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 This proposal and the rules as repealed or amended by this proposal are referred to collectively as the "proposed rules."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.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005668
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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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.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005670
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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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.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005671

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Earliest possible date of adoption: February 7, 2021
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.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005672

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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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.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005673
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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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.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005674
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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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.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005675
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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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.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005676
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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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.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005677

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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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.

TRD-202005710
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.

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

TRD-202005711

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.

TRD-202005712
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.

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

TRD-202005713
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

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.

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

TRD-202005714
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 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.

TRD-202005715
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.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005717
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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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.

TRD-202005702
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.

TRD-202005704
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.

Filed with the Office of the Secretary of State on December 21, 2020.

TRD-202005646
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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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.

TRD-202005655
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 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.

TRD-202005656
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

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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~~].

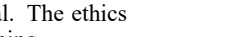
(4) If a certified procurement professional allows the certification to expire, an extension may be requested within thirty calendar days from the date of expiration. If the division approves the extension, the certified procurement professional has sixty calendar days from the date of extension approval 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