the declarant's circumstances may change, so that the claim is no longer true. Importantly, costs may increase with the appointment of officers or professionals in the case, or when a reporter's record must be prepared. The reporter is always allowed to challenge a claim of inability to afford costs before incurring the substantial expense of record preparation. The trial court always retains discretion to require evidence of an inability to afford costs.

Comment to 2021 Change: The rule has been amended to clarify that proof of any criterion in paragraph (d) is prima facie evidence of the declarant's inability to afford payment of costs. Paragraph (e) has been amended to require that a contest by the court reporter satisfy the same conditions as a contest by the clerk or a party. These amendments are intended to reduce frivolous challenges to a Statement, which cost time and resources.

The rule has also been amended to require in paragraph (f)(4) that an order requiring payment of costs include conspicuous notice of the declarant's right to appeal.

To accommodate these substantive changes, some paragraphs have been rearranged and relettered or renumbered. Other clarifying and stylistic changes have been made.

RULE 145. PAYMENT OF COSTS NOT REQUIRED

~~(a) *General Rule.*~~

~~A party who files a Statement of Inability to Afford Payment of Court Costs cannot be required to pay costs except by order of the court as provided by this rule. After the Statement is filed, the clerk must docket the case, issue citation, and provide any other service that is ordinarily provided to a party. The Statement must either be sworn to before a notary or made under penalty of perjury. In this rule, "declarant" means the party filing the Statement.~~

~~(b) *Supreme Court Form; Clerk to Provide.* The declarant must use the form Statement approved by the Supreme Court, or the Statement must include the information required by the Court-approved form. The clerk must make the form available to all persons without charge or request.~~

~~(c)~~ *Costs Defined.* "Costs" mean any fee charged by the court or an officer of the court that could be taxed in a bill of costs, including, but not limited to, filing fees, fees for issuance and service of process, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.

(b) *Sworn Statement Required.* A party who cannot afford payment of court costs must file the Statement of Inability to Afford Payment of Court Costs approved by the Supreme Court or another sworn document containing the same information. A "sworn" Statement is one that is signed before a notary or made under penalty of perjury. In this rule, "declarant" means the party filing the Statement.

~~(d) *Defects.*~~(c) *Duties of the Clerk.* The clerk~~:~~

(1) must make the Statement available to any person for free;

(2) may ~~refuse to file~~return a Statement ~~that~~for correction only if it is not sworn ~~to before a notary or made under penalty of perjury. No~~ not for any other ~~defect is~~reason;

(3) must, on the filing of a ~~ground for refusing~~sworn Statement, docket the case, issue citation, and provide any other service that is ordinarily provided to ~~file a Statement or requiring the party to pay costs. If a defect or omission in a Statement is material, the court on its own motion or on motion of the clerk or any party~~ party; and

(4) may, without delaying compliance with (3), ask the court to direct the declarant to correct or clarify ~~the~~a sworn Statement that contains a material defect.

~~(e)~~ (d) *Prima Facie Evidence of Inability to Afford ~~Costs Required.~~* ~~The Statement must say that the declarant cannot afford to pay costs.~~ *Payment of Costs.* The declarant ~~must~~

~~provide in~~should submit with the Statement~~, and, if~~ any available~~, in attachments to the Statement,~~ evidence of the declarant's inability to afford ~~costs, such as~~payment of costs. An attachment demonstrating any of the following is prima facie evidence:

(1) ~~that~~ the declarant ~~:~~

~~(1)~~ receives benefits from a means-tested government entitlement program~~, eligibility for which is dependent on the recipient's means~~;

(2) the declarant is being represented in the case by an attorney who is providing free legal services to the declarant~~, without contingency,~~ through:

(A) a provider funded by the Texas Access to Justice Foundation;

(B) a provider funded by the Legal Services Corporation; or

(C) a nonprofit that provides civil legal services to persons living at or below 200% of the federal poverty guidelines published annually by the United States Department of Health and Human Services; or

(3) the declarant has applied for free legal services for the case through a provider listed in (~~c~~)(2) and was determined to be financially eligible but was declined representation~~; or~~.

~~(4) does not have funds~~

(e) *Motion to* ~~afford payment~~*Require Payment of* ~~costs.~~

~~(f) *Requirement to Pay Costs Notwithstanding Statement.* The court may order the declarant to pay costs only as follows~~. A motion ~~:~~

~~(1) *On Motion by the Clerk or a Party.* The clerk or any party may move~~ to require the declarant to pay costs ~~only if the motion contains~~must comply with this paragraph.

(1) *By the Clerk, the Reporter, or a Party.* A motion filed by the clerk, the court reporter, or a party must contain sworn evidence~~,~~ not merely ~~on information or belief:~~

~~(A)~~ allegations ~~either~~ that the Statement was materially false when ~~it was~~ made~~;~~ or

~~(B)~~ that because of changed circumstances, ~~the Statement~~ it is no longer true ~~in material respects~~.

~~(2) *On Motion by the Attorney Ad Litem for a Parent in Certain Cases.* An attorney ad litem appointed to represent a parent under Section 107.013, Family~~

~~Code, may move to require the parent to pay costs only if the motion complies with (f)(1).~~

~~(3) *On Motion by the Court Reporter.* When the declarant requests the preparation of a reporter's record but cannot make arrangements to pay for it, the court reporter may move to~~*By the Court*. The court on its own may require the declarant to prove the inability to afford costs~~.~~

(2) ~~(4) *On the Court's Own Motion.* Whenever~~ when evidence comes before the court that the declarant may be able to afford costs~~,~~ or when an officer or professional must be appointed in the case~~, the court may require the declarant to prove the inability to afford costs~~.

(f) *Notice; Hearing; Requirements of Order.* When a Statement has been filed, the declarant must not be ordered to pay costs unless these procedural requirements have been satisfied:

(1~~(5)~~ *Notice and Hearing.* The declarant ~~may~~must not be required to pay costs without an oral evidentiary hearing. The declarant must be given 10 days' notice of the hearing. Notice must either be in writing and served in accordance with Rule 21a or given in open court. At the hearing, the burden is on the declarant to prove the inability to afford costs.

(~~6~~2) *Findings Required.* An order requiring the declarant to pay costs must be supported by detailed findings that the declarant can afford to pay costs.

(~~7~~3) *Partial and Delayed Payment.* The court may order that the declarant pay the part of the costs the declarant can afford or that payment be made in installments. But the court must not delay the case if payment is made in installments.

(4) *Order Must State Notice of Right to Appeal.* An order requiring the declarant to pay costs must state in conspicuous type: "You may challenge this order by filing a motion in the court of appeals within 10 days after the date this order is signed. See Texas Rule of Civil Procedure 145."

(g) *Review of Trial Court Order.*

(1) *Only Declarant May Challenge; Motion.* Only the declarant may challenge an order issued by the trial court under this rule. The declarant may challenge the order by motion filed in the court of appeals with jurisdiction over an appeal from the judgment in the case. The declarant is not required to pay any filing fees related to the motion in the court of appeals.

(2) *Time for Filing; Extension.* The motion must be filed within 10 days after the trial court's order is signed. The court of appeals may extend the deadline by 15 days if the declarant demonstrates good cause for the extension in writing.

(3) *Record.* After a motion is filed, the court of appeals must promptly send notice to the trial court clerk and the court reporter requesting preparation of the record of all trial court proceedings on the declarant's claim of indigence. The court may set a deadline for filing the record. The record must be provided without charge.

(4) *Court of Appeals to Rule Promptly.* The court of appeals must rule on the motion at the earliest practicable time.

(h) *Judgment.* The judgment must not require the declarant to pay costs, and a provision in the judgment purporting to do so is void, unless the court has issued an order ~~under~~that complies with (f), or the declarant has obtained a monetary recovery, and the court orders the recovery to be applied toward payment of costs.

Notes and Comments

Comment to 2016 Change: The rule has been rewritten. Access to the civil justice system cannot be denied because a person cannot afford to pay court costs. Whether a particular fee is a court cost is governed by this rule, Civil Practice and Remedies Code Section 31.007, and case law.

The issue is not merely whether a person can pay costs, but whether the person can afford to pay costs. A person may have sufficient cash on hand to pay filing fees, but the person cannot afford the fees if paying them would preclude the person from paying for basic essentials, like housing or food. Experience indicates that almost all filers described in (e)(1)-(3), and most filers described in (e)(4), cannot in fact afford to pay costs.

Because costs to access the system—filing fees, fees for issuance of process and notices, and fees for service and return—are kept relatively small, the expense involved in challenging a claim of inability to afford costs often exceeds the costs themselves. Thus, the rule does not allow the clerk or a party to challenge a litigant's claim of inability to afford costs without sworn evidence that the claim is false. The filing of a Statement of Inability to Afford Payment of Court Costs—which may either be sworn to before a notary or made under penalty of perjury, as permitted by Civil Practice and Remedies Code Section 132.001—is all that is needed to require the clerk to provide ordinary services without payment of fees and costs. But evidence may come to light that the claim was false when made. And the declarant's circumstances may change, so that the claim is no longer true. Importantly, costs may increase with the appointment of officers or professionals in the case, or when a reporter's record must be prepared. The reporter is always allowed to challenge a claim of inability to afford costs before incurring the substantial expense of record preparation. The trial court always retains discretion to require evidence of an inability to afford costs.

Comment to 2021 Change: The rule has been amended to clarify that proof of any criterion in paragraph (d) is prima facie evidence of the declarant's inability to afford court costs. Paragraph (e) has been amended to require that a contest by the court reporter satisfy the same

conditions as a contest by the clerk or a party. These amendments are intended to reduce frivolous challenges to a Statement, which cost time and resources.

The rule has also been amended to require in paragraph (f)(3) that an order requiring payment of costs include conspicuous notice of the declarant's right to appeal.

To accommodate these substantive changes, some paragraphs have been rearranged and relettered or renumbered. Other clarifying and stylistic changes have been made.

RULE 502.3. FEES; INABILITY TO AFFORD FEES

(a) *Fees and Statement of Inability to Afford Payment of Court Costs*. On filing the petition, the plaintiff must pay the appropriate filing fee and service fees, if any, with the court. A plaintiff who is unable to afford to pay the fees must file a Statement of Inability to Afford Payment of Court Costs. The Statement must either be sworn to before a notary or made under penalty of perjury. Upon filing the Statement, the clerk must docket the action, issue citation, and provide any other customary services.

(b) *Supreme Court Form; Contents of Statement*. The plaintiff must use the form Statement approved by the Supreme Court, or the Statement must include the information required by the Court-approved form. The clerk must make the form available to ~~all~~ any person~~s~~ for free~~without charge or request~~.

(c) *Certificate of Legal-Aid Provider*. If the party is represented by an attorney who is providing free legal services ~~because of the party's indigence, without contingency, and the attorney is providing services~~ either directly or by referral from a legal-aid provider described in Rule 145(d)~~(e)(2)~~, the attorney may file a certificate confirming that the provider screened the party for eligibility under the income and asset guidelines established by the provider. A Statement that is accompanied by the certificate of a legal-aid provider may not be contested under (d).

(d) *Contest*.

(1) Unless a certificate is filed under (c), the defendant may file a contest of the Statement at any time within 7 days after the day the defendant's answer is due. If the Statement attests to receipt of government entitlement based on indigence, the Statement may only be contested with regard to the veracity of the attestation.

(2) If contested, the judge must hold a hearing to determine the plaintiff's ability to afford the fees. At the hearing, the burden is on the plaintiff to prove the inability to afford fees.

~~(2)~~(3) The judge may, regardless of whether the defendant contests the Statement, examine the Statement and conduct a hearing to determine the plaintiff's ability to afford fees.

~~(3)~~(4) If the judge determines that the plaintiff is able to afford the fees, the judge must enter a written order listing the reasons for the determination, and the plaintiff must pay the fees in the time specified in the order or the case will be dismissed without prejudice.

RULE 506.4. WRIT OF CERTIORARI

* * *

(c) *Bond, Cash Deposit, or Sworn Statement of ~~Indigency~~ Inability to Pay Required. . . .*

* * *

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

Cause Number: _____
(The Clerk's office will fill in the Cause Number when you file this form)

_____
_____
(Print style of case as listed on the petition.)

In the *(check one)*:
_____ *Court Number* ☐ District Court ☐ County Court / County Court at Law ☐ Probate Court ☐ Justice Court
_____ Texas
County

Statement of Inability to Afford Payment of Court Costs or an Appeal Bond

1. Your Information

My full legal name is: _____ My date of birth is: ____/____/____
First Middle Last Month/Day/Year

My address is: *(Home)* _____
(Mailing) _____

My phone number: _____ My email: _____

About my **dependents:** "The people who depend on me financially are listed below.

	Name	*Age*	*Relationship to me*
1.			
2.			
3.			
4.			
5.			

2. Are you represented by Legal Aid? *(Check ONLY ONE box)*

☐ I am being represented in this case for free by an attorney who works for a legal aid provider or who received my case through a legal aid provider. I have attached the certificate the legal aid provider gave me as 'Exhibit: Legal Aid Certificate. **– OR –**

☐ I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case. **– OR –**

☐ I am not represented by legal aid.

3. Do you receive public benefits? *(Check ONLY ONE box)*

☐ I do not receive needs-based public benefits. **– OR –**

☐ I receive these **public benefits/government entitlements**:
(Check ALL boxes that apply and attach proof to this form, such as a copy of an eligibility form or check.)

☐ Food stamps/SNAP ☐ TANF ☐ Medicaid ☐ CHIP ☐ SSI ☐ WIC ☐ AABD
☐ Public Housing or Section 8 Housing ☐ Low-Income Energy Assistance ☐ Emergency Assistance
☐ Telephone Lifeline ☐ Community Care via DADS ☐ LIS in Medicare ("Extra Help")
☐ Needs-based VA Pension ☐ Child Care Assistance under Child Care and Development Block Grant
☐ County Assistance, County Health Care, or General Assistance (GA)
☐ Other: _____

4. What are your monthly income sources?

"My take-home pay is:$_____in monthly wages. I work as a_____ for_____.
I receive: *Your job title* *Your employer*

$_____in monthly unemployment. I have been unemployed since *(date)*_____.
$_____in public benefits per month.
$_____from people in my household each month. (*List for income received from people other than your spouse.*)
$_____from ☐ Retirement/Pension ☐ Tips, bonuses ☐ Disability ☐ Worker's comp
☐ Social Security ☐ Military Housing ☐ Dividends, interest, royalties
☐ Child or spousal support ☐ Spouse's income (*List if your spouse is not your opponent.*)
$_____from other jobs/sources of income. *(Describe)* _____
$_____is my *total* **monthly** income.

5. What is the value of your assets or property?

"My **property** includes:	**Value***
Cash	$_____
Bank accounts, other financial assets	
_____	$_____
_____	$_____
_____	$_____
Vehicles (cars, boats) *(make and year)*	
_____	$_____
_____	$_____
_____	$_____
Other property (like jewelry, stocks, land, a 2nd house. *Do not list your homestead.*)	
_____	$_____
_____	$_____
_____	$_____
***Total* Value of Property →**	**$_____**

6. What are your monthly expenses that are not deducted from your paycheck?

"My **monthly expenses** are:	**Amount**
Rent/house payments/maintenance	$_____
Food and household supplies	$_____
Utilities and telephone	$_____
Clothing and laundry	$_____
Medical and dental expenses	$_____
Insurance (life, health, auto, etc.)	$_____
School and child care	$_____
Transportation, auto repair, gas	$_____
Child / spousal support	$_____
Wages withheld by court order	$_____
Other expenses	$_____
Debt payments paid to: *(List)*	$_____
_____	$_____
_____	$_____
***Total* Monthly Expenses →**	**$_____**

*The value is the amount the item would sell for less the amount you still owe on it, if anything.

7. Are there debts or other facts explaining your financial situation?

"My **debts** include: *(List debt and amount owed)* _____
_____
_____

(If you want the court to consider other facts, such as unusual medical expenses, family emergencies, etc., attach another page to this form labeled "Exhibit: Additional Supporting Facts.") *Check here if you attach another page.*☐

8. Ability to Pay Court Costs: ***(Check ONLY ONE box)***

☐ I cannot afford to pay court costs.
☐ I cannot furnish an appeal bond or pay a cash deposit to appeal a justice court decision, and I cannot afford to pay court costs.

9. Declaration/Affidavit: ***(Check and complete ONLY ONE box)***

☐ Declaration: I declare under penalty of perjury that the foregoing is true and correct.
My name is_____. My date of birth is :____/___/_____.
My address is _____
Street *City* *State* *Zip Code* *Country*
_____signed on ___/____/____ in _____ County, _____
Signature *Month/Day/Year* *County name* *State*

☐ Notary: I swear under penalty of perjury that the foregoing is true and correct.
_____ _____
Your Printed Name Your Signature

Sworn to and subscribed before me this _____ day of _____, 20_____.
_____ (NOTARY)

TRD-202005701
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: December 26, 2020

♦ ♦ ♦

Texas Department of Transportation

Correction of Error

The Texas Department of Transportation proposed amendments to 43 TAC §1.85 in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9400). Due to an error by the Texas Register, a portion of the text was published incorrectly.

Section 1.85(a)(3)(B)(iv) should have been shown as the following:

(iv) review and consider how personal mobility, or micromobility, devices relate to bicycling and pedestrian issues and to other road users.

This content was all new, not just the clause number as shown in the publication.

TRD-202005718

♦ ♦ ♦

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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