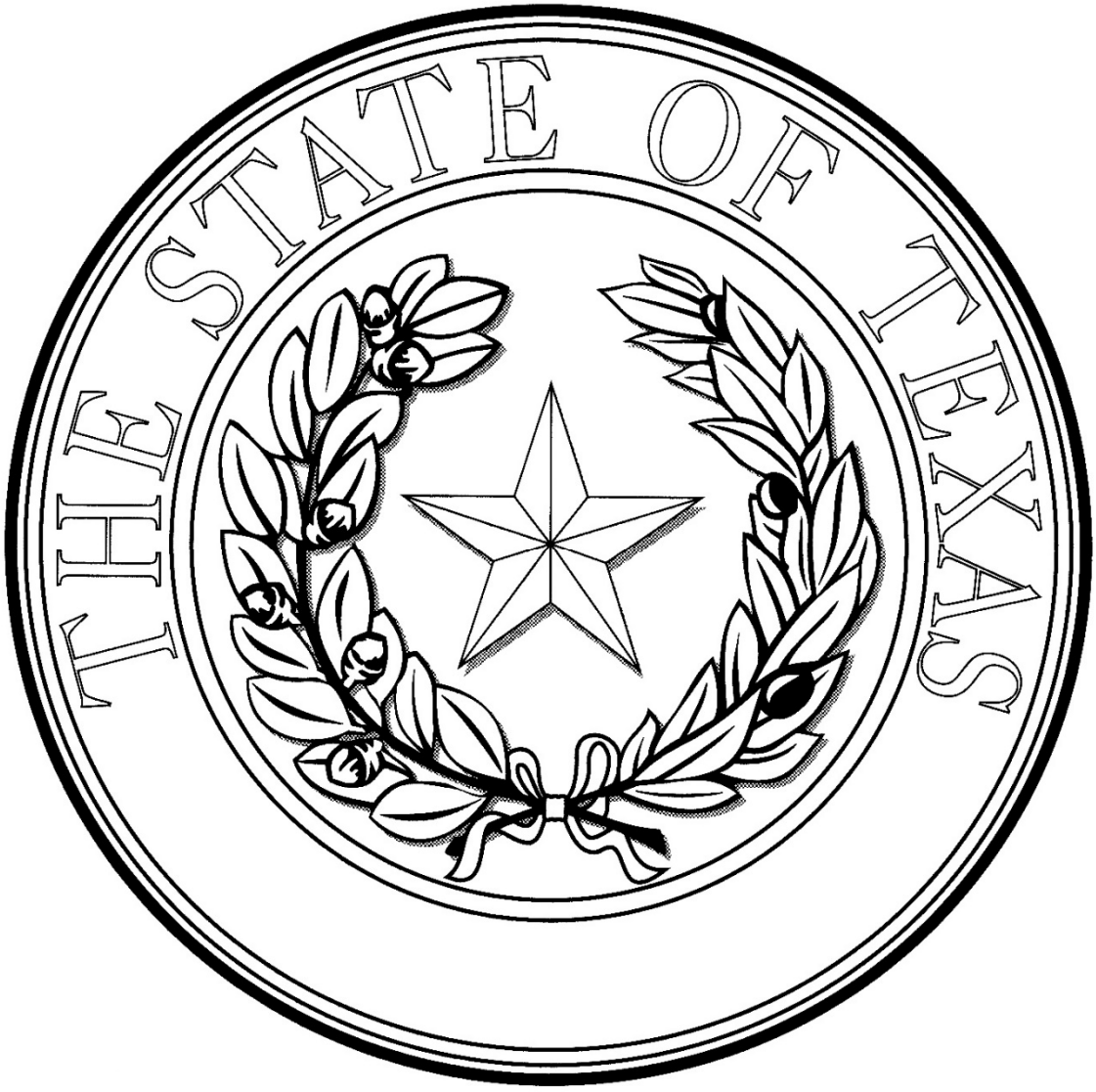
TEXAS REGISTER

Volume 48 Number 18 *May 5, 2023* *Pages 2255 - 2422*



a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, Texas 78711
(512) 463-5561
FAX (512) 463-5569

https://www.sos.texas.gov
register@sos.texas.gov

Texas Register, **(ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $340.00 ($502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register,* 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

In This Issue

WITHDRAWN RULES

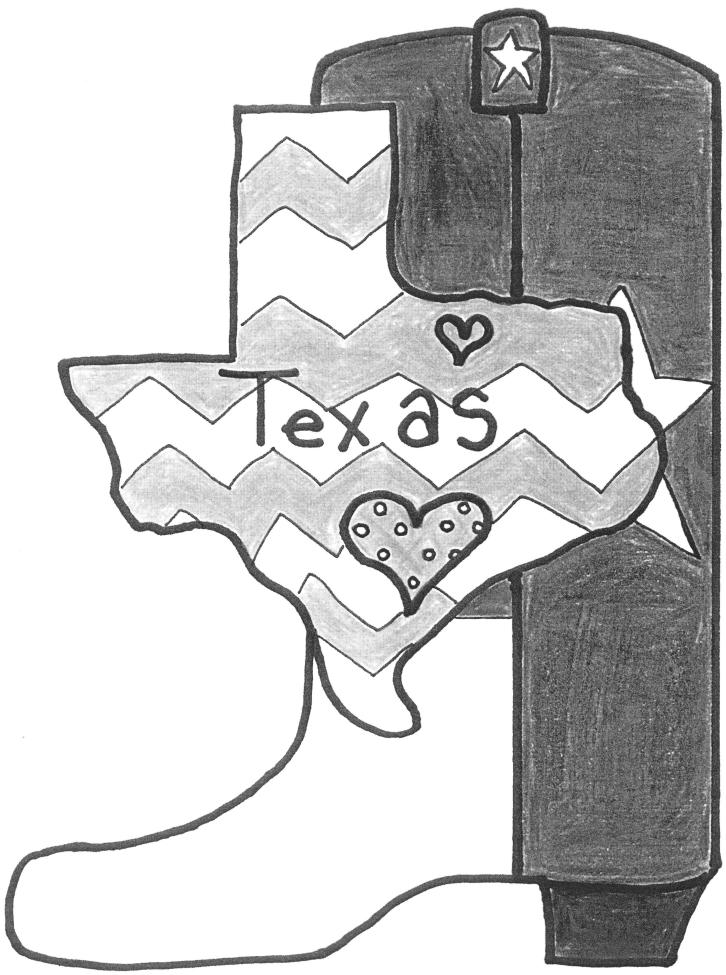
ADOPTED RULES

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Public Utility Commission of Texas


Texas

THE GOVERNOR

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

Appointments

Appointments for April 18, 2023

Appointed to the Texas Funeral Service Commission for a term to expire February 1, 2029, Dianne W. Hefley of Amarillo, Texas (Ms. Hefley is being reappointed).

Appointed to the Texas Funeral Service Commission for a term to expire February 1, 2029, Kristin D. Tips of San Antonio, Texas (Ms. Tips is being reappointed).

Appointed to the State Preservation Board for a term to expire February 1, 2025, Alethea Swann Bugg of San Antonio, Texas (Ms. Bugg is being reappointed).

Appointments for April 19, 2023

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2025, Devin D. Duvak of Burleson, Texas (Mr. Duvak is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2025, Otis W. Jones, Jr. of Humble, Texas (Mr. Jones is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2025, Binoy J. Kurien of Pearland, Texas (Mr. Kurien is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2025, Edward E. "Eddie" Martin, Jr. of Austin, Texas (Mr. Martin is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2025, Scott A. McDonald of Keller, Texas (Mr. McDonald is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2025, Stephen C. Shang of Austin, Texas (Mr. Shang is being reappointed).

Appointments for April 24, 2023

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2025, John K. "Keith" Crow of Barksdale, Texas (replacing Lana P. Guthrie of Rocksprings, who resigned).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2027, Fohn W. Bendele of Hondo, Texas (replacing Tomas "Tommy" Ramirez, III of Moore whose term expired).

Appointments for April 25, 2023

Appointed to the Texas Board of Occupational Therapy Examiners for a term to expire February 1, 2029, Estrella Barrera of Austin, Texas (Ms. Barrera is being reappointed).

Appointed to the Texas Board of Occupational Therapy Examiners for a term to expire February 1, 2029, Blanca E. Cardenas of Mission, Texas (Ms. Cardenas is being reappointed).

Appointed to the Texas Racing Commission for a term to expire February 1, 2027, Margaret L. Martin of Boerne, Texas (Ms. Martin is being reappointed).

Appointed to the Texas Racing Commission for a term to expire February 1, 2029, Michael J. "Mike" Moore of Fort Worth, Texas (Mr. Moore is being reappointed).

Appointments for April 26, 2023

Appointed to the Department of Information Resources for a term to expire February 1, 2029, Michael D. "Mike" Bell of Spring, Texas (Mr. Bell is being reappointed).

Appointed to the Department of Information Resources for a term to expire February 1, 2029, Benjamin E. "Ben" Gatzke of Fort Worth, Texas (Mr. Gatzke is being reappointed).

Greg Abbott, Governor

TRD-202301490

♦ ♦ ♦

Proclamation 41-3967

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Bee, Brewster, Brooks, Caldwell, Chambers, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala Counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 21st day of April, 2023.

Greg Abbott, Governor

TRD-202301441

♦ ♦ ♦

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0506-KP

Requestor:

The Honorable Matthew Minick

Hardin County Attorney

Post Office Box 516

Kountze, Texas 77625

Re: Whether an elected constable may serve as a student resource officer, employed as an independent contractor, with a school district located in the constable's precinct

(RQ-0506-KP)

Briefs requested by May 22, 2023

RQ-0507-KP

Requestor:

The Honorable Brandon Creighton

Chair, Senate Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Questions relating to the powers and duties of the Galveston Park Board of Trustees

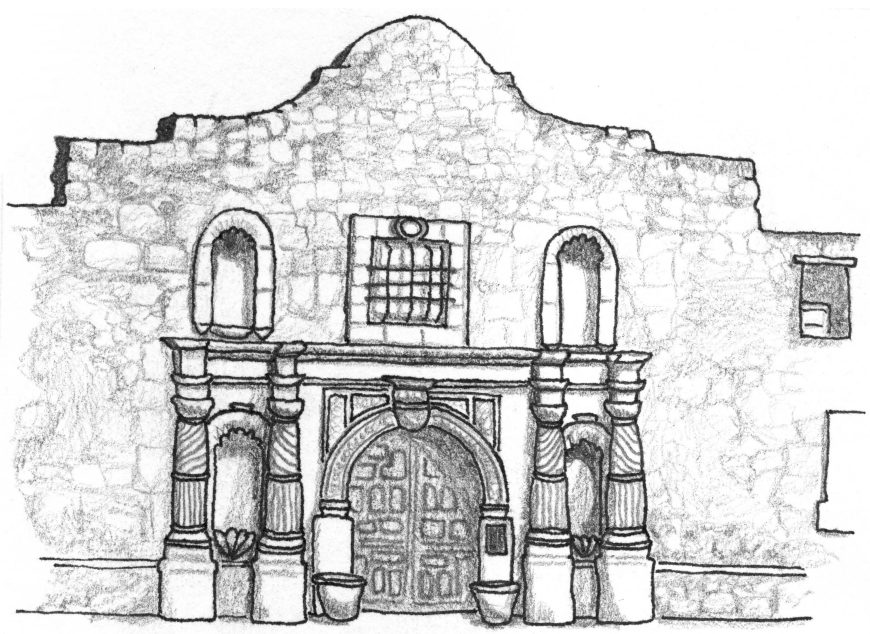
(RQ-0507-KP)

Briefs requested by May 24, 2023

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

TRD-202301488
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: April 26, 2023

♦ ♦ ♦



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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §§18.21, 18.23 - 18.26

The Texas Ethics Commission (the Commission) proposes the repeal of §§18.21, 18.23 - 18.26 of Chapter 18, Title 1 of the Texas Administrative Code, regarding the administrative waivers of statutory civil penalties for late filing of statements and reports.

The Commission seeks to simplify the rules and streamline the processing of requests for waiver or reduction of civil penalties for late reports assessed through the "administrative process." The rules as currently constructed are overly complicated. The complexity makes it difficult and time-consuming for staff to process waiver requests. The complexity also makes it difficult for the regulated community to understand their rights under the rules. The Commission believes the rules need to change substantially for the Commission to timely process waiver requests. These repeals are submitted along with new Ethics Commission Rules §§18.21, 18.24, 18.25 and 18.26, which are submitted separately.

James Tinley, General Counsel, has determined that for the first five-year period the repeal of these rules is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repeal of these rules.

The General Counsel has also determined that for each year of the first five years the proposed repeal of these rules is in effect, the public benefit will be consistency and clarity in the Commission's rules regarding the reduction or waiver of administrative penalties. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

The General Counsel has determined that during the first five years that the proposed repeals are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed repeal of these rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed repeal of these rules may do so at any Commission meeting during the agenda item relating to the proposed repeal of the rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The repeal of these rules is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed repeal of these rules affects Title 15 of the Election Code.

§18.21. Jurisdiction to Consider Waiver Request.

§18.23. Administrative Waiver of Statutory Civil Penalties.

§18.24. General Guidelines for Other Administrative Waiver or Reduction of Statutory Civil Penalties.

§18.25. Administrative Waiver or Reduction of Certain Statutory Civil Penalties.

§18.26. Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of $500.

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 April 17, 2023.

TRD-202301394
Jim Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 463-5800

♦ ♦ ♦

1 TAC §§18.21, 18.24 - 18.26

The Texas Ethics Commission (the Commission) proposes new Texas Ethics Commission Rules in Chapter 18. Specifically, the Commission proposes new rules §18.21, regarding Jurisdiction to Consider Waiver Request, §18.24, regarding General Guidelines for Administrative Waiver or Reduction of Statutory Civil Penalties, §18.25, regarding Administrative Waiver or Reduction of Certain Statutory Civil Penalties, and §18.26, regarding Administrative Waiver or Reduction of Statutory Civil Penalties in Excess of $500.

The Commission seeks to simplify the rules and streamline the processing of requests for waiver or reduction of civil penalties

for late reports assessed through the administrative process. The rules as currently constructed are overly complicated. The complexity makes it difficult and time consuming for staff to process waiver requests. The complexity also makes it difficult for the regulated community to understand their rights under the rules. The Commission believes the rules need to change substantially for the Commission to timely process waiver requests. These proposed amendments are submitted along with the proposed repeal of 1 TAC §§18.21, 18.23, 18.24, 18.25 and 18.26, which is submitted separately. The proposed rules preserves the right to appeal the determination of a waiver or reduction under the rules to the Commission.

James Tinley, General Counsel, has determined that for the first five-year period the proposed new rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rules.

The General Counsel has also determined that for each year of the first five years the proposed new rules are in effect, the public benefit will be consistency and clarity in the Commission's rules regarding the reduction or waiver of administrative penalties. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed new rules.

The General Counsel has determined that during the first five years that the proposed new rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed new rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed new rules may do so at any Commission meeting during the agenda item relating to the proposed new and amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposal affects Title 15 of the Election Code.

§18.21. Jurisdiction to Consider Waiver Request.

(a) A filer may ask the commission to waive or reduce a civil penalty determined by §§ 305.033(b) or 572.033(b) of the Government Code, or §254.042(b) of the Election Code by submitting a written request to the Commission.

(b) The commission will not consider a request under subsection (a) of this section unless the filer, not later than 60 days after the report or statement was due:

(1) submits the request in the manner prescribed by subsection (a) of this section;

(2) files all reports owed to the commission; and

(3) pays all outstanding civil penalties owed to the commission that are not subject to a pending request for waiver or appeal.

(c) Upon a showing of good cause, the executive director may extend the deadline in subsection (b) of this section.

§18.24. General Guidelines for Administrative Waiver or Reduction of Statutory Civil Penalties.

(a) For purposes of determining whether a filer is eligible for a waiver or reduction of a civil penalty under §18.25 or §18.26 of this title (relating to Administrative Waiver or Reduction of Certain Statutory Civil Penalties and Administrative Waiver or Reduction of Statutory Civil Penalties in Excess of $500 respectively), a "prior late offense" is any report for which a civil penalty for late filing was assessed, regardless of whether the civil penalty was waived or reduced. The term does not include:

(1) reports for which no late notices were sent and the filer did not file a request that the civil penalty be waived or reduced for the prior late report; and

(2) reports determined by the executive director to be not required.

(b) A civil penalty that is reduced under §18.25 or §18.26 of this title will revert to the full amount originally assessed if the reduced civil penalty is not paid within thirty (30) calendar days from the date of the letter informing the filer of the reduction.

(c) A filer may appeal a determination made under §18.25 or §18.26 of this title by submitting a request for appeal in writing to the commission.

(1) The request for appeal should state the filer's reasons for requesting an appeal, provide any additional information needed to support the request, and state whether the filer would like the opportunity to appear before the commission and offer testimony regarding the appeal.

(2) The Executive Director may review the appeal and reconsider the determination made under §18.25 or §18.26 of this title or set the appeal for a hearing before the commission.

(3) After hearing a request for appeal, the commission may affirm the determination made under §18.25 or §18.26 of this title or make a new determination based on facts presented in the appeal.

§18.25. Administrative Waiver or Reduction of Certain Statutory Civil Penalties.

(a) The executive director shall apply this section to late report subject to statutory civil penalty of not more than $500.

(b) The executive director shall use the following chart to determine the level of waiver or reduction of a civil penalty under this section:

Figure: 1 TAC §18.25(b)

§18.26. Administrative Waiver or Reduction of Statutory Civil Penalties in Excess of $500.

(a) The executive director shall apply this section to late report subject to statutory civil penalty in excess of $500.

(b) The executive director shall use the following chart to determine the level of waiver or reduction of a civil penalty under this section:

Figure: 1 TAC §18.26(b)

(c) For purposes of using the chart in subsection (b) of this section:

(1) where the chart identifies a dollar amount, that is the amount of the reduced or waived penalty; and

(2) where the chart identifies a percentage, that is the percentage by which the penalty is reduced.

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 April 17, 2023.

TRD-202301395
Jim Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 463-5800

♦ ♦ ♦

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. CHARTER APPLICATIONS

7 TAC §§52.1 - 52.15

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 52, as follows: §§52.1 - 52.15. This proposal and the rules as repealed 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 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 52.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. 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 proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 52; however, in a related proposal published elsewhere in this issue of the *Texas Register.* the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 52; (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, 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, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§52.1. Form and Content of Application to Incorporate; Requirements for Capital Stock and Paid-in Surplus or Savings Liability and Expense Fund; Payment before Opening for Business.
§52.2. Use of Approved Forms.
§52.3. Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications.
§52.4. Publication of Notice of Charter Application.
§52.5. Notice to Associations.
§52.6. Filing Proof of Publication.
§52.7. Hearing When Application Not Protested.
§52.8. Purpose of Hearing; Post-Hearing Investigation.
§52.9. Time of Decision on Charter Applications.
§52.10. Motions for Rehearing.
§52.11. Definition of Community.
§52.12. Identification of Office Site; Temporary Location.
§52.13. Qualifying Management.
§52.14. Notice to Applicants.
§52.15. Appeals.

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 April 24, 2023.

TRD-202301442
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 53. ADDITIONAL OFFICES

7 TAC §§53.1 - 53.5, 53.7 - 53.10, 53.17, 53.18

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 53, as follows: §§53.1 - 53.5, 53.7 - 53.10, 53.17, and 53.18. This proposal and the rules as repealed 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 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 53.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. 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 proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 53; however, in a related proposal published elsewhere in this issue of the *Texas Register,* the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 53; (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, 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, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§53.1. Establishment and Operation of Additional Offices.

§53.2. Types of Additional Offices.

§53.3. Content of Branch Office Application; Filing of Another Application; Notice; Publication; Hearing; Decision.

§53.4. Findings Necessary for Approval of Branch Office.

§53.5. Loan Production Offices (Loan Offices), Administrative Offices, and Deposit Production Offices.

§53.7. Verification of Applications.

§53.8. Mobile Facility Application; Operation of Mobile Facility; Notice; Publication; Hearing.

§53.9. Exemption for Supervisory Sale.

§53.10. Designation of Supervisory Sale.

§53.17. Temporary Closing of Additional Offices.

§53.18. Offices in Other States or Territories.

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 April 24, 2023.

TRD-202301443
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 57. CHANGE OF OFFICE LOCATION OR NAME

7 TAC §§57.1 - 57.4

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 57, as follows: §§57.1 - 57.4. This proposal and the rules as repealed 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 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings

and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 57.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. 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 proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 57; however, in a related proposal published elsewhere in this issue of the *Texas Register,* the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 57; (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, 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, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§57.1. Change of Office Location Not Requiring Approval; Application for Change of Location; Findings for Approval.

§57.2. Notice, Publication, Hearing.

§57.3. Change of Name.

§57.4. Application Forms.

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 April 24, 2023.

TRD-202301444
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 60. SAVINGS ASSOCIATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes new rules in 7 TAC Chapter 60, as follows: §§60.1, 60.2, 60.101 - 60.104, 60.121 - 60.123, 60.131 - 60.133, 60.141 - 60.145, 60.161 - 60.165, 60.171, 60.181, 60.191, 60.201 - 60.204, 60.221 - 60.227, 60.231 - 60.234, 60.241 - 60.245, 60.251, 60.252, 60.261, 60.301 - 60.309, 60.321, 60.323 - 60.326, and 60.331. This proposal and the rules as added as a new rule 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 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules.

Changes Concerning Loan Requirements

The department's existing rules in Chapter 65, §§65.4 - 65.10, 65.13, 65.14, 65.15, 65.20, and 65.23 establish various requirements for loans made by a savings association. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such existing rules is not included in the proposed rules.

Changes Concerning Savings and Deposit Accounts

The department's existing rules in Chapter 67, §§67.1 - 67.3, 67.6 - 67.13, and 67.15 establish various requirements concerning savings and deposit accounts of a savings association. The department has determined the rules are not necessary and should be repealed. As a result, the subject matter of such existing rules is not included in the proposed rules.

Changes Concerning Holding Companies

Pursuant to Finance Code §66.051(a), the department's commissioner (commissioner) is required to conduct periodic examinations of a savings association, its subsidiaries, and any holding company of the savings association. Pursuant to Finance Code §66.053, the commissioner is entitled access to the books and records of a savings association, its subsidiaries, and any holding company of the savings association. Pursuant to Finance Code §66.103(a), the commissioner may intervene in the affairs of a savings association if a person that participates in the affairs of the savings association, its subsidiaries, or any holding company of the savings association, is about to commit: a fraudulent or criminal act that may cause the savings association to be insolvent; an act that threatens harm to the public, the savings association, or its account holders or creditors; or a breach of fiduciary duty that results in substantial financial losses or other damages to the savings association or that would prejudice the interests of its account holders or shareholders. Pursuant to Finance Code §66.104, the commissioner may intervene in the affairs of a savings association if a person who participates in the affairs of the association, its subsidiaries, or any holding company of the savings association, refuses to submit to or otherwise interferes with an examination conducted by the commissioner. In order to facilitate the examination of a savings association holding company and ensure the department has adequate knowledge of its existence and affairs, the proposed rules, if adopted, would: require a savings association to register with the department any holding company of the savings association within 90 days of the holding company becoming a holding company and pay a one-time application fee of $2,000; require a savings association holding company and its subsidiaries to file periodic reports with the department as determined by the commissioner; require a savings association holding company and its subsidiaries to maintain books and records in the same manner required of a savings association; clarify the existing requirements of Finance Code §66.051(a) by requiring a savings association holding company and its subsidiaries to submit to and bear the costs of an examination; require a savings association holding company, if directed by the commissioner, to appoint an agent for service of process; and establish conditions under which a savings association holding company may be released from the registration requirements under the proposed rules, including a requirement that a savings association holding company maintain books and records after it has been released from such registration requirements.

Changes Concerning Fees

Pursuant to Finance Code §61.007(1), the commission, by rule, determines the fees assessed by the commissioner in connection with filing an application or other documents with the department. The department's existing rules in Chapter 63 (proposed for repeal elsewhere this issue of the *Texas Register* in connection with the proposed rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), establish fees for various applications filed with the department. Such existing rules do not establish a specific fee concerning an application by a financial institution other than a savings association seeking to convert to a savings association charter. Instead, the $10,000 fee for a de novo charter application under existing §63.1 is assessed. The proposed rules, if adopted, would establish a specific fee for an application concerning such a conversion by a financial institution other than a savings association to a savings association charter. The fee is determined based on the

total asset size of the financial institution seeking to convert to a savings association charter, as follows: $0 to less than $125 million - $2,500; $125 million to less than $500 million - $5,000; $500 million to less than $1 billion - $10,000; over $1 billion - $15,000. Under the proposed rules, the fee for converting to a savings association charter could therefore be higher or lower depending on the asset size of the financial institution seeking conversion; however, the department anticipates any potential application for conversion to a savings association charter under the proposed rules will be filed by a financial institution with an asset size of less than $1 billion and will therefore result in a fee equal to or lesser than the fee under existing §63.1. The department asserts a graduated fee for an application for conversion based on the asset size of the financial institution seeking conversion better reflects the true costs of the department in processing the application and facilitates the department's compliance with Finance Code §16.003(c), requiring the department to collect only those amounts necessary for the purposes of carrying out its functions. Under existing §63.11 (proposed for repeal elsewhere this issue of the *Texas Register* in connection with the proposed rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), the department assesses a fee of $10,000 for an application concerning change of control of a savings association made in accordance with Finance Code Chapter 62, Subchapter L. The proposed rules, if adopted, would lower such fee from $10,000 to $5,000. Pursuant to Finance Code §66.052, the commissioner is required to conduct periodic examinations of the savings associations it regulates. Pursuant to Finance Code §66.052(a), the commissioner may conduct additional examinations of a savings association (each a special examination) if deemed by the commissioner to be appropriate based on the condition of the savings association. Pursuant to Finance Code §66.052(a), the savings association being examined is required to bear the costs of such special examination. Under existing §63.5 (proposed for repeal elsewhere this issue of the *Texas Register* in connection with the proposed rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), the department assesses a fee of $325 per day for each examiner performing a special examination. The proposed rules, if adopted, would: assess a maximum fee of $75 per hour for each examiner performing a special examination; clarify the existing requirement, pursuant to Finance Code §66.052(a), that a savings association bear the cost of the special examination, by clarifying that such costs include expenses related to travel, food, and lodging of the examiner performing the special examination; and clarify the commissioner's existing authority to assess a lower fee rate or otherwise waive any fees or costs related to a special examination. To the extent an examiner performing a special examination works a standard eight-hour day, the proposed rules would have the effect of raising the per diem fee from $325 to $600; however, if an examiner works four hours or less on any given day, the proposed rules would have the effect of lowering such per diem fee. The department asserts a per hour fee better reflects the true costs of the department in conducting a special examination and facilitates the department's compliance with Finance Code §16.003(c), requiring the department to collect only those amounts necessary for the purposes of carrying out its functions.

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. 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 proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). The foregoing notwithstanding, the department includes in this proposal a cost note addressing potential although improbable costs to persons required to comply with the proposed rules. Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect the proposed rules related to Changes Concerning Fees may result in costs to a savings association required to register a savings association holding company under the proposed rules. Specifically, the proposed rules, if adopted, would assess a $2,000 application fee to a savings association required to register a savings association holding company; however, no savings associations currently exist. As a result, these potential costs to persons required to comply with the proposed rules are not probable. Stephany Trotti has further determined that for the first five years the proposed rules are in effect the proposed rules related to Changes Concerning Fees may result in costs to a savings association subject to a special examination under Finance Code §66.052. Specifically, the proposed rules, if adopted, would change the fee assessed to a savings association for each examiner conducting the special examination from $325 per day to $75 per hour. To the extent

an examiner performing a special examination works a standard eight-hour day, the proposed rules would have the effect of raising the per diem fee from $325 to $600; however, if an examiner works four hours or less on any given day, the proposed rules would have the effect of lowering such per diem fee. The foregoing notwithstanding, no savings associations currently exist. As a result, these potential costs to persons required to comply with the proposed rules are not probable. Stephany Trotti has further determined that for the first five years the proposed rules are in effect the proposed rules related to Changes Concerning Fees may result in costs to a financial institution other than a savings association that files an application with the department seeking to convert to a savings association charter. Specifically, a financial institution with an asset size in excess of $1 billion seeking to convert to a savings association charter will be assessed an application fee of $15,000 under the proposed rules versus the $10,000 fee assessed under the existing rules, representing a cost of $5,000. The department anticipates that any potential application from a financial institution seeking to convert to a savings association charter will have an asset size below $1 billion and such financial institution will therefore incur in a fee that is equal to or lesser than the fee assessed under existing requirements. The department asserts it is unlikely a depository institution with an asset size in excess of $1 billion will seek to convert to a savings association charter. As a result, these potential costs to persons required to comply with the proposed rules are not probable.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 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 Changes Concerning Holding Companies require an increase in fees paid to the agency as discussed in such section. The proposed rules related to Changes Concerning Fees may result in an increase or decrease in fees paid to the agency as discussed in such section; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Holding Companies establish various requirements related to a savings association holding company as discussed in such section; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Loan Requirements have the effect of repealing existing rule requirements as discussed in such section. The proposed rules related to Changes Concerning Savings and Deposit Accounts have the effect of repealing existing rule requirements as discussed in such section. The proposed rules related to Changes Concerning Savings and Deposit Accounts have the effect of repealing existing rule requirements as discussed in such section; (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 probable 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. The foregoing notwithstanding, the department includes in this proposal a cost note addressing potential although improbable costs to persons required to comply with the proposed rules. As a result, the department also includes in this proposal an economic impact statement and a regulatory flexibility analysis concerning such improbable costs. The department incorporates by reference the Probable Economic Costs to Persons Required to Comply with the Proposed Rules section above as if fully set forth herein. No rural communities are substantially affected by the proposed rules. With respect to small and micro-businesses, the proposed rules are designed to implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings associations regulated by the department. No savings associations currently exist, including any that would constitute a small or micro business for purposes of Government Code Chapter 2006, and it is unlikely that a savings association would constitute a small or micro-business. The potential economic costs imposed by the proposed rules relate to: application fees by a savings association or a financial institution seeking to convert to a savings association charter; and fees for a savings association to pay for the costs associated with conducting a special examination of a savings association. Such fees are designed to allow the department to recoup its costs of regulation and ensure its compliance with Finance Code §16.003(c). Any potential alternative to recouping these costs from a small or micro-business would entail shifting such costs to the department's other regulated persons and those regulated persons paying a disproportionate share of the department's costs attributable to such regulated persons. As a result, the department asserts no viable alternative methods exist. The foregoing notwithstanding, the proposed rules include provisions allowing the commissioner to waive any costs or fees including with respect to a small or micro-business that may be adversely affected by the proposed rules.

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, 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. GENERAL PROVISIONS

7 TAC §60.1, §60.2

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.2 is also proposed under the authority of, and to implement, Finance Code: §61.002; and §62.004(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.1. Purpose and Applicability.

This chapter governs the chartering, administration, and operations of a Texas-chartered savings and loan association under Finance Code Title 3, Subtitle B, the Texas Savings and Loan Act (Finance Code §61.001 et seq.).

§60.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code Title 3, Subtitle B, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(2) Affiliated person--

(A) a director, officer, or controlling person of a savings association;

(B) a spouse of a director, officer, or controlling person of a savings association;

(C) a member of the immediate family of a director, officer, or controlling person of a savings association, who is a director or officer of any subsidiary of a savings association or of any holding company affiliate of a savings association;

(D) any company (other than the savings association, its holding company, or an operating subsidiary) of which a director, officer, or controlling person of a savings association:

(i) is a director or officer;

(ii) in the case of a limited liability company, is a manager or managing member;

(iii) in the case of a partnership, is a general partner;

(iv) in the case of a partnership, is a limited partner who, directly or indirectly, either alone or with his or her spouse and the members of their immediate family who are also affiliated persons of the savings association, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of a savings association, and their spouses and their immediate family members who are also affiliated persons of the savings association, owns an interest of 25% or more in the partnership; or

(v) directly or indirectly, either alone or with their spouse and the members of their immediate family, who are also affiliated persons of the savings association, owns or controls 10% or more of any class of equity securities, or owns or controls with other directors, officers, and controlling persons of a savings association and their spouses and their immediate family members, who are also affiliated persons of the savings association, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of a savings association, or a member of the director's, officer's, or controlling person's immediate family, has a substantial beneficial interest or as to which such person or his or her spouse serves as trustee or in a similar fiduciary capacity.

(3) Application--An application requesting authorization or other relief from the Commissioner pursuant to this chapter or under the Texas Savings and Loan Act for which a filing fee is required under §60.102 of this title (relating to Application Fees and Charges).

(4) Appropriate banking agency--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(5) Board--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(6) Bylaws--The rules adopted to regulate or manage a company, regardless of the name used to designate the rules, and with respect to a limited liability company, means the company agreement, or similar rules adopted to regulate or manage the limited liability company.

(7) Capital stock--Has the meaning assigned by the Texas Savings and Loan Act (Tex. Fin. Code §61.002).

(8) Capital stock association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(9) Certificate of formation--The document evidencing the formation of the business entity, referred to in other governmental jurisdictions as the articles of incorporation, certificate of incorporation, or articles of organization, as applicable.

(10) Commissioner--The savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(11) Company--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(12) Control--The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company. Control is deemed to exist when a person, directly or indirectly, or acting through or in concert with one or more persons:

(A) owns, controls, or has the power to vote 25% or more of any class of voting securities of a company;

(B) is an officer or director of the company and owns, controls, or has the power to vote 10% or more of any class of voting securities of a company, and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities; or

(C) controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of a company.

(13) Controlling person--A person having control as defined by paragraph (12) of this section.

(14) Day--A calendar day, unless another method of counting days is specified.

(15) Deposit account--A savings account, certificate of deposit, withdrawable deposit, demand deposit account, checking account, or any other term referring to the amount of money a savings association owes an account holder as a result of the deposit of money in the savings association.

(16) Deposit liability--The aggregate amount of money shown by the books of the savings association to be owed to the savings association's bank deposit account holders after applying any legal or contractual reduction.

(17) FDIC--The Federal Deposit Insurance Corporation, including any successor.

(18) Finance Commission--The Finance Commission of Texas, the oversight body responsible for overseeing and coordinating the Department under Finance Code Chapter 11.

(19) Financial institution--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(20) GAAP--Generally Accepted Accounting Principles.

(21) Holding company--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002) in defining the term "savings and loan holding company."

(22) Holding company affiliate--A company of which a savings association is a subsidiary and any other subsidiary of such company other than a subsidiary of the savings association.

(23) Home office--The office where a savings association has its headquarters and from which all of its operations are directed.

(24) Immediate family--The spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(25) Issuer--The savings association that issued the security in question.

(26) Managing officer--An individual designated by the board as being responsible for, and having the authority to direct, the day-to-day operations of the savings association. The managing officer must have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that, under the management and supervision of the managing officer, the savings association will operate in compliance with applicable law and that success of the savings association is probable.

(27) Member--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(28) Mutual association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(29) Officer--The president, any vice president (but not an assistant vice president, second president, or other vice president having authority similar to an assistant or second vice president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any entity or organization, whether incorporated or unincorporated. The term "officer" includes the chairman of the board, if the savings association's certificate of formation or bylaws authorize the chairman to participate in the operating management of the entity or organization, or if the chairman actually participates in such management.

(30) Person--An individual, corporation, a partnership, a savings association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(31) Recourse--A contract by a borrower or guarantor to repay 100% of all amounts due and owing under the loan.

(32) Savings Association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002) in defining the term "association."

(33) Shareholder--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(34) Subsidiary--Any company that is controlled by the savings association or by a company that is controlled by a company which is controlled, directly or indirectly, by the savings association.

(35) Surplus--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(36) Texas Savings and Loan Act--Finance Code Title 3, Subtitle B (Finance Code §61.001 et seq.).

(37) Unsafe and unsound practice--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002), and includes excessive operating expenses, excessive growth, high-risk or undiversified investment positions, and non-existent or poorly followed lending or underwriting policies, procedures, or guidelines.

(38) Voting security--Includes any security convertible into or evidencing a right to acquire a voting security.

(39) Withdrawal value--The net amount of money that may be withdrawn by an account holder from a deposit account.

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 April 24, 2023.

TRD-202301453
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

SUBCHAPTER B. APPLICATIONS
DIVISION 1. GENERAL PROVISIONS

7 TAC §§60.101 - 60.104

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §§60.101 - 60.103 are also proposed under the authority of, and to implement, Finance Code §66.002(3). 7 TAC §60.102 is also proposed under the authority of Finance Code: §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §61.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to filing an application or other documents with the department. 7 TAC §60.102 is also proposed under the authority of, and to implement, Finance Code: §62.001(a); §62.011; and §63.004(d). 7 TAC §60.103 is also proposed under the authority of, and to implement, Finance Code: §62.006(a)(1); and §62.353(a)(1). 7 TAC §60.104 is also proposed under the authority of, and to implement, Finance Code §61.006.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.101. Application Filing Requirements.

(a) Purpose and Applicability. Applications submitted to the Department must comply with the requirements of this section.

(b) Application Forms. All applications must be made on the current form for the application prescribed by the Commissioner.

(c) Incomplete Filings; Notice of Acceptance; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. Within 30 days of receipt of an application the Commissioner or the Commissioner's designee will issue a written notice to the applicant informing them either that the application is complete and accepted for filing, or that the application is incomplete and specifying the information required to render the application complete. The application may be deemed withdrawn and the applicable fee forfeited if, within 30 days of being notified the application was incomplete, the applicant fails to provide to the Department the supplemental information or supporting documentation necessary to render the application complete.

(d) Duty to Supplement. The applicant has a continuing obligation and duty to supplement the application with any other information or supporting documentation requested by the Commissioner in writing. The applicant must provide any information or supporting documentation submitted in connection with any related application made to the appropriate federal banking agency, to the extent not previously provided to the Department.

(e) Duty to Amend. If a material change occurs in the facts contained in or information furnished in support of the application, the applicant must file an amended application or otherwise supplement the application to address the material change. The applicant must endeavor to resolve any potential changes or amendments to the application prior to publishing public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application). The Commissioner may, in his or her sole discretion, require the applicant to republish the public notice.

§60.102. Application Fees and Charges.

(a) Filing Fees. An applicant must pay the following filing fees:

(1) Charter Application and Amendments.

(A) Charter application: $10,000.

(B) Change of name: $500.

(C) Certificate of formation or bylaws amendments: $100 per request.

(2) Office Locations.

(A) Branch office (other than a mobile facility): $1,500.

(B) Mobile facility: $500, plus $100 for each location where the mobile facility is to be conducting banking business for purposes of §60.132 of this title (relating to Mobile Facility).

(C) Relocate home or branch office: $500.

(3) Reorganization, merger, consolidation, conversion, or purchase and assumption:

(A) For a reorganization, merger, or consolidation transaction in which the resulting institution will be a savings association, a fee of $2,500 for each financial institution involved in the transaction.

(B) For a purchase and assumption transaction by a savings association as purchaser, a fee of $2,000 for each financial institution involved in the transaction.

(C) For the conversion by a financial institution that is not a savings association into a savings association, the fee will be determined based on the total asset size of the institution, as follows:

(i) $0 - 125 million: $2,500.

(ii) $125 million - $500 million: $5,000.

(iii) $500 million - 1 billion: $10,000.

(iv) over 1 billion - $15,000.

(D) For the conversion of a savings association into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings association reorganizing into, or merging or consolidating with a financial institution that is not a savings association, no fee will be assessed.

(E) for the conversion of a mutual association into a capital stock association, a fee of $7,500.

(4) Change of control (obtaining control of a savings association): $5,000.

(5) Permission to issue capital notes or debentures: $1,000.

(6) Holding company registration: $2,000.

(7) Investment in subsidiaries.

(A) Initial investment: $1,500, plus $100 for each office other than the home office of the proposed subsidiary.

(B) Service subsidiary application to engage in a new activity: $500.

(C) Redesignation of operating subsidiary: $300.

(D) Change of name: $100.

(E) Relocate home or branch office: $100.

(b) Reimbursement for Costs. In addition to filing fees established in subsection (a) of this section, the applicant must reimburse the Department for any costs incurred in connection with investigating or conducting a hearing on the application, including travel expenses.

(c) Protest Filing Fee. A person filing a protest to an application or otherwise requesting a hearing on an application (other than the applicant) must pay a fee of $2,500 at the time the protest or request for hearing is filed.

(d) Fees Nonrefundable; Discretion to Waive Fees and Costs. All filing fees must be paid at the time the application is filed and are nonrefundable. Except for fees set or required by statute, the Commissioner, in his or her sole discretion, may waive, in whole or in part, any fees or costs required by this section.

§60.103. Public Notice of Application.

If an application requires that notice to the public be given, such notice must comply with the requirements of this section. The notice must use language and content preapproved by the Commissioner prior to publishing. The notice must be submitted to the publisher for publication within 15 days after the date the applicant receives notice that the application is complete and accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). The notice must be published in an English language newspaper of general circulation in each county required by the rule(s) governing such application. The applicant must, within 10 days after publishing the notice, provide the Commissioner with a publisher's affidavit evidencing that the notice was properly published in conformity with this section. The notice is deemed properly effected when the appropriate notice has been published in conformity with this section, and more than 10 days have elapsed.

§60.104. Motions for Rehearing.

A motion for rehearing pursuant to Finance Code §61.006 must be filed not later than the 14th day after the date the decision or order that is the subject of the motion is signed. A copy of the motion for rehearing must be served on all parties who made an appearance or otherwise submitted a filing in the proceeding, and the motion must include a certificate of service reciting the parties served and the method of service. A party must file a reply to the motion for rehearing, if any, not later than the 30th day after the date the decision or order that is the subject of the motion is signed. The Commissioner must act on the motion for rehearing not later than the 45th day after the date the decision or order that is the subject of the motion for rehearing is signed or the motion for rehearing is deemed overruled by operation of law.

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

Filed with the Office of the Secretary of State on April 24, 2023.

TRD-202301454
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 2. CHARTER APPLICATIONS AND AMENDMENTS

7 TAC §§60.121 - 60.123

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.121 is also proposed to implement Finance Code: Chapter 62, Subchapter A; §62.152; and §66.002(3). 7 TAC §60.122 is also proposed under the authority of, and to implement, Finance Code: §62.011; and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.121. Savings Association Charter.

(a) Application Requirements. The charter application and all required supporting information must be executed by the proposed incorporators of the proposed savings association which must consist of at least five adult residents of this state and must include all of the information required by Finance Code §62.001. The application must include a request for a corporate name to be approved by the Commissioner. The application must include the proposed home office of the savings association, the identity and qualifications of the proposed managing officer(s), and any additional information the Commissioner deems necessary to enable the Commissioner to determine the matters set forth in Finance Code §62.007.

(b) Identification of Home Office; Definition of Community; Temporary Office Location. The proposed location for the home office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in the Finance Code §62.007 means the geographical area surrounding the proposed location of the home office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business. The Commissioner may approve the opening and operation of a temporary home office location for an approved charter, provided that such office is within the 1/2-mile radius of the permanent home office approved in the charter. If a temporary home office location is approved, the savings association must promptly cease operations at such office upon the permanent home office being constructed or rendered fit for occupancy, but in any event no later than 18 months from the date the charter was approved, unless extended in writing by the Commissioner.

(c) Capital Requirements. No application to incorporate a savings association will be approved unless the Commissioner determines the proposed savings association has received subscriptions for capital stock and paid-in surplus in the case of a capital stock association, or pledges for savings liability and expense fund in the case of a mutual association, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the FDIC or the amount required of a national bank. No savings association with an approved charter may open or do business as a savings association until the Commissioner certifies that the Commissioner has received satisfactory proof that the amounts of capital stock and additional paid-in capital, or the savings liability and expense fund, as set forth in this section, have been received by the savings association in cash, free of encumbrance.

(d) Public Notice. A charter application is deemed to be a complete application for purposes of Finance Code §62.006 at the time the Department notifies the applicant that the application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the charter application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the proposed savings association will have its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the application for purposes of Finance Code §62.006.

(e) Request for Hearing; Deadline to Protest. A person may protest or otherwise request a hearing on the application as provided by Finance Code §62.006. Any person desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.006 is deemed waived.

(f) Hearing. If a charter application is protested or a hearing on the application is otherwise requested, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the charter application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the charter application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by Finance Code §62.006 and subsection (e) of this section.

§60.122. Change of Name.

(a) Approval Required. A savings association may not change its name without the prior written approval of the Commissioner, and a savings association may not operate under any name which has not been approved by the Commissioner in writing.

(b) Public Notice. An applicant seeking to change its name must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings association has its home office.

(c) Request for Hearing; Deadline to Protest. A person affected by the proposed name change may protest or otherwise request a hearing on the change of name application as provided by Finance Code §62.011. Any person affected by the proposed name change and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (b) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(d) Persons Affected by the Change of Name. A person is affected by a change of name for purposes of Finance Code §62.011 only if the requested name change, if granted, would result in the savings association's name being substantially or deceptively similar to the party alleged to be affected, or is otherwise reasonably anticipated to create confusion in the marketplace involving the party alleged to be affected. A person requesting a hearing on a change of name application must allege and provide information in support of their request indicating they are a person that might be affected by the proposed name change as provided by this section. The Commissioner will review the request for hearing and determine, in his or her sole discretion, if the person might be affected so as to require a hearing under Finance Code §62.011.

(e) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases contained in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(f) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (c) of this section.

§60.123. Certificate of Formation or Bylaws Amendments.

(a) Approval Required. A savings association may not amend its certificate of formation, bylaws, or other governing documents without the prior written approval of the Commissioner.

(b) Application Requirements. The application to amend the savings association's certificate of formation, or bylaws must include the proposed amendments together with an explanation as to why the amendments are necessary.

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 April 24, 2023.

TRD-202301455
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

DIVISION 3. OFFICE LOCATIONS

7 TAC §§60.131 - 60.133

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §62.011; and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.131. Branch Office.

(a) Approval Required. A savings association may not establish a branch office or an additional office as provided by §60.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner. A branch office application is required if a savings association would like to establish and operate a courier/messenger service pursuant to §60.202 of this title.

(b) Required Information. The application must provide the following information, subscribed to and sworn before a notary:

(1) proposed location for the office;

(2) the personnel and office facilities to be provided;

(3) the estimated cost and projected profits of such office; and

(4) any information deemed necessary by the Commissioner to render a determination on the matters set forth in subsection (c) of this section.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that:

(1) the operation and condition of the savings association affords no basis for supervisory objection;

(2) the character, responsibility, and general fitness of the current management of the savings association warrant a belief that the branch office will be operated in accordance with the Texas Savings and Loan Act; and

(3) the financial effect of establishing and operating the proposed office will not adversely affect the safe and sound operation of the savings association.

(d) Commencement of Operations. The branch office must commence operations within a period of 12 months after the date of approval unless the Commissioner grants a written extension. No more than one 12-month extension will be approved by the Commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the approval for such office is deemed revoked and a new application must be made.

(e) Identification of Branch Office; Definition of Community. The proposed location for the branch office must be specifically identified so as to exactly locate it within the community to be served. The

term "community" as used in Finance Code §62.008 means the geographical area surrounding the proposed location of the branch office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business.

(f) Public Notice. An applicant seeking to establish a branch office must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published both in the county where the proposed branch office is to be located and in the county where the savings association has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed branch office may protest or otherwise request a hearing on the branch office application as provided by Finance Code §62.011. Any person affected by the proposed establishment of a branch office and desiring to protest the application or otherwise request a hearing on the application must file a written protest within the Department within 10 days from the date the public notice was made as provided by subsection (f) of this section, otherwise any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) of this section.

(j) Offices in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this chapter, a savings association may establish branch offices in any state or territory of the United States. Each application for permission to establish such a branch office must comply with the requirements of this section and must include a certified copy of an order from the appropriate banking agency approving the office, or other evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve the application unless the Commissioner determines that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

§60.132. Mobile Facility.

(a) Approval Required. A savings association may not establish a mobile facility as provided by §60.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner.

(b) Required Information. The application must provide the following information, subscribed to and sworn before a notary:

(1) the proposed location(s) at and times during which the mobile facility will operate;

(2) the need for the mobile facility within the community;

(3) the personnel and office facilities to be provided; and

(4) the estimated expense to operate the mobile facility.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that all requirements for approval of a branch office (§60.131 of this title, relating to Branch Office) have been met. Additionally, the savings association must show that adequate safeguards exist for the security of the mobile facility.

(d) Public Notice. An applicant seeking to establish a mobile facility must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county or counties where the proposed mobile facility will be operating and in the county where the savings association has its home office.

(e) Request for a Hearing; Deadline to Protest. A person affected by the proposed establishment of a mobile facility may protest or otherwise request a hearing on the mobile facility application, as provided by Finance Code §62.011. Any person affected by the proposed establishment of a mobile facility and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(f) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (e) of this section.

§60.133. Relocate Home or Additional Office.

(a) Approval Required. A savings association may not move its home office or any additional office as provided by §60.202 of this title (relating to Types of Additional Offices) beyond its immediate vicinity without the prior written approval of the Commissioner.

(b) Immediate Vicinity. The term "Immediate vicinity" as used in Finance Code §62.011 means the area within a radius of 1 mile from the present location of such office. However, if the office to be relocated has not been open for business at its present location for more than 2 years, approval in accordance with this section is required as if the office were not within the immediate vicinity. If the existing office has been open for more than 2 years, prior written notice must be provided to the Commissioner describing the saving association's plans for the relocation, including the precise location for the new office, the date of the relocation, and information supporting that the new location of the office will be within the immediate vicinity of the present location and does not require the Commissioner's approval.

(c) Relocation of Existing Offices. Notwithstanding subsection (a) of this section, a savings association may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the Commissioner prior writ-

ten notice. Upon such notification, the establishment of such office is deemed to be an approved branch office of the savings association.

(d) Required Information. Each application for prior approval, or prior written notice, whichever is applicable, must provide the following information, subscribed to and sworn before a notary:

(1) the addresses of the existing and new office location;

(2) a description of the land and building to be built or leased and terms thereof;

(3) estimates of the cost of removal to and maintenance of the new location;

(4) whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office;

(5) evidence of the board's approval of the relocation; and

(6) any other information deemed necessary by the Commissioner.

(e) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that all requirements for approval of a branch office (§60.131 of this title, relating to Branch Office) have been met.

(f) Public Notice. An applicant seeking to change the location of the home or an additional office must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the office is presently located, the county where the proposed new location is located, and the county where the savings association has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed change in home or additional office location may protest or otherwise request a hearing on the application, as provided by Finance Code §62.011. Any person affected by the proposed change in home or branch office location and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (f) of this section, otherwise any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal or decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) 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 April 24, 2023.

TRD-202301456
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 4. REORGANIZATION, MERGER, CONSOLIDATION, CONVERSION, PURCHASE, AND ASSUMPTION AND ACQUISITION

7 TAC §§60.141 - 60.145

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.141 is also proposed under the authority of, and to implement, Finance Code: Chapter 62, Subchapters B, H, and I; and §66.002(3). 7 TAC §60.142 is also proposed under the authority of, and to implement, Finance Code §62.353. 7 TAC §60.143 is also proposed under the authority of, and to implement, Finance Code: Chapter 62, Subchapter E; and §66.002(3). 7 TAC §60.144 is proposed under the authority of, and to implement, Finance Code: Chapter 62, Subchapter F; and §66.002(a)(3). 7 TAC §60.145 is also proposed under the authority of, and to implement, Finance Code: §62.002; and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.141. Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association.

(a) Applicability. This section governs:

(1) A reorganization, merger, or consolidation transaction in which the resulting institution will be a savings association; and

(2) A purchase and assumption transaction by a savings association as purchaser.

(b) Non-Applicability. This section does not govern:

(1) the conversion of a savings association into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings association reorganizing into, or merging or consolidating with, a financial institution that is not a savings association, which is governed by section §60.143 of this title (relating to Reorganization, Merger or Conversion by a Savings Association to Another Financial Institution Charter); or

(2) the conversion by a financial institution that is not a savings association into a savings association, which is governed by section §60.144 of this title (relating to Conversion into a Savings Association).

(c) Plan Required. Any savings association seeking to reorganize, merge, and/or consolidate or to engage in a purchase and assumption transaction in which the resulting institution will be a savings association must do so pursuant to a plan adopted by the board and filed with the Commissioner as a part of an application for approval. Purchase and assumption transactions include purchases of assets, deposit accounts, or other liabilities in bulk not made in the ordinary course of business.

(d) Application Required. The application for approval of the plan must contain: proof that the plan was adopted by the board of each institution involved; documentation showing that the plan has been approved by each institution by a majority of the members or shareholders entitled to vote on the plan; a statement that the corporate continuity of the resulting institution will possess the same incidents as that of a savings association which has converted in accordance with the Texas Savings and Loan Act; and a statement identifying the home office of the resulting institution. A true and correct copy of the plan, as adopted, must be filed as part of the application. All documents and their contents must be subscribed and sworn to before a notary.

(e) Public Notice. An applicant seeking reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition must publish a public notice of the plan and application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in each county in which a financial institution participating in the plan has its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the plan and application for purposes of Finance Code §62.353.

(f) Request for Hearing; Deadline to Protest. Any interested person desiring to protest the plan and application or otherwise request a hearing on the plan and application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (e) of this section, otherwise any right or opportunity to protest or have a hearing on the application under Finance Code §62.353 is deemed waived.

(g) Hearing. If a hearing is required, the Commissioner will set a hearing on the plan and application within 60 days after the date the protest or request for hearing and the required fee are received, unless the Commissioner determines that the provisions set forth in §60.142 of this title (relating to Exemption for Supervisory Merger) apply, and the merger is designated as a supervisory merger for purposes of Finance Code §62.353(e). The hearing is governed by the procedural requirements concerning contested cases set forth in Government Code Chapter 2001 and Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(h) Time of Decision. To the extent a hearing on the plan and application is required, the Commissioner will render a decision within 30 days after the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the plan and application is not required, the Commissioner will render a decision within 30 days after the time period for requesting a hearing on the plan and application lapsed as provided by subsection (f) of this section, unless the Commissioner establishes a longer time period, with written notice to the applicant.

(i) Transactions Involving Financial Institutions in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this section, a savings association may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state or territory. Each such application must include a certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve such an application unless the Commissioner determines that all requirements of this section have been met, and all applicable requirements of the laws of the state or territory in question have been met.

§60.142. Exemption for Supervisory Merger.

(a) The Commissioner may designate a transaction under §60.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association) as a supervisory merger when:

(1) the Commissioner has placed one or more of the savings associations involved under voluntary supervisory control or under conservatorship pursuant to the Texas Savings and Loan Act;

(2) the Commissioner has determined that one or more of the savings associations involved is in an unsafe condition; or

(3) the FDIC has determined, and certified to the Commissioner, that the merger of one or more of the institutions involved is necessary to prevent the failure or possible failure of the said institution.

(b) For purposes of this section, unsafe condition means that the savings association is (or savings associations are) insolvent or in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation(s) of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that the savings association is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its capital; or that the savings association and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the Commissioner, or any agreement between the savings association and the Commissioner; or that the savings association, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of the savings association by the Commissioner or other duly authorized personnel of the Department; or any other condition affecting the savings association which the Commissioner and the board agree place the savings association in an unsafe condition.

(c) Effect of Exemption. If the Commissioner designates the transaction as a supervisory merger, the application and all information relating to the application are deemed confidential. As a result, the requirements of §60.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association), concerning public notice of the application, and a hearing on the application, are not applicable.

§60.143. Reorganization, Merger or Conversion by a Savings Association to Another Financial Institution Charter.

(a) A savings association is authorized to reorganize, merge, or convert into another type of financial institution charter subject to applicable law and regulation relating to the type of charter which will be held by the resulting institution.

(b) The Commissioner must be given written notice of the intention of the savings association to reorganize, merge, or convert no less than 30 days prior to the proposed transaction.

(c) The savings association must file with the Commissioner:

(1) a copy of the application filed with the appropriate banking agency having jurisdiction over the surviving financial institution;

(2) a certified copy of all minutes of meetings of the board, shareholders, or members that relate to the transaction, including those reflecting approval to engage in the transaction by a majority vote of the shareholders of members;

(3) a publisher's certificate certifying the publication of the notice required to be published by the appropriate banking agency; and

(4) evidence to ensure that no undue harm will be caused to the public interest or to any other existing financial institution.

(d) The Commissioner is deemed to have consented to the reorganization, merger or conversion into another type of financial institution charter at the time the Department notifies the savings association that the filing made in accordance with this section is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon compliance with the provisions of this section and the granting of a successor charter by the appropriate banking agency, a copy of which must be filed with the Commissioner, the savings association receiving the new charter ceases to exist as a savings association and will no longer be subject to the jurisdiction of the Commissioner. The foregoing notwithstanding, the Commissioner must receive the original charter certificate or a certified affidavit of lost certificate in order to be released from the requirement to pay annual assessments as provided by §60.251 of this title (relating to Annual Assessments.)

§60.144. Conversion into a Savings Association.

(a) The Commissioner may authorize any financial institution to convert itself into a savings association in a manner consistent with the provisions of applicable law and regulations of the institution.

(b) Plan and Application. In order to obtain such authorization, the converting institution's board must approve and authorize the filing of a conversion plan and application. Upon approval of the conversion plan, the plan must be approved by a majority vote of the members or shareholders of the financial institution entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the savings association will be so converted, which resolution, verified by affidavit of the secretary or an assistant secretary, must be filed with the Commissioner and mailed to the appropriate banking agency within 10 days after the date of its adoption. At the meeting to vote on a conversion to a savings association, the members or stockholders must also vote on the directors of the savings association. The proposed directors must execute an application for savings association charter as provided by Finance Code Chapter 62, Subchapter A, and §60.121 of this title (relating to Savings Association Charter).

(c) Review by Commissioner; Approval. The Commissioner, on receipt of the application and verified copy of the minutes, will conduct an examination of the financial institution seeking conversion. Following the examination, the Commissioner will approve the conversion if the Commissioner determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of Finance Code Chapter 62, Subchapter A, and §60.121 of this title.

§60.145. Mutual to Stock Conversion.

(a) The application for mutual to stock conversion must include:

(1) a plan of conversion;

(2) amendments to the savings association's certificate of formation and bylaws;

(3) a copy of the proxy and soliciting materials to be used; and

(4) such other information the Commissioner may require.

(b) The plan of conversion must provide:

(1) a comprehensive description of the nontransferable subscription rights received each eligible accountholder, including details on oversubscriptions;

(2) that the shares of the converting savings association be offered to persons with subscription rights and management, in that order, and that any remaining shares will be sold either in a public offering through an underwriter or directly by the converting savings association in a direct community offering;

(3) that a direct community offering by the converting savings association will give a preference to natural persons residing in the counties in which the savings association has an office;

(4) that the sale price of the shares of capital stock to be sold in the conversion will be a uniform price determined in accordance with paragraph (1) of this subsection, and specify the underwriting and/or other marketing arrangements to be made;

(5) that the conversion must be completed within 24 months from the date the savings association members approve the plan of conversion;

(6) that each savings accountholder of the converting savings association will receive, without payment, a withdrawable savings account or accounts in the converted savings association equal in withdrawable amount to the withdrawal value of such accountholder's savings account or accounts in the converting savings association;

(7) for an eligibility record date;

(8) that expenses incurred in the conversion are reasonable;

(9) that the converting savings association may not loan funds or otherwise extend credit to any person to purchase the capital stock of the savings association;

(10) that the proxies held with respect to voting rights in the saving association will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion; and

(11) the amount of the deposit of an accountholder will be the total of the deposit balances in the accountholder's savings accounts in the converting savings association as of the close of business on the eligibility record date. The plan of conversion may provide that the total deposit balances of less than $50 (or any lesser amounts) will not be considered for purposes of paragraph (6) of this subsection.

(c) A plan of conversion must be adopted by not less than two-thirds of the board.

(d) Public Notice. An application for mutual to stock conversion is deemed to be a complete application at the time the Department notifies the applicant that application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in each county in which the savings association has an office, and must prominently post the notice in each of its offices.

(e) Following approval of the application for conversion by the Commissioner, the plan of conversion must be submitted to the members at an annual or special meeting and the plan must be approved, in person or by proxy, by at least a majority of the total outstanding votes of the members.

(f) No offer to sell securities of a savings association pursuant to a plan of conversion may be made prior to Commissioner's approval of the:

(1) application for conversion;

(2) proxy statement; and

(3) offering circular.

(g) Within 45 days:

(1) of the date of the mailing of the subscription form, the subscription rights must be exercised;

(2) after the last day of the subscription period, the sale of all shares of capital stock of the converting savings association to be made under the plan of conversion, including any sale in a public offering or direct community marketing, must be completed.

(h) The converting savings association must pay interest at not less than the savings account interest rate on all amounts paid in cash or by check or money order to the savings association to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the savings association until the conversion is completed or terminated.

(i) For the purpose of this rule, the public offering and a direct community offering is deemed to commence upon the declaration of effectiveness by the Commissioner of the final offering circular.

(j) The Commissioner may grant a written waiver from any requirement of this rule that is not otherwise required by statute.

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 April 24, 2023.

TRD-202301457
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 6. CHANGE OF CONTROL

7 TAC §§60.161 - 60.165

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: Chapter 62, Subchapter L; and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.161. Acquisition of a Savings Association.

The following procedures must be followed when a person desires to obtain control of a savings association (including change of control of a savings association holding company).

(1) No person other than the issuer may make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of a savings association if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such savings association, unless such person has filed with the Commissioner all of the following information on an application form approved by the Commissioner and which application form is deemed by the Commissioner to be complete and has received a written order from the Commissioner approving such acquisition or change of control:

(A) the background and identity of the applicant, if such applicant and any affiliate is an individual, or all individuals who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Such filing must contain the following information:

(i) name and address;

(ii) present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(iii) material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;

(iv) whether such individual is presently charged with or has ever been convicted of a violation of law in a criminal proceeding (excluding minor traffic violations) and, if so, giving the date, nature of conviction, name and location of the court, and penalty imposed or other disposition of the case;

(v) whether such individual has been or is a party to any federal, state, or municipal court lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulations, and, if so, giving the date, style of the suit, case number, court location, and disposition of the suit;

(vi) whether any such individual has been or is a party to any federal, state, or municipal governmental agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case; and any other relevant information requested by the Commissioner;

(B) if the applicant is not an individual, the nature of its business operations for the past five years or for such lesser period as such applicant and any predecessors thereof have been in existence;

(C) description of the interrelationships between the applicant and all affiliates of the applicant;

(D) nature, identity, source, and amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there must be a description of the transaction, the names of the parties, and all arrangements, or other understanding with such parties, including all arrangements, agreements, or understandings in regard to repayment of the funds;

(E) any plans or proposals which the applicant may have to declare dividends to liquidate such savings associations, to sell its assets, or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any management contracts, and any financial or employment guarantees given to present and contemplated management;

(F) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(G) the number of shares of the savings association's voting securities (including securities convertible or evidencing rights to acquire voting securities) which the applicant, its affiliates, affiliated persons, and any other related person plans to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(H) a description of any contracts, arrangements, or understandings with respect to any voting security of the savings association in which the applicant, its affiliates, or any related person is involved;

(I) copies of any contracts, agreements, or other documents which the Commissioner determines are relevant to the review of the application; and

(J) any other relevant information requested by the Commissioner.

(2) If the person required to file the information required by paragraph (1) of this section is a partnership, limited partnership, syndicate, trust, or other group, the Commissioner may require that the information must be given to:

(A) each partner of such partnership or limited partnership;

(B) each member of such syndicate or group; and

(C) each person who controls such partner or member.

(3) If the person required to file the information required by paragraph (1) of this section is a corporation, the Commissioner may require that the information called for must be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) The transaction for acquisition of control of a savings association may not be consummated until the Commissioner approves the application for acquisition of control. The application will be processed and considered in accordance with Finance Code §62.555 and §62.556. The Commissioner will render a decision within 60 days after the application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). The application will be denied if the Commissioner finds any of the following:

(A) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or the savings bank industry in any part of the state, unless the Commissioner also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;

(B) the financial condition of any acquiring party might jeopardize the financial stability of the savings association being acquired;

(C) plans or proposals to liquidate or sell the savings association or its assets are not in the best interest of the savings association;

(D) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the savings association;

(E) the savings association will not be solvent, have adequate capital structure, or be in compliance with the laws of this state after the acquisition;

(F) the acquisition would result in the violation of any law or regulation or it has been evidenced that the applicant, affiliates, or affiliated persons may cause to be abused the fiduciary responsibility held by the savings association or other demonstration or untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the savings association has been evidenced;

(G) the applicant has not provided information pertinent to the application requested by the Commissioner; or

(H) the applicant is not acting in good faith.

§60.162. Notice and Hearing.

(a) Public Notice. An applicant timely requesting a hearing on the Commissioner's decision to deny the application must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings association has its home office.

(b) Hearing. If a hearing is required, the Commissioner will set a hearing on the denial within 60 days after the date the request for a hearing on the denial was received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(c) Time of Decision. To the extent a hearing on the Commissioner's decision to deny the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to be closed for purposes of Finance Code §62.556.

§60.163. Retention of Control.

(a) The following conditions affecting any controlled savings association, regardless of when or how such control has been acquired, are grounds for the Commissioner to investigate, seek to enjoin, or set aside any change of control of a savings association, if the Commissioner deems the transfer to be against the public interest:

(1) the violation of any law, these regulations, abuse of the fiduciary responsibility held by a savings association, or other demonstration of untrustworthiness by the savings association, its holding company, or any controlling person, affiliates, affiliated persons, or any of the officers or directors which would affect the savings association; or

(2) the violation of any antitrust law of this state by the savings association, the holding company, or any affiliate.

(b) The Commissioner may require the submission of such information as necessary to determine whether any retention of control complies with the law of this state, as a condition of approval of such retention of control.

(c) When the Commissioner determines reasonable cause exists to believe that a change of control may have taken place without prior approval, the Commissioner may call a hearing to determine whether there has been in fact a change of control. If the Commissioner finds by a preponderance of the evidence that such unauthorized

control exists, the Commissioner may, after notice and hearing, issue an order requiring immediate divestiture by certain persons of unapproved or indirect control, or the Commissioner may issue any other supervisory order the Commissioner deems appropriate.

§60.164. Abeyance of Other Applications.

When an application for approval of acquisition of control of a savings association has been received by the Commissioner and the savings association also has other applications on file with the Commissioner, such applications may, at the Commissioner's discretion, be held in abeyance until the change of control application has been disposed of.

§60.165. Exempt Transactions.

The following transactions are exempt from the application requirements of this division:

(1) control of an insured institution acquired solely as a result of foreclosure on the stock of a savings association which secures a loan contracted for in good faith, where such loan was made in the ordinary course of business of the lender, provided that the acquisition of control pursuant to such foreclosure is reported to the Commissioner within 30 days and provided further that the acquiror may not retain such control for more than one year from the date on which such control was acquired. The Commissioner may, upon application by the acquiror, extend such one-year period from year to year for an additional period of time, not to exceed three years, if the Commissioner finds such extension is warranted and would not be detrimental to the public interest. Nothing in this subsection prevents such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

(2) control of an insured institution acquired through a percentage increase in stock ownership following a pro-rata stock dividend or stock split, if the proportional interest of the recipients remains substantially the same; and

(3) acquisition of additional stock of a savings association by any person who has held power to vote 25% or more of any class of voting stock in such savings association continuously for the three-year period preceding such acquisition, or has maintained control of the savings association continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

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 April 24, 2023.

TRD-202301458
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 7. CAPITAL NOTES AND DEBENTURES

7 TAC §60.171

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code §63.004(d).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.171. Capital Notes and Debentures.

(a) Approval Required. No savings association may issue and sell its capital notes or debentures without the prior written approval of the Commissioner. The Commissioner, in approving the issuance and sale, may impose any conditions the Commissioner determines necessary 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.

(b) Requirements. A savings association may, by resolution of its board and with prior approval of the 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 association, provided:

(1) the savings association provides adequate proof to the satisfaction of the 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 as to the need and utilization of such funds by the savings association in a profitable manner.

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 April 24, 2023.

TRD-202301459
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 8. HOLDING COMPANY APPLICATIONS

7 TAC §60.181

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §66.002(3); §66.051(a); §66.053(2); §66.103(a); and §66.104(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.181. Registration.

A holding company must apply and register with the Commissioner not later than the 90th day after the date the company becomes a hold-

ing company. The application 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 finds necessary and appropriate. On written request, the Commissioner may, in his or her sole discretion, extend the time within which a holding company is required to register and file the required information.

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

Filed with the Office of the Secretary of State on April 24, 2023.

TRD-202301460
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 9. SUBSIDIARY APPLICATIONS

7 TAC §60.191

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §64.001; §64.002(18) and (19); and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.191. Subsidiary Application.

(a) In order to obtain approval for a subsidiary, the savings association must file with the Commissioner an application accompanied by the following information:

(1) an audited financial statement in the event of acquisition of an existing company;

(2) a certified board resolution of the board of the applying savings association approving the investment in the proposed subsidiary;

(3) a certified copy of the certificate of formation and bylaws of the proposed subsidiary;

(4) the acquisition terms, cost, or investment requirements of the savings association;

(5) projected operating statements of the proposed subsidiary for the first 3 years of operation;

(6) an attorney's opinion letter as to direct, indirect, and/or contingent liability of the savings association and the proposed subsidiary;

(7) an outline of plans for operation of the proposed subsidiary;

(8) evidence that the proposed subsidiary will have adequate management and operating personnel with proper supervision by savings association management;

(9) plans for the safeguarding of assets of the proposed subsidiary;

(10) affidavits from all directors of a savings association and the proposed subsidiary fully disclosing any interest they may directly or indirectly have in the proposed subsidiary; and

(11) such other information or data as the Commissioner may require.

(b) The Commissioner may approve an investment in a subsidiary if the Commissioner finds that:

(1) the operation and condition of the savings association affords no basis for supervisory objection;

(2) there are adequate income and reserves to support the proposed investment;

(3) the operations of the subsidiary will be clearly distinguishable from those of the parent savings association; and

(4) the subsidiary is or will be profitably operating within a reasonable period of time or the investment is reasonably projected to result in economic benefit to the savings association.

(c) If the Commissioner finds that a savings association has abused or is abusing the authority to invest in a subsidiary, the Commissioner may exercise discretion in denying such savings association the right to future exercise thereof until such abuse or abuses have been corrected.

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 April 24, 2023.

TRD-202301461
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

SUBCHAPTER C. OPERATIONS

DIVISION 1. OFFICE LOCATIONS

7 TAC §§60.201 - 60.204

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code §62.011.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.201. Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office.

(a) Approval Required. No savings association may establish, maintain, or relocate its home office, or an additional office as provided by §60.202 of this title (relating to Types of Additional Offices), without the prior written approval of the Commissioner, except as otherwise provided by §60.133 of this title (relating to Relocate Home or Additional Office).

(b) Ancillary Facilities. An authorized or approved office of a savings association is the place where the business of the savings association is conducted, and with the prior written consent of the Com-

missioner, may include facilities ancillary thereto for the extension of the savings association's services to the public. Any authorized or approved office of a savings association also means, with the prior written consent of the Commissioner, separate quarters or facilities to be used by the savings association for the purpose of performing service functions in the efficient conduct of its business.

(c) Notice of Home Office. All offices of a savings association which are located outside the county of its home office must display a sign which is suitable to advise the public of the type of additional office which is located therein and the location of the home office of such savings association.

(d) Closing an Office. Before closing an approved branch or other office, other than a temporary closure as provided by §60.203 of this title (relating to Temporary Closing of Additional Offices), or an emergency closure as provided by Finance Code §63.009, a savings association must comply with the notice requirements of federal law, and provide the Commissioner with a copy of the closing notice filed with the appropriate federal banking agency, if applicable, upon filing such notice. A savings association must provide the Commissioner with confirmation within 10 days after the actual closing date. Once closed, prior written approval from the Commissioner to operate a branch or other office is deemed revoked, and a savings association may not reopen the branch or other office without seeking new approval from the Commissioner.

(e) Activities Not Requiring an Approved Office. The following activities of a savings association, or any combination thereof, may be performed at a location other than the home or a branch office and such location does not constitute an "additional office" requiring notice to or the prior approval of the Commissioner for purposes of Finance Code §62.011:

(1) Automated or remote activities. A savings association may engage in limited banking activities through infrastructure and equipment by automated or remote means, including use of an automated teller machine (ATM), automated loan machine, automated device for receiving deposits (remote deposit capture), or other remote service unit.

(2) Loan production activities. A savings association may engage in loan production activities including taking loan applications, making a credit decision, accepting payments on loans, or managing or selling real estate owned by the institution in connection with such loans, unless such activity conflicts with applicable state or federal law.

(3) Administrative activities (administrative offices). A savings association may establish or maintain administrative offices to perform the internal operations of the institution, provided the savings association does not conduct banking activities.

(4) Advertising and marketing. A savings association may advertise and market itself to the public including soliciting deposits, providing information about the financial products of the savings association, and assisting persons in completing application forms to open a deposit account, provided the savings association does not conduct banking activities.

(5) Trade association participation; community events and engagement. A savings association may participate in trade association events promoting the banking or financial services industry broadly. A savings association may also host, attend, or otherwise participate in community events, provided the savings association does not conduct banking activities at such event.

(6) Information technology (IT) infrastructure. A savings association may operate information technology infrastructure or equipment including the placement of IT infrastructure in a data center, the hosting or processing of a website or data by a third-party IT service provider, or such other physical presence tied to the IT infrastructure of the savings association.

(7) Ancillary customer service activities. A savings association may engage in customer service activities ancillary to its banking functions including relating to accessing or using its website or a software application.

§60.202. Types of Additional Offices.

The following types of additional offices may be established and maintained by a savings association:

(1) branch offices at which the savings association may transact any business that could be done in the home office;

(2) mobile facilities at which the savings association may transact any business of the institution which could be done in the home office (a detailed record of the transactions at such facility must be maintained); and

(3) courier/messenger service to transport items relevant to the savings associations' transactions with its customers, including courier services between financial institutions.

§60.203. Temporary Closing of Additional Offices.

In the event a savings association closes any additional office of any type on a temporary basis, such office must be reopened within 12 months or less, unless otherwise extended by written authorization of the Commissioner. In the event such office is not reopened within the allotted 12-month period, or the longer period established by the Commissioner, if applicable, the Commissioner's approval to establish such office for purposes of §60.201 of this title (relating to Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office) is deemed revoked. Written notice of any temporary closing must be provided to the Commissioner no later than 10 days after such closing, and the office may not reopen until the Commissioner receives written notification at least 10 days before such reopening.

§60.204. Operation of a Mobile Facility.

Mobile facilities must be operated consistent with the following requirements:

(1) Such facility may be operated only at locations approved by the Commissioner, each of which must at all times be appropriately identified at the site and on the facility and located within 100 miles of the savings association's home office or a branch office.

(2) The savings association must maintain adequate safeguards for the security of the mobile facility. The Commissioner may require additional safeguards, if in the Commissioner's sole discretion, existing safeguards are inadequate, with written notice to the savings association.

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 April 24, 2023.

TRD-202301462
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

DIVISION 2. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, AND RESERVES

7 TAC §§60.221 - 60.227

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.221 is also proposed under the authority of, and to implement, Finance Code: §66.002(4) and (6); and §66.053. 7 TAC §60.222 is also proposed under the authority of, and to implement, Finance Code §66.002(5). 7 TAC §60.223 is also proposed under the authority of, and to implement, Finance Code: §66.002(8); and §66.051. 7 TAC §60.225 is also proposed under the authority of, and to implement, Finance Code §66.002(10). 7 TAC §60.226 is also proposed under the authority of, and to implement, Finance Code §66.051. 7 TAC §75.227 is also proposed under the authority of, and to implement, Finance Code: §62.051(b)(2); §62.007(b)(3); §62.010; §62.106; and §62.151(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.221. Books and Records.

A savings association must create and maintain books and records of its operations, including complete minutes of the meetings of its members and the board, 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 savings association may store original records or copies of records at a location other than the home office; however, a savings association 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 association by the Commissioner at the home office. A savings association 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.

§60.222. Accounting Practices.

A savings association must use such forms and observe such accounting principles and practices as the Commissioner may require from time to time.

§60.223. Financial Statements; Annual Reports; Audits.

For safety and soundness purposes, no later than 90 days after its fiscal year end, each savings association 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, with the exception of any matters specifically addressed by this section, the Texas Savings and Loan Act, or the rules (regulations) adopted thereunder.

§60.224. Misdescription of Transactions.

A savings association may not, either directly or indirectly, knowingly make any entry on its books that is not accurate or otherwise fails to appropriately describe the transaction, or withholds information material to the transaction.

§60.225. Charging Off or Setting Up Reserves Against Bad Debts.

The 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 GAAP.

§60.226. Examinations.

(a) The Commissioner will examine each savings association once in each year, or more frequently if the Commissioner determines that the condition of the savings association justifies more frequent attention to enforce the Texas Savings and Loan Act. The Commissioner may defer an examination for not more than six months if the Commissioner considers the deferment appropriate to the efficient enforcement of the Texas Savings and Loan 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 association's appropriate federal banking agency. The Commissioner may accept an examination made by such federal banking agency in lieu of an examination pursuant to this section.

§60.227. Bylaws.

(a) The bylaws of a savings association must contain sufficient provisions to govern the institution in accordance with the Texas Savings and Loan Act, the Texas Business Organizations Code, and other applicable laws, rules and regulations, or the certificate of formation. 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. Bylaw amendments may not take effect before being filed with and approved by the Commissioner in accordance with §60.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

(b) A savings association 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 savings association.

(c) Other optional bylaws may be adopted by a savings association with the approval of the Commissioner obtained in accordance with §60.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

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 April 24, 2023.

TRD-202301463
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 3. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§60.231 - 60.234

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.231 and §60.232 are proposed under the authority of, and to implement, Finance Code: §62.002(b); §62.003(b); §62.052(c); §62.152; and §66.002(1) and (2). 7 TAC §60.233 is also proposed under the authority of, and to implement, Finance Code Chapter 66, Subchapter C. 7 TAC §60.234 is also proposed under the authority of, and to implement, Finance Code §63.004(d).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.231. Capital Requirements.

(a) Unless the context clearly indicates otherwise, when used in this division, "capital" for a savings association 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 association's capital under GAAP) plus any retained earnings and additional paid-in capital as well as such other items as the Commissioner may approve in writing for inclusion as capital.

(b) Minimum capital requirement. Each savings association must maintain capital at levels that are required for institutions whose accounts are insured by the FDIC.

§60.232. Increase or Decrease of Minimum Capital Requirements.

(a) The Commissioner may increase or decrease the minimum capital requirement set forth in this chapter upon written request by a savings association or by supervisory directive if the Commissioner determines that:

(1) the savings association'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 association, a violation of any provision of the certificate of formation or bylaws of the savings association, or a violation of any law, rule, or supervisory action applicable to the savings association or any condition that the Commissioner has imposed on the savings association by written order or agreement;

(2) the savings association is well managed. In determining whether the savings association is well managed, the Commissioner may consider:

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

(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 association in changing economic conditions; and

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

(3) the savings association has submitted a plan acceptable to the Commissioner for restoring capital within a reasonable period of time. Such plan must describe the means and schedule by which capital will be increased. The plan must 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. The plan must provide for improvement in the savings association'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 to be reasonably feasible will not be acceptable. The Commissioner may require modification of the savings association's plan in order for the institution to receive or to continue to receive such waiver or variance.

(b) Progress Reports. Any savings association which receives an increase or decrease of its minimum capital requirement from the Commissioner must file quarterly progress reports regarding compliance with its capital plan. The 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 for approval.

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

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

(1) the savings association 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 association undergoes a change of control or a material change in management that was not approved by the Commissioner;

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

(5) information is discovered that was not made available to the 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 association engages in unsafe and unsound practices, violates any provision of its certificate of formation or bylaws, or violates any law, rule, or supervisory order applicable to the savings association or any condition that the Commissioner has imposed upon the savings association by written order or agreement; or

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

§60.233. Business Plans.

(a) All savings associations whose operations are considered by the Commissioner unsafe or unsound or that have total capital less than the amount required under §60.231 of this title (relating to Capital Requirements) or §60.232 of this title (relating to Increase or Decrease of Minimum Capital Requirements) must 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 1 year but may be for so long as the Commissioner may require.

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

§60.234. Joint Issuance of Capital Obligations.

Joint Issuance of Capital Obligations. On the same terms and conditions as stated in §60.171 of this title (relating to Capital Notes and Debentures), a savings association may, by resolution of its board and with prior approval of the Commissioner, join other savings associations in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations.

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 April 24, 2023.

TRD-202301464
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 4. HOLDING COMPANIES

7 TAC §§60.241 - 60.245

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §66.051(a); §66.053(2); §66.103(a); and §66.104(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.241. Reports.

Each holding company and each subsidiary of a holding company, other than a savings association, must file with the Commissioner reports required by the Commissioner. The reports must be made under oath and must be in the form and for the periods prescribed by the Commissioner. Each report must contain information concerning the operations of the holding company and its subsidiaries as the Commissioner may require. A holding company must file with the 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.

§60.242. Books and Records.

Each holding company must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §60.221 of this title (relating to Books and Records), pertaining to savings associations.

§60.243. Examinations.

Each holding company and each subsidiary of a holding company is subject to examinations as the Commissioner may prescribe. The holding company or the savings association must pay the cost of an examination. The confidentiality provisions of Finance Code §89.052 apply to an examination performed in accordance with this section, however, the 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, to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

§60.244. Agent for Service of Process.

The 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.

§60.245. Release from Registration.

The Commissioner at any time, on the Commissioner's own motion or on written request, may release a registered holding company from a registration made by the company if the Commissioner determines that the company no longer controls a savings association. If released, the savings association associated with the holding company must maintain the books and records of such holding company.

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 April 24, 2023.

TRD-202301465
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 5. ASSESSMENTS AND FEES

7 TAC §60.251, §60.252

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations; §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §61.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to the supervision and examination of savings banks. 7 TAC §60.252 is also proposed under the authority of, and to implement, Finance Code §66.052(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.251. Annual Assessments.

(a) Annual assessment. All savings associations chartered under the laws of the state and all foreign savings associations (as defined by the Texas Savings and Loan Act in defining "foreign association") holding a certificate of authority to do business in this state must pay to the department an annual assessment fee in an amount determined by the Commissioner as provided by subsection (c) of this section in accordance with the rate requirements set by the Finance Commission of Texas, and subject to the maximum assessment rates established by subsection (d) of this section. The Department will maintain on its website information concerning current rate requirements.

(b) Payment of Assessment. The annual assessment must be paid in quarterly installments. Upon receipt of a written invoice from the department, the savings association must pay the assessment fee by electronic/ACH payment, or by another method, if directed to do so by the Department.

(c) Determination of Assessment. The assessment will be determined based on the total assets of the savings association. The valu-

ation of assets will be determined as of the close of the calendar quarter immediately preceding the effective date of the assessment.

(d) Maximum Assessment Rates. The assessment rates set by the Finance Commission of Texas may not exceed the maximum rates established in the following rate schedule:
Figure: 7 TAC §60.251(d)

§60.252. Fee for Special Examination.

(a) A special examination is one that is conducted outside the context of a savings association's annual examination and includes, but is not limited to, examinations of a savings association holding company, and interstate branches of savings associations in Texas as the host state. The savings association or other regulated entity that is the subject of the special examination is subject to a fee and liable for the Department's costs as provided by this section in order to recoup the salary expense of the examiner(s) plus a proportionate share of Department overhead allocable to the special examination, and the actual costs by the examiner in conducting the special examination.

(b) The fee for a special examination under this section will be calculated at a rate not to exceed $75 per examiner per hour. The entity that is the subject of the examination must also pay to the Department an amount for actual travel expenses and costs incurred by the Department's examiner(s), including mileage, public transportation, food, and lodging. The Commissioner, in his or her sole discretion, may lower the applicable rate for the examination fee or waive, in whole or in part, any fees or costs chargeable in accordance with this section.

(c) In connection with an examination under this section, the regulated entity or other legally responsible party must pay the examination fee and costs incurred as provided by 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 April 24, 2023.

TRD-202301466
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 6. COMPLAINT PROCEDURES

7 TAC §60.261

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §13.011(a); and Chapter 66, Subchapter C.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.261. Savings Association Complaint Notices.

(a) Definitions.

(1) Privacy notice means any notice which a state savings association 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 associations must use the following notice: The (name of state savings association) 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 association) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Phone: (877) 276-5550, Fax: (512) 936-2003, or through the Department's website at www.sml.texas.gov.

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

(3) Regardless of whether a savings association is required by any state or federal law to give privacy notices, each savings association 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 association 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 association must give the required notice when the customer relationship is established.

(C) The required notice must be posted on each website of the savings association that is accessible by the public and either used to conduct banking activities or from which the savings association 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.

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 April 24, 2023.

TRD-202301467
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

SUBCHAPTER D. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

DIVISION 1. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §§60.301 - 60.309

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §64.001; and §64.002. 7 TAC §60.303 is also proposed under the authority of, and to implement, Finance Code Chapter 64, Subchapter E.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.301. Definitions.

As used in this division, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Commercial real estate--Land on which structures or improvements do not qualify the property as residential real estate are located.

(2) Home--A structure designed and used as a residence by one family, or a structure designed and used for occupancy for one to four family units. The term also includes common areas around town houses or condominium units which are incidental to ownership of the residence.

(3) Home improvement loan--Any loan made for the improvement, maintenance, repair, modernization, or equipment of a home.

(4) Interim construction loan--A loan made to finance the improvement of or the building of residential or commercial structures on developed building sites, and may include the acquisition of such developed building sites. This term does not include home improvement loans.

(5) Manufactured home--A structure, transportable in one or more sections, which in the traveling mode is 8 feet or more in width or and 40 feet or more in length, or when erected on site, is 400 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

(6) Personal property--Tangible and intangible property that is not real property, including the following items as defined in the Texas Business and Commerce Code: consumer goods, equipment, farm products, inventory, accounts, instruments, chattel paper, documents, general intangibles, cash proceeds, and non-cash proceeds.

(7) Residential real estate--Land on which a house, a home, or an apartment house is located, including combinations of farm residences and commercial farm real estate.

(8) Unimproved real estate--Land which has no substantial improvements or utilities. All other real estate will be considered either residential real estate or commercial real estate.

§60.302. Loans Authorized.

(a) A savings association may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) loans or participations subject to the requirements of the Texas Savings and Loan Act, and this subchapter, including:

(1) residential real estate loans, including loans on the security of leasehold interests in residential real estate;

(2) home improvement loans;

(3) manufactured home loans,;

(4) interim construction loans;

(5) other real estate loans, including loans on the security of leasehold interest in real estate;

(6) personal property loans;

(7) commercial real estate loans, including loans on the security of leasehold interest in real estate;

(8) non-real estate commercial loans;

(9) loans fully secured by savings accounts owned or otherwise pledged for or by the borrower;

(10) unsecured loans; and

(11) loans which are insured or guaranteed by the United States or any instrumentality thereof.

(b) Parity. A savings association may purchase or commit to purchase any loan it could make if it were incorporated and operating as a federal savings association domiciled in this state, so long as for each such transaction the savings association complies with all applicable regulations governing such activities by federal savings banks. However, all such loans must be documented in accordance with the applicable requirements of this chapter.

§60.303. Local Service Area Investment Requirement.

(a) A savings association must ensure compliance with the local service area investment requirements set forth in Finance Code Chapter 64, Subchapter E.

(b) Local Service Area. A savings association's "local service area" means the geographical area designated by the Commissioner under Finance Code §64.082. A savings association's local service area is deemed to include any zip code for which any portion of the zip code is located within the 50-mile radius of the home office or any branch office of the savings association and is deemed to be removed from the local service area at the time such office permanently closes.

(c) Categories of Assets and Investments. The following categories of assets and investments constitute loan and investments for purposes of Finance Code §64.081:

(1) first and second lien residential mortgage loans or foreclosed residential mortgage loans secured by real estate located in the local service area;

(2) home improvement loans concerning real estate located in the local service area;

(3) interim residential construction loans concerning real estate located in the local service area;

(4) mortgage-backed securities collateralized by loans secured by real estate located in the savings association's local service area; and

(5) loans for community reinvestment purposes concerning a community located in the local service area.

(d) For purposes of identifying qualifying assets and investments under this section:

(1) Mortgage-backed securities includes mortgage-back bonds, mortgage pass-through securities, collateralized mortgage obligations, and such other securities determined by the Commissioner to be collateralized by first or second lien residential mortgages.

(2) It is the responsibility of the savings association to capture and maintain information and documentation to support a mortgage back security as being collateralized by loans secured by real estate located in the local service area.

(3) A qualifying loan or investment includes the loans sold by the savings association or any subsidiary (including finance subsidiaries) within the preceding 12 months that otherwise meet the requirements of this section.

(e) Any request by a savings association for a waiver under Finance Code §64.084 must be accompanied by a written explanation and justification as to why qualifying loans are not available in saving association's local service area.

§60.304. Unsecured Loans.

(a) A savings association may make unsecured loans or purchase participations in unsecured loans, on the terms and in amounts consistent with the savings association's lending policies, subject to the limitations of this section.

(b) Real estate, personal property, or interests in oil and gas leases may be provided as security for such loans without meeting the requirements of this chapter for real estate or personal property loans, so long as all requirements of this section are met.

§60.305. Loan Policies and Documentation.

(a) Policies. Each savings association must establish written policies approved by its board establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the savings association's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board; take adequate account of concentration of credit risk; and are appropriate to the size of the savings association and the scope of its lending activities.

(b) Loan Documentation Standards. Loan documentation standards must be established and maintained to enable the savings association to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the savings association may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed and dated by the borrower or their agent (and if the borrower is a corporation, a board resolution authorizing the loan), which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or their agent, or a copy of the executed contract, disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing the purchase of the security for the loan;

(3) current financial statements signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors (a current financial statement is as of a date within 180 days before the application is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, and any conditions of approval;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon their completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes containing the borrower's obligation to repay duly executed by the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan file, if the original notes are stored for safekeeping in another location at the savings association);

(8) the original mortgage, deed of trust, or other instrument creating or constituting the lien securing the loan;

(9) for real estate loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is located and naming the savings association as a co-insured, as its interest may appear;

(11) for real estate loans, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq.;

(12) for personal property loans, a detailed explanation of how the savings association arrived at the appraised or market value of the security property;

(13) any loan agreement or other ancillary documents relating to the loan; and

(14) any documents required by the Texas Credit Title (Finance Code §301.001 et seq.).

(c) Unsecured Loans. Documentation guidelines for unsecured loans under this chapter would generally include the documents in subsection (b)(1) and (3) - (7) of this section.

(d) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof.

(e) Closing Agent. A savings association may designate as escrow agent an attorney or a title company, either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents must be forwarded to the savings association within 5 business days after closing, or immediately after recording, for those documents which require filing of record.

(f) Permanent Loan File Requirements.

(1) Loan documentation must be in the possession of the savings association or an escrow agent designated by the savings association before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records must be placed in one permanent loan file immediately upon receipt by the savings association.

(2) The permanent loan file required by this section must be located at an office of the savings association. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings association's discretion. Files for loans which are fully secured by accounts at the association may be maintained at the office where the loan was originated.

(3) The permanent loan file must contain evidence that the savings association obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings association's interest therein. This requirement does not apply to loan participations purchased by the savings association.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw must be part of the permanent file.

(5) When a savings association purchases whole loans or participations in loans, it must cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement must be a part of the permanent file. The savings association must obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(g) The records of the savings association must reflect that the board has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the savings association and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings association. Loans originating in branch offices, loan offices, or agencies must be approved in the same manner as loans originating in the principal office.

(h) A savings association must maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

§60.306. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.

All transactions, including loans, involving officers, directors, affiliated persons, controlling persons or employees are subject to the requirements of Federal Reserve Board Regulations O and W, which sections are hereby incorporated by reference. The Department will monitor and enforce compliance with such provisions.

§60.307. Letters of Credit.

A savings association may issue letters of credit in accordance with the terms and conditions of the Uniform Commercial Code of the State of Texas and the Uniform Customs and Practice for Documentary Credits, subject to the following requirements:

(1) The savings association must maintain a letter of credit register containing name of customer, address, amount of credit extended, and identifying number.

(2) Each letter of credit must conspicuously state that it is a letter of credit or must be conspicuously entitled as such.

(3) The savings association's undertaking must contain a specified expiration date or be for a definite term and must be limited in amount.

(4) The savings association's obligation to pay arises only upon presentation of a draft and other documents as specified in the letter of credit and there is no obligation on the part of the savings association to determine questions of fact or law at issue between the account party and the beneficiary.

(5) The savings association must obtain an unqualified obligation from its customer to reimburse it for payments made under the letter of credit.

(6) Each letter of credit's terms is subject to the limitations and documentation requirements to the same extent as if it were a loan made under this chapter.

(7) An appropriate fee may be collected for each letter of credit issued.

§60.308. Investment in Securities.

(a) A savings association is deemed to have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the FDIC; in stock or obligations of a national mortgage association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the FDIC; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the savings association's purposes or power; in demand, time, or savings deposits of any financial institution the deposits of which are insured by the FDIC; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state; and in such other securities or obligations approved by the Commissioner.

(b) A savings association investing in securities under this section must insure that the securities are delivered to the savings association, or for the savings association's account to a custodial agent or trustee designated by the savings association, within 3 business days after paying for or becoming obligated to pay for the securities. The savings association may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the FDIC, any financial institution legally exercising

trust powers and the accounts of which are insured by the Federal Deposit Insurance Corporation, or such other trust company approved in advance by the Commissioner. When employing any of the foregoing entities as trustee or custodial agent to accept delivery of the securities, the savings association must ensure that it receives a custodial or trust receipt for the securities within 3 business days of the delivery of the securities.

(c) No savings association or subsidiary thereof may invest, either directly or indirectly, in the stocks, bonds, notes, or other securities of any affiliated person without the prior written approval of the Commissioner.

(d) No savings association or subsidiary thereof may, either directly or indirectly, purchase securities from any affiliated person of such savings association.

(e) Investments in equity securities.

(1) A savings association or any service corporation, operating subsidiary, or finance subsidiary of a savings association may not invest in stock or equity securities unless the securities qualify as investment grade securities. Additionally, no savings association may invest in stock or equity securities unless the securities are eligible investments for federal associations.

(2) The limitations of paragraph (1) of this subsection do not apply to equity securities:

(A) issued by any United States government-sponsored corporation including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(B) issued by a service corporation, an operating subsidiary, or a finance subsidiary of the savings association.

(f) A savings association may be a member of the Federal Home Loan Bank System and/or Federal Reserve System and is specifically authorized to invest in such Federal Home Loan Bank and Federal Reserve Bank stock.

§60.309. Investment in Banking Premises and Other Real Estate Owned.

(a) A savings association may not, without prior written consent of the Commissioner, invest an amount in excess of its capital in fixed assets, including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) A savings association may not acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings association, or for the use of the savings association in future expansion of its banking facilities.

(c) Real estate acquired for the future expansion of a savings association's facilities not improved and occupied as banking facilities within 5 years from the date of its acquisition must be sold or otherwise disposed of. Existing bank facilities must be sold or otherwise disposed of within 5 years of the date the real estate ceases to be used for banking purposes. The Commissioner may, for good cause shown, grant an extension of time for the sale or disposition of the real estate, as described in this subsection.

(d) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings association may be held by a savings association for no more than 5 years, unless the Commissioner extends in writing the holding period for such property.

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a savings association must substantiate the market value of the real estate by obtaining an appraisal within 90 days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is $500,000 or less. The Commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) An additional appraisal or evaluation is not required when a savings association acquires real estate in accordance with subsection (d) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than 1 year old.

(g) An evaluation must be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal must be made at least once every 3 years on real estate with a recorded book value in excess of $500,000.

(h) Notwithstanding any other provision of this section, the Commissioner may require an appraisal of real estate if the Commissioner considers an appraisal necessary to address safety and soundness concerns.

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the FDIC in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.

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 April 24, 2023.

TRD-202301468
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 2. SUBSIDIARIES

7 TAC §§60.321, 60.323 - 60.326

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code §64.002(18) - (20).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.321. Investment in and Divestiture of Subsidiaries.

(a) A savings association may, only after prior written approval of the Commissioner, invest in a subsidiary.

(b) Subsequent to obtaining approval for its initial investment and activity, a subsidiary may not engage in additional or substitute activities without the prior written approval of the Commissioner.

(c) A savings association may, with prior written approval of the Commissioner, divest itself of a subsidiary or merge or consolidate

the subsidiary with another company if the Commissioner finds that the terms and conditions of the transaction are in the best interests of the savings association.

§60.323. Authorized Subsidiary Investments.

(a) Activities of a subsidiary must consist of one or more of the following:

(1) loan origination, purchasing, selling, and servicing;

(2) acquisition of unimproved real estate lots and other unimproved real estate for the purpose of prompt development and subdividing;

(3) purchasing, selling, owning, renting, leasing, managing, subdividing, improving, operating for income, or otherwise dealing in and with real property, whether improved or unimproved (excluding any investment of any nature in an oil and gas drilling venture, whether such investment be in the stock of a corporate entity or in the partnership or joint venture interest of any entity making purchases or investments in oil and gas drilling ventures);

(4) acquisition of improved residential real estate and mobile home lots to be held for sale or rental;

(5) acquisition of improved residential real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

(6) maintenance and management of rental real estate;

(7) serving as real estate brokers;

(8) serving as insurance broker or agent;

(9) engaging in or owning an interest in insurance companies engaged in the property, casualty, fire and marine, life, health and accident, title, fidelity, guaranty, and surety insurance business;

(10) serving in the capacity of trustee under deeds of trust or escrow agent;

(11) preparation of state and federal tax returns for the savings association's accountholders and/or borrowers;

(12) acquisition, maintenance, and management of real estate to be used for savings association offices and related facilities;

(13) investing in obligations of, or guaranteed as to principal and interest by, the United States or this state, and in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state;

(14) investing in venture capital through small business investment corporations; and

(15) other activities which may be approved by the Commissioner.

(b) A subsidiary may not, without prior approval of the Commissioner, invest in the stock of any savings and loan association or savings bank.

(c) A subsidiary may not receive payments on new or established savings accounts or pay out withdrawals of monies from savings accounts, and may not perform any duties for the savings association other than those specifically authorized in this section.

(d) The savings association must maintain the originals of all documents relating to the activities of its subsidiaries that do not require prior approval by the Commissioner, which documents must be made available at all times to state and federal supervisory authorities for examination and review.

§60.324. Subsidiary Operations.

(a) The savings association must obtain prior written approval of the Commissioner for the establishment and location of the home office, and any branch office, agency office, or any other office or facility of the subsidiary, and for any change of name of the subsidiary.

(b) A verified copy of all contracts, instruments, joint ventures, and partnership agreements and financing arrangements of the subsidiary investments must be furnished to the savings association within 30 days from date of execution.

(c) The subsidiary must furnish, at the expense of the subsidiary or parent savings association or its holding company, an independent appraiser's report or other expert opinion as determined to be necessary by the Commissioner for the purpose of establishing the value of any investments made by the subsidiary.

(d) Each subsidiary must maintain fidelity bond coverage with an acceptable bonding company in an amount that adequately protects the subsidiary from such loss. Coverage as an additional insured entity under a fidelity bond of the parent savings association or its holding company may satisfy this requirement.

(e) All directors of the savings association and subsidiary must furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the corporation.

(f) Each subsidiary must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §60.221 of this title (relating to Books and Records), pertaining to savings associations.

§60.325. Subsidiary Investment and Debt Limitation.

Investment in subsidiaries is deemed to include investment in the subsidiary's capital stock, paid-in capital, subordinated debentures, unsecured loans, advances, contingencies, and other obligations (excluding secured conforming loans), and may not, in the aggregate, exceed 10% of the savings association's total assets without prior approval.

§60.326. Operating Subsidiaries.

A savings association is authorized to invest in operating subsidiaries, the activities of which are exclusively limited to activities which could be conducted directly by the parent savings association. Because an operating subsidiary is limited to activities that could otherwise be conducted directly by the savings association, operating subsidiary investment is not limited by the percentage of assets or dollar amount restrictions applicable to subsidiary corporations as set forth in §60.325 of this title (relating to Subsidiary Investment and Debt Limitation). Notwithstanding this exclusion, all other provisions of this chapter applicable to a subsidiary apply equally to an operating subsidiary.

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 April 24, 2023.

TRD-202301469
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 3. SAVINGS AND DEPOSITS

7 TAC §60.331

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations; and §59.310, requiring the commission to adopt rules to implement Finance Code Chapter 59, Subchapter D. This proposal is also made under the authority of, and to implement Finance Code Chapter 59, Subchapter D.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.331. User Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code §59.301, have the same meanings assigned by such section.

(b) Measurement of Candle Foot Power. For purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by Landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator must notify the landlord in writing of the requirements of the Finance Code Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(d) Safety Evaluations.

(1) The owner or operator of an unmanned teller machine must evaluate the safety of each machine on a periodic basis no less frequently than annually.

(2) The scope of the safety evaluation must include, at a minimum, the factors identified in Finance Code §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice. An issuer of access devices must furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Texas Business & Commerce Code §322.008.

(1) When Notice is Required. The issuer must furnish the notice to its customer whenever an access device is issued or renewed. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of Notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) Video Surveillance Equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The owner or operator must determine whether video surveillance or

unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under Finance Code §59.308. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) Unmanned Teller Machines Located in a Bank Vestibule. The provisions of the Finance Code Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a bank vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of Compliance. The security officer of each depository must certify compliance with the Finance Code Chapter 59, Subchapter D, and this section on a basis no less frequently than annually.

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 April 24, 2023.

TRD-202301470
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 61. HEARINGS.

7 TAC §§61.1 - 61.3

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 61, as follows: §§61.1 - 61.3. This proposal and the rules as repealed 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 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 61.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. 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 proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 61; however, in a related proposal published elsewhere in this issue of the *Texas Register,* the depart-

ment proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 61; (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, 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, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§61.1. Hearings Officer.
§61.2. Rules of Procedure for Contested Hearings.
§61.3. Publication of Hearings 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 April 24, 2023.

TRD-202301445
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 63. FEES AND CHARGES

7 TAC §§63.1 - 63.9, 63.11 - 63.13, 63.15

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 63, as follows: §§63.1 - 63.9, 63.11 - 63.13, and 63.15. This proposal and the rules as repealed 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 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 63.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. 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 proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 63; however, in a related proposal published elsewhere in this issue of the *Texas Register,* the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 63; (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, 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, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§63.1. Fee for Charter Application.
§63.2. Fee for Branch Office.
§63.3. Fee for Mobile Facility.
§63.4. Fee for Change of Name or of Location.
§63.5. Fee for Special Examination or Audit.
§63.6. Fee for Corporate Document Amendments.
§63.7. Fee for Permission to Issue Capital Obligations.
§63.8. Annual Fee to do Business.
§63.9. Fee for Reorganization, Merger, and Consolidation.
§63.11. Fee for Change of Control.
§63.12. Fee for Subsidiaries.
§63.13. Fee for Charter Application under §62.051.
§63.15. Fees for Public Information Requests.

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 April 24, 2023.

TRD-202301446
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 64. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, RESERVES, NET WORTH, EXAMINATIONS, COMPLAINTS

7 TAC §§64.1 - 64.10

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 64, as follows: §§64.1 - 64.10. This proposal and the rules sections as repealed 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 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 64.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. 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 proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 64; however, in a related proposal published elsewhere in this issue of the *Texas Register,* the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 64; (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, 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, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§64.1. Location of Books and Records.

§64.2. Accounting Practices.

§64.3. Reproduction and Destruction of Records.

§64.4. Financial Statements; Annual Reports.

§64.5. Misdescription of Transactions.

§64.6. Charging Off or Setting Up Reserves Against Bad Debts.

§64.7. Capital Requirements.

§64.8. Waiver of Minimum Net Worth Requirements.

§64.9. Examinations.

§64.10. Savings and Loan Association Complaint Notices.

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 April 24, 2023.

TRD-202301447
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 65. LOANS AND INVESTMENTS

7 TAC §§65.1 - 65.21, 65.23, 65.24

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 65, as follows: §§65.1 - 65.21, 65.23, and 65.24. This proposal and the rules as repealed 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 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60.

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 65.

Changes Concerning Loan Requirements

The department's existing rules in Chapter 65, §§65.4 - 65.10, 65.13 - 65.15, 65.20, and 65.23 establish various requirements for loans made by a savings association. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such rules is not included in the department's related proposal concerning proposed new rules in 7 TAC Chapter 60, published elsewhere in this issue of the *Texas Register.*

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. 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 proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 65; however, in a related proposal published elsewhere in this issue of the *Texas Register,* the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 65. The foregoing notwithstanding, the proposed rules related to Changes Concerning Loan Requirements do have the effect of repealing an existing rule requirement by purposely not proposing new rules to adopt the subject matter of existing 7 TAC §§65.4 - 65.10, 65.13 - 65.15, 65.20, and 65.23 in connection with the department's proposal to consolidate the subject matter of the existing rules in Chapter 65 into 7 TAC Chapter 60; (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, 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, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§65.1. Types of Loans, Letters of Credit, and Investments Authorized.
§65.2. Loans and Investments Made under Prior Rules and Purchases of Such Loans or Participations Therein.
§65.3. Definitions.
§65.4. Limitations on Aggregate Loans to One Borrower.
§65.5. Residential Real Estate Loans.
§65.6. Commercial Real Estate Loans.
§65.7. Unimproved Real Estate Loans.
§65.8. Personal Property Loans.
§65.9. Oil and Gas Loans.
§65.10. Wrap-around Real Estate Loans.
§65.11. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.
§65.12. Unsecured Loans.
§65.13. Manufactured Home Loans.
§65.14. Home Improvement Loans.
§65.15. Acquisition, Development, and Construction Loans.
§65.16. Interim Construction Loans.
§65.17. Loan Policies and Documentation.
§65.18. Letters of Credit.
§65.19. Investments in Real Property.
§65.20. Investments in Deferred Payment Obligations.
§65.21. Investment in Securities.
§65.23. Restrictions on Loan Transactions with Third Person.
§65.24. Local Service Area Investment Requirement.

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 April 24, 2023.

TRD-202301448
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 67. SAVINGS AND DEPOSIT ACCOUNTS

7 TAC §§67.1 - 67.3, 67.6 - 67.13, 67.15, 67.17

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 67, as follows: §§67.1 - 67.3, 67.6 - 67.13, 67.15, and 67.17. This proposal and the rules as repealed 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 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 67.

Changes Concerning Savings and Deposit Accounts

The department's existing rules in Chapter 67, §§67.1 - 67.3, 67.6 - 67.13, and 67.15 establish various requirements concerning savings and deposit accounts of a savings association. The department has determined the rules are not necessary and should be repealed. As a result, the subject matter of such existing rules is not included in the department's related proposal concerning proposed new rules in 7 TAC Chapter 60, published elsewhere in this issue of the *Texas Register.*

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. 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 proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 67; however, in a related proposal published elsewhere in this issue of the *Texas Register,* the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 67. The foregoing notwithstanding, the proposed rules related to Changes Concerning Savings and Deposit Accounts do have the effect of repealing an existing rule requirement by purposely not proposing new rules to adopt the subject matter of existing §§67.1 - 67.3, 67.6 - 67.13, and 67.15 in connection with the department's proposal to consolidate the subject matter of the existing rules in Chapter 67 into 7 TAC Chapter 60; (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, 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, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§67.1. Distribution or Payment of Dividends or Interest.
§67.2. Account Balance to Which Dividends or Interest Are Applied.
§67.3. Method of Computing Dividends.
§67.6. Provisions for Distribution of Earnings on Other Than Regular Accounts.
§67.7. Notice Prior to Withdrawal.
§67.8. Deposit Accounts.
§67.9. Provisions for Issuance of Secured or Unsecured Capital Obligations.
§67.10. Joint Issuance of Capital Obligations.
§67.11. Required Average Daily Balance of Liquid Assets; Failure to Meet Requirement.
§67.12. NOW Accounts.
§67.13. Checking Accounts.
§67.15. Noninterest-Bearing Deposit Accounts.
§67.17. User Safety at Unmanned Teller Machines.

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 April 24, 2023.

TRD-202301449
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 69. REORGANIZATION, MERGER, CONSOLIDATION, ACQUISITION, AND CONVERSION

7 TAC §§69.1 - 69.11

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 69, as follows: §§69.1 - 69.11. This proposal and the rules sections as repealed 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 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposal, if adopted, would repeal all existing rules in Chapter 69.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. 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 proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 69; however, in a related proposal published elsewhere in this issue of the *Texas Register,* the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 69; (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, 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, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§69.1. Filing of Plan.

§69.2. Form and Content of Application.

§69.3. Use of Approved Forms.

§69.4. Notice and Hearing.

§69.5. Publication.

§69.6. Time of Decision.

§69.7. Denial and Appeal.

§69.8. Exemption for Supervisory Merger.

§69.9. Designation as Supervisory Merger.

§69.10. Acquisitions Involving Associations in Other States or Territories.

§69.11. Conversion into another Financial Institution Charter.

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 April 24, 2023.

TRD-202301450

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 71. CHANGE OF CONTROL

7 TAC §§71.1 - 71.8

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 71, as follows: §§71.1 - 71.8. This proposal and the rules as repealed 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 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 71.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. 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 proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 71; however, in a related proposal published elsewhere in this issue of the *Texas Register,* the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 71; (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, 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, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§71.1. Introduction.

§71.2. Definitions.

§71.3. Acquisition of an Association.

§71.4. Hearings.

§71.5. Retention of Control.

§71.6. Application for Approval of the Acquisition of Control of a Savings and Loan Association.

§71.7. Abeyance of Other Applications.

§71.8. Exempt Transactions.

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 April 24, 2023.

TRD-202301451
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

CHAPTER 73. SUBSIDIARY CORPORATIONS

7 TAC §§73.1 - 73.6

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 73, as follows: §§73.1 - 73.6. This proposal and the rules as repealed 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 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 73.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined

that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. 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 proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, 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 that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 73; however, in a related proposal published elsewhere in this issue of the *Texas Register,* the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 73; (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, 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, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§73.1. Investment in and Divestiture of Subsidiary Corporations.
§73.2. Application.
§73.3. Authorized Subsidiary Investments.
§73.4. Operations.
§73.5. Investment in Debt Limitation.
§73.6. Operating Subsidiaries.

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 April 24, 2023.

TRD-202301452
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 9. TALKING BOOK PROGRAM

13 TAC §9.1

The Texas State Library and Archives Commission (commission) proposes the repeal of 13 TAC §9.1, Definitions.

The proposed repeal is necessary because during its review of Chapter 9, Talking Book Program, under Government Code, §2001.039, the commission identified several needed amendments to update and clarify the definitions. The commission is proposing those amendments, which include putting the definitions in alphabetical order, in a separate notice also in this issue of the *Texas Register.*

FISCAL NOTE. Ann Minner, Director, Talking Book Program, has determined that for each of the first five years the proposed repeal is in effect, there will not be a fiscal impact on state or local government.

PUBLIC BENEFIT/COST NOTE. Ms. Minner has also determined that for the first five-year period the repeal is in effect, the public benefit will be consistency and clarity in the rules governing participation in the Talking Book Program. There are no anticipated economic costs to persons required to comply with the proposal.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT. Pursuant to Government Code, §2001.0221, the commission provides the following Government Growth Impact Statement for the proposed repeal.

During the first five years that the proposed repeal would be in effect, the proposed repeal: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will repeal an existing regulation that will be replaced by an improved regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the proposed repeal will be in effect, the proposed repeal will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed repeal may be directed to Ann Minner, Director, Talking Book Program, via email rules@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY. The repeal is proposed under §441.006, which directs the commission to govern the state library; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§9.1. Definitions.

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 April 17, 2023.

TRD-202301390

Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 463-5474

♦ ♦ ♦

13 TAC §§9.1 - 9.9, 9.11 - 9.18

The Texas State Library and Archives Commission (commission) proposes new §9.1, Definitions; and amendments to §9.2, Administration; §9.3, Eligibility; §9.4, Application for Service; §9.5, Priority Service to Veterans; §9.6, Status of Users; §9.7, Playback Equipment; §9.8, Books and Magazines; §9.9, Availability of Materials; §9.11, Misuse of Service; §9.12, Notification of Potential Suspension; §9.13, Correction of Problem; §9.14, Suspension of Service; §9.15, Reinstatement of Service; §9.16, Termination of Service; §9.17, Transfer of Service; and §9.18, Reactivation of Accounts.

BACKGROUND. In November 2022, the commission approved posting a notice of intent to review the rules located at 13 TAC Chapter 9, Talking Book Program (program) under Government Code, §2001.039. This section requires state agencies to review its rules every four years and readopt, readopt with amendments, or repeal the current rules. The review must include, at a minimum, an assessment of whether the reasons for initially adopting the rules continue to exist.

Throughout the rule review, staff identified numerous amendments necessary to update, modernize, and clarify the rules, improve grammar and readability, and align the rules with best practices. While the reasons for initially adopting the rules continue to exist, the proposed amendments will modernize and improve the rules, making it easier for patrons and the public at large to understand the rules governing the program.

SECTION BY SECTION ANALYSIS. Multiple amendments are necessary to update and clarify the definitions in §9.1. Proposed amendments update the overall structure of definitions by consistently using the term "means" when defining a term and make non-substantive grammatical edits throughout. In addition, alphabetizing the definitions will make them easier to read and align with rule drafting best practices. Therefore, the commission finds it necessary to propose the repeal of §9.1, Definitions, which may also be found in this issue of the *Texas Register,* and propose new §9.1, Definitions, with more specific amendments to each defined term as explained below.

Several proposed new definitions are essentially the same as previously defined, with the only changes being minor and non-substantive. These include proposed new §9.1(3), "applicant agreement," §9.1(4), "audit," §9.1(8), "digital download service," §9.1(11), "equipment," and §9.1(12), "loan period." The proposed new definitions do not include previously defined terms "digital materials and services," as that term is not used within the chapter, or "account in good standing," as those requirements are proposed for addition to §9.3, Eligibility.

Proposed new §9.1(1) defines "active" as a borrower who has requested at least one book or magazine in the preceding 12-month period or signed on to the Braille and Audio Reading Download service at least once every six months.

Proposed new §9.1(2) defines "agency" as the Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections, archives, operations, pro-

grams, and property of the Texas State Library and Archives Commission. This definition is used in other chapters of the commission's rules and maintains consistency in rule language. The previously defined term "commission" is proposed for deletion as it is not necessary.

Proposed new §9.1(5) defines "books" as previously defined but proposes to change the word "computer" to "digital."

Proposed new §9.1(6) simplifies the definition of "borrower" by removing references to a person's activities in the program, adding "institution" to the definition, and updating the reference to the National Library Service for the Blind and Print Disabled.

Proposed new §9.1(7), "certifying authority," updates the previously defined term of competent authority to reflect updates to the persons who may certify an individual for participation in the program following changes to the National Talking Book Program by the National Library Service for the Blind and Print Disabled. While this change was made in 2021, the commission has not yet updated its rule to reflect the change, despite accepting applications with the certifying authorities recognized by the National Library Service for the Blind and Print Disabled.

Proposed new §9.1(9) and §9.1(10) provide updated definitions for "digital talking book" and "digital talking book machine," previously contained within the definition of "digital materials and services," with updated language to reflect current books and devices used by the program.

Proposed new §9.1(13) maintains the same definition for "magazines" but deletes the reference to "cassette" as the program no longer uses cassette tapes.

Proposed new §9.1(14) defines "National Library Service" by updating the reference to the National Library Service for the Blind and Print Disabled.

Proposed new §9.1(15) defines "program" as the Talking Book Program.

Proposed new §9.1(16) updates the definition of "veteran" by moving language from the previously defined term at §9.1(15), U.S. Armed Forces, and including that information in the definition, thereby eliminating the need to refer to another definition to define a term.

Proposed amendments to §9.2, Administration, update and improve the language and a citation to the United States Code provision regarding mailing free matter for blind and other handicapped persons.

Proposed amendments to §9.3, Eligibility, update language based on the updated definitions, delete text that is no longer necessary, and explain how an account may be maintained in good standing. This information was previously located within a defined term.

Proposed amendments to §9.4, Application for Service, make general language and readability improvements, update language based on the updated definitions, and delete text that is no longer necessary.

Proposed amendments to §9.5, Priority Service to Veterans, update the section title to "Priority for Veterans" and delete language that is no longer necessary.

Proposed amendments to §9.6, Status of Users, update the section title to "Status of Borrowers" and delete unnecessary language.

Proposed amendments to §9.7, Playback Equipment, update language based on the updated definitions and clarify what constitutes misuse of equipment in subparagraph (a)(10).

Proposed amendments to §9.8, Books and Magazines, update language based on the updated definitions and delete duplicative language found in other sections within the chapter.

Proposed amendments to §9.9, Availability of Materials, update language based on the updated definitions.

Proposed amendments to §9.11, Misuse of Service, update language based on the updated definitions.

Proposed amendments to §9.12, Notification of Potential Suspension, update language based on the updated definitions, improve readability, and add a citation to another section within the chapter.

Proposed amendments to §9.13, Correction of Problem, make minor wording changes and update language based on the updated definitions.

Proposed amendments to §9.14, Suspension of Service, update language based on the updated definitions and improve grammar and readability.

Proposed amendments to §9.15, Reinstatement of Service, update language based on the updated definitions and improve readability.

Proposed amendments to §9.16, Termination of Service, update and clarify language and clarify that a borrower who wishes to reinstate service after five years must file a new application.

Proposed amendments to §9.17, Transfer of Service, update language based on the updated definitions.

Proposed amendments to §9.18, Reactivation of Accounts, update language based on the updated definitions and improve readability.

FISCAL IMPACT. Ann Minner, Director, Talking Book Program, has determined that for each of the first five years the proposed amendments and new rule are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the new or amended rules, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Minner has determined that for each of the first five years the proposed amendments and new rule are in effect, the anticipated public benefit will be consistency and clarity in the rules governing participation in the Talking Book Program. There are no anticipated economic costs to persons required to comply with the proposed new rule or amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed amendments and new rule do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is

not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Gov't Code §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed amendments and new rule will be in effect, the commission has determined the following:

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

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

3. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed rules will not require an increase or decrease in fees paid to the commission;

5. The proposed rules will not create a new regulation;

6. The proposed rules will not expand, limit, or repeal an existing regulation;

7. The proposed rules will not increase the number of individuals subject to the proposed rules' applicability; and

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

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed amendments and new rule do not constitute a taking under Texas Gov't Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new rule may be submitted to Ann Minner, Director, Talking Book Program, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register.*

STATUTORY AUTHORITY. The amendments and new rule are proposed under Government Code, §441.006, which directs the commission to govern the state library; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§9.1. Definitions.

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

(1) Active--means a borrower who has requested at least one book or magazine in the preceding 12-month period or signed on to the Braille and Audio Reading Download service at least once in a six-month period.

(2) Agency--means the Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections, archives, operations, programs, and property of the Texas State Library and Archives Commission.

(3) Applicant agreement--means a statement signed by each new applicant which states the borrower agrees to abide by the policies and procedures of the program.

(4) Audit--means a periodic inventory of equipment and/or books, as required by the National Library Service.

(5) Books--means Braille, large print, and audio publications, both physical hardcopy and digital download.

(6) Borrower--means an eligible person or institution that has registered with the Talking Book Program, part of the National Library Service for the Blind and Print Disabled's library network.

(7) Certifying authority--means a registered nurse, therapist, professional staff member of a hospital, doctor of medicine, doctor of osteopathy, ophthalmologist, optometrist, psychologist, or an individual representing a public or welfare agency or institution, such as an educator, social worker, case worker, counselor, rehabilitation teacher, certified reading specialist, dyslexia specialist, school psychologist, superintendent, or librarian.

(8) Digital download service--means a service provided or funded by either the National Library Service or the agency in which borrowers may download via the Internet audio and/or text computer files containing the contents of books and magazines.

(9) Digital talking book--means an audio or electronic Braille book produced by digital processes. Audio books are available in physical format or may be accessed through a digital download service. Braille books are accessed by digital download. These books are produced either by, or under the direction of, the National Library Service or the agency.

(10) Digital talking book machine--means a hardware device produced by the National Library Service and assigned to the commission for loan to borrowers. These may also include commercially-produced machines purchased by the commission for the purpose of loan to borrowers by the commission.

(11) Equipment--means any playback machine, accessories, and parts thereof that enable a borrower to listen to books and magazines.

(12) Loan period--means the specific period of time that an item is loaned to a borrower. The loan period begins when the agency assigns the book to the borrower and ends with the date the item is due back to the agency.

(13) Magazines--means periodical publications in Braille, large print, or digital format.

(14) National Library Service--means the National Library Service for the Blind and Print Disabled, a division of the Library of Congress that operates a free national library service that produces audio and Braille materials and distributes them to a cooperating network of regional and subregional libraries, to be circulated by postage-free mail to blind and physically disabled borrowers.

(15) Program--means the Talking Book Program.

(16) Veteran--means any person who has been honorably discharged or honorably released from the U.S. Armed Forces, meaning the U.S. Army, the U.S. Navy, the U.S. Marine Corps, the U.S. Air Force, the U.S. Coast Guard, and all armed auxiliary services of these branches.

§9.2. Administration.

The program provides library services [~~A statewide program of library service~~] for Texas residents with visual, physical, or reading disabilities. [~~who are blind, reading disabled, or physically handicapped~~] The program is operated and administered by the agency as part of the [~~Texas State Library, Talking Book Program for the Blind and Physically Handicapped. The~~] National Library Service, a program administered by [~~for the Blind and Physically Handicapped provides the Texas State Library with books in digital audio and Braille formats under regulations established by~~] the Library of Congress. The National Library Service [~~also~~] provides the agency books in audio and braille formats and reading equipment [~~Texas State Library with playback equipment for reading materials in audio format~~]. Postage for mailing materials and equipment to and from borrowers [~~users~~] is paid by the U.S. Government under the [~~special~~] provisions of 39 U.S.C.A. §3403, Matter for blind and other handicapped persons. [~~for "free matter for the blind and other physically handicapped persons."~~]

§9.3. Eligibility.

(a) The following persons are eligible for the program [~~service~~]:

(1) persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field is no greater than 20 degrees;

(2) persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing reading of standard printed material;

(3) persons certified by competent authority as unable to read or unable to use standard printed materials as a result of physical limitations;

(4) persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner; and

(5) persons certified by competent authority as having an allergy or other chemically-based reaction of sufficient severity as to prevent their handling of printed materials in a normal manner.

(b) The following persons are not eligible for service:

(1) persons who are illiterate without having an eligible disability; and

(2) persons who cannot read because of an intellectual disability or an intellectual development disorder. [~~;~~]

[~~(3) persons who are unable to read because they have a reading disability resulting from a non-organic dysfunction; and~~]

[~~(4) persons who cannot read because of conditions of non-organic dysfunction.~~]

(c) All borrowers [~~active users~~] will remain eligible for service, provided they:

(1) continue to meet the requirements for eligibility in the program;

(2) are active borrowers; and

(3) maintain their accounts in good standing, meaning: [~~"good standing."~~]

(A) borrower does not have excessive overdue, lost, or damaged materials and/or machines;

(B) borrower has not had account suspended for failure to follow procedures and policies as part of the membership agreement or for failure to cooperate with the agency; and

(C) borrower has not had service suspended for misuse of the service, as specified in §9.11 of this title (relating to Misuse of Service).

§9.4. Application for Service.

(a) Each potential borrower [~~user of the service~~] must submit an application for service by mail, email, or facsimile. Individuals [~~Users~~] reactivating accounts after five years discontinuance must submit [~~file~~] a new application. The application may be either the specific application issued by the agency [~~commission~~] or the generic application issued by the National Library Service. Any application must include the following to be accepted and processed:

(1) Signature from a certifying authority; [~~competent authority, as defined in §9.1(5) of this title (relating to Definitions). Because the signature must be an actual signature, as specified by the guidelines of the National Library Service, Texas State Library staff cannot accept applications that are photocopied, emailed, or have a stamped signature. Scanned or faxed applications are accepted.~~]

(2) Signed copy of the applicant agreement; and

(3) Alternative contact person, and if applicable, any person authorized to access and make decisions on the borrower's account. [~~user's account; and~~]

[~~(4) In the case of an applicant claiming to be a veteran, documentation that confirms the person as an honorably discharged or honorably released veteran of the U.S. Armed Forces.~~]

(b) Incomplete applications or applications submitted by applicants who [~~that~~] do not meet eligibility requirements will be returned to the applicants.

§9.5. Priority for [~~Service to~~] Veterans.

[~~(a)~~] As required by the National Library Service, veterans using the service are to be given priority whenever they request services. Veteran borrowers are subject to the same requirements as other borrowers[~~, namely they must meet eligibility requirements, must keep their accounts in good standing, must not misuse the service, etc~~].

[~~(b) Veteran borrowers are required to provide documentation to confirm that they are honorably discharged or honorably released from the U.S. Armed Forces. Veteran designation will be removed from a user's account if Texas State Library staff determines that the designation was inappropriately placed on the account.~~]

§9.6. Status of Users.

Borrowers must [~~Registered borrowers of the Texas State Library, Talking Book Program for the Blind and Physically Handicapped should~~] notify the agency [~~library~~] if any of the following circumstances occur [~~affecting the borrowers' accounts~~]:

(1) the borrower moves to a different address, acquires a different telephone number, or changes email address;

(2) the borrower desires to cancel service permanently or to place service on temporary hold for vacation, illness, or other reasons;

(3) the borrower moves temporarily or permanently to a location outside the State of Texas;

(4) the borrower desires to add a contact person or remove a contact person;

(5) the borrower wishes to designate a person to have access to the account and to act for the borrower;

(6) the borrower wishes to block a person from having access to the account or to request that that person no longer act for the borrower; or [~~and~~]

(7) the borrower ceases to be eligible for service.

§9.7. Playback Equipment.

(a) The playback machine is a digital talking book machine. Equipment may be distributed by the National Library Service to the agency [~~commission~~] for loan to borrowers, purchased by borrowers, or purchased by the agency [~~commission~~] for loan to borrowers. All loaned equipment is subject to be returned to the agency [~~commission~~] by borrowers when requested to do so. Damage or loss of equipment may cause a borrower's account to not be in good standing.

(1) Loan period. Playback equipment may be loaned to any borrower [~~active user~~] who continues to meet eligibility requirements for service and who maintains an account in good standing. Equipment and accessories are loaned free of charge. A borrower [~~An active user~~] may keep playback equipment for as long as the borrower [~~user~~] remains in the program and maintains active ["~~active~~"] status.

(2) Replacement of equipment. An active borrower [~~user~~] may request replacement of equipment if experiencing difficulty in using equipment or equipment does not operate properly. A borrower [~~User~~] may be required to return current equipment before replacement equipment is sent to borrower [~~user~~].

(3) Number of loaned equipment allowed. An active individual borrower [~~user~~] may not have more than one of each type of playback equipment on loan at any given time. An active institutional borrower [~~user~~] may have more than one of each type of playback equipment on loan at any given time if the institution serves a number of active individual borrowers [~~users~~] and machines are available for loan.

(4) Ownership of equipment and accessories. Some playback [~~Playback~~] equipment, amplifiers, headphones, and remote controls distributed by the agency [~~Texas State Library~~] or the National Library Service are the property of the federal government. Any equipment purchased by the agency [~~commission~~] for loan to borrowers [~~active users~~] is the property of the agency [~~commission~~].

(5) Repair of playback equipment. Only the agency [~~Texas State Library~~] is authorized to make repairs to playback equipment on loan to Texas borrowers, or to make the determination that a machine is damaged beyond repair. A machine that needs repair must be returned to the agency [~~Texas State Library~~], which will provide a replacement machine. Under no circumstances should a borrower or any other person attempt to repair the playback equipment or accessories.

(6) Accessories for use with the digital talking book machine may be requested through the agency [~~Texas State Library~~].

(7) Non-transferal of equipment. Borrowers must not lend, sell, or otherwise transfer playback equipment to other persons.

(8) Return of equipment. Playback equipment and accessories must be returned to the agency [~~Texas State Library~~] if the borrower ceases to actively use the service or no longer meets eligibility requirements for the service.

(9) Lost and damaged machines. A borrower is responsible for the good upkeep of any equipment loaned to that borrower. A borrower who repeatedly damages or loses equipment will not receive an automatic replacement, and a moratorium on future loans may be placed on the borrower's account. Borrowers may also face suspension of services in cases of flagrant abuse of equipment.

(10) Misuse of equipment. Borrowers who cause damage to equipment through negligence, intentional act, or failure to exercise reasonable care to safeguard or maintain the equipment or who use the equipment in an unauthorized manner may have their service suspended temporarily or permanently, depending on the severity or frequency of the damage or unauthorized use [~~misuse equipment in a damaging or illegal manner will face suspension of service and may face a moratorium on future loans of equipment~~].

(11) Recall of equipment. Equipment may be recalled for the following reasons:

(A) periodic maintenance, either scheduled or unscheduled;

(B) as part of a recall issued by the National Library Service;

(C) for the purpose of repairing the machine;

(D) for non-cooperation on the part of the borrower with staff who are implementing and/or enforcing program policies and procedures;

(E) for a borrower's failure to adhere to the patron loan policy, the program's policies and procedures, and/or for abusive, destructive, or threatening behavior toward staff and property of National Library Service and of the agency [~~commission~~];

(F) when a borrower no longer meets eligibility requirements for service, ceases to be an active borrower [~~user~~], or is deceased; and

(G) for any other reason or occasion, as determined by staff in accordance with policies and procedures of the program and/or guidelines provided by the National Library Service.

(b) If a borrower's machine is recalled, a replacement machine will be issued, dependent on the reason for the recall and the availability of a replacement machine. In the case of a general or wide-ranging recall, staff will notify borrowers affected by the recall in as reasonable a timeframe as possible. A borrower who does not cooperate with staff in the recall of equipment may have the loan of that equipment revoked for a period of time in accordance with the program's policies and procedures. A moratorium on future loans of equipment also may be placed on the borrower's account.

(c) Required audits of equipment. A borrower must cooperate with the agency [~~commission~~] in the auditing of any loaned equipment. Staff may conduct periodic, limited audits, in accordance with guidelines provided by the National Library Service, in which a set number of machines selected for audit must be located and reported as being in the assigned location. Staff may also conduct a regular audit of all equipment, in which all equipment must be located and accounted for. A borrower who does not cooperate with staff conducting an audit may have the loan of all equipment revoked and a moratorium on future loans of equipment placed on the account.

§9.8. Books and Magazines.

(a) Loan period. The loan period for books is 45 days [~~for individuals and other institutions~~]. The loan period for magazines is 21 days [~~for individuals, schools, and other institutions~~]. No fines for overdue books or magazines will be levied, although excessive overdues may result in suspension of service until overdue situation is resolved. [~~A borrower with excessive overdues does not have an account in good standing.~~]

(b) Ownership. Books and magazines in all formats are the property of state and/or federal government. Books or magazines identified as "TSL" are the property of the agency [~~Texas State Library~~]. Magazines distributed by the National Library Service are the property of the National Library Service [~~NLS~~].

(c) Non-transferal of materials. Borrowers must not lend, sell, or otherwise transfer library books or magazines to other persons.

(d) Return of books and magazines. Except for disposable Braille and large print materials, all books and magazines must be returned to the agency [Texas State Library] at the end of their loan period. National Library Service [NLS] distributed magazines must be returned to the location listed on the mailing card or the label on the mailing container. If the borrower becomes ineligible or cancels service, all books and magazines must be returned to the agency [Texas State Library] regardless of whether the loan period has ended.

[(e) Lost and damaged materials. Excessive numbers of lost and/or damaged books may result in suspension of service until the situation is resolved. Any borrower with an excessive number of lost and/or damaged books and magazines does not have an account in good standing.]

§9.9. Availability of Materials.

(a) All materials that are available for distribution to borrowers are distributed either by specific request of the borrower or through an automated selection process based on an array of variables chosen by the borrower. The agency monitors [Texas State Library staff monitor] borrowers' requests and attempts [attempt] to keep items in stock that [which] borrowers are likely to demand. Availability of items such as books and magazines are subject to the following circumstances:

(1) popular demand for a particular item;

(2) whether an item has been damaged and removed from the collection;

(3) ability of staff to acquire and/or replace an item; or,

(4) whether an item has been lost.

(b) From time to time, shortages of books, equipment, and other items for distribution to borrowers [users] may occur. In the event of a shortage that will be widespread or has the potential to be of some duration, the agency [Texas State Library staff] will institute a special process of distribution to ensure [insure] that items are made available to borrowers [users] in an efficient and equitable manner. The type of process used will be determined by the specific type of shortage and in consultation with staff of the National Library Service.

§9.11. Misuse of Service.

The following actions may result in suspension of borrowing privileges:

(1) repeated requests for replacement of equipment that has been damaged through negligence, maliciousness, or unauthorized repair;

(2) excessive numbers of overdue books or magazines;

(3) repeated loss or damage of books or magazines;

(4) abusive, obscene, harassing, or threatening behavior to the agency [Texas State Library staff] and/or staff of the National Library Service;

(5) providing access to/making available books or playback equipment to unauthorized persons;

(6) violations of the Patron Loan Policy and/or other policies described in this chapter;

(7) refusal to cooperate with the agency [Texas State Library staff] carrying out policies and procedures of the program;

(8) not keeping borrower's account in good standing, as described in §9.3(c)(3) of this chapter (relating to Eligibility). ["good standing."]

§9.12. Notification of Potential Suspension.

If a borrower is engaging in any activity described in §9.11 of this chapter (relating to Misuse of Service) [misusing the service], the agency [Texas State Library staff] will contact the borrower and attempt to resolve the situation. In most cases, a warning letter will be sent stating that borrowing privileges will be suspended on a designated date [suspension will be applied] if the borrower does not cease the misuse of service.

§9.13. Correction of Problem.

If the borrower's response to a warning letter [potential suspension] resolves the apparent problem or the borrower ceases the misuse of service by the designated date, and the borrower agrees to abide by agency [Texas State Library] policies in the future, no further action will take place at that time.

§9.14. Suspension of Service.

(a) The agency may suspend a borrower's service if [Suspension of service may come about under one of three conditions]:

(1) [a] borrower requests suspension of service because of illness, temporary relocation, or other personal reasons;

(2) [service is automatically suspended when a] borrower has not been active for a year;

(3) staff of the National Library Service request suspension of the account;

(4) the agency determines the borrower misused the service, as described in §9.11 of this chapter (relating to Misuse of Service); or

(5) [(3)] the agency identifies a problem with the account and the agency needs additional information from the borrower. [service is suspended by Texas State Library staff for cause. "For cause" may include the following:

[(A) misuse of service, as defined in §9.11 of this chapter (relating to Misuse of Service);]

[(B) Texas State Library staff detect a problem with the account and need further information from the borrower;]

[(C) staff of the National Library Service request suspension of the account.]

(b) In the event of suspension under subsection (a)(3) and (a)(5) [(a)(3)(B) and (C)] of this section, the agency [Texas State Library staff] will take the following actions:

(1) attempt to contact the borrower and resolve the situation so that service may be restored;

(2) determine an appropriate period of suspension[,] if the situation warrants an extended suspension.

(c) Suspension for cause generally will not exceed six months. In some instances, a longer suspension may be imposed after consultation with staff of the National Library Service. In the case of minor problems with the account, such as outdated or incorrect contact information, suspension is in effect until the problem is corrected or resolved.

(d) Any suspension may be extended if the cause has not been resolved as of the end of the previous suspension.

(e) Suspension of service may be limited only to the portion of service being misused. For example, if the misuse relates to Braille books, then Braille service would be suspended, but circulation of other formats would continue. The scope of the suspension will be determined by the extent of the cause and at the discretion of the agency [Texas State Library staff].

§9.15. Reinstatement of Service.

(a) If a borrower has voluntarily suspended service, then the borrower may contact the agency [~~Texas State Library staff~~] at any time to reinstate service. Service will be reinstated if less than five years have elapsed since service was suspended, the borrower still meets eligibility requirements, and the account is otherwise in good standing, as described in §9.3(c)(3) of this chapter (relating to Eligibility).

(b) If service was automatically suspended because the borrower had not been [~~an~~] active [~~user~~] for one [~~a~~] year, then the borrower may contact the agency [~~Texas State Library staff~~] at any time and request that service be reinstated. Service will be reinstated if less than five years have elapsed since service was suspended, the borrower still meets eligibility requirements, and the account is otherwise in good standing.

(c) If a borrower has been suspended for cause, service may be reinstated when the cause has been resolved or the suspension has expired, depending on the cause of suspension. In the case of a lengthy suspension, the patron will receive instructions, as part of the suspension notification, as to how to reinstate service. The borrower must continue to meet eligibility requirements and the account must otherwise be in good standing.

§9.16. Termination of Service.

(a) Service to eligible borrowers will not be permanently cancelled, although suspensions may be applied repeatedly. An account will be closed only under the following circumstances:

(1) a borrower ceases to meet eligibility requirements;

(2) a borrower requests that service be terminated; or,

(3) a borrower ceases to be [~~an~~] active [~~user~~].

(b) A borrower's application and account information will remain on file for five years after the account has been closed, and the account may be reactivated at any time within the five years. After five years, the application and account information will be disposed of in accordance with the agency's approved [~~applicable~~] records retention schedule. If a borrower wishes to reinstate service after five years, the borrower must file a new application as required by §9.4 of this chapter (relating to Application for Service).

§9.17. Transfer of Service.

A borrower who has lived or will live outside the State of Texas for six months or longer will no longer be eligible to receive service through the agency [~~Texas State Library,~~] and must return all books and magazines [~~to the Texas State Library~~]. At the borrower's request, the agency [~~Texas State Library~~] will make arrangements to have service transferred to the new state of residence.

§9.18. Reactivation of Accounts.

(a) Any account that has been suspended may be reactivated[~~. Any account closed~~] within a five-year period if [~~may be reactivated. Reactivations occur under the following conditions~~]:

(1) The borrower [~~User~~] continues to meet eligibility requirements for service;

(2) The account [~~Account~~] will be in good standing upon reactivation; and

(3) The agency has received an application as required by §9.4 of this chapter (relating to Application for Service) [~~Signed applicant agreement has been received~~].

(b) An account that has been closed for more than five years cannot be reactivated; the individual [~~user~~] must file a new application.

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 April 17, 2023.

TRD-202301389
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 463-5474

♦ ♦ ♦

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §100.1010 is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 5, 2023, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §100.1010, concerning the charter school performance frameworks. The proposed amendment would adopt in rule the *2022 Charter School Performance Framework (CSPF) Manual,* which would be updated to comply with statutory provisions and the accountability framework currently used to rate the performance of open-enrollment charter schools in Texas.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 100.1010 defines the standards by which the commissioner of education will measure the performance of open-enrollment charter schools.

The proposed amendment would replace the *2021 CSPF Manual* with the *2022 CSPF Manual.* The 2022 version of the manual would reflect the current accountability system and ratings.

Throughout the manual, language would be revised with clarifying edits such as updated dates and references to accountability indicators. Indicators that were not rated in 2021 would reflect the most current rating methodology. To provide clarity for schools that were not rated under the accountability system, a designation of "N/A" would be used for the Academic Standard and the Alternative Education Accountability Academic Standard.

FISCAL IMPACT: Kelvey Oeser, deputy associate commissioner for educator support, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation in order to provide clarity for schools that were not rated under the accountability system. A designation of "N/A" would be used for the Academic Standard and the Alternative Education Accountability Academic Standard.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Oeser has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide open-enrollment charter schools with clarification on the year of the report and manual being issued. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 5, 2023, and ends June 5, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 5, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §12.1181, which requires the commissioner to develop and adopt performance frameworks to measure the performance of an open-enrollment charter school.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.1181.

§100.1010. Performance Frameworks.

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Framework (CSPF) Manual established under Texas Education Code (TEC), §12.1181. The CSPF Manual will include measures for charters registered under the standard accountability system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) The performance of an adult high school diploma and industry certification charter school will be measured annually in the CSPF against a set of criteria established under TEC, §29.259.

(c) The assignment of performance levels for charter schools on the 2022 [~~2021~~] CSPF report is based on specific criteria, which are described in the *2022 [~~2021~~] Charter School Performance Framework Manual* provided in this subsection.
Figure: 19 TAC §100.1010(c)
[~~Figure: 19 TAC §100.1010(c)~~]

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 April 24, 2023.

TRD-202301471
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT

28 TAC §1.502

The Texas Department of Insurance proposes amending 28 TAC §1.502, concerning licensing persons with criminal history. These amendments update the section for consistency with Occupations Code §§53.021, 53.022, and 53.023, amended by House Bill 1342, 86th Legislature, 2019.

EXPLANATION. HB 1342 amended Occupations Code §§53.021, 53.022, and 53.023, which contain factors to be considered by licensing agencies when contemplating how a criminal conviction relates to a licensed occupation. Section 1.502 incorporates elements of Occupations Code §§53.021, 53.022, and 53.023 regarding offenses and criteria to consider when licensing an individual with a criminal background. This

proposal updates §1.502 to reflect criteria in the Occupations Code as amended by HB 1342.

In addition, the proposed amendments update the list of criminal offenses considered under §1.502 to reflect changes in the Code of Criminal Procedure and the Penal Code since the rule was last amended in 2010, and it makes additional updates to the section based on practical experience under the current text of the section.

The section's proposed amendments are described in the following paragraphs.

Section 1.502(a) - (c). The proposal makes nonsubstantive changes to the text for plain language purposes and to correct capitalization.

Section 1.502(d). The proposal amends subsection (d) to address factors currently included in subsections (f) and (g) of the section.

New text is also included in subsection (d) to address Code of Criminal Procedure provisions cited by Occupations Code §53.021 for which the department may refuse to issue an original license or revoke, suspend, or refuse to renew.

Section 1.502(e). The proposal adds new subsection (e), stating that the department will consider the factors specified in Occupations Code §53.022 and §53.023 in determining whether to issue an original license or authorization or revoke, suspend, or refuse to renew a license or authorization. This text replaces text in current subsection (h), which addresses the factors in Occupations Code §53.022 and §53.023 by listing them.

The subsections that follow new subsection (e) are redesignated as appropriate to reflect the addition of the new section.

Section 1.502(f). Current subsection (e), redesignated as subsection (f), provides a non-exhaustive list of crimes the department considers to be of such serious nature that they are directly related to the duties and responsibilities of the licensed occupation or of prime importance in determining fitness for licensure or authorization.

Proposed amendments to paragraph (2) clarify that the criminal violations considered under subsection (f)(2) include offenses pertaining to the financial industry or business of insurance under any state or federal law or any law of a foreign country or the Uniform Code of Military Justice. The amendments also add a non-exhaustive list of five criminal violations specifically contemplated by the paragraph.

Proposed amendments to paragraph (4) add clarifying language and reorganize the offenses listed in the paragraph to track the numeric order of the Penal Code chapters and sections in which they are addressed. Amendments also insert references to additional offenses in the Penal Code for which the department may revoke, suspend, or refuse to issue or renew a license or authorization.

Finally, amendments add new paragraphs (5) - (8) to clarify that the crimes that the department considers in determining fitness for licensure or authorization include any offense described by the Code of Criminal Procedure Article 42A.054; sexually violent offenses as defined by Code of Criminal Procedure Article 62.001; any attempt or conspiracy to commit any offense listed in §1.502 as described by the Penal Code; and any offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under §1.502.

Section 1.502(f) - (h). Proposed amendments delete current subsections (f) - (h) because the provisions in these subsections are addressed in proposed amendments to subsections (d) and (e).

Section 1.502(g). Current subsection (i) is redesignated as subsection (g). In addition, the word "shall" is replaced with "will."

Section 1.502(h). Current subsection (j) is redesignated as subsection (h). In addition, the word "shall" is replaced with "will."

Section 1.502(i). Current subsection (k) is redesignated as subsection (i).

The proposal also includes additional nonsubstantive text changes for style and grammar, for consistency with current department rule drafting preferences.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jodie Delgado, director of Agent and Adjuster Licensing, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments because of enforcing or administering the amendments, other than that imposed by the statute. Ms. Delgado made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Delgado expects that administering them will have the public benefits of ensuring that the department's rules conform to Occupations Code §§53.021, 53.022, 53.023, and 53.025.

Ms. Delgado expects that the proposed amendments will not increase the cost of compliance because the proposal does not impose requirements beyond the regulations currently in place. The changes to §1.502 update the section for consistency with Occupations Code §§53.021, 53.022, and 53.023. This adds no cost and has no adverse economic impact.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to small and micro businesses and rural communities. The changes to §1.502 update the section for clarity and consistency with Occupations Code §§53.021, 53.022, and 53.023. They address criteria for license issuance, revocation, and suspension. This does not add or create costs for small or microbusinesses or rural communities. As a result, and in accordance with Texas Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this proposal does not impose a cost on regulated persons.

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

- will not create or eliminate a government program;

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

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

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

- will not create a new regulation;

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

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

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on June 5, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on June 5, 2023. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to §1.502 under Occupations Code §§53.021, 53.022, 53.023, and 53.025 and Insurance Code §36.01.

Occupations Code §53.021 states grounds on which a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination.

Occupations Code §53.022 provides factors that a licensing authority must consider in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation.

Occupations Code §53.023 provides additional factors that a licensing authority must consider in determining whether to take an action authorized by Occupations Code §53.021 if it determines that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation.

Occupations Code §53.025 requires licensing authority to issue guidelines relating to the practice of the licensing authority under Occupations Code Chapter 53. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 1.502 implements Occupations Code §§53.021, 53.022, 53.023, 53.0231, and 53.025.

§1.502. Licensing Persons with Criminal Backgrounds.

(a) The special nature of the relationship between licensees, insurance companies, other insurance-related entities, discount health care programs, and the public with respect to insurance and related businesses regulated by the department requires that the public [~~place~~] trust [~~in~~] and rely on licensees because of [~~reliance upon such persons due to~~] the complex and varied nature of insurance, insurance-related products, and discount health care programs.

(b) Fire protection systems and equipment are often technically sophisticated beyond the knowledge or understanding of the average consumer. During times of imminent personal danger, the public relies on licensees to have correctly designed, installed, and serviced fire protection systems and equipment to operate the first time and each time they are needed. Additionally, licensees are often permitted to service these systems unescorted in nursing homes, schools, day care centers, and commercial facilities where children and those unable to protect themselves are present and valuables are located. Finally, the manufacturing, storing, selling, and discharge of fireworks requires numerous special precautions to maintain a safe environment for the licensees and the public. Each of these factors requires the public to [~~place~~] trust [~~in~~] and rely on [~~reliance upon~~] these individuals.

(c) The department considers it very important that license and authorization holders and applicants, including those regulated under the State Fire Marshal's Office [~~state fire marshal's office~~], the officers, directors, members, managers, partners, and any other persons who have the right to control a license or authorization holder or applicant, and the members of boards of directors of insurance companies, be honest, trustworthy, and reliable.

(d) After notice and opportunity for hearing and, as applicable, consideration of the factors addressed in subsection (e) of this section, in accordance with Texas Occupations Code §53.021 the [~~The~~] department may refuse to issue an original license or authorization and may revoke, suspend, or refuse to renew a license or authorization if the department determines that the applicant or license or authorization holder, or any partner, officer, director, member, manager, or any other person who has the right to control the applicant or license or authorization holder, has been convicted of or placed on deferred adjudication for:

(1) an offense [~~committed a felony or misdemeanor, or has engaged in fraudulent or dishonest activity~~] that directly relates to the duties and responsibilities of the licensed occupation;[~~.~~]

(2) an offense listed in Code of Criminal Procedure Article 42A.054; or

(3) a sexually violent offense as defined by Code of Criminal Procedure Article 62.001.

(e) The department will consider the factors specified in Occupations Code §53.022 and §53.023 in determining whether to issue an original license or authorization or revoke, suspend, or refuse to renew a license or authorization under subsection (d) of this section.

(f) [~~(e)~~] In accordance with the requirements of Texas Occupations Code §53.025, the department has developed guidelines relating to the matters [~~which~~] the department will consider in determining

whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction. Those crimes that [~~which~~] the department considers to be of such serious nature that they are directly related to the duties and responsibilities of the licensed occupation or are of prime importance in determining fitness for licensure or authorization include [~~but are not limited to~~]:

(1) any offense for which fraud, dishonesty, or deceit is an essential element;

(2) any criminal violation of the Texas Insurance Code or an offense pertaining to the financial industry or business of insurance under any state or federal [~~insurance or security~~] law or any law of a foreign country or the Uniform Code of Military Justice, including: [~~regulating or pertaining to the business of insurance;~~]

(A) a fraud offense, as described by Penal Code Chapter 32;

(B) money laundering, as described by Penal Code Chapter 34;

(C) insurance fraud, as described by Penal Code Chapter 35;

(D) health care fraud, as described by Penal Code Chapter 35A; or

(E) engaging in the unauthorized business of insurance, as described by Insurance Code §101.106;

(3) any felony involving moral turpitude or breach of fiduciary duty; [~~or~~]

(4) any [~~an~~] offense with the essential elements of:

(A) a criminal solicitation offense, as described by Penal Code §15.03 or §15.031;

(B) [~~(A)~~] a criminal homicide offense, as described by Penal Code[~~,~~] Chapter 19;

[~~(B) a felony offense of assault, as described by Penal Code, Chapter 22;~~]

(C) a kidnapping or unlawful restraint offense, as described by Penal Code Chapter 20;

(D) an offense related to the smuggling of persons or the trafficking of persons, as described by Penal Code Chapter 20 or 20A;

(E) a sexual offense, as described by Penal Code Chapter 21;

(F) an assaultive offense, as described by Penal Code Chapter 22;

(G) an offense against the family, as described by Penal Code Chapter 25;

(H) [~~(C)~~] an arson or property damage offense, as described by Penal Code[~~,~~] Chapter 28;

(I) [~~(D)~~] a robbery offense, as described by Penal Code[~~,~~] Chapter 29;

(J) [~~(E)~~] a burglary offense, as described by Penal Code[~~,~~] Chapter 30;

(K) [~~(F)~~] a theft offense, as described by Penal Code[~~,~~] Chapter 31;

(L) online solicitation of a minor, as described by Penal Code §33.021;

(M) a bribery or corrupt influence offense, as described by Penal Code Chapter 36;

(N) a perjury or falsification offense, as described by Penal Code Chapter 37;

(O) a stalking offense, as described by Penal Code §42.072;

(P) an offense against public order and decency, as described by Penal Code Chapter 43;

(Q) a weapons offense, as described by Penal Code Chapter 46;

(R) an intoxication assault or manslaughter offense, as described by Penal Code §49.07 or §49.08;

(S) an organized crime offense, as described by Penal Code Chapter 71; or

(T) [~~(G)~~] an offense relating to the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance, a simulated controlled substance, [~~or~~] a dangerous drug, or a volatile chemical; [~~and~~]

[~~(H) an offense against the person as described by Penal Code §§20.03, 20.04, 21.07, 21.08, or 21.11;~~]

[~~(I) an offense against the family as described by Penal Code §§25.02 or 25.07];~~

[~~(J) a stalking offense as described by Penal Code §42.072; or~~]

[~~(K) an offense against public order and decency as described by Penal Code §§43.25 or 43.26.~~]

(5) any offense described by Code of Criminal Procedure Article 42A.054;

(6) a sexually violent offense as described by Code of Criminal Procedure Article 62.001;

(7) any criminal attempt or conspiracy to commit any offense listed under this section, as described by Penal Code §15.01 or §15.02; or

(8) any offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under this section.

[~~(f) The department shall not issue a license or authorization if an applicant has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the commissioner finds that the matters set out in subsection (h) of this section outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.~~]

[~~(g) The department may, after notice and opportunity for hearing, revoke a license or authorization if the holder has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the commissioner finds that the matters set out in subsection (h) of this section outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.~~]

[~~(h) The department will consider the factors specified in Texas Occupations Code §§53.022 and 53.023 in determining whether~~

to grant, deny, suspend, or revoke any license or authorization under its jurisdiction.]

[(1) In determining whether a criminal offense directly relates to the duties and responsibilities of the licensed occupation, the department shall consider the following factors:]

[(A) the nature and seriousness of the crime;]

[(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;]

[(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and]

[(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.]

[(2) In addition to the factors listed in paragraph (1) of this subsection, the department shall consider the following evidence in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has committed a crime:]

[(A) the extent and nature of the person's past criminal activity;]

[(B) the age of the person when the crime was committed;]

[(C) the amount of time that has elapsed since the person's last criminal activity;]

[(D) the conduct and work activity of the person prior to and following the criminal activity;]

[(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and]

[(F) other evidence of the person's present fitness, including letters of recommendation from:]

[(i) prosecutor, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]

[(ii) the sheriff or chief of police in the community where the person resides; and]

[(iii) any other persons in contact with the person.]

[(G) In addition to the factors and evidence listed in paragraphs (1) and (2) of this subsection, an applicant or license or authorization holder shall also furnish proof that the applicant or holder has:]

[(i) maintained a record of steady employment;]

[(ii) supported the applicant's or holder's dependents where applicable;]

[(iii) otherwise maintained a record of good conduct; and]

[(iv) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant or holder has been convicted.]

[(3) It shall be the responsibility of the applicant or holder to the extent possible to secure and provide to the commissioner the information required by paragraph (2) of this subsection.]

(g) [(i)] The department will [shall] consider any specific criteria the legislature has set out for any license or authorization in considering whether to grant, deny, suspend, or revoke such license or authorization.

(h) [(j)] The department will [shall] revoke a license or authorization on the holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(i) [(k)] No person currently serving in prison for conviction of a felony under any state or federal law is eligible to obtain a license or authorization issued by the 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 April 18, 2023.

TRD-202301402
Allison Eberhart
Deputy General Counsel
Texas Department of Insurance
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 676-6555

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §523.6

Texas State Soil and Water Conservation Board proposes an amendment to Title 31 Texas Administrative Code, §523.6(e)(5), which limits the amount of cost share incentive funding per operating unit to $15,000. The agency is proposing to remove the amount from rule and base it on a routine state board decision within the Water Quality Management Plan Program.

Fiscal Note

Kenny Zajicek, Fiscal Officer, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments due to enforcing or administering the rule.

Kenny Zajicek, Fiscal Officer, has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Kenny Zajicek, Fiscal Officer, has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to protect the public by establishing and maintaining a high standard of integrity, skills, and practice.

Local Employment Impact Statement

Kenny Zajicek, Fiscal Officer, has determined that the rule will not impact local employment or economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Kenny Zajicek, Fiscal Officer, has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities because of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Kenny Zajicek, Fiscal Officer, has determined that no private real property interests are affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Public Benefit/Cost Note.

Kenny Zajicek, Fiscal Officer, has determined, under Government Code §2001.024(a)(5), that for the first five-year period, the amended rules are in effect, the public benefit will be an efficient use of state resources. He further has determined there will be no probable economic cost to persons required to comply with the rule.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Environmental Rule Analysis

The proposed rule is not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is/is not required.

Request for Public Comments

The Texas State Soil and Water Conservation Board invites comments on the proposed new rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Heather Bounds, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504, or by e-mail to hbounds@TSSWCB.Texas.Gov Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after the publication of this proposal to be considered.

Statutory Authority

With the enactment of Senate Bill 503 (73rd Regular Session - Sims / Counts) in 1993, the Texas Legislature designated the Texas State Soil and Water Conservation Board (TSSWCB) the lead agency in the state for the abatement, management, and prevention of nonpoint source pollution from agricultural or silvicultural sources. Additionally, the Legislature authorized the agency to administer a certified Water Quality Management Plan (WQMP) Program, complete with a cost-share program to incentivize participation and offset the cost of implementing soil and water land improvement measures for lands within the state. While the TSSWCB makes the program available on a statewide basis, the State Board approves priorities based on activity and geography to target the cost-share incentive funding to the areas of the state that exhibit the most need for nonpoint source pollution abatement.

Title 31 Texas Administrative Code, §523.6(f)(4), which limits the amount of cost share incentive funding per operating unit to $15,000. The agency is proposing to remove the amount from rule and base it on a routine state board decision within the Water Quality Management Plan Program.

§523.6. Cost-Share Incentive Funding for Soil and Water Conservation Land Improvement Measures.

(a) - (d) (No change.)

(e) Administration of Funds.

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

(5) Maximum Allowable Amount of Cost-Share Funds per Operating Unit. The maximum allowable amount of cost-share funds that may be applied to any single operating unit will be adopted by the State Board prior to the beginning of each biennium [~~is $15,000~~]. This provision applies only to general revenue funds appropriated by the Texas Legislature to assist program participants with the implementation of soil and water conservation land improvement measures as allowed by Agriculture Code §201.301. In cases where the funding for cost-share incentives originates from sources other than appropriations made directly to this program by the Texas Legislature, the maximum allowable amount of cost-share incentive funding per operating unit will be established by the terms of the contractual agreement providing the funds until otherwise specified by the State Board.

(f) - (k) (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 April 18, 2023.

TRD-202301401
Heather Bounds
Government Relations Specialist
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: June 4, 2023
For further information, please call: (254) 778-8741

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.297

The Comptroller of Public Accounts proposes amendments to §3.297, concerning carriers, commercial vessels, locomotives and rolling stock, and motor vehicles. The comptroller amends the section to implement the changes made to Tax Code, §160.001(2) (Definitions) by House Bill 4032, 86th Legislature, 2019 and to codify current comptroller policy regarding the taxability of components and the repair and maintenance of vessels.

The comptroller amends subsection (a)(1) "Chapter 160 boat" to update the maximum length of such a boat from 65 to 115 feet to implement House Bill 4032 and to more closely follow the statute and the definition of taxable boat in §3.741 of this title (relating to Imposition and Collection of Tax).

The comptroller amends subsection (c)(3) entitled, "component parts," by adding the phrase "or a Chapter 160 boat that meets the definition of a commercial vessel" for clarification without substantive change to the subparagraph.

The comptroller amends subsection (c)(4) entitled, "repair and maintenance," by adding the phrase "or a Chapter 160 boat that meets the definition of a commercial vessel" for clarification in accordance with STAR Accession No. 9809812L (September 15, 1998) without substantive change to the subparagraph.

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

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by conforming the rule to current statute and incorporating long-standing agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public.

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

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

The amendments implement Tax Code, §151.329 (Certain Ships and Ship Equipment), §151.3291 (Boats and Boat Motors), and 160.001(2) (Definitions).

§3.297. Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles.

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

(1) Chapter 160 boat--A vessel not more than 115 [~~65~~] feet in length, measured from the tip of the bow in a straight line to the stern, other than a canoe, kayak, rowboat, raft, punt, or other watercraft designed to be propelled only by paddle, oar, or pole. The term includes federally documented vessels, sailboats, personal watercraft, and boats designed to accommodate an outboard motor. The term does not include seaplanes. Seaplanes, and canoes, kayaks, rowboats, rafts, punts, [~~that is not a canoe, kayak, rowboat, raft, punt, inflatable vessel,~~] or other watercraft designed to be propelled only by paddle, oar, or pole, are not "taxable boats" [~~and that is subject to tax~~] under Tax Code, Chapter 160 (Taxes On Sales And Use Of Boats And Boat Motors), but are subject to tax under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax).

(2) Commercial vessel--A vessel that displaces eight or more tons of fresh water before being loaded with fuel, supplies, or cargo, and that is:

(A) used exclusively and directly in a commercial or business enterprise or activity, including, but not limited to, commercial fishing; or

(B) used commercially for pleasure fishing by individuals who are paying passengers.

(3) Common carrier--A person who holds out to the general public a willingness to provide transportation of persons or property from place to place for compensation in the normal course of business.

(4) Licensed and certificated common carrier--A person authorized through issuance of a license or certificate by the appropriate United States agency or by the appropriate state agency within the United States to operate a vessel, train, motor vehicle, or pipeline as a common carrier. Certificates of inspection or safety do not authorize a person to operate as a licensed and certificated common carrier.

(5) Locomotive--A self-propelled unit of railroad equipment consisting of one or more units powered by steam, electricity, diesel electric, or other fuel, designed solely to be operated on and supported by stationary steel rails or electromagnetic guideways and to move or draw one or more units of rolling stock owned or operated by a railroad. The term includes a yard locomotive operated to perform switching functions within a single railroad yard, but does not include self-propelled roadway maintenance equipment.

(6) Marine cargo container--A container that is fully or partially enclosed; is intended for containing goods; is strong enough to be suitable for repeated use; and is specially designed to facilitate the carriage of goods by one or more modes of transportation without intermediate reloading. The term includes the accessories and equipment that are carried with the container. The term does not include trailer chassis, motor vehicles, accessories, or spare parts for motor vehicles.

(7) Motor vehicle--A self-propelled vehicle designed to transport persons or property upon the public highway and a vehicle designed to be towed by a self-propelled vehicle while carrying property. The term includes, but is not limited to: automobiles; motor homes; motorcycles; trucks; truck tractors; trailers; semitrailers; house trailers or travel trailers, as defined by §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines); park models, as defined by §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax); trailers sold unassembled in a kit; dollies; jeeps; stingers; auxiliary axles; converter gears; and truck cab/chassis. The term does not include a nonrepairable vehicle and a

salvage vehicle, as defined by §3.86 of this title (relating to Destroyed and Repaired Motor Vehicles).

(8) Operating exclusively in foreign or interstate coastal commerce--Transporting persons or property between a point in Texas and a point in another state or foreign country. A vessel that travels between a point in Texas and an offshore area or fishing area on the high seas, or between two points in Texas, is not operating exclusively in foreign or interstate coastal commerce.

(9) Railroad--A form of non-highway ground transportation of persons or property in the normal course of business by means of trains solely operated on and supported by stationary steel rails or electromagnetic guideways, including but not limited to:

(A) high speed ground transportation systems that connect metropolitan areas;

(B) commuter or other short-haul rail passenger service in a metropolitan or suburban area;

(C) narrow gauge shortline railroads, including tourist, historical, or amusement park railroads; and

(D) private industrial railroads operated on steel rails that connect directly to the national rail system of transportation, but not a private industrial railroad operated on steel rails totally inside an installation that is not connected directly to the national rail system of transportation.

(10) Rolling stock--A unit of railroad equipment that is mounted on wheels and designed to be operated in combination with one or more locomotives upon stationary steel rails or electromagnetic guideways owned or operated by a railroad. Examples include, but are not limited to, passenger coaches, baggage and mail cars, box cars, tank cars, flat cars, and gondolas. Rolling stock also includes self-propelled trackmobile rail car movers and roadway maintenance equipment. Rolling stock does not include equipment used for intra-plant transportation or other nontraditional railroad activities and that is mounted on stationary steel rails or tracks but that are not part of, or connected to, a railroad. For example, cranes operated on steel rails or tracks and used to load or unload ships are not rolling stock.

(11) Train--One or more locomotives coupled to one or more units of rolling stock that are designed to carry freight or passengers, are operated on steel rails or electromagnetic guideways, and are owned or operated by a railroad.

(12) Vessel--A watercraft, other than a seaplane on water, used, or capable of being used, for navigation and transportation of persons or property on water. The term includes a ship, boat, watercraft designed to be propelled by paddle or oar, barge, and floating dry-dock.

(b) Carriers generally.

(1) Use tax is not due on the storage or use of repair or replacement parts acquired outside of Texas and actually affixed in Texas to a self-propelled vehicle that is used by a licensed and certificated common carrier. Trailers, barges, and semitrailers are not considered to be self-propelled vehicles.

(2) Use tax is due on the storage or use of tangible personal property brought into Texas to be assembled into a vehicle used by a common carrier to transport persons or property from place to place, unless the tangible personal property is otherwise exempt from sales and use tax under this section.

(3) Sales tax is not due on the sale of tangible personal property to a common carrier if the tangible personal property is shipped to a point outside of Texas using the purchasing carrier's facilities under a bill of lading, and if the tangible personal property is to be used by the purchasing carrier in the conduct of its business outside of Texas.

(c) Vessels.

(1) Chapter 160 boats. The sale or use in Texas of a Chapter 160 boat is subject to boat and boat motor sales or use tax under Tax Code, Chapter 160, even if the vessel meets the definition of a commercial vessel. The lease or rental of a Chapter 160 boat is subject to limited sales, excise, and use tax under Tax Code, Chapter 151 [~~(Limited Sales, Excise, and Use Tax)~~]. For information concerning the imposition of the boat and boat motor sales and use tax, see §3.741 of this title (relating to Imposition and Collection of Tax).

(2) Commercial vessels. Sales or use tax is not due on the sale by the builder of a commercial vessel that is not a Chapter 160 boat.

(3) Component parts. Sales and use tax is not due on the sale or use of materials, equipment, and machinery that become component parts of a commercial vessel, [~~or~~] a marine cargo container, or a Chapter 160 boat that meets the definition of a commercial vessel. A component part is tangible personal property that is actually attached to and becomes a part of a commercial vessel, [~~or~~] a marine cargo container, or a Chapter 160 boat that meets the definition of a commercial vessel. For example, items such as radios, radar equipment, navigation equipment, wenches, long-line fishing gear, and rigging equipment, that are attached to the vessel by means of bolts or brackets, or are otherwise attached to the vessel, including items required by federal or state law, are component parts. Permanent coatings such as paint and varnishes are also component parts. The term does not include furnishings of any kind that are not attached to the vessel, nor does it include consumable supplies. For example, it does not include bedding, linen, kitchenware, tables, chairs, ice for cooling, refrigerants for cooling systems, fuels, lubricants, first aid kits, tools, or polishes, waxes, glazes, or other similar temporary coatings.

(4) Repair and maintenance. Sales and use tax is not due on the labor to repair, remodel, restore, renovate, convert, or maintain a commercial vessel or a Chapter 160 boat that meets the definition of a commercial vessel, or a component part of a commercial vessel or a Chapter 160 boat that meets the definition of a commercial vessel. Sales and use tax is due on the sale or use of machinery, equipment, tools, and other items used or consumed in performing the non-taxable service. For more information about the repair, remodeling, maintenance, and restoration of vessels that are not commercial vessels, see §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(5) Vessels operating exclusively in foreign or interstate coastal commerce.

(A) Sales or use tax is not due on the sale of materials and consumable supplies, including items commonly known as ships' stores and sea stores, to the owner or operator of a vessel operating exclusively in foreign or interstate coastal commerce, if the materials and consumable supplies are for use and consumption in the operation and maintenance of the vessel, or if the materials and supplies enter into and become component parts of the vessel.

(B) Operation of the vessel in a manner other than in foreign or interstate coastal commerce will result in a loss of the exemption for ships' stores and sea stores for the quarterly period in which the nonexempt operation occurs.

(C) Any owner or operator of a vessel operating exclusively in foreign or interstate coastal commerce shall, when giving an exemption certificate, include on the certificate the title or position of

the person issuing the certificate and the name of the vessel on which the items are to be loaded.

(D) Sales tax is due on sales made to individual seamen operating these vessels.

(6) Closely associated service companies provide servicing operations such as stevedoring, loading, and unloading vessels. Sales or use tax is not due on the sale or use of materials and supplies purchased by a person providing stevedoring services for a vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies are loaded aboard the vessel and are not removed before its departure. This includes, but is not limited to, such items as lumber, plywood, deck lathing, turnbuckles, and lashing shackles.

(d) Taxable uses of tangible personal property purchased tax free. Sales and use tax is due when tangible personal property sold, leased, or rented tax-free under a properly completed resale or exemption certificate is subsequently put to a taxable use other than the use allowed under the certificate. For more information refer to §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

(e) Rolling stock, locomotives, and trains.

(1) Sales or use tax is not due on the sale or use of locomotives and rolling stock.

(2) Sales or use tax is not due on the sale or use of fuel or supplies essential to the operation of locomotives and trains, including items required by federal or state regulation. Examples include, but are not limited to, telecommunication and signaling equipment, rails, ballast, cross ties, and roadbed moisture barriers. Items of tangible personal property used to construct, repair, remodel, or maintain improvements to real property such as depots, maintenance facilities, loading facilities, and storage facilities are not supplies essential to the operation of locomotives and trains.

(3) Sales or use tax is not due on the amount charged for labor or incorporated materials used to repair, remodel, maintain, or restore locomotives and rolling stock. Sales or use tax is due on the sale or use of machinery, equipment, tools, and other items used or consumed in performing the non-taxable service.

(4) Sales or use tax is not due on the sale or use of electricity, natural gas, and other fuels used or consumed predominately in the repair, maintenance, or restoration of rolling stock. For more information, see §3.295 of this title (relating to Natural Gas and Electricity).

(5) Sales or use tax is not due on the amount charged for labor or incorporated materials, whether lump-sum or separately stated, used for the construction of new railroad tracks and roadbeds. For more information, see §3.291 of this title (relating to Contractors). Sales or use tax is not due on the separately stated sales price of incorporated materials used to repair, remodel, restore, or maintain existing railroad tracks and roadbeds. Sales and use tax is due on the sales price for labor to repair, remodel, restore, or maintain existing railroad tracks and roadbeds as nonresidential real property repair, remodeling, and restoration. For more information, see §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(f) Motor vehicles. The sale and use of motor vehicles are taxed under the Tax Code, Chapter 152 (Taxes on Sale, Rental, and Use of Motor Vehicles). For information on repairs to motor vehicles, see §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment.

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 April 24, 2023.

TRD-202301473
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-2220

♦ ♦ ♦

SUBCHAPTER EE. BOAT AND BOAT MOTOR SALES AND USE TAX

34 TAC §3.741

The Comptroller of Public Accounts proposes amendments to §3.741, concerning imposition and collection of tax, relating to Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors). This proposed amendment implements House Bill 2926, 78th Legislature, 2003; House Bill 1106, 83rd Legislature, 2013; and House Bill 4032, 86th Legislature, 2019. Other amendments to the section reflect changes to existing text for consistency, clarity, and to incorporate long-standing agency policy.

The comptroller amends the section by inserting the word "sales" before the word "tax" when appropriate and replacing the terms "state" and "this state" with the term "Texas" throughout the section for uniformity with other sections of this title. The comptroller also inserts the term "taxable" before the term "boat" where appropriate to conform to the term defined in subsection (a)(12). The comptroller also replaces the term "boat" with the term "outboard" when referring to motor throughout the section to conform to the term defined in subsection (a)(13).

The comptroller amends current subsection (a), entitled "definitions," by revising certain existing definitions and by adding nine new terms in paragraphs (2), (3), (6), (7), (9), (10), (14), (15), and (18). The comptroller renumbers existing paragraphs in the subsection accordingly.

The comptroller amends subsection (a)(1) defining the term "accessories" by replacing the term "boat" with the more general term "vessel" because accessories may be attached to vessels other than taxable boats. The comptroller further amends the paragraph by adding the terms "water skis" and "tow ropes" deleted and relocated from current subsection (f)(1) and adding a statement excluding boat trailers from the definition of an accessory.

The comptroller adds a new paragraph (2) defining the term "agent of the department." The amendment is derived from the definition of the same term in Parks and Wildlife Code, §31.003(15) (Definitions).

The comptroller adds a new paragraph (3), defining the term "Application for Certificate of Title and/or Registration." The amendment derives the definition, in part, from Parks and Wildlife Code, §31.046 (Application for Certificate of Title), and §31.047 (Application; Form and Content; Fee).

The comptroller amends current paragraph (2), renumbered paragraph (4), defining the term "dealer" based on the revi-

sions to the definition of the term in Parks and Wildlife Code, §31.003(7), and by adding a licensing requirement based on §31.041 (Duties of Dealers, Distributors, and Manufacturers; License Required).

The comptroller adds new paragraph (6) defining the term "Distributor." The definition is based on the definition of the term "distributor" in the Parks and Wildlife Code, §31.003, added by House Bill 2926.

The comptroller adds new paragraph (7) defining the term "federally documented vessel." The definition comes from information on the United States Coast Guard website at https://www.dco.uscg.mil/Our-Organization/Deputy-for-Operations-Policy-and-Capabilities-DCO-D/National-Vessel-Documentation-Center/ (April 20, 2023).

The comptroller amends current paragraph (4), renumbered paragraph (8), defining the term "manufacturer." The comptroller amends the definition to incorporate revisions to Parks and Wildlife Code, §31.003(11), and to add a licensing requirement based on §31.041.

The comptroller deletes paragraph (6) defining the term "tax assessor-collector" and adds new paragraph (9) defining the term "participating county tax assessor-collector." The comptroller defines the term as a county tax assessor-collector that has an agreement with the Texas Parks & Wildlife Department (Parks & Wildlife) to title and/or register taxable boats or outboard motors in Texas. The comptroller bases the definition on guidance from STAR Accession No. 9110L1150C10 (October 3, 1991).

The comptroller adds new paragraph (10), defining the term "registered repair facility." The definition incorporates Tax Code, §160.0246 (Exemption for Certain Boats and Motors Temporarily Used in This State), added by House Bill 4032 and includes a requirement that the repair facility hold a Texas sales and use tax permit.

The comptroller amends current paragraph (5), renumbered paragraph (11), defining the term "retail sale" by incorporating the language from Tax Code, §160.001(7) (Definitions), to follow the statute more closely.

The comptroller amends current paragraph (7), renumbered paragraph (12), defining the term "taxable boat." The comptroller amends the definition of "taxable boat" by increasing the length of a taxable boat from 65 feet to 115 feet based on Tax Code, §160.001(2) revised by House Bill 4032. The comptroller further amends the paragraph to more closely follow the statutory definition of taxable boat in Tax Code, §160.001(9), by rearranging the paragraph, deleting the term "inflatable" and adding the term "punts", The comptroller also adds the word "only" when referring to the how the boat is propelled to clarify the taxability of vessels that are designed to be propelled by oars or motors, The comptroller further amends the paragraph by replacing the term "jet skis," which is a manufacturer's trade name, with the generic term "personal watercraft."

The comptroller amends current paragraph (8), renumbered paragraph (13), by changing the defined term from "taxable motor" to "outboard motor" based on Tax Code, §160.001(5) and (9), and Parks and Wildlife Code, §31.003(13). The comptroller further amends the paragraph by replacing the terms "watercraft" and "boat" with the term "vessel" used in Tax Code, §160.001(2), as amended by House Bill 4032.

The comptroller adds new paragraph (14), defining the term "temporary use permit." The comptroller derives the definition from the language in Tax Code, §160.0247 (Temporary Use Permit), added to Tax Code, Chapter 160, by House Bill 4032.

The comptroller adds new paragraph (15), defining the term "territorial boundaries of Texas." The comptroller derives the definition, in part, from the language in §3.332(c) of this title (relating to Drilling Equipment) and STAR Accession No. 200905476L (May 1, 2009).

The comptroller amends current paragraph (9), renumbered paragraph (16), defining the term "total consideration" by incorporating language from Tax Code, §160.002 (Total Consideration), and rearranging certain other terms for clarity and readability. The comptroller amends the second sentence of the paragraph by adding language explaining that total consideration includes the inventory tax due and payable by dealers under Tax Code, §23.124 (Dealer's Vessel and Outboard Motor Inventory; Value). The comptroller further amends the paragraph by including long-standing comptroller practice under STAR Accession No. 9607L1418A11 (July 11, 1996). *See* Comptroller's Decision No. 42,142 (2005) and §3.74 of this title (relating to Seller Responsibility).

The comptroller amends current paragraph (10), renumbered paragraph (17), defining the term "use" by adding the terms "taxable boat or outboard motor" and creating two examples describing "use" in new subparagraphs (A) and (B). The comptroller derives the example in subparagraph (A) from current subsection (a)(10). The comptroller derives the example in new subparagraph (B), in part, from the language in Tax Code, §160.0246, added by House Bill 4032.

The comptroller adds new paragraph (18), defining the term "vessel." The comptroller derives the definition from §3.297 of this title (relating to Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles), and Parks and Wildlife Code, §31.003(2).

The comptroller amends the heading for current subsection (b) entitled "general principles" to read "general principles of taxation" to better inform readers as to what the subsection contains. The comptroller amends current subsection (b)(1) by deleting the phrase "the boat and boat motor sales and use tax" and adding the title for Tax Code, Chapter 160 for clarification without substantive change.

The comptroller amends subsection (b) by adding a new paragraph (2) by relocating the second sentence from current paragraph (2) and adding the term "lease" and a statement that taxable boats or outboard motors cannot be purchased for resale. The amendment is based on Tax Code, §151.3291 (Boats and Boat Motors), and guidance from STAR Accession No. 9709824L (September 29, 1997).

The comptroller amends current subsection (b)(2), renumbered as paragraph (3), by correcting the title of Tax Code, Chapter 151, and deleting and relocating the second sentence to new paragraph (2) for clarification without substantive change. The amendment includes several minor edits to current subsection (b)(3), renumbered as paragraph (4), for consistency and clarification without substantive change.

The comptroller amends current subsection (b)(4), renumbered as paragraph (5), by inserting the titles for the Parks and Wildlife Code sections cited therein and by making several edits for clarification without substantive change. The comptroller further amends renumbered paragraph (4) and paragraph (5) by replacing the phrase "the provisions of the boat and boat motor

sales and use tax" with "Tax Code, Chapter 160" for uniformity without substantive change to the paragraph.

The comptroller adds new paragraph (6) addressing the taxation of a taxable boat or outboard motor purchased at retail outside Texas and brought into Texas for use in Texas by a Texas resident or person domiciled or doing business in Texas in accordance with Tax Code, §160.022 (Use Tax). The new paragraph also adds a reference to the new resident use tax in accordance with Tax Code, §160.023 (New Resident).

The comptroller adds new paragraph (7) addressing the taxation of a boat trailer in accordance with STAR Accession No. 200109441L (September 6, 2001). The new paragraph also references §3.74 of this title and §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines).

The comptroller amends subsection (c), entitled "imposition of the tax," by creating two new subparagraphs in paragraph (1) and by moving the 6.25% tax rate referenced in current paragraph (2) to new paragraphs (1)(A) and (2)(A).

The comptroller derives new subparagraph (A) from Tax Code, §160.021 (Retail Sales Tax), and implements the amendment to Tax Code, Chapter 160, by House Bill 4032, adding Tax Code, §160.026 Limitation on Amount of Tax, limiting the amount of total sales tax due at $18,750. New subparagraph (B) restates the last two sentences in current paragraph (1) and makes several edits for clarification without substantive change.

The comptroller amends subsection (c) by deleting the language in paragraph (2) and adding new language relating to use tax due under Tax Code, §160.022. New subparagraph (A) states that tax is due on the total consideration paid or to be paid, regardless of any use or depreciation prior to entry into Texas. New subparagraph (B) makes the use tax an obligation of the person who brings the taxable boat or outboard motor into Texas in accordance with Tax Code, §160.022. New subparagraph (B) allows a credit against the Texas use tax in accordance with Tax Code, §160.025 (Credit for Other Taxes). New subparagraph (C) states that the new resident use tax imposed is $15 and is in lieu of the use tax in accordance with Tax Code, §160.023.

The comptroller further amends subsection (c)(2) by adding a new subparagraph (D) providing that use tax is not due on the use of a taxable boat or outboard motor brought into Texas if the owner of a taxable boat or outboard motor obtains a current temporary use permit. The addition of new subparagraph (D) implements the amendment to Tax Code, Chapter 160, by House Bill 4032 which added Tax Code, §160.0246 and §160.0247. The comptroller amends subsection (c)(2) by adding a new subparagraph (E) explaining that use tax is due on the use of a taxable boat or outboard motor located within the territorial boundaries of Texas after the expiration date of the temporary use permit. The amendment makes minor changes to current subsection (c)(2), renumbered (3), for clarity without substantive change.

The comptroller amends subsection (d), entitled "payment of the tax," by creating two new subparagraphs in paragraph (1) for clarity and readability. The comptroller further amends section (d)(1) by replacing the phrase "after the completion of the seller, donor, or trader's affidavit" with the phrase "the seller and purchaser must complete an Application for Certificate of Title and/or Registration" since the comptroller and Parks & Wildlife have combined the tax affidavit required under Chapter 160 with Parks and Wildlife's Application for Certificate of Title. New subparagraph (A) is drawn from the remainder of the language in current paragraph (1). The comptroller further amends the new subparagraph by deleting and replacing the term "county tax assessor-collector" with the term "participating county tax assessor-collector" at the end of the subparagraph in accordance with STAR Accession No. 9110L1150C10.

The comptroller amends subsection (d)(2) by designating it as new subparagraph (B) of paragraph (2) and amending the new subparagraph by deleting the phrase "after the completion of the seller, donor, or trader's affidavit for the sale of a boat or boat motor" based on the amendment to subsection (d)(1). The comptroller amends new subparagraph (B) by replacing the term "affidavit" with the term "Application for Certificate of Title and/or Registration" and inserting the term "an agent of the department," and deleting and replacing the term "county tax assessor-collector" with "participating county tax assessor-collector." The amendment further revises new subparagraphs (A) and (B) by replacing the numeral "20" with the numeral "45" in accordance with House Bill 4032.

The comptroller amends subsection (d) by renumbering paragraph (2) as paragraph (3) and adding language to make the paragraph consistent with the rest of the subsection. The amendment revises the paragraph by replacing the numeral "20" with the numeral "45" in accordance with the changes made to Tax Code, §160.041 (Collection Procedure), by House Bill 4032. The comptroller amends current subsection (d) by adding a new paragraph (3) giving guidance for the transfer of a taxable boat or outboard motor due to a tax exemption, even exchange, or gift of a taxable boat or outboard motor in accordance with Tax Code, Chapter 160.

The comptroller makes minor changes to current subsection (e), entitled "Failure of tax remittance by the selling dealer," for clarity and consistency within the section without substantive change.

The comptroller amends the heading for current subsection (f), entitled "purchase of accessories/components for resale," to read "purchase of tangible personal property or accessories for resale" to conform to the contents of the amended subsection. The amendment deletes the heading for paragraph (1) because no paragraphs in the current section contain a heading. The comptroller amends the subsection by inserting the words "properly completed" before the word "resale" for consistency with other sections of this title. The amendment also replaces the term "Limited Sales, Excise, and Use Tax Act" with the term "Tax Code, Chapter 151" for consistency and readability. The comptroller further amends current subsection (f)(1) by creating a new paragraph (2) from the second sentence in current paragraph (1) and by inserting the language "A properly completed resale certificate may be used in purchasing" for clarity and readability. The amendment also replaces the word "single" with the word "lump-sum" to be consistent with the last sentence in the new paragraph. The comptroller amends current paragraph (1) by deleting the sentence "These accessories include water skis and tow ropes" and relocating the terms "water skis and tow ropes" to subsection (a)(1) defining "accessories."

The amendment renumbers current paragraph (2) as paragraph (3), replaces the term "boat or boat motor" with the term "vessel" and replaces the phrase "boats over 65" with the phrase "vessels over 115" to be consistent with the changes made to Tax Code, §160.001, by House Bill 4032.

The comptroller adds new subsection (g), entitled, "exemptions and non-taxable transactions," which contains three new paragraphs.

The comptroller adds new paragraph (1) concerning an exemption from sales tax for the sale of a taxable boat or outboard motor purchased in Texas for use in another state or nation before any use in Texas. New paragraph (1) implements the amendment to Tax Code, Chapter 160, by House Bill 4032 which added Tax Code, §160.0246 and §160.0247 to Chapter 160. New paragraph (1) contains five subparagraphs (A) through (E).

Subparagraph (A) requires the purchaser to provide the seller with a signed written statement stating that the purchaser intends to remove the taxable boat or outboard motor from Texas for use in another state or nation by complying with either subparagraph (B), (C), or (D).

Subparagraph (B) requires the removal of the taxable boat or outboard motor from Texas within ten days of the sale in accordance with Tax Code, §160.0246(a)(1).

Subparagraph (C) requires the taxable boat or outboard motor be placed in a registered repair facility within 10 days of the date of sale and then removed from Texas within 20 days from the date the repairs, remodeling, maintenance, or restoration are completed in accordance with Tax Code, §160.0246(a)(2).

Subparagraph (D) requires the purchase of a temporary use permit within the time limits described in paragraph (1)(B) and (C) in accordance with Tax Code, §160.0246(a)(3) and (b).

Subparagraph (E) states that sales tax is due if the purchaser fails to meet the requirements of subparagraphs (A), (B), (C), or (D).

The comptroller adds new paragraph (2) concerning an exemption from sales tax for the sale of a taxable boat or outboard motor purchased in Texas for use by a governmental entity. New subparagraph (A) addresses the exemption for sales to the state of Texas, its agencies, instrumentalities, and political subdivisions in accordance with Tax Code, §160.024 (Exemption). New subparagraph (B) addresses the exemption for sales to the United States, its unincorporated agencies and instrumentalities, including instrumentalities chartered by the United States congress, such as the American Red Cross, in accordance with Tax Code, §160.024, and STAR Accession No. 9803362L (March 12, 1998). New subparagraph (C) addresses the exemption for volunteer fire departments in accordance with Tax Code, §160.0245 (Exemption for Emergency Service Organizations).

The comptroller adds new paragraph (3) concerning the nontaxable transfer of a taxable boat or outboard motor to an insurance company due to the settlement of an insurance claim or by a seller or lienholder due to a repossession of a taxable boat or outboard motor in accordance with STAR Accession No. 9306L1247F11 (June 28, 1993).

The comptroller adds new subsection (h), entitled, "refunds," which contains four paragraphs. New paragraph (1) informs the reader who may request a refund of any boat or boat motor sales and use tax paid in error in accordance with Tax Code, §111.104(b) (Refunds).

New paragraph (2) sets out the requirements for filing a refund claim in subparagraphs (A) through (D) in accordance with Tax Code, §111.104(c).

Subparagraph (A) requires that the request be in writing on comptroller's Form 57-200, Texas Claim for Refund of Boat and Boat Motor Tax. Subparagraph (B) requires that the request state the specific grounds upon which the claim is founded. Subparagraph (C) requires that the request be filed within four years from the date on which the tax was due and payable. Subparagraph (D) informs the reader that the comptroller can require a person to submit additional information to verify the refund under Tax Code, §111.004 (Power to Examine Records and Persons).

A new paragraph (3) states that the comptroller will notify a claimant if the comptroller determines that a refund claim cannot be granted, in part or in full, and the comptroller will also notify a claimant which requirements were not met in accordance with Tax Code, §111.1042 (Tax Refund: Informal Review). The amendment also explains that the claimant may request a refund hearing within 30 days of the denial of the refund in accordance with Tax Code, §111.105 (Tax Refund: Hearing). New paragraph (3) provides that a person may not refile a claim for the same transaction and for the same ground or reason as a refund claim previously denied in accordance with Tax Code, §111.107(b) (When Refund or Credit Is Permitted).

New paragraph (4) sets out the requirements for a person who intends to file suit under Tax Code, Chapter 112 (Taxpayers' Suits).

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

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by conforming the rule to current statute and incorporating long-standing agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public.

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

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

The amendments implement Tax Code, §§160.001 (Definitions), 160.002 (Total Consideration), 160.021 (Retail Sales Tax), 160.022 (Use Tax), 160.023 (New Resident), 160.024 (Exemption), 160.0245 (Exemption for Emergency Service Organizations), 160.0246 (Exemption for Certain Boats and Motors Temporarily Used in This State), 160.0247 (Temporary Use Permit), 160.026 (Limitation on Amount of Tax), and 160.041 (Collection Procedure).

§3.741. Imposition and Collection of Tax.

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

(1) Accessories--Nonessential tangible personal property attached to or sold with a vessel [~~a boat~~] for the convenience or comfort of the operator or passengers. The [~~For purpose of this rule, the~~] term "accessories" includes, but is not limited to, radios, mirrors, transom-mounted ladders, electric trolling motors, water skis, tow ropes, and depth finders. The term does not include a boat trailer.

(2) Agent of the Department--A dealer who is authorized by the Department under Parks and Wildlife Code, §31.006 (Appointment of Authorized Agent), to collect taxes and fees and issue certificates of number for taxable boats and outboard motors sold by that dealer in Texas.

(3) Application for Certificate of Title and/or Registration--Form PWD 143 (boats) or PWD 144 (outboard motors), an electronic equivalent, or a successor form used to apply for a certificate of title and/or registration for a taxable boat or outboard motor and/or to pay any sales or use tax due on the sale or use of a taxable boat or outboard motor in Texas. The Applications for Certificate of Title and/or Registration are available at https://tpwd.texas.gov/fishboat/boat/forms/.

(4) [~~(2)~~] Dealer--A person who holds a license issued by the Department to engage [~~or entity engaged~~] in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five taxable boats or outboard [~~boat~~] motors in Texas during a calendar year at an established or permanent place of business in Texas [~~this state. At each such place of business a sign must be conspicuously displayed showing the name of the dealership so that it may be located by the public, and sufficient space must be maintained for an office, service area, and display of boats and boat motors~~].

(5) [~~(3)~~] Department--The Texas Parks and Wildlife Department.

(6) Distributor--A person who holds a license issued by the Department to engage in the business of selling, offering for sale, or processing for distribution new taxable boats or outboard motors to dealers in Texas.

(7) Federally documented vessel--A vessel of five net tons or more, operated on United States navigable waters that has been issued a valid marine certificate of documentation on file with the United States Coast Guard National Vessel Documentation Center.

(8) [~~(4)~~] Manufacturer--A person who holds a license issued by the Department to engage [~~or entity engaged~~] in the business of manufacturing new and unused taxable boats and outboard [~~boat~~] motors for the purpose of sale or trade.

(9) Participating county tax assessor-collector--A county tax assessor-collector in Texas that has an agreement with the Department to title and/or register taxable boats or outboard motors in Texas.

(10) Registered repair facility--A person engaged in the business of repairing, remodeling, maintaining, or restoring taxable boats or outboard motors that holds a current Texas sales and use tax permit issued under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax).

(11) [~~(5)~~] Retail sale--An installment or credit [~~Any~~] sale of a taxable boat or outboard [~~boat~~] motor, an exchange of a taxable boat or outboard motor for property or money, or an exchange in which a taxable boat or outboard motor is transferred but the seller retains title as security for payment of the purchase price. The term does not include [~~other than~~] a sale in which the dealer, distributor, or manufacturer acquires the taxable boat or outboard [~~boat~~] motor for the exclusive purpose of resale. Dealers, distributors, and manufacturers [~~, as defined,~~] are the only persons who [~~or entities that~~] may acquire a taxable boat or outboard [~~boat~~] motor for resale.

[~~(6) Tax assessor-collector--Any of the county tax assessors-collectors in the State of Texas.~~]

(12) [~~(7)~~] Taxable boat--A vessel not more than 115 feet in length, measured from the tip of the bow in a straight line to the stern, other than a canoe, kayak, rowboat, raft, punt, or other watercraft designed to be propelled only by paddle, oar, or pole. The term [~~Any watercraft, other than a seaplane on water, not more than 65 feet in length. This~~] includes federally documented vessels [~~boats, motorboats~~], sailboats, personal watercraft [~~jet skis~~], and boats designed to accommodate an outboard motor. The term does not include seaplanes. Seaplanes, and [~~Excluded from this definition are~~] canoes, kayaks, rowboats, [~~inflatable~~] rafts, punts, or other watercraft designed to be propelled only by paddle, oar, or pole, are not "taxable boats" under Tax Code, Chapter 160 (Taxes On Sales And Use Of Boats And Boat Motors), but are subject to tax under Tax Code, Chapter 151. [~~These excluded watercraft are taxed under~~] (Limited Sales, Excise and Use Tax). [~~, unless some other exemption applies.~~]

(13) [~~(8)~~] Outboard [~~Taxable~~] motor--Any self-contained internal combustion propulsion system of any horsepower, excluding fuel supply, used to propel a vessel [~~watercraft,~~] that is detachable as a unit from the vessel [~~boat~~]. The term does not include electric [~~Electric~~] boat motors [~~are excluded~~].

(14) Temporary use permit--A non-renewable, non-transferable permit issued by the Department, an agent of the Department, or a participating county tax assessor-collector authorizing the temporary tax-free use of a taxable boat or outboard motor within the territorial boundaries of Texas for not more than 90 consecutive days from the date of issue. Only two temporary use permits may be issued for the same taxable boat or outboard motor within a calendar year. The second temporary use permit cannot be issued until 30 days after the date the first permit expires. The nonrefundable fee for the permit is $150 per taxable boat or outboard motor.

(15) Territorial boundaries of Texas--All territory within the exterior borders of Texas. The offshore border of Texas extends nine nautical miles from the coastline of Texas.

(16) [~~(9)~~] Total consideration--The amount paid or to be paid for a taxable boat or outboard [~~boat~~] motor, including all accessories attached thereto at the time of [~~or before~~] the sale. The [~~This~~] amount includes payments by the purchaser for the costs of material, labor or service, interest paid, loss, or any other expense, transportation before the sale, [~~and~~] any manufacturer's or importer's excise tax imposed by the United States government, and any dealer's vessel and outboard motor inventory property tax imposed on the dealer and passed through to the purchaser. The amount also includes anything of monetary value received by the seller, such as cash or the equivalent; a book entry reflecting cash received or paid; the forgiveness or assumption of debt; book entries reflecting accounts receivable or accounts payable for an item; the performance of a service; or real or tangible personal property. The [~~This~~] amount does not include any separately stated discount, finance or interest charges, documentary [~~service~~] charges, transportation charges after the sale, or [~~other interest charges. Also excluded from total consideration will be~~] the value of another [~~a~~] taxable boat or outboard [~~boat~~] motor taken by the seller as all or part of the consideration for the sale of the taxable boat or outboard [~~boat~~] motor. [~~No other tangible, intangible, or real property will be excluded from total consideration. Also excluded from total consideration are charges for transportation of the boat or boat motor after the sale.~~]

(17) [~~(10)~~] Use--Any storage or other exercise of rights of ownership in Texas [~~this state~~] by any person [~~or entity,~~] excluding:

(A) the storage, display, or holding of a taxable boat or outboard [~~boat~~] motor exclusively for sale by a dealer, distributor, or manufacturer; or

(B) troubleshooting or testing of a taxable boat or outboard motor being repaired, remodeled, maintained, or restored by a registered repair facility under subsection (g)(1) of this section [~~, as defined in this subsection~~].

(18) Vessel--Any watercraft, other than a seaplane on water, used or capable of being used for transportation on water. The definition includes a ship, barge, taxable boat, yacht, or any watercraft designed to be propelled by paddle, oar or pole.

(b) General principles of taxation.

(1) The purchase of a taxable boat or outboard [~~and boat~~] motor and all accessories attached thereto at the time of sale in Texas is subject to [~~the boat and boat motor sales and use tax (~~]Tax Code, Chapter 160, including the [~~). The~~] purchase of a taxable boat or outboard [~~boat~~] motor for purposes of lease or rental [~~is subject to Tax Code, Chapter 160~~].

(2) The lease or rental of a taxable boat or outboard motor in Texas is subject to Tax Code, Chapter 151, and cannot be purchased tax-free for resale.

(3) [~~(2)~~] The purchase of accessories for a taxable boat or outboard [~~and boat~~] motor attached after the time of sale of the taxable boat or outboard [~~boat~~] motor is subject to [~~the limited sales, excise, and use tax (~~]Tax Code, Chapter 151[~~). The rental of a taxable boat or boat motor is subject to Tax Code, Chapter 151~~].

(4) [~~(3)~~] The purchase of tangible personal property that cannot [~~is subject to the limited sales, excise, and use tax, if no item can~~] be identified as a taxable boat or outboard [~~boat~~] motor at the time of sale is subject to Tax Code, Chapter 151, even if the combination of items of tangible personal property later becomes a taxable boat or outboard [~~boat~~] motor. If items of tangible personal property are combined to create [~~produce~~] a taxable boat or outboard [~~boat~~] motor, the initial titling or registration of the taxable boat or outboard [~~boat~~] motor in the name of the person who created [~~produced~~] the taxable boat or outboard [~~boat~~] motor is not subject to [~~the provisions of the boat and boat motor sales and use tax~~] Tax Code, Chapter 160. If [~~, however,~~] the taxable boat or outboard [~~boat~~] motor is titled or registered in any other person's name, the taxable boat or outboard motor is considered transferred to that person and [~~transfer~~] is subject to Tax Code, Chapter 160 [~~the provisions of the boat and boat motor sales and use tax~~].

(5) [~~(4)~~] The purchase of safety [~~Safety~~] equipment required by [~~the~~] Parks and Wildlife Code, §§31.064-31.071, including life preservers and fire extinguishers, purchased with a taxable boat or outboard [~~boat~~] motor are considered to be attached to the taxable boat or outboard [~~boat~~] motor at the time of sale and subject to Tax Code, Chapter 160 [~~the provisions of the boat and boat motor sales and use tax~~].

(6) A taxable boat or outboard motor and all accessories attached thereto purchased outside of Texas and brought into Texas for use in Texas is subject to use tax under Tax Code, §160.022 (Use Tax), or in lieu of the use tax, a new resident use tax is due under Tax Code, §160.023 (New Resident), if the taxable boat or outboard motor and all accessories attached thereto are brought into Texas by a new resident of Texas.

(7) The purchase of a boat trailer is subject to motor vehicle sales and use tax under Tax Code, Chapter 152 (Taxes on Sale, Rental, and Use of Motor Vehicles). The total consideration paid or to be paid for a boat trailer must be separately stated from the total consideration paid or to be paid for a taxable boat and/or outboard motor at the time the boat trailer is registered in Texas. For more information on the taxation of boat trailers, see §3.74 of this title (relating to Seller Responsibility) and §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines).

(c) Imposition of the tax.

(1) A sales tax is imposed on each retail sale of a taxable boat or outboard [~~boat~~] motor transferred for consideration within the territorial boundaries of Texas [~~in this state~~].

(A) The sales tax rate is 6.25% of the total consideration paid or to be paid for each taxable boat or outboard motor sold. The total consideration paid or to be paid for a taxable boat must be separately stated from the total consideration paid or to be paid for an outboard motor. The total amount of sales tax due may not exceed $18,750 for each taxable boat or outboard motor sold in Texas. The total amount of sales tax allowed applies separately to the taxable boat and outboard motor.

(B) The sales tax is the obligation of and shall be paid by the purchaser of the taxable boat or outboard [~~boat~~] motor. A [~~Although a boat~~] dealer who collects sales tax from the purchaser of a taxable boat or outboard motor [~~is not required to collect the tax under the Tax Code, if a dealer collects the tax~~] and does not remit the sales tax collected to either [~~a county tax assessor-collector or~~] the Department an agent of the Department, or a participating county tax assessor-collector [~~department, the dealer~~] is liable for the sales tax collected and any penalties that may apply.

(2) Use tax is imposed on the use in Texas of each taxable boat or outboard motor purchased outside of Texas and brought into Texas for use in Texas [~~The tax rate is 6.25% of total consideration paid or to be paid~~].

(A) The use tax rate is 6.25% of the total consideration paid or to be paid for the taxable boat or outboard motor, regardless of any use or depreciation of the taxable boat or outboard motor before the entry of the taxable boat or outboard motor into Texas. The total consideration paid or to be paid for a taxable boat must be separately stated from the total consideration paid or to be paid for each outboard motor.

(B) The use tax is an obligation of, and shall be paid by, the person who brings the taxable boat or outboard motor into Texas. The person obligated to pay Texas use tax may claim a credit against the use tax due at the time the taxable boat or outboard motor is titled and/or registered in Texas only for legally imposed state and local sales or use tax paid on the purchase of the taxable boat or outboard motor to another state, Puerto Rico, or a possession or territory of the United States by the purchaser of the taxable boat or outboard motor before entry into Texas. Acceptable proof of tax paid includes an out-of-state tax receipt, a seller's bill of sale, sales invoice, or sales contract identifying the amount of sales or use tax paid to another state on the sale of the taxable boat or outboard motor.

(C) A new resident use tax of $15 is due in lieu of the use tax for each taxable boat or outboard motor owned by a new resident in any other state or foreign country and brought into Texas by the new resident if the taxable boat or outboard motor is brought into Texas by the new resident within 45 working days after becoming a new resident. The tax is an obligation of, and shall be paid by, the new resident who brings the taxable boat or outboard motor into Texas. A new resident cannot claim a credit against the new resident use tax due at the time the taxable boat or outboard motor is titled and/or registered in

Texas for any legally imposed state and local sales or use tax due and paid to another state on the purchase of the taxable boat or outboard motor.

(D) The use tax is not due on the use of a taxable boat or outboard motor brought into Texas for use in Texas if the taxable boat or outboard motor:

(i) is a federally documented vessel or has a current certificate of number or registration issued by a United States Coast Guard approved numbering system of another state;

(ii) is issued a temporary use permit that must be present on board the boat at all times while the taxable boat or outboard motor is located within the territorial boundaries of Texas; and

(iii) the boat or outboard motor is removed from the territorial boundaries of Texas on or before the expiration date of the temporary use permit.

(E) Subparagraphs (A) and (B) of this paragraph apply to the use of a taxable boat or outboard motor brought into Texas that remains within the territorial boundaries of Texas after the expiration date of the temporary use permit. Credit is not allowed for the $150 temporary use permit fee against any Texas use tax that may be due.

(d) Payment of the tax.

(1) The seller and purchaser must complete an Application for Certificate of Title and/or Registration for each [~~After the completion of the seller, donor, or trader's affidavit for the~~] sale of a taxable boat or outboard [~~boat~~] motor in Texas, and: [~~,~~]

(A) if the seller collects the sales tax from the purchaser, the seller must remit the tax and the Application for Certificate of Title and/or Registration to either [~~a county tax assessor-collector or to~~] the Department, an agent of the Department, or a participating county tax assessor-collector [~~department~~] within 45 [~~20~~] working days from the date the taxable boat or outboard [~~boat~~] motor is delivered to the purchaser in Texas; or [~~.~~]

(B) [~~(2)~~] if the seller gives the Application for Certificate of Title and/or Registration [~~After the completion of the seller, donor, or trader's affidavit for the sale of a boat or boat motor, the seller may give the original affidavit~~] to the purchaser, the[~~. The~~] purchaser is then required to remit the sales tax and the Application for Certificate of Title and/or Registration to either [~~a county tax assessor-collector or to~~] the Department, an agent of the Department, or a participating county tax assessor-collector [~~department~~] within 45 [~~20~~] working days from the date the taxable boat or outboard [~~boat~~] motor is delivered to the purchaser in Texas.

(2) [~~(3)~~] Persons who owe use tax must complete an Application for Certificate of Title and/or Registration and remit the use tax and the Application for Certificate of Title and/or Registration to either the Department, an agent of the Department, or a participating county tax assessor-collector [~~The payment of the boat or boat motor use tax is the responsibility of the user and is due~~] within 45 [~~20~~] working days after the date [~~that~~]the taxable boat or outboard [~~boat~~] motor is brought into Texas [~~this state~~].

(3) Persons transferring ownership of a taxable boat or outboard motor in Texas when no sales or use tax is due as a result of a tax exemption, even exchange, or gift of a taxable boat or outboard motor, must complete an Application for Certificate of Title and/or Registration indicating why no sales or use tax is due and file the Application for Certificate of Title and/or Registration with either the Department, an agent of the Department, or a participating county tax assessor-collector within 45 working days after the date the taxable boat or outboard motor is transferred in Texas.

(e) Failure of tax remittance by the selling dealer.

(1) If [~~Effective September 1, 1999, if~~] a purchaser paid sales [~~pays~~] tax imposed by Tax Code, §160.021 (Retail Sales Tax), to a selling dealer, and the dealer failed [~~fails~~] to remit the sales tax within 45 working days from the date of sale [~~in the time and manner required by Tax Code, §160.041(c)~~], the Department [~~department~~], agent of the Department [~~department~~], or participating county tax assessor-collector shall accept an application for Certificate of Title and/or Registration [~~a Texas certificate of number or certificate of title~~] for a taxable boat or outboard motor from the purchaser without payment of additional sales tax by the purchaser. The purchaser must provide proof that the sales tax was paid to the dealer. Acceptable proof includes an invoice, bill of sale, or a receipt signed by the dealer or its representative showing that the sales tax was paid to the dealer.

(2) The Department [~~department~~], agent of the Department [~~department~~], or participating county tax assessor-collector shall notify the comptroller [~~Comptroller~~] in writing of the dealer's failure to remit the tax. The notice must:

(A) be made before the 31st day after the date the application for Certificate of Title and/or Registration [~~title~~] is accepted;

(B) contain the name and address of the dealer; and

(C) include copies of documentation provided by the purchaser showing sales tax was paid to the dealer [~~seller~~].

(f) Purchase of tangible personal property or accessories [~~accessories/components~~] for resale.

(1) [~~Items combined into a boat or boat motor.~~] A properly completed resale certificate as provided under Tax Code, Chapter 151, [~~for in the Limited Sales, Excise, and Use Tax Act~~] may be used to purchase [~~purchasing~~] tangible personal property tax-free to be combined into a taxable boat or outboard [~~boat~~] motor held for sale in the purchaser's regular course of business.

(2) A properly completed resale certificate as provided under Tax Code, Chapter 151, may be used to purchase [~~This includes all~~] accessories tax-free that are included in a lump-sum [~~single sales~~] price for the accessory and taxable [~~,~~] boat or outboard [~~, and boat~~] motor. [~~These accessories include water skis and tow ropes.~~] The lump-sum sales price is [~~will be~~] subject to the boat and boat motor sales and use tax.

(3) [~~(2)~~] Accessories purchased to be attached to a vessel [~~boat or boat motor that is~~] not subject to Tax Code, Chapter 160 [~~the boat and boat motor sales and use tax~~] (vessels over 115 [~~boats over 65~~] feet in length), are subject to Tax Code, Chapter 151 [~~the limited sales, excise, and use tax~~]. See also §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.294 of this title (relating to Rental and Lease of Tangible Personal Property), and §3.297 of this title (relating to Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles).

(g) Exemptions and non-taxable transactions.

(1) Sales tax is not due on the sale of a taxable boat or outboard motor to a purchaser in Texas for use in another state or nation before any use in Texas, if:

(A) the purchaser gives the seller a written statement signed by the purchaser stating that the purchaser intends to remove the taxable boat or outboard motor from Texas to a designated state or nation, and either;

(B) removes the taxable boat or outboard motor from the territorial boundaries of Texas within 10 days of the date of sale;

(C) places the taxable boat or outboard motor in a registered repair facility for repair, remodeling, maintenance, or restoration within 10 days of the date of sale and then removes the taxable boat or outboard motor from the territorial boundaries of Texas within 20 days from the date the repair, remodeling, maintenance, or restoration is completed; or

(D) obtains a temporary use permit within the time limits described in this paragraph. The permit must be present on board the boat at all times while the taxable boat or outboard motor is located within the territorial boundaries of Texas.

(E) Noncompliance with the requirements in this paragraph will result in the loss of the exemption and sales tax is due on the sale of the taxable boat or outboard motor. Credit is not allowed for the $150 temporary use permit fee against any sales tax that may be due.

(2) Sales or use tax is not due on the purchase or use of a taxable boat or outboard motor in Texas by:

(A) the State of Texas; its unincorporated agencies and instrumentalities; any county, city, special district or other political subdivision of the State of Texas; and any college or university created or authorized by the State of Texas;

(B) the United States; its unincorporated agencies and instrumentalities, including all independent boards, commissions, agencies, or instrumentalities chartered by the United States congress (e.g., the American Red Cross, Boy Scouts of America, Girl Scouts of America, etc.); and any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States; or

(C) any volunteer fire department or other department, company, or association organized for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services by members who receive no compensation or only nominal compensation for their services rendered, if the volunteer fire department or other department, company, or association uses the taxable boat or outboard motor exclusively for exempt purposes.

(3) Sales or use tax is not due on a taxable boat or outboard motor when:

(A) an insurer takes title to the taxable boat or outboard motor as a result of a total loss settlement or adjustment of an insurance claim for a damaged or stolen taxable boat or outboard motor; or

(B) a seller or lienholder takes possession of a taxable boat or outboard motor repossessed under a retail installment sales agreement, a chattel mortgage, or a security agreement.

(h) Refunds.

(1) Any person, or the person's attorney, assignee, or other successor may request from the comptroller a refund of any boat or boat motor sales and use tax paid in error.

(2) The request for a refund must:

(A) be in writing on Form 57-200, Texas Claim for Refund of Boat and Boat Motor Tax, available at comptroller.texas.gov, its electronic equivalent, or a successor form, promulgated by the comptroller;

(B) state fully and in detail the specific grounds upon which the claim is founded; and

(C) be filed within four years from the date on which the tax was due and payable and within the provisions of Tax Code, Chapter 111, Subchapter D (Limitations).

(D) The comptroller will require a person to submit additional information to verify the refund claim, including a copy of the title and tax receipt issued by the Department, agent of the Department, or participating county tax assessor-collector.

(3) The comptroller will notify the claimant if the comptroller determines that a refund claim cannot be granted in part or in full and will also notify the claimant which requirements were not met. The claimant may then request a refund hearing in accordance with Tax Code, §111.105 (Tax Refund: Hearing). A person may not refile a claim for the same transaction and for the same ground or reason as a refund claim previously denied by the comptroller.

(4) A person who intends to file suit under Tax Code, Chapter 112, Subchapter B (Suit After Protest Payment), must submit to the Department, agent of the Department, or participating county tax assessor-collector a letter of protest with the payment of the tax. The letter of protest must state fully and in detail the reason that the person contends that the assessment is unlawful or unauthorized. Upon receipt of the protest letter, the Department, agent of the Department, or participating county tax assessor-collector must immediately send the comptroller a copy of the protest letter and a copy of the tax receipt showing tax paid to the comptroller.

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 April 24, 2023.

TRD-202301474
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 475-2220

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.49

The Texas Department of Public Safety (the department) proposes amendments to §15.49, concerning Proof of Domicile. The proposed rule amendment increases the number of acceptable proof of domicile documents and changes the validity period from within ninety 90 days of the date of application to within one hundred eighty (180) days of the date of application.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses,

or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be an increased number of acceptable proof of domicile documents for a non-commercial driver license or identification certificate.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Charles McInnis, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; and §521.1426.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.005 and §521.1426, are affected by this proposal.

§15.49. Proof of Domicile.

(a) To establish domicile in Texas for a non-commercial driver license or identification certificate, an applicant must reside in Texas for at least thirty (30) days prior to application. Applicants who surrender a valid, unexpired out-of-state driver license or identification certificate are not required to reside in Texas for at least thirty (30) days prior to application.

(b) In order to prove domicile, all original applicants for a driver license or identification certificate must present two acceptable documents verifying the applicant's residential address in Texas.

(c) The department may require individuals renewing or obtaining a duplicate driver license or identification certificate to present proof of domicile prior to issuance.

(d) In order to satisfy the requirements of this section the individual must provide two documents, which contain the applicant's name and residential address, from the acceptable proof of domicile list in subsection (e) of this section. At least one of the documents presented must demonstrate that the applicant has resided in Texas for at least thirty (30) days prior to application.

(e) Acceptable proof of domicile documents are:

(1) A current deed, mortgage, monthly mortgage statement, mortgage payment booklet, or a residential rental/lease agreement.

(2) A valid, unexpired Texas voter registration card.

(3) A valid, unexpired Texas motor vehicle registration or title.

(4) A valid, unexpired Texas boat registration or title.

(5) A valid, unexpired Texas concealed handgun license or license to carry.

(6) A utility or residential service bill dated within one hundred eighty (180) [~~ninety (90)~~] days of the date of application. Examples of acceptable statement include, but are not limited to: electric, water, gas, internet, cable, streaming services, lawn service, cellular telephone, etc.

(7) A Selective Service card.

[~~(8) A medical or health card.~~]

(8) [~~(9)~~] A current homeowners or renters insurance policy or statement.

(9) [~~(10)~~] A current automobile insurance policy, card, or statement.

(10) [~~(11)~~] A Texas high school, college, or university report card or transcript for the current school year.

(11) [~~(12)~~] A pre-printed W-2, 1099, or 1098 tax form from an employer, government, or financial entity for the most recent tax year.

(12) [~~(13)~~] Mail or printed electronic statements from financial institutions; including checking, savings, investment account, and credit card statements dated within one hundred eighty (180) [~~ninety (90)~~] days of the date of application.

(13) [~~(14)~~] Mail or printed electronic statements from a federal, state, county, or city government agency dated within one hundred eighty (180) [~~ninety (90)~~] days of the date of application.

(14) [~~(15)~~] A current automobile payment booklet or statement.

(15) [~~(16)~~] A pre-printed paycheck or payment stub dated within one hundred eighty (180) [~~ninety (90)~~] days of the date of application.

(16) [~~(17)~~] Current documents issued by the U.S. military indicating residence address.

(17) [~~(18)~~] A document from the Texas Department of Criminal Justice indicating the applicant's recent release or parole.

(18) [~~(19)~~] Current Form DS2019 or a document issued by the United States Citizenship and Immigration Services.

(19) A valid, unexpired Texas fishing or hunting license.

(20) A letter of medical Explanation of Benefits or medical bills dated within one hundred eighty (180) days of the date of application.

(f) Both documents may be from the same source if the source is a local governmental entity or service provider that provides multiple residential services. For example, an individual may use a water and gas bill from the same municipal utility if they are on separate statements. Documents from the same source for different months will not be accepted.

(g) Mail addressed with a forwarding label or address label affixed to the envelope or contents is not acceptable.

(h) If the individual cannot provide two documents from the acceptable proof of domicile list, the individual may submit a Texas residency affidavit executed by:

(1) An individual who resides at the same residence address as the applicant.

(A) For related individuals, the applicant must present a document acceptable to the department indicating a family relationship to the person who completed the Texas residency affidavit and present two acceptable proof of domicile documents with the name of the person who completed the Texas residency affidavit. Acceptable documents demonstrating family relationship may include, but are not limited to:

(i) a marriage license;

(ii) military dependent identification card;

(iii) birth certificate; and

(iv) adoption records.

(B) For unrelated individuals, the individual must accompany the applicant, present valid identification as defined under §15.24 of this title (relating to Identification of Applicants), and present two acceptable proof of domicile documents from the acceptable proof of domicile list in subsection (e) of this section.

(2) A representative of a governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, group/half way house, or college/university certifying to the address where the applicant resides or receives services. The organization must provide a notarized letter verifying that they receive mail or services for the individual or completed Texas Residency Affidavit (DL-5).

(i) An individual is not required to comply with this section if the applicant is subject to the address confidentiality program administered by the Office of the Attorney General, or currently incarcerated in a Texas Department of Criminal Justice facility.

(j) Minors under the conservatorship of the Department of Family and Protective Services (DFPS) and individuals under the age of 21 in DFPS paid foster care are not required to comply with subsection (b) of this section and may present an approved DFPS residency form signed by a DFPS caseworker or caregiver as proof of the applicant's residential address in Texas.

(k) Homeless youth, defined by 42 U.S.C. §11434a, may present a letter certifying the child or youth does not have a residence from:

(1) the school district in which the child is enrolled;

(2) the director of an emergency shelter or transitional housing program;

(3) the director of a basic center for runaway and homeless youth; or

(4) a transitional living program.

(l) All documents submitted by an individual must be acceptable to the department. The department has the discretion to reject or require additional evidence to verify domicile address.

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 April 21, 2023.

TRD-202301435
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 424-5848

♦ ♦ ♦

SUBCHAPTER K. INTERAGENCY AGREEMENTS

37 TAC §15.174

The Texas Department of Public Safety (the department) proposes new §15.174, regarding Interagency Application Fees. This new rule outlines the fees related to interagency application for driver licenses and personal identification certificates to qualified inmates preparing for release by Texas agencies who have entered into a memorandum of understanding with the department under §15.171 of this title and is authorized by §521.421, Transportation Code.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be an increased number of driver licenses or identification certificates issued to qualified inmates prior to release.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure

and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Charles McInnis, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; and §521.421.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.005 and §521.421, are affected by this proposal.

§15.174. Interagency Application Fees.

(a) Texas agencies may enter into a memorandum of understanding with the department based on §15.171 of this title (relating to Identifying Document for Offenders/Memorandum of Understanding) that allows the issuance of driver licenses and personal identification certificates.

(b) Texas agencies that adopt and issue an original, renewal, or duplicate personal identification (ID) certificates, are required to provide the proper fee for each processed ID certificate application.

(1) The fee for an original or renewed ID card is $5; and

(2) The fee for a duplicate ID card is the statutory fee of $10.

(c) Texas agencies that adopt and issue an original, renewal, or duplicate driver license (DL), are required to provide the proper fee for each processed DL application.

(1) The fee for an original or renewed driver license is $5; and

(2) The fee for a duplicate driver license is the statutory fee of $10.

(d) Texas agencies that adopt and issue an original, renewal, or duplicate commercial driver license (CDL), are required to provide the proper fee for each processed CDL application. The fees for commercial driver license transactions are established in Transportation Code, §522.029.

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 April 21, 2023.

TRD-202301436
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 424-5848

♦ ♦ ♦

CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.7

The Texas Department of Public Safety (the department) proposes amendments to §16.7, concerning Proof of Domicile. The proposed rule amendment increases the number of acceptable proof of domicile documents and changes the validity period from within ninety 90 days of the date of application to within one hundred eighty (180) of the date of application.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be an increased number of acceptable proof of domicile documents for a commercial driver license.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly,

the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Charles McInnis, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code; and §522.0225.

Texas Government Code, §411.004(3), and Texas Transportation Code, §522.005 and, §522.0225, are affected by this proposal.

§16.7. Proof of Domicile.

(a) A person applying for a commercial driver license (CDL) which authorizes operation of a commercial motor vehicle (CMV) must be domiciled in Texas. For purposes of this requirement, the state of domicile means the state where a person has the person's true, fixed, and permanent home and principal residence and to which the person intends to return whenever absent. A person may have only one state of domicile.

(b) In order to prove domicile, all original applicants for a CDL must present two acceptable documents verifying the applicant's domicile address in Texas.

(c) The department may require individuals renewing or obtaining a duplicate CDL to present proof of domicile prior to issuance.

(d) In order to satisfy the requirements of this section the individual must provide two documents, which contain the applicant's name and domicile address, from the acceptable proof of domicile list in subsection (e) of this section.

(e) Acceptable proof of domicile documents are:

(1) A current deed, mortgage, monthly mortgage statement, mortgage payment booklet, or a residential rental/lease agreement.

(2) A valid, unexpired Texas voter registration card.

(3) A valid, unexpired Texas motor vehicle registration or title.

(4) A valid, unexpired Texas boat registration or title.

(5) A valid, unexpired Texas license to carry a handgun or license to carry.

(6) A utility or residential service bill dated within one hundred eighty (180) [~~ninety~~ ~~(90)~~] days of the date of application. Example of acceptable statements include, but are not limited to: electric, water, gas, internet, cable, streaming services, lawn service, cellular telephone, etc.

(7) A Selective Service card.

[~~(8) A medical or health card.~~]

(8) [~~(9)~~] A current homeowners or renters insurance policy or statement.

(9) [~~(10)~~] A current automobile insurance policy, card, or statement.

(10) [~~(11)~~] A Texas high school, college, or university report card or transcript for the current school year.

(11) [~~(12)~~] A pre-preprinted W-2, 1099, or 1098 form from an employer, government, or financial entity for the most recent tax year.

(12) [~~(13)~~] Mail or printed electronic statements from financial institutions; including checking, savings, investment account, and credit card statements dated within one hundred eighty (180) [~~90~~] days of the date of application.

(13) [~~(14)~~] Mail or printed electronic statements from a federal, state, county, or city government agency dated within one hundred eighty (180) [~~90~~] days of the date of application.

(14) [~~(15)~~] A current automobile payment booklet or statement.

(15) [~~(16)~~] A pre-printed paycheck or payment stub dated within one hundred eighty (180) [~~ninety~~ ~~(90)~~] days of the date of application.

(16) [~~(17)~~] Current documents issued by the U.S. military indicating residence address.

(17) [~~(18)~~] A document from the Texas Department of Criminal Justice indicating the applicant's recent release or parole.

(18) A valid, unexpired Texas fishing or hunting license.

(19) A letter of medical Explanation of Benefits or medical bills dated within one hundred eighty (180) days of the date of application.

(f) Both documents may be from the same source if the source is a local governmental entity or service provider that provides multiple residential services. For example, an individual may use a water and gas bill from the same municipal utility if they are on separate statements. Documents from the same source for different months will not be accepted.

(g) Mail addressed with a forwarding label or address label affixed to the envelope or contents is not acceptable.

(h) If the individual cannot provide two documents from the acceptable proof of domicile list, the individual may submit a Texas residency affidavit executed by:

(1) An individual who resides at the same residence address as the applicant.

(A) For related individuals, the applicant must present a document acceptable to the department indicating a family relationship to the person who completed the Texas residency affidavit and

present two acceptable proof of domicile documents with the name of the person who completed the Texas residency affidavit. Acceptable documents demonstrating family relationship may include but are not limited to:

(i) marriage license;

(ii) military dependent identification card;

(iii) birth certificate; and

(iv) adoption records.

(B) For unrelated individuals, the individual must accompany the applicant, present valid identification as defined under §15.24 of this title (relating to Identification of Applicants), and present two acceptable proof of domicile documents from the acceptable proof of domicile list in subsection (e) [~~(d)~~] of this section.

(2) A representative of a governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, group/half way house, or college/university certifying to the address where the applicant resides or receives services. The organization must provide a notarized letter verifying that they receive mail or services for the individual or completed Texas Residency Affidavit (DL-5).

(i) An individual is not required to comply with this section if the applicant is subject to the address confidentiality program administered by the Office of the Attorney General, or currently incarcerated in a Texas Department of Criminal Justice facility.

(j) All documents submitted by an individual must be acceptable to the department. The department has the discretion to reject or require additional evidence to verify domicile address.

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 April 21, 2023.

TRD-202301437
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 4, 2023
For further information, please call: (512) 424-5848

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §§18.21, 18.23, 18.24

The Texas Ethics Commission withdraws the proposed repeal of §§18.21, 18.23, and 18.24, which appeared in the January 6, 2023, issue of the *Texas Register* (48 TexReg 7).

Filed with the Office of the Secretary of State on April 20, 2023.

TRD-202301433
Jim Tinley
General Counsel
Texas Ethics Commission
Effective date: April 20, 2023
For further information, please call: (512) 463-5800

♦ ♦ ♦

1 TAC §§18.21, 18.24 - 18.26

The Texas Ethics Commission withdraws proposed new §18.21 and §18.24, and amended §18.25 and §18.26, which appeared in the January 6, 2023, issue of the *Texas Register* (48 TexReg 7).

Filed with the Office of the Secretary of State on April 20, 2023.

TRD-202301434
Jim Tinley
General Counsel
Texas Ethics Commission
Effective date: April 20, 2023
For further information, please call: (512) 463-5800

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER C. ASSESSMENT OF EDUCATORS

19 TAC §230.25

The State Board for Educator Certification (SBEC) adopts an amendment to 19 Texas Administrative Code (TAC) §230.25, concerning test exemptions for persons with a hearing impairment. The amendment is adopted with a change since published as proposed in the December 30, 2022 issue of the *Texas Register* (47 TexReg 8848) and will be republished. The adopted amendment creates a carve-out for the Science of Teaching Reading (STR) examination, removing the requirement that a candidate be unable to process only written linguistic information to allow an exemption; removes the requirement that to qualify for an exemption, a person who is already certified in another state and seeking a one-year certificate in Texas must have a recommendation from an SBEC-approved Texas educator preparation program (EPP); and eliminates the limitation that persons who qualify for an exemption to one certification examination cannot ever take another certification examination unless they have regained their ability to process written linguistic information.

REASONED JUSTIFICATION: Texas Education Code (TEC), §21.048(b) and (d), require the SBEC to give exemptions from required written examinations for persons with hearing impairments. TEC, §21.048(d), defines hearing impairment as "so severe that the person cannot process linguistic information with or without amplification." The SBEC has tailored this to the context of written exams in 19 TAC §230.25(b)(1) to require proof "that the person cannot process written linguistic information."

Since 19 TAC §230.25(b)(1) was last revised, the Texas Legislature has created TEC, §21.048(a-2), which requires that in order to teach Prekindergarten-Grade 6, a person must have passed the STR examination. The STR examination is different from the other written certification examinations the SBEC requires, in that it requires the test-taker to listen to recorded speech and phonetic sounds and answer written questions about them. Since this examination requires that test-takers be able to hear and process the linguistic information on the recording without any subtitles or other written translation indicating the errors in the speech, the exemption for individuals who are unable to process only written linguistic information is insufficient to address the difficulty that candidates who are Deaf or Hard of Hearing face when attempting the STR examination. To address this issue, the adopted amendment to §230.25(b)(1) and adopted new §230.25(b)(1)(A) and (B) create a carve-out for the STR examination to allow an exemption for any person who is unable to process any linguistic information with or without amplification--not only written linguistic information. The adopted amendment maintains the requirement that a candidate be unable to process written linguistic information to qualify for an exemption for the other SBEC-required certification examinations, which do not include a listening component that requires interpretation of phonetic sounds.

The adopted amendment to §230.25(b)(2) and (d) removes the requirement that to qualify for an exemption, a person who is already certified in another state and seeking a one-year certificate in Texas in accordance with 19 TAC Chapter 230, Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States, must have a recommendation from an SBEC-approved Texas EPP. This amendment allows candidates who are Deaf or Hard of Hearing who have already been vetted and certified in other states to get certified and begin teaching in Texas without incurring the additional time and expense required to get approval from a Texas EPP, which is not required of out-of-state candidates who are Deaf or Hard of Hearing.

The adopted amendment to §230.25(c) creates a relettering of subsections (c) and (d) and eliminates the limitation that persons who qualify for an exemption to one certification examination cannot ever take another certification examination unless they have regained their ability to process written linguistic information. The SBEC initially enacted this prohibition to prevent persons who are Deaf or Hard of Hearing from attaining certification in areas for which they were not qualified. In practice, however, it prevents qualified educators who are Deaf or Hard of Hearing from attaining more than one certification and from advancing their careers with administrator certifications. The number of individuals who request an exemption based on hearing impairment averages fewer than 20 annually. Given that Texas certifies approximately 20,000-30,000 educators every year, this small minority of educators who are Deaf or Hard of Hearing will not significantly harm the Texas education system, even if a few attain certificates through waived examinations for which they are not qualified.

At adoption and in response to public comment, the SBEC changed the amended language of 19 TAC §230.25(b)(1)(A) to add "auditory" to create a contrast with "written" in 19 TAC §230.25(b)(1)(B) to clarify the difference between the types of linguistic information presented by the STR examination as compared with the other written educator certification examinations.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began December 30, 2022, and ended January 30, 2023. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 10, 2023 meeting in accordance with the SBEC board operating policies and procedures. The following public comments were received on the proposal.

Comment: Twelve individuals and the Texas School for the Deaf commented in support of the proposed amendment, noting that the portion of the STR examination that involves listening to a child reading a book in a video is not accessible for candidates who are Deaf or Hard of Hearing, making it unfairly difficult or even impossible for candidates who are Deaf or Hard of Hearing to pass the STR examination.

Response: The SBEC agrees. The listening portion of the examination is not accessible to individuals who are Deaf or Hard of Hearing, even if those individuals are able to read and write. An exemption from the STR examination is therefore necessary for a candidate with a hearing impairment, regardless of whether the candidate is able to process written linguistic information.

Comment: The Texas School for the Deaf and one individual commented in support of the proposed amendment to remove "written" from the description of hearing impairments that would be exempt from taking the STR examination. The commenters recommended that the SBEC add "access auditory" instead of "process" in proposed 19 TAC §230.25(b)(1)(A), so that the phrase would read "the person cannot access auditory linguistic information with or without amplification."

Response: The SBEC agrees Adding "auditory" to 19 TAC §230.25(b)(1)(A) would create a contrast with "written" in 19 TAC §230.25(b)(1)(B) to clarify the difference between the types of linguistic information presented by the STR examination as compared with the other written educator certification examinations. However, the authorizing statute, Texas Education Code (TEC) §21.048(d)(1), allows the examination exemption when "the person cannot process linguistic information with or without amplification." It is therefore necessary to maintain "cannot process" rather than "cannot access" as the verb in the rule.

Comment: Five individuals commented in support of the proposed amendment because many of the methods of teaching reading tested on the STR examination such as phonics cannot be used to teach reading to students who are Deaf or Hard of Hearing that are usually assigned to educators who are Deaf or Hard of Hearing.

Response: The SBEC agrees. Candidates who are Deaf or Hard of Hearing should not be required to take an examination that requires listening to and identifying phonetic mistakes in a student's reading, since that portion of the examination would be inaccessible to them and tests on a teaching method they would not use as educators.

Comment: Two individuals and the Texas School for the Deaf commented in support of the proposed amendment that eliminates the prohibition on hearing-impaired educators receiving an examination exemption more than once. The commenters stated that the current rule is unfair to educators who are Deaf or Hard of Hearing because it prevents them from changing careers or advancing within the education profession. The commenters also noted that school district administrators can evaluate candidate's qualifications and abilities when making hiring decisions.

Response: The SBEC agrees. Qualified hearing-impaired educators should not be prohibited from either attaining more than one certification or from advancing their careers with administrator certifications. Given the small number of individuals who apply for examination exemptions for hearing impairment each year, allowing individuals who are hearing impaired to attain more than one certification through an examination waiver will not have a significant impact on the overall preparedness of educators in Texas.

Comment: One individual commented in opposition to the proposed amendment, stating that teachers certified in another state such as Arizona or Oklahoma should be exempt from taking the STR examination, even if the teacher did not take an STR examination to get certified.

Response: The SBEC disagrees. TEC, §21.048(a-2), requires that anyone certified in Texas after January 1, 2021, to teach Prekindergarten-Grade 6 must have passed an STR examination, regardless of whether they were previously certified in another state. The commissioner of education has created exception from the STR examination requirement in 19 TAC §152.1001(c)(2)(B) for educators who were previously certified in states that require a similarly rigorous examination on the science of teaching reading for certification. Oklahoma is among the listed states, but Arizona is not. However, any Oklahoma-certified candidate who achieved certification without taking the Oklahoma STR examination would not meet the requirements for the exemption, or the statutory requirement for certification. SBEC does not have the statutory authority to create an exception to the STR examination requirement for out-of-state educators who have not taken an STR examination for certification in the other state.

Comment: The Texas School for the Deaf commented in opposition to the proposed amendment because it preserves the existing requirement that a licensed audiologist issue a report "addressing the relationship between the candidate's age at the onset or diagnosis of hearing loss and the candidate's ability to process linguistic information." The Texas School for the Deaf noted that audiologists are not generally trained to judge a person's ability to process language, only to test and to document a person's hearing levels on an audiogram.

Response: The SBEC disagrees. The requirement for the audiologist's analysis is not significantly changed by the amendment and has been in place for several years. During that time, candidates have been able to get reports with the required information from audiologists and to attain exemptions.

Comment: The Texas School for the Deaf commented in opposition to the use of the term "hearing impaired" in the proposed rules.

Response: The SBEC disagrees. The authorizing statute that provides the SBEC rulemaking authority for this amendment, TEC, §21.048, uses the term "hearing impairment" and defines it to mean "a hearing impairment so severe that the person cannot process linguistic information with or without amplification."

The State Board of Education (SBOE) took no action on the review of the amendment to §230.25 at the April 14, 2023 SBOE meeting.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school

educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(a),which allows SBEC to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.045(a)(1), which authorizes the SBEC to propose rules necessary to establish standards to govern the continuing accountability of all EPPs based on the following information that is disaggregated with respect to race, sex, and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); TEC, §21.048(a) and (a-2), which state that the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC and that all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; and TEC, §21.048(b), (c), and (d),which state that the SBEC may not administer a written examination to an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability and validity for persons with hearing impairments. It defines "hearing impairment" as "so severe that the person cannot process linguistic information with or without amplification;" that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; and that the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.031; 21.041(a) and (b)(1)-(4); 21.045(a)(1); and 21.048(a), (a-2), (b), (c), and (d).

§230.25. Test Exemptions for Persons with a Hearing Impairment.

(a) A candidate who has a hearing impairment may request exemption from educator certification and competence examinations that have not been field-tested for appropriateness, reliability, and validity as applied to persons with hearing impairments.

(b) A request for such an exemption shall include:

(1) a report by a licensed audiologist dated no more than one year from the date of the request for the exemption, addressing the relationship between the candidate's age at the onset or diagnosis of hearing loss and the candidate's ability to process linguistic information, and documenting that the candidate has a hearing impairment so severe that:

(A) for a person requesting an exemption from the Science of Teaching Reading (STR) examination, the person cannot process auditory linguistic information with or without amplification; or

(B) for a person requesting an exemption to an examination other than the STR examination, the person cannot process written linguistic information; and

(2) for candidates who are not seeking certification under Chapter 230, Subchapter H, of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States), a recommendation for exemption and certification of the candidate by an approved Texas educator preparation program (EPP). The recommendation shall be based on the EPP's determination of the candidate's qualification for the exemption and competency in each certification class and category in which certification is sought. The EPP shall make and document its determination of educator standards competency, as follows:

(A) by reviewing and approving transcripts from an accredited institution of higher education that demonstrate that the candidate has completed 24 semester credit hours in the educator standards, including 12 semester credit hours of upper division coursework, and documenting that the coursework is aligned to the Texas educator standards;

(B) if an EPP uses an alternative assessment to measure competency in any certification class and category in which a certification is being sought, by documenting the method and validity of the means of assessment, the results of the assessment, and the alignment of the assessment to the applicable Texas educator standards; and

(C) for the Texas pedagogy and professional responsibilities examination, by documenting successful completion of EPP coursework and training covering educator standards for the grade level for which certification is sought.

(c) This section does not affect the procedures for one-year certificates, extensions, and permits based on out-of-state credentials pursuant to §230.113 of this title (relating to Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States).

(d) As with other EPP completion and admission documentation under §228.40 of this title (relating to Assessment and Evaluation of Candidates for Certification and Program Improvement), all documentation required under this section shall be retained by an EPP for five years and is subject to audit by Texas Education Agency staff.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 2023.

TRD-202301439
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Effective date: May 11, 2023
Proposal publication date: December 30, 2022
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.1 - 233.3, 233.5, 233.8, 233.10, 233.14, 233.15

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§233.1-233.3, 233.5, 233.8, 233.10, 233.14, and 233.15, concerning categories of classroom teaching certificates. The amendments are adopted without changes to the proposed text as published in the December 30, 2022 issue of the *Texas*

Register (47 TexReg 8850) and will not be republished. The adopted amendments remove certificates no longer issued by the SBEC; strike, where applicable, language referencing deadlines for use of test scores for certificate issuance; add three new special education certificates into rule; update language specific to licensure requirements for cosmetology certification; and propose the addition of a new foreign language certificate to the list of credentials issued by the SBEC. Technical changes also provide clarification and consistent information related to the classroom teacher certificates issued by the SBEC.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, establish separate certificate categories within the certificate class for the classroom teacher. These categories identify the content area or special population the holder may teach, the grade levels the holder may teach, and the earliest date the certificate may be issued.

Following is a description of the proposed amendments.

§233.1. General Authority.

The adopted amendment in 19 TAC §233.1(e) deletes references to use of test scores for certificate issuance and applicability of catastrophic illness and military service since these provisions are addressed in other SBEC rules. The adopted amendment also ensures that there is clarity around required tests for certification and deadlines for certificate issuance as reflected in Figure §230.21(e) of 19 TAC Chapter 230, Subchapter C, Assessment of Educators.

§233.2. Early Childhood; Core Subjects.

The adopted amendment in §233.2(b) Core Subjects: Early Childhood-Grade 6 and §233.2(c) Core Subjects: Grades 4-8 certificates deletes these certificate references since they are no longer credentials issued by the SBEC. The adopted amendment in §233.2(d) Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6 certificate deletes references to use of passing scores on Core Subjects examinations and related deadlines for purposes of certificate issuance. The remaining rules in this section are lettered subsections (b) and (c).

§233.3. English Language Arts and Reading; Social Studies.

The adopted amendment to §233.3(a) English Language Arts and Reading: Grades 4-8 and §233.3(d) English Language Arts and Reading/Social Studies: Grades 4-8 certificates deletes these certificate references since they are no longer issued by the SBEC. The adopted amendment to §233.3(b) also deletes references to use of passing scores on the 117 ELAR 4-8 TExES examination and related deadlines for purposes of certificate issuance. The remaining rules in this section are lettered subsections (a)-(h).

§233.5. Technology Applications and Computer Science.

The adopted amendment to §233.5(a) deletes the reference to the Technology Applications: Grades 8-12 certificate that is no longer issued by the SBEC. The remaining rules in this section are lettered subsections (a) and (b).

§233.8. Special Education.

The adopted amendment adds the following three new special education certificates into rule: §233.8(a), Core Subjects with Science of Teaching Reading/Special Education: Early Childhood-Grade 6; §233.8(b), Deafblind Supplemental: Early Childhood-Grade 12; and §233.8(d), Special Education Specialist: Early Childhood-Grade 12. The adopted addition of these new certificates reflects years of work completed by Texas Education Agency (TEA) staff and stakeholders in developing new special education standards approved by the SBEC and honors the continuing test development work completed by stakeholders and advisory committees. The adopted amendment also specifies that the new special education certificates would be issued by the SBEC no earlier than September 1, 2025, and September 1, 2026, accordingly. The remaining rules in this section are lettered subsections (c)-(g).

§233.10. Fine Arts.

The adopted amendment to §233.10(d) deletes the Dance: Grades 8-12 certificate that is no longer issued by the SBEC. The remaining rules in this section are lettered subsection (d).

§233.14. Career and Technical Education (Certificates requiring experience and preparation in a skill area).

The adopted amendment to §233.14(d)(2), Trade and Industrial Education: Grades 6-12 certificate, provides a technical edit by clarifying the acronym, NOCTI, which refers to the National Occupational Competency Testing Institute. NOCTI's teacher assessments are designed to measure an individual's knowledge of high-level concepts, theories, and applications in specific technical areas and to evaluate individuals with a combination of education, training, and work experiences. The adopted amendment also updates references to the credentials that must be held by a cosmetology teacher (i.e., a valid Cosmetology Operator license or Class A Barber Operator license) and aligns with legislation to eliminate the outdated reference to a current cosmetology instructor license issued by the Texas Department of Licensing and Regulation.

The adopted amendment to §233.14(d)(3) clarifies that individuals seeking initial certification in Trade and Industrial Education: Grades 6-12 certificate satisfies the required years of classroom teaching experience on an intern or probationary certificate, and not on an emergency permit. The emergency permit reference is removed because SBEC rules do not allow the experience serving on that credential to count toward completion of EPP preparation and certification requirements for licensure. This amendment aligns with other SBEC rules and does not reflect a change in procedures.

§233.15. Languages Other Than English.

Adopted new §233.15(a)(14), Tamil: Early Childhood-Grade 12, adds a new foreign language certificate area to the list of certificates to be issued by the SBEC no earlier than September 1, 2025. The addition of the Tamil certificate addresses a petition for a new certificate area from 2018 and aligns with the certification examination and corresponding implementation date being added as an amendment to Figure: 19 TAC §230.21(e) in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter A, General Provisions, and Subchapter C, Assessment of Educators, presented to the SBEC for discussion at its February 2023 meeting. The adopted deletion of §233.15(15), Urdu: Early Childhood-Grade 12, removes this credential from the list of certificates issued by the SBEC as standards or test development activities were never initiated for this certificate area. The remaining rules are numbered paragraphs (15) and (16).

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began December 30, 2022, and

ended January 30, 2023. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 10, 2023 meeting in accordance with the SBEC board operating policies and procedures. The following public comments were received on the proposal.

Comment: One individual and the Texas Tamil Academy commented in support of the proposed amendments because they open a pathway for a Tamil educator certification and for high school-level courses in Tamil that allow students to learn about Tamil language and culture while still in high school.

Response: The SBEC agrees.

Comment: One individual commented in opposition to striking from rule the certificates that the SBEC no longer offers and expressed concern that the proposed amendments would mean that educators would lose these certificates if they already held them.

Response: The SBEC disagrees. Removing certificate categories from this rule only means that the SBEC will no longer issue them. Any educator who has previously earned a certificate will keep the certificate, and it will remain a valid credential that allows the educator to teach in Texas public schools as long as the educator continues to renew it.

Comment: The Texas Council of Administrators of Special Education commented neither in support nor in opposition to the proposed amendments but requested that consideration be given in the future regarding how the new special education certificates are implemented in Chapter 231.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking; however, TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

The State Board of Education (SBOE) took no action on the review of amendments to §§233.1-233.3, 233.5, 233.8, 233.10, 233.14, and 233.15 at the April 14, 2023 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; TEC, §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; TEC, §21.044(f), which provides that SBEC rules for obtaining a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under TEC, §21.044(e); TEC, §21.0442, which requires the SBEC to create an abbreviated educator preparation program (EPP) for trade and industrial workforce training; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC. TEC, §21.048(a), also specifies that the commissioner of education shall determine the satisfactory level of performance required for each certification examination and require a satisfactory level of examination performance in each core subject covered by the generalist certification examination; TEC, §21.048(a-2), which requires the SBEC to adopt rules to require individuals teaching any grade level from Prekindergarten-Grade 6 to demonstrate proficiency in the science of teaching reading; TEC, §21.0487, which requires the SBEC to establish a standard Junior Reserve Officer Training Corps teaching certificate; TEC, §21.0489, which requires the SBEC to create a Prekindergarten-Grade 3 certificate; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; and TEC, §22.0831(f)(1) and (2), which state the SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4) and (6); 21.044(e) and (f); 21.0442; 21.048(a) and (a-2); 21.0487; 21.0489; 21.0491; and 22.0831(f)(1) and (2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 2023.

TRD-202301440
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Effective date: May 11, 2023
Proposal publication date: December 30, 2022
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §§15.1 - 15.13

The General Land Office (GLO) adopts amendments to 31 Texas Administrative Code §§15.1 - 15.13 relating to Management of the Beach/Dune System, with changes to the text of §§15.1 - 15.13, made in response to public comments. The proposed amendments were published in the December 30, 2022, edition of the *Texas Register* (47 TexReg 8920). The rules will be republished.

BACKGROUND AND JUSTIFICATION OF AMENDMENTS

Many of the amendments are not substantive and were made to improve structural organization and clarity. Other amendments include modifications to the mitigation and compensation deadlines for adverse effects to dunes and dune vegetation, new width limitations and height requirements for dune walkovers, and an allowance for a limited use of impervious cover for accessibility enhancements at commercial or public beach access facilities, as otherwise required by law. Also in the rulemaking is the addition of a requirement for at least one access way with a stable, slip-resistant surface from the dry beach to the approximate high tide line to better facilitate access to the water for persons with disabilities in areas where vehicles are prohibited from the beach. The rules will be effective coastwide immediately with no amendments to local governments' Beach Access and Dune Protection plans required, unless otherwise noted below.

The GLO is adopting amendments to the following sections: §15.1 (relating to Policy) to enhance the goal of minimizing public expenditures on erosion and storm damage losses; §15.2 (relating to Definitions) to revise multiple definitions by providing supporting citations, clarifying language, or removing unnecessary language; §15.3 (relating to Administration) to clarify the local government plan amendment processes, extend administrative record retention, clarify and add minor requirements for permit applications, and provide more detailed standards for material changes to permits; §15.4 (relating to Dune Protection Standards) to incorporate additional minimization requirements for adverse impacts to dunes and dune vegetation and to modify mitigation or compensation deadlines; §15.5 (relating to Beachfront Construction Standards) to provide clarification and consistency; §15.6 (relating to concurrent Dune Protection and Beachfront Construction Standards) to allow impervious surfaces for certain parking areas or walkways, modify construction standards to dune walkovers related to width, height, deck board spacing, and to increase access for persons with disabilities; §15.7 (relating to Local Government Management of the Public Beach) to require a stable, slip-resistant surface to the approximate high tide line or require an alternate means of access for persons with disabilities in certain circumstances; §15.8 (relating to Beach User Fees) to expand the required information for a new or amended beach user fee proposal; and §15.9 (relating to Enforcement, Penalties and Remedial Orders) to clarify notice of violation and hearing requirements. Amendments to §15.10 (relating to General Provisions), §15.11 (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach), §15.12 (relating to Temporary Orders Issued by the Land Commissioner), and §15.13 (relating to Disaster Recovery Orders) provide clarification and consistency with the rest of Chapter 15 and with Texas Natural Resources Code (TNRC) Chapter 61, the Open Beaches Act, and with Chapter 63, the Dune Protection Act.

References to the Attorney General were removed throughout the chapter to reflect current statutory authority under TNRC Chapters 61 and 63, "state " was changed to "General Land Office" where appropriate, and changes were made to ensure consistency throughout the chapter and with TNRC Chapters 61 and 63. Clarifying language and supporting citations were added and duplicative language was removed.

The terms mean high tide and mean high water were replaced with coastal public land, where appropriate, since the terms can be ambiguous and to ensure consistency with TNRC Chapter 33, Management of Coastal Public Land. References to fax numbers were also removed because it is no longer a prevalent form of communication.

SECTION BY SECTION ANALYSIS OF THE AMENDMENTS

§15.1 Policy

The GLO added new §15.1(11) to include the GLO's policy and goals related to minimizing public expenditure on erosion and storm damage losses to public and private property in rule, in accordance with TNRC Ch. 33.

§15.2 Definitions

Throughout this subchapter, supporting citations and clarifying language were added to multiple definitions, and duplicative language was removed. For example, language regarding the local government's role in determining consistency of proposed construction with their dune protection and beach access plan was removed from the definition of "beachfront construction certificate or certificate" in renumbered §15.2(12) because the requirement is already in §15.3(s)(8).

The GLO also removed the definitions for "all-terrain vehicle" and "recreational off-highway vehicle" from §§15.2(2) and (62) and added a definition for "off-highway vehicle" to renumbered §15.2(52), which encompasses both all-terrain vehicles and recreational off-highway vehicles, for consistency with the Transportation Code.

The modification of the definition of "beach maintenance" in renumbered §15.2(8) was made to clarify that the redistribution of seaweed on the beachfront is considered a beach maintenance activity. Redistribution of seaweed to ensure that the public can use and access the beach is a common beach maintenance activity, and the inclusion in the definition clarifies that this type of activity is subject to the requirements regarding beach maintenance activities in 31 TAC Chapter 15 and local government plans.

GLO added new §15.2(17) to define "coastal public land" as having the meaning assigned by TNRC §33.004 to be consistent with TNRC Ch. 33.

GLO modified the definition of "construction" in §15.2(19) to include the removal or demolition of a structure and to clarify that alteration of land is considered a construction activity. Language was also added to clarify that fencing that may adversely affect public access, dunes or dune vegetation is considered a construction activity. These additions clarify that these are activities that are considered construction and for which a permit or certificate is required since they have the potential to adversely affect public beach access or critical dunes and dune vegetation.

GLO removed the 21-day camping duration limit from the definition of "recreational activity" in renumbered §15.2(63) to allow each local government to establish a permissible duration of camping.

In order to clarify the use of the term "restoration" when used in reference to violations and subsequent remedial actions, the GLO expanded the definition of "restoration" in renumbered

§15.2(65) to include the restoration of a site to a condition that is compliant with applicable requirements in TNRC Chapters 61 and 63, 31 TAC Chapter 15, and a local government plan, including removal or abatement of unauthorized construction or structures. Previously, this definition only referred to the restoration of dunes or dune vegetation. The amended definition encompasses its use in the context of resolving a violation.

§15.3 Administration

References to TNRC Ch. 33 and erosion response plans were added in multiple places to clarify that erosion response plans are subject to the same requirements as local government beach access and dune protection plans. GLO also deleted §15.3(b)(4) regarding individual requests for line of vegetation (LOV) determinations since conducting a LOV determination at the time of the construction application saves costs and achieves the same goals. Also, an LOV determination can often be done without a site visit.

GLO modified renumbered §15.3(o)(4) to formalize the requirement that plan amendment submissions include the governing body's formal approval of changes, a description of the changes, and a version of the plan identifying all proposed changes. This information was previously informally requested by the GLO and submitted by local governments since it is needed for the GLO to determine if proposed plan amendments are consistent with state law. GLO also added language to renumbered §15.3(o)(5) requiring local governments that submit a proposed plan amendment that includes a variance to provide a reasoned justification and a clear demonstration of how the variance is equal to or more protective of the goals and policies contained in §15.1.

GLO added new §15.3(q)(2) clarifying that the Open Beaches Act applies to state and national park and wildlife management areas located on islands or peninsulas, regardless of whether the park is accessible by public road or ferry, as provided for in TNRC §61.0211.

GLO added new §15.3(s)(4) stating that no person shall violate TNRC Chapters 61 and 63, 31 TAC Chapter 15, the requirements of a local government plan, or the terms of a certificate or permit issued pursuant to Chapter 15. This addition clarifies that any unauthorized activities or activities that are not compliant with TNRC Chapters 61 and 63, 31 TAC Chapter 15, the requirements of a local government plan, or the terms of a certificate or permit are subject to enforcement action.

GLO added language to renumbered §§15.3(s)(5)(A)(viii) and 15.3(s)(5)(B)(vi) requiring that design plans and elevation views for any proposed walkways or dune walkovers be included in an application since this information is needed to determine consistency with new rules relating to height and width of dune walkovers in §15.6 and elsewhere in this chapter. GLO added a requirement for construction applications to renumbered §15.3(s)(5)(A)(x) for photographs of dunes immediately adjacent to the site since dunes are a connected system that often cross property boundaries and measures may need to be taken to avoid or mitigate for damages to dunes on adjacent properties. GLO also included "survey" in renumbered §§15.3(s)(5)(A)(xv) and 15.3(s)(5)(B)(viii) as a type of map that may be submitted with a permit application.

GLO added language to §15.3(t)(1) clarifying that permits and certificates are valid for no more than three years from the date of original issuance unless additional time has been provided by a renewal. New §15.3(t)(2)(A) - (D) was created using language from §15.3(t)(1) to clarify that permits and certificates are only renewable prior to the expiration of the permit and certificate, and may be renewed only if there are no material changes to the site or the proposed activities. Permittees must provide a statement describing the absence of or any changes to the site, project plans, or other original information as part of a renewal request.

In §15.3(t)(4), language was added that specifies that it is the local government that has the authority to void a permit under various circumstances. The language in renumbered §15.3(t)(5) was modified to clarify that an applicant or permittee must either amend or obtain a new permit or certificate in the event of a material change to the site conditions or proposed construction activities, and to clarify that the local government must submit the amendment or new permit to the GLO for review and comment.

GLO added new §15.3(u)(1)(A) to clarify that a permit, certificate, or other relevant authorization is part of the administrative record, and §15.3(u)(1)(B) clarifies that any information submitted as part of a permit renewal or amendment is part of the administrative record. Renumbered §15.3(u)(1)(D) was added to clarify that all correspondence sent or received by the local government regarding the permit or certificate is also part of the administrative record.

In §15.3(u)(2), GLO changed the mandatory retention time of the administrative record by a local government from three years from the date of a final decision on a permit or certificate to four years from the expiration date of a permit or certificate or from the date that the required mitigation or compensation has been determined to be complete, whichever is later. This change to the retention record timeframe is necessary to include the entire three-year deadline that is required for mitigation and compensation to be completed.

§15.4 Dune Protection Standards

The GLO added language to §15.4(a) stating that no person shall initiate or perform construction in violation of TNRC §§ 63.051, 63.091, or this chapter to further support the regulatory prohibitions in the Dune Protection Act. This addition clarifies that any unauthorized activities or activities that are not compliant with TNRC Chapters 61 and 63, 31 TAC Chapter 15, the requirements of a local government plan, or the terms of a certificate or permit are subject to enforcement action.

The GLO created new §15.4(f)(2)(B)(iii) to highlight that local governments may use their planning and development authority to limit private access points to the beach to only the minimum number needed to service the development. Although there is an existing requirement in renumbered §15.4(f)(2)(iv), some local governments have concerns over implementing this provision if private access pathways are already platted. This addition highlights that local governments can use other existing authorities to minimize the proliferation of excessive private access in the initial planning stages of a development when approving proposed plats to protect public infrastructure and private property from storm surge and further minimize potential adverse impacts to dunes and dune vegetation.

GLO also created new §15.4(f)(2)(B)(vi) to prohibit the construction or maintenance of a structure on previously mitigated or compensated dunes that are seaward of a dune protection line except for permitted dune walkovers or similar access ways. This addition clarifies that existing requirements in §15.7(e)(8) also apply to mitigated or compensated dunes and is intended to protect less robust artificial or man-made dunes from being

weakened, and to limit the extent of recurring damages to dunes and dune vegetation.

The amendments include the addition of the term "mitigation" to all areas where "compensation" is mentioned, and vice versa, in §§15.4(g)(1) - (5), since this section describes the deadlines for both mitigation and compensation. GLO also added "in accordance with the mitigation or compensation plan" to §15.4(g)(1) to clarify that permittees must provide local governments with proof of financial responsibility for mitigation or compensation costs if mitigation or compensation is not completed in accordance with the mitigation or compensation plan prior to the commencement of construction of any structure. This addition clarifies that a permittee must provide the local government with proof of financial responsibility for mitigation costs if the sand placement and dune vegetation planting components of the required mitigation or compensation are not completed in adherence to the mitigation plan before construction of any structure begins.

GLO also added a requirement to §15.4(g)(5) for permittees to complete sand placement, and if applicable, dune vegetation relocation and/or planting portions of a mitigation plan within one year of initiation of construction. The deadline by which mitigation or compensation must be complete was changed to three years after the initiation of construction instead of three years after beginning compensation. Under the previous mitigation and compensation deadline requirements, some permitted construction projects did not begin the required mitigation or compensation until years after construction was initiated, which leaves an inadequate amount of time for the planted vegetation to become established by the three-year completion deadline and allowed for an unnecessary and extended period of time where public infrastructure and private property were at greater risk to storm damage. By requiring a one-year deadline for sand movement and vegetation planting after the initiation of construction and changing the mitigation or compensation deadline to three years after the initiation of construction, the GLO is encouraging prompt restoration of the protective capacity of the dune system after impacts occur, which minimizes the risk of damage to natural resources from floods and erosion. The inclusion of a one-year deadline for vegetation planting will also help permittees meet the three-year mitigation or compensation deadline since planted vegetation needs time to become established and for the vegetative cover to match the surrounding natural dunes, as required in §15.4(g)(3).

§15.5 Beachfront Construction Standards

GLO created new §15.5(a)(2), stating that no person shall initiate or perform construction in violation of TNRC §61.013 or this chapter, to further support the regulatory prohibitions in the Open Beaches Act. Non-substantive changes were also made to §15.5(b)(3) to ensure consistency throughout the chapter.

§15.6 Concurrent Dune Protection and Beachfront Construction Standards

GLO added new §15.6(g), which would allow for the construction of certain parking areas or walkways landward of the line of vegetation to enhance ease of access for persons with disabilities, as required by law. For commercial facilities or public beach access facilities that are required to be accessible for persons with disabilities, a change was made to allow concrete slabs or other impervious surfaces so long as the area does not exceed 5% of the square footage of the property to be used for parking areas or walkways, when the use of permeable materials is not practicable. A demonstration of necessity must be provided by the applicant. There are many instances where commercial facilities or public beach access facilities are required to be accessible for persons with disabilities under other laws and regulations, and this addition provides more flexibility in complying with those standards.

To ensure dune walkovers or similar structures are constructed in a manner that is protective of the critical dune area and to minimize the amount of building materials in the dune system that may end up as debris on the public beach, GLO added various construction requirements for dune walkovers and similar structures to new §15.6(i). The requirement for dune walkovers to be constructed to allow for the growth of dune vegetation and migration of dunes was relocated to this section from §15.7(g), and specific requirements for maximum width limitations, minimum height above the dunes, and deck board spacing were added. In response to comments made on the proposed amendment, the GLO changed the specific requirements for maximum width limitations and minimum height above the dunes in §15.6(i).

GLO also added new §15.6(i)(3) requiring local governments to construct dune walkovers that are accessible for persons with disabilities, where practicable, for all new construction of public dune walkovers in areas where vehicles are prohibited from the public beach. This addition is intended to enhance public beach access opportunities for persons with disabilities and ensure equal access to the beach, as already required under other laws and regulations.

The new requirements in §§15.6(i)(1) - (3) apply to all new construction of dune walkovers and similar structures after the date of adoption of the rules and any major repairs to existing dune walkovers and similar structures. A few examples of major repairs to existing dune walkovers subject to the new provisions include widening and replacing a substantial portion of the deck boards or replacing some pilings. If there is a conflict between the new dune walkover requirements in §§15.6(i)(1) - (3) and the requirements in a local government's Beach Access and Dune Protection Plan, then the more protective requirements will apply.

§15.7 Local Government Management of the Public Beach

The amendments include modifications to §15.7(e)(6)(B) authorizing local governments to allow sand fencing that is discontinuous and temporary to restore dunes and recommending that the fencing conform to the guidelines in the most recent edition of the GLO's Dune Protection and Improvement Manual for the Texas Gulf Coast. This change was made after a review of best dune restoration practices along the Texas coast and in recognition of the benefits of discontinuous sand fencing to nesting sea turtles.

The requirements for local governments to require permittees to shorten dune walkovers after a major storm and for local governments to assess the status of the public beach boundary after a major storm or other event causing significant landward migration of the public beach was removed from §§15.7(g)(4)(A) - (B) to be consistent with TNRC Ch. 61. In an effort to give the beach time to recover naturally, dune walkovers are typically not shortened immediately after a major storm unless they are impacting the public's ability to use the beach, and the language was modified accordingly.

A modification to §15.7(h) requires prior approval from the GLO before a local government modifies public beach parking. Additionally, the requirement for the GLO to approve and certify a local government's beach access and use standards was moved

from §15.7(h)(1)(C) to §15.7(h), and language was added to clarify that any modification to a local government's beach access and use plan must be approved and certified by the GLO based on the GLO's affirmative finding that such modifications preserve or enhance the public's right to use and access the beach.

Language added to §15.7(h)(4) clarifies that local governments must notify the GLO of any emergency beach access point closures as soon as practicable if a local government has had to make a closure for an emergency related to public safety. Historically the GLO has not always been promptly notified by local governments of emergency beach closures, and this addition will ensure timely communication and coordination between a local government and the GLO.

GLO added new §§15.7(h)(5)(A)(i) - (ii) requiring at least one access way with a stable, slip-resistant surface to the approximate high tide line to be provided in each jurisdiction where vehicles are prohibited from driving to mean high tide, and signs identifying the accessible beach access route to be conspicuously posted at the landward terminus of the access route. If a local government can demonstrate that providing and maintaining a stable, slip-resistant surface to the approximate high tide line is not practicable, local governments will be required to provide an alternate means of access for persons with disabilities, such as beach wheelchairs. Local governments will have until December 31, 2023 to come into compliance with these provisions. These changes will enhance public beach access for persons with disabilities and are modeled after the United States Access Board accessibility standards for federal outdoor developed areas, which are currently the only federal accessibility standards with specific guidelines for beach access routes.

GLO also clarified that golf carts must be prohibited in areas where vehicles are prohibited from driving on and along the beach in §15.7(h)(5)(B) unless they have a valid disabled parking placard and are transporting a person with a physical disability or a veteran with disabilities.

GLO also created new §15.7(l) using language from §15.7(i)(4)(E) requiring a local government to prepare a compliance plan if the GLO determines that existing beach access or proposed changes to vehicular controls are not consistent with state standards. The compliance plan must include a detailed description of the means and methods of upgrading the availability of public parking and access ways, including funding for such improvements.

§15.8 Beach User Fees

Amendments to §15.8 include reformatting and language additions for clarity. GLO also expanded the list of information that must be included in a new or amended beach user fee plan proposal in §15.8(b) to include information that is needed for the GLO to be able to determine consistency with state law and regulations. For example, the GLO added §15.8(b)(7) requiring an estimate of the projected beach user fee revenues and expected budget for expenditures on beach-related services, including a description of how the projections and budget were determined, for the next five years, which is needed for the GLO to determine if the proposed beach user fee is reasonable, would recover the cost of providing and maintaining beach-related services, and would not exceed the necessary and actual cost of providing beach-related services, as required by this subchapter.

The GLO also added §15.8(b)(6) requiring a report detailing a local government's previous five years of beach user fee revenue and expenditures on beach-related services; §15.8(b)(10) requiring a description of how the beach user fee will be collected and managed by the local government and an explanation of how the method of fee collection and management is consistent with the requirements of this chapter; §15.8(b)(11) requiring where appropriate, evidence of the cost to the local government of providing existing beach-related services and how the proposed beach user fee will maintain or enhance those or additional beach-related services; and §15.8(b)(12) for any additional information required for the GLO to determine if the fee is reasonable. Detailed historical revenue and expenditure information is needed so the GLO can ensure that a proposed price increase in beach user fees (BUFs) is appropriately determined and review previous local government management of these funds for efficiency and effectiveness in providing beach-related services to the public. Obtaining detailed information on the cost of providing existing beach-related services and how a new BUF or a BUF increase will enhance those services is critical to the GLO's responsibility to ensure that BUFs are reasonable. A reasonable fee is one that recovers the cost of providing and maintaining beach-related services but does not exceed the necessary and actual cost of providing reasonable beach-related public facilities and services. Much of this information has been informally requested by the GLO during the plan amendment process since a high level of detail is needed to determine consistency with existing regulations and state law. In addition, administrative costs must be directly related to providing support for beach related services. Examples of administrative costs were added.

GLO also added new §15.8(g)(2), requiring documentation sufficient to substantiate the proper collection and expenditure of beach user fees to be maintained by the local government and for such documentation to be kept by the local government for four years following the date the fees are spent. This information must be provided to the GLO within 10 working days of a request by the GLO to the local government. In addition, language was added in renumbered §15.8(h) allowing beach user fee revenues to be separately tracked in local governments' accounting systems as an alternative to being maintained in entirely separate revenue accounts. GLO added new §15.8(i) using language previously in §15.13(f) stating that the GLO shall suspend the local government's privilege to collect fees and shall revoke approval of any pertinent section of a dune protection and beach access plan if the beach user fee revenues have been spent on services which are not beach-related services.

§15.9 Enforcement, Penalties and Remedial Orders

GLO created new §15.9(b)(3) to clarify that a person damages a dune or dune vegetation when their conduct results in the destruction or removal of a dune or dune vegetation or weakens a dune or dune vegetation by increasing the potential for flood damage, washovers, or blowouts, by changing runoff or drainage patterns in a way that aggravates erosion on or off the site or in a way that may result in adverse effects to dune hydrology and dune complexes or dune vegetation. This addition incorporates the prohibition of the approval by local governments of permits that materially weaken dunes or dune vegetation, as required in this chapter, and clarifies the circumstances under which a person who damages a dune or dune vegetation may be subject to the administrative penalties and restoration requirements in this section.

GLO changed §15.9(b)(5) to state that a person must apply for a permit and complete restoration rather than just initiate restoration of damages in order to avoid further costs, fees or enforcement proceedings as described in this section. New

§15.9(d) was created to outline the notice of violation and hearing requirements, using updated language partially relocated from §§15.9(b)(3), 15.9(b)(6)(B), and 15.9(c)(6)(B).

§15.10 General Provisions

The GLO deleted §15.10(j) regarding grandfathered plans since it applied to the initial beach dune rules and is no longer relevant. Minor editorial changes and changes for clarification were also made in this subchapter.

§15.11 Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach

Minor editorial changes to clarify language and be consistent with the rest of this chapter are proposed. Modifications to §15.11(e) were also made to clarify that a local government shall coordinate with property owners to remove personal property and beach debris related to a structure from the public beach and dune complex. Language was added to authorize local governments to require debris removal from the public beach when the debris is a public health and safety hazard as a condition of the issuance of a new certificate or permit under this section.

§15.12 Temporary Orders Issued by the Land Commissioner

Minor editorial changes to clarify language and for consistency with the rest of this chapter and with TNRC Chapter 61 are adopted. Specifically, the GLO amended §15.12(d)(2) to clarify that the GLO is responsible for clearing debris from the public beach in accordance with TNRC §61.067, and that while an order issued under this section is in effect, a local government with the duty to clean and maintain the beach must coordinate with the GLO and, where appropriate, littoral property owners, to remove beach debris from the public beach. Previously, this section stated that the local government must coordinate with the littoral property owners to remove beach debris from the public beach and did not include reference to the GLO or the GLO's responsibility for clearing debris from the public beach after declared disaster.

§15.13 Disaster Recovery Orders

The GLO made minor editorial changes to clarify language and for consistency with the rest of this chapter and TNRC Chapter 61. GLO also relocated language, from §15.13(b) to §15.13(c), stating that temporary standards authorized by this section are effective for a period of two years from the date of the issuance of disaster recovery order by the commissioner, unless a shorter period of recovery is specified in the order. GLO changed §15.13(h)(2) to require the removal of a clay core dune if it is not covered with a minimum of 24 inches of sand. The requirement for local governments to require the use of indigenous dune vegetation when restoring dunes is being relocated from §15.13(e)(10) to new §15.13(h)(4) and modified to clarify that indigenous dune vegetation is only required when vegetation is used to restore dunes.

RESPONSE TO PUBLIC COMMENTS

The GLO received public comments on the proposed amendments to 31 Texas Administrative Code §§15.1 - 15.13 during the comment period.

The GLO received three comments on the changes to walkover regulations in §15.6(i)(1)(A) and §15.6(i)(1)(B). The City of South Padre Island supported the amendments to place restrictions on the width and height of dune walkovers. The City of Port Aransas and a member of the public provided comments with concerns about various aspects of the proposed limits on dune walkover width limitations since wider dune walkovers can serve many homes and allow emergency vehicles to enter and exit the beach expeditiously. In response to the comments, the GLO modified the language in §15.6(i)(1)(A) to eliminate an eight-foot width limitation for dune walkovers and to allow dune walkovers with a width of more than four feet to be permitted for public access walkovers, shared walkovers for three or more residences, or for wheelchair or golf-cart use with approval of the local government and a demonstration of need during the permitting process. The GLO also modified the requirements regarding the minimum height of dune walkovers in §15.6(i)(1)(B) to no longer require dune walkovers with a width of greater than four feet to be at a minimum height equal to the width of the walkover above the highest point of the tallest dune crest. Section 15.6(i)(1)(B) now requires dune walkovers with a width of greater than four feet to be constructed at an adequate height that will allow for the growth of dune vegetation and migration of the dunes under the walkover. An allowance was also added for exceptions to the height requirement for walkovers to descend to the beach over the foredune ridge. Local governments can adopt more specific requirements regarding dune walkovers in their local Dune Protection and Beach Access Plan.

The City of South Padre Island and the City of Port Aransas also commented that it is difficult to keep a stable, slip-resistant surface to the water line, as required by §15.7(h)(5)(A), accessible for use at all times due to various local environmental and funding factors. The GLO agrees and points to the allowance in §15.7(h)(5)(A)(i) for local governments to provide alternate means of access for persons with disabilities, such as beach wheelchairs, in cases where maintaining a stable, slip-resistant surface to the approximate high tide line is not practicable. There are currently beach wheelchairs available in each jurisdiction where the requirements in §15.7(h)(5)(A) will be applicable. No changes were made based on these comments.

Comments on the requirement in §15.6(i)(1)(C) for the deck boards of a dune walkover to be spaced at least ½ inch apart were also received, stating that deck board spacing provides no meaningful impact to the establishment of vegetation. However, the intent for the requirement in §15.6(i)(1)(C) for the deck boards of a dune walkover to be spaced at least ½ inch apart is not only to allow rainfall to reach the vegetation below but also so that sunlight can penetrate to the vegetation and to help prevent sand accumulation on the deck. No changes were made based on this comment.

Other comments received by the City of Port Aransas were based on misunderstandings of the proposed text of the rulemaking. After meeting with the commenters, the concerns were resolved.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The rulemaking is subject to the Coastal Management Program (CMP) as provided for in the Texas Natural Resources Code §33.2053, and 31 TAC §29.11(a)(1)(J) and §29.11(c), relating to the Actions and Rules Subject to the CMP. GLO has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the regulations and has determined that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §26.12 (relating to Goals) and §26.26 (relating to Policies for Construction in the Beach/Dune System).

The amendments are consistent with the CMP goals outlined in 31 TAC §26.12(5). These goals seek to balance the benefits of economic development and multiple human uses, the benefits of protecting, preserving, restoring, and enhancing coastal natural resource areas (CNRAs), and the benefits from public access to and enjoyment of the coastal zone. The amendments are consistent with 31 TAC §26.12(5) as they provide local governments with the ability to enhance public access and enjoyment of the coastal zone, protect and preserve and enhance the CNRA, and balance other uses of the coastal zone. The rules are also consistent with CMP policies in 31 TAC §26.26(a)(4) because they enhance and preserve the ability of the public, individually and collectively, to exercise rights of use of and access to and from public beaches.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §61.011, which provides authority for the Commissioner to promulgate rules for the protection of the public easement from erosion or reduction and §63.121, which provides for the commissioner's authority to adopt rules for the protection of critical dune areas.

§15.1. Policy.

The General Land Office has identified the following goals as a basis for managing and regulating human impacts on the beach/dune system:

(1) to assist coastal citizens and local governments in protecting public health and safety and in protecting, preserving, restoring, and enhancing coastal natural resources including barrier islands and peninsulas, mainland areas bordering the Gulf of Mexico, and the floodplains, beaches, and dunes located there;

(2) to aid coastal landowners and local governments in using beachfront property in a manner compatible with preserving public and private property, protecting the public's right to benefit from the protective and recreational functions of a healthy beach/dune system, conserving the environment, conserving flora and fauna and their habitat, ensuring public safety, and minimizing loss of life and property due to inappropriate coastal development and the destruction of protective coastal natural features;

(3) to foster mutual respect between public and private property owners and to assist local governments in managing the Texas coast so that the interests of both the public and private landowners are protected;

(4) to promote dune protection and ensure that adverse effects on dunes and dune vegetation are avoided whenever practicable. If such adverse effects cannot be avoided and have been minimized, every effort must be made to repair, restore, and rehabilitate existing dunes and dune vegetation;

(5) to prevent the destruction and erosion of public beaches and other coastal public resources, to encourage the use of environmentally sound erosion response methods, and to discourage those methods such as rigid shorefront structures which can have a harmful impact on the environment and public and private property;

(6) to aid communities located on barrier islands, peninsulas, and mainland areas bordering the Gulf of Mexico which are extremely vulnerable to flooding and property damage due to violent storms by working to reduce flood losses, by minimizing any waste of public funds in the National Flood Insurance Program, and by ensuring that the insurance remains available and affordable;

(7) to protect the public's right of access to, use of, and enjoyment of the public beach and associated facilities and services as established by state common law and statutes. The public has vested property rights in Texas' public beaches, and free use of and access to and from the beaches are guaranteed. The Open Beaches Act requires local governments to preserve and enhance use of public beaches and access between the beaches and public roads. If an access point must be closed, then existing law requires it to be replaced with equal or better access consistent with the appropriate local dune protection and beach access plan. Whenever practicable, local governments should enhance public beach use and access;

(8) to provide coordinated, consistent, responsive, timely, and predictable governmental decision making and permitting processes;

(9) to recognize that the beach/dune system contains resources of statewide value and concern, which local governments are in the best position to manage on a daily basis. This subchapter is designed to provide local governments with the necessary tools for effective coastal management and are regarded as a minimum standard; local governments are encouraged to develop procedures that provide greater protection for the beach/dune system;

(10) to educate the public about coastal issues such as dune protection, beach access, erosion, and flood protection, and to provide for public participation in the protection of the beach/dune system and in the development and implementation of the Texas Coastal Management Program; and

(11) to minimize public expenditure on damages caused on public and private property, including the public beach, by erosion, storms, and meteorological events.

§15.2. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affect--As used in this subchapter regarding dunes, dune vegetation, and the public beach, "affect" means to produce an effect upon dunes, dune vegetation, or public beach use and access.

(2) Amenities--Any non habitable major structure including, but not limited to, swimming pools, decks, bathhouses, detached garages, cabanas, pipelines, piers, canals, lakes, ditches, artificial runoff channels and other water retention structures, sidewalks, roads, streets, highways, parking areas and other paved areas (exceeding 144 square feet in area), underground storage tanks, and similar structures.

(3) Applicant--Any person applying to a local government for a permit and/or certificate for any construction or development plan.

(4) Backdunes--The dunes located landward of the foredune ridge which are usually well vegetated but may also be unvegetated and migratory. These dunes supply sediment to the beach after the foredunes and the foredune ridge have been destroyed by natural or human activities.

(5) Beach access--The right to use and enjoy the public beach, including the right of free and unrestricted ingress and egress to and from the public beach.

(6) Beach/Dune Rules--31 TAC §§15.1 - 15.36, 31 TAC Ch. 25, 31 TAC §26.26 and 31 TAC §29.60.

(7) Beach/dune system--The land from the line of mean low tide of the Gulf of Mexico to the landward limit of dune formation.

(8) Beach maintenance--The cleaning or removal of debris from the beach or redistribution of seaweed on the beachfront by handpicking, raking, or mechanical means.

(9) Beach profile--The shape and elevation of the beach as determined by surveying a cross section of the beach.

(10) Beach-related services--Reasonable and necessary services and facilities directly related to the public beach which are provided to the public to ensure safe use of and access to and from the public beach, such as vehicular controls, management, and parking (including acquisition and maintenance of off-beach parking and access ways); sanitation and litter control; lifeguarding and lifesaving; beach maintenance; law enforcement; beach nourishment projects; beach/dune system education; beach/dune protection and restoration projects; providing public facilities such as restrooms, showers, lockers, equipment rentals, and picnic areas; recreational and refreshment facilities; liability insurance; and staff and personnel necessary to provide beach-related services. Beach-related services and facilities shall serve only those areas on or immediately adjacent to the public beach.

(11) Beach user fee--A fee collected by a local government in order to establish and maintain beach-related services and facilities for the preservation and enhancement of access to and from and safe and healthy use of public beaches by the public.

(12) Beachfront construction certificate or certificate--The document issued by a local government that certifies that the proposed construction either is consistent with the local government's dune protection and beach access plan.

(13) Blowout--A breach in the dunes caused by wind erosion.

(14) Breach--A break or gap in the continuity of a dune caused by wind or water.

(15) Bulkhead--A structure or partition built to retain or prevent the sliding of land. A secondary purpose is to protect the upland against damage from wave action.

(16) Coastal and shore protection project--A project designed to slow shoreline erosion or enhance shoreline stabilization, including, but not limited to, erosion response structures, beach nourishment, sediment bypassing, construction of man-made vegetated mounds, and dune revegetation.

(17) Coastal public land--Has the meaning assigned by Texas Natural Resource Code, §33.004.

(18) Commercial facility--Any structure used for providing, distributing, and selling goods or services in commerce including, but not limited to, hotels, restaurants, bars, rental operations, and rental properties.

(19) Construction--Causing or carrying out any building, bulkheading, filling, clearing, excavation, or substantial improvement to or alteration of land or the size of any structure, or removal or demolition of a structure. "Building" includes, but is not limited to, all related site work and placement of construction materials on the site. "Filling" includes, but is not limited to, disposal of dredged materials. "Excavation" includes, but is not limited to, removal or alteration of dunes and dune vegetation and scraping, grading, or dredging a site. "Substantial improvements to or alteration of land or the size of any structure" include, but are not limited to, creation of vehicular or pedestrian trails, landscape work and fencing (that may adversely affect public access, dunes or dune vegetation), and increasing the size of any structure.

(20) Coppice mounds--The initial stages of dune growth formed as sand accumulates on the downwind side of plants and other obstructions on or immediately adjacent to the beach seaward of the foredunes. Coppice mounds may be unvegetated.

(21) Critical dune areas--Those portions of the beach/dune system as designated by the General Land Office that are located within 1,000 feet of mean high tide of the Gulf of Mexico that contain dunes and dune complexes that are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas include, but are not limited to, the dunes that store sand in the beach/dune system to replenish eroding public beaches.

(22) Cumulative impact--The effect on beach use and access, on a critical dune area, or an area seaward of the dune protection line which results from the incremental effect of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

(23) Dedication--Includes, but is not limited to, a restrictive covenant, permanent easement, and fee simple donation.

(24) Dune--An emergent mound, hill, or ridge of sand, either bare or vegetated, located on land bordering the waters of the Gulf of Mexico. Dunes are naturally formed by the windward transport of sediment, but can also be created via man-made vegetated mounds. Natural dunes are usually found adjacent to the uppermost limit of wave action and are usually marked by an abrupt change in slope landward of the dry beach. The term includes coppice mounds, foredunes, dunes comprising the foredune ridge, backdunes, and man-made vegetated mounds.

(25) Dune complex or dune area--Any emergent area adjacent to the waters of the Gulf of Mexico in which several types of dunes are found or in which dunes have been established by proper management of the area. In some portions of the Texas coast, dune complexes contain depressions known as swales.

(26) Dune Protection Act--Texas Natural Resources Code, §§63.001, et seq.

(27) Dune protection and beach access plan or plan--A local government's legally enforceable program, policies, and procedures for protecting dunes and dune vegetation and for preserving and enhancing use of and access to and from public beaches, and for reducing public expenditures for erosion and storm damage losses, as required by Texas Natural Resources Code Chapters 61 and 63 and Texas Natural Resources Code §33.607.

(28) Dune protection line--A line established by a county commissioners court or the governing body of a municipality for the purpose of preserving, at a minimum, all critical dune areas identified by the General Land Office pursuant to the Dune Protection Act, §63.011, and §15.3(f) of this title (relating to Administration). A municipality is not authorized to establish a dune protection line unless the authority to do so has been delegated to the municipality by the county in which the municipality is located. Such lines will be located no farther than 1,000 feet landward of the mean high tide of the Gulf of Mexico.

(29) Dune protection permit or permit--The document issued by a local government to authorize construction or other regulated activities in a specified location seaward of a dune protection line or within a critical dune area, as provided in the Texas Natural Resources Code, §63.051.

(30) Dune vegetation--Flora indigenous to natural dune complexes, and growing on naturally-formed dunes or man-made vegetated mounds on the Texas coast and can include coastal grasses and herbaceous and woody plants.

(31) Effect or effects--"Effects" include: direct effects--those impacts on public beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and occur at the same time and place; and indirect effects--those impacts on beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and are later in time or farther removed in distance than a direct effect, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems. "Effects" and "impacts" as used in this subchapter are synonymous. "Effects" may be ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.

(32) Eroding area--A portion of the shoreline which is experiencing an historical erosion rate of greater than two feet per year based on published data of the University of Texas at Austin, Bureau of Economic Geology. Local governments may establish an "eroding area boundary" in beach/dune plans; this boundary shall be whichever distance landward of the line of vegetation is greater: 200 feet, or the distance determined by multiplying 50 years by the annual historical erosion rate (based on the most recent data published by the University of Texas at Austin, Bureau of Economic Geology).

(33) Erosion--The wearing away of land or the removal of beach and/or dune sediments by wave action, tidal currents, wave currents, drainage, or wind. Erosion includes, but is not limited to, horizontal recession and scour and can be induced or aggravated by human activities.

(34) Erosion response structure--A hard or rigid structure built for shoreline stabilization which includes, but is not limited to, a jetty, groin, breakwater, bulkhead, seawall, riprap, rubble mound, revetment, or the foundation of a structure which is the functional equivalent of these specified structures.

(35) FEMA--The United States Federal Emergency Management Agency. This agency administers the National Flood Insurance Program and publishes the official flood insurance rate maps.

(36) Fibercrete--Unreinforced concrete, consisting of a combination of pulped paper, or other cellulose-based raw material, and binders such as lime, cement, and/or clay.

(37) Foredune ridge--The high continuous line of dunes which are usually well vegetated and rise sharply landward of the foredune area but may also rise directly from a flat, wave-cut beach immediately after a storm.

(38) Foredunes--The first clearly distinguishable, usually vegetated, stabilized large dunes encountered landward of the Gulf of Mexico. On some portions of the Texas Gulf Coast, foredunes may also be large, unvegetated, and unstabilized. Although they may be large and continuous, foredunes are typically hummocky and discontinuous and may be interrupted by breaches and washover areas. Foredunes offer the first significant means of dissipating storm-generated wave and current energy issuing from the Gulf of Mexico. Because various heights and configurations of dunes may perform this function, no standardized physical description applies. Foredunes are distinguishable from surrounding dune types by their relative location and physical appearance.

(39) Habitable structure footprint--The area of a lot covered by a structure used or usable for habitation. The habitable structure footprint does not include uncovered stairs and decks, incidental projecting eaves, balconies, ground-level paving, landscaping, open recreational facilities (for example, pools and tennis courts), or other similar features.

(40) Habitable structures--Structures suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and commercial facilities. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a single habitable structure. Additionally, a habitable structure includes porches or gazebos, and other attached improvements.

(41) Industrial facilities--Include, but are not limited to, those establishments listed in Part 1, Division D, Major Groups 20 - 39 and Part 1, Division E, Major Group 49 of the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management and Budget (1987 ed.). However, for the purposes of this subchapter, the establishments listed in Part 1, Division D, Major Group 20, Industry Group Number 209, Industry Numbers 2091 and 2092 are not considered "industrial facilities." These establishments are listed in "Appendix I" attached to this section.

(42) Large-scale construction--Construction activity greater than 5,000 square feet or habitable structures greater than two stories in height. Both the area beneath the lowest habitable level of an elevated structure and a cupola (i.e. "widow's walk") with an area of 400 square feet or less on the top of the second habitable story are not considered stories for the purpose of this section. Multiple-family habitable structures are typical of this type of construction.

(43) Line of vegetation--The extreme seaward boundary of natural vegetation which spreads continuously inland. The line of vegetation is typically used to determine the landward extent of the public beach.

(44) Local government--A municipality, county, any special purpose district, any unit of government, or any other political subdivision of the state.

(45) Man-made vegetated mound--A mound, hill, or ridge of sand created by the deliberate placement of sand or sand trapping devices including sand fences, trees, or brush and planted with dune vegetation.

(46) Master plan--A plan developed by the applicant in consultation with the General Land Office, the applicant or applicants, and the local government, for the development of an area subject to the beach/dune rules, as identified in §15.3 of this title (relating to Administration). The master plan shall fully describe in narrative form the proposed development and all proposed land and water uses, and shall include maps, drawings, and tables, and other information, as needed. The master plan must, at a minimum, fully describe the general geology and geography of the site, land and water use intensities, size and location of all buildings, structures, and improvements, all vehicular and pedestrian access ways, and parking or storage facilities, location and design of utility systems, location and design of any erosion response structures, retaining walls, or stormwater treatment management systems, and the schedule for all construction activities described in the master plan. The master plan shall comply with the Open Beaches Act and the Dune Protection Act. The master plan shall provide for overall compliance with the beach/dune rules, but may vary from the specific standards, means and methods provided in the beach/dune rules if the degree of dune protection and the public's right to safe and healthy use of and access to and from the public beach are preserved. If all impacts to dunes, dune vegetation and public beach use and access are accurately identified, local governments shall not

require permits or certificates for construction on the individual lots within the master plan area. Master plans are intended to provide a comprehensive option for planning along the Texas coast.

(47) Material changes--Changes in project design, construction materials, or construction methods or in the condition of the construction site which occur after an application is submitted to a local government or after the local government issues a permit or certificate. Material changes are those additional or unanticipated changes which may have caused or may cause adverse effects on dunes, dune vegetation, or beach access and use, or exacerbation of erosion on or adjacent to the construction site.

(48) Meteorological Event--Atmospheric conditions or phenomena resulting in avulsion, erosion, accretion, or other impacts to the shoreline that alter the location of the line of vegetation.

(49) Mitigation sequence--The series of steps which must be taken if dunes and dune vegetation will be adversely affected. First, such adverse effects shall be avoided. Second, adverse effects shall be minimized. Third, the dunes and dune vegetation adversely affected shall be repaired, restored, or replaced. Fourth, the dunes and dune vegetation adversely affected shall be replaced or substituted to compensate for the adverse effects.

(50) National Flood Insurance Act--42 United States Code, §§4001, et seq.

(51) Natural resources--Land, fish, wildlife, insects, biota, air, surface water, groundwater, plants, trees, habitat of flora and fauna, and other such resources.

(52) Off-highway vehicle--Has the meaning assigned by §551A.001, Transportation Code.

(53) Open Beaches Act--Texas Natural Resources Code, §§61.001, et seq.

(54) Owner or operator--Any person owning, operating, or responsible for operating commercial or industrial facilities.

(55) Permit or certificate condition--A requirement or restriction in a permit or certificate necessary to assure protection of life, natural resources, property, and adequate beach use and access rights which a permittee must satisfy in order to be in compliance with the permit or certificate.

(56) Permittee--Any person authorized to act under a permit or a certificate issued by a local government.

(57) Person--An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision, or any international or interstate body or any other governmental entity.

(58) Pipeline--A tube or system of tubes used for the transportation of oil, gas, chemicals, fuels, water, sewerage, or other liquid, semi-liquid, or gaseous substances.

(59) Practicable--In determining what is practicable, local governments shall consider the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Local governments shall also consider the cost of the technology or technique.

(60) Production and gathering facilities--The equipment used to recover and move oil or gas from a well to a main pipeline, or other point of delivery such as a tank battery, and to place such oil or gas into marketable condition. Included are pipelines used as gathering lines, pumps, tanks, separators, compressors, and associated equipment and roads.

(61) Project area--The portion of a site or sites which will be affected by proposed construction.

(62) Public beach--As used in this subchapter, "public beach" is defined in the Texas Natural Resources Code, §61.013(c).

(63) Recreational activity--Includes, but is not limited to, hiking, sunbathing, and camping. As used in §15.3(s)(2)(C) of this title (relating to Administration), recreational activities are limited to the private activities of the person owning the land and the social guests of the owner. Operation of recreational vehicles is not considered a recreational activity, whether private or public.

(64) Recreational vehicle--A dune buggy, marsh buggy, minibike, trail bike, jeep, off-highway vehicle as defined by §551A.001, Transportation Code, or any other mechanized vehicle used for recreational purposes, but does not include a vehicle that is not being used for recreational purposes.

(65) Restoration--Repair or replacement of dunes or dune vegetation, or restoring a site to compliance with applicable requirements, including removal or abatement of unauthorized construction or structures, as those terms defined in this section.

(66) Retaining wall--A structure designed to contain or which primarily contains material or prevents the sliding of land. Retaining walls may collapse under the forces of normal wave activity.

(67) Sand budget--The amount of all sources of sediment, sediment traps, and transport of sediment within a defined area. From the sand budget, it is possible to determine whether sediment gains and losses are in balance.

(68) Seawall--An erosion response structure specifically designed to or which will withstand wave forces.

(69) Seaward of a dune protection line--The area between a dune protection line and the line of mean high tide.

(70) Small-scale construction--Construction activity less than or equal to 5,000 square feet or habitable structures less than or equal to two stories in height. Both the area beneath the lowest habitable level of an elevated structure and a cupola (i.e. "widow's walk") with an area of 400 square feet or less on the top of the second habitable story are not considered stories for the purpose of this section. Single-family habitable structures are typical of this type of construction.

(71) Structure--Includes, without limitation, any building or combination of related components constructed in an ordered scheme that constitutes a work or improvement constructed on or affixed to land.

(72) Swales--Low areas within a dune complex located in some portions of the Texas coast which function as natural rainwater collection areas and are an integral part of the dune complex.

(73) Unique flora and fauna--Endangered or threatened plant or animal species listed pursuant to 16 United States Code Annotated, §1531 et seq., the Endangered Species Act of 1973, and/or the Parks and Wildlife Code, Chapter 68, or any plant or animal species that a local government has determined in their local beach/dune plan are rare or uncommon.

(74) Washover areas--Low areas that are adjacent to beaches and are inundated by waves and storm tides from the Gulf of Mexico. Washovers may be found in abandoned tidal channels or where foredunes are poorly developed or breached by storm tides and wind erosion.

§15.3. Administration.

(a) Integration of dune protection and beach access programs. The Dune Protection Act and the Open Beaches Act require certain local governments to adopt and implement programs for the preservation of dunes and the preservation and enhancement of use of and access to and from public beaches. These Acts provide for regulation of generally the same activities and the same geographic areas, and their requirements are scientifically and legally related. Local governments required to adopt dune protection and beach access programs shall integrate them into a single plan consisting of procedural and substantive requirements for management of the beach/dune system within their jurisdiction. The authority to integrate such plans is provided pursuant to the Dune Protection Act, the Open Beaches Act, and this subchapter. The local government plans shall be consistent with the requirements of the Open Beaches Act, the Dune Protection Act, and this subchapter, and each shall, whenever possible, incorporate the local government's ordinary land use planning procedures.

(b) Boundary of the public beach. The public beach is defined in the Open Beaches Act, §61.013(c), and §15.2 of this title (relating to Definitions). The line of vegetation is defined in the Open Beaches Act, §61.001(5), and §15.2 of this title. The line of vegetation is typically used to determine the landward extent of the public beach. However, there are portions of the Texas coast where there is no marked vegetation line or the line is discontinuous or modified. In those portions of the coast, the line of vegetation shall be determined consistent with §15.10(b) of this title (relating to General Provisions) and the Open Beaches Act, §61.016 and §61.017.

(1) If there is no clearly marked line of vegetation, the "line of vegetation" delineating the public beach shall be the line of constant elevation connecting two clearly marked lines of vegetation of equal elevation on each side, but if there are no clearly marked lines of vegetation on each side, the "line of vegetation" shall not extend inland further than 200 feet from the seaward line of mean low tide.

(2) If there is no clearly marked line of vegetation, the "line of vegetation" delineating the public beach shall be the line of average elevation connecting two clearly marked lines of vegetation of unequal elevation on each side, but if there are no clearly marked lines of vegetation on each side, the "line of vegetation" shall not extend inland further than 200 feet from the seaward line of mean low tide.

(3) If the vegetation line has been obliterated or is created artificially and there is a vegetation line consistently following a line more than 200 feet from the seaward line of mean low tide, the 200-foot line shall constitute the landward boundary of the area subject to the public easement.

(4) If the commissioner has issued an order under §15.12 of this title (relating to Temporary Orders Issued by the Land Commissioner) or §15.13 of this title (relating to Disaster Recovery Orders) the line of vegetation shall be delineated in accordance with the order(s).

(5) When a Beachfront Construction Certificate/Dune Protection Permit application is submitted to the General Land Office for review and comment, the line of vegetation depicted on any map, aerial photograph, or other documentation shall be subject to verification by the General Land Office.

(6) The determination of the location of the line of vegetation by the commissioner of the General Land Office as provided by the Open Beaches Act, §§61.016 - 61.017 and 61.0171, constitutes prima facie evidence of the landward boundary of the area subject to the public easement until a court adjudication establishes the line in another place.

(c) Beachfront construction certification areas. The General Land Office has the responsibility of protecting the public's right to use and have access to and from the public beach and of providing standards to the local governments certifying construction on land adjacent to the Gulf of Mexico consistent with such public rights. The Open Beaches Act, §61.011(d)(6), limits the geographic scope of the beachfront construction certification area to the land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or the area up to 1,000 feet of mean high tide, whichever distance is greater. For this area, local governments shall prepare a beach access and use program, pursuant to the Open Beaches Act, §61.015, for inclusion in their dune protection and beach access plans to control any adverse effects of beachfront construction on public beach use and access. Applications for beachfront construction certificates shall be reviewed by local governments for consistency with their dune protection and beach access plans.

(d) Critical dune areas and dune protection lines. The commissioner of the General Land Office, as trustee of the public lands of Texas, has the responsibility to identify and protect Texas' critical dune areas that are essential to the protection of coastal public land, public roads, public beaches, and other public resources. Local governments have the responsibility to establish dune protection lines for the purpose of preserving sand dunes within their jurisdiction. The Dune Protection Act, §63.121 and §63.012, respectively, limits the geographic scope of critical dune areas and the location of the dune protection line to that portion of the beach within 1,000 feet of mean high tide of the Gulf of Mexico.

(e) Identification of critical dune areas. Pursuant to the authority provided in the Dune Protection Act, §63.121, the General Land Office has identified critical dune areas as all dunes and dune complexes located within 1,000 feet of mean high tide of the Gulf of Mexico. This identification is based on the determination that all of the various protective functions served by the dunes and dune complexes located within that 1,000 feet are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas are related to dune protection lines in that local governments are required to establish such lines for the purpose of preserving dunes in a location landward of all critical dune areas. Criteria for establishing dune protection lines shall, at a minimum, include the criteria for establishing critical dune areas in this subsection.

(f) Establishment of dune protection lines. Pursuant to the authority provided in the Dune Protection Act, §63.011, local governments shall establish and maintain dune protection lines which preserve, at a minimum, the dunes within the critical dune areas as defined in this subchapter. The establishment of the line should include the protection of critical dune areas from erosion caused by natural forces and development on adjacent land. Accordingly, the Dune Protection Line should be established in a location that will allow local governments to implement Texas Natural Resources Code, §33.607. A local government must conduct a field inspection to determine the approximate location of the line unless it proposes to establish or relocate its line at a distance of 1,000 feet of mean high tide of the Gulf of Mexico, as that 1,000 feet is the maximum extent of the local government's jurisdiction for establishing dune protection lines.

(g) Deadline for establishment of dune protection lines. Local governments shall establish dune protection lines as part of the dune protection component of their local plans. The local plans shall be submitted to the state no later than 180 days after the effective date of this subchapter. Therefore, local governments shall establish dune protection lines no later than 180 days after this subchapter goes into effect.

(h) Information required regarding dune protection lines. Local governments are required to submit the following information to the General Land Office to allow state evaluation of the adequacy of the dune protection line location: a map or drawing of the line; a written description of the line; or a written description and a map or drawing. This information shall be included in the local government's dune protection and beach access plan and must clearly designate for the public and the state the location of the line and the location of dunes seaward of the line. All maps, drawings, or descriptions shall incorporate sufficient elements of the Texas State Plane Coordinate System to enable such description to be located on the ground and shall be tied to and/or include the Texas State Plane Coordinates for two or more monumented points along any described boundary. Each local government shall file a map or drawing or description of its dune protection line with the clerk of the county or municipality establishing the line.

(i) State assistance in the establishment of local government dune protection lines. The General Land Office may assist and advise local governments in establishing or modifying a dune protection line. Pursuant to the Dune Protection Act, §63.013, local governments shall notify the General Land Office of the establishment of dune protection lines and any subsequent change in a line. Upon such notification, the General Land Office shall review the location of the line by examining the map or description of the line submitted to the state and by conducting field inspections, as necessary. The General Land Office will review the location of the line to determine whether the line meets the geographic standard of being located landward of all critical dune areas. If the General Land Office is satisfied that the line meets that geographic standard, the General Land Office will notify the local government of this finding in writing. If the line does not meet that geographic standard, the General Land Office will assist and advise the local government in adjusting the line.

(j) State review of dune protection line location. Each local government shall submit the information regarding the location of the dune protection line, as required in subsection (h) of this section, to the General Land Office as part of its dune protection and beach access plan. In determining whether to approve the local plan, the General Land Office will review the various components of the plan, including the adequacy of the location of a local government's dune protection line (with respect to the protection of critical dune areas), based on the geographic standards provided in subsection (i) of this section.

(k) Local government review of dune protection line location. Each local government shall review its dune protection line every five years to determine whether the line is adequately located to achieve the purpose of preserving critical dune areas. In addition to the five-year review, each local government shall review the adequacy of the location of the line within 90 days after a tropical storm or hurricane affects the portion of the coast in its jurisdiction.

(l) Provisions for public hearings on dune protection lines. Local governments shall provide notice of a public hearing to consider establishing or modifying a dune protection line by publishing such notice at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing. Notice shall be given to the General Land Office not less than one week nor more than three weeks before the hearing. In the notice to the General Land Office, local governments shall also include the information described in subsection (h) of this section.

(m) Local government authority. Local governments shall include in the plans submitted to the General Land Office citations of all statutes, policies, and ordinances which demonstrate the authority of the local government to implement and enforce the plan in a manner consistent with the requirements of this subchapter. Local government plans shall also demonstrate the coordination, on the local level, of the dune protection, beach access, erosion response, and flood protection programs (if participating in the National Flood Insurance Program under the National Flood Insurance Act). Each local government shall integrate these programs into one plan for the management of the beach/dune system within its jurisdiction.

(n) Content of local government dune protection and beach access plans. Local government plans shall contain procedural mechanisms and substantive requirements necessary for compliance with this subchapter, the Dune Protection Act, the Open Beaches Act and Texas Natural Resources Code §33.607. Local governments shall attach copies of this subchapter, the Dune Protection Act, and the Open Beaches Act to their plans, and their plans shall state that these state laws are incorporated into the plans. A local government shall also state in its plan that any person in violation of the incorporated state laws is in violation of its local plan.

(o) Consultation on and submission of local government plans to the General Land Office. Local governments shall submit dune protection plans, beach access plans, erosion response plans under Texas Natural Resources Code Chapter 33, and 31 TAC §15.17, and any amendments to those plans to the General Land Office for review, comment, and certification as to compliance with this subchapter, the Dune Protection Act, and the Open Beaches Act.

(1) A local government's governing body must formally approve the plan or amendments to the plan prior to submission to the General Land Office for certification. Prior to formally approving its plan, a local government may consult with or request legal and technical advice from the General Land Office on meeting the requirements for state agency approval. The General Land Office will provide written guidance on the form and content of the plan or amendment prior to formal approval upon request by a local government.

(2) Review of plan and amendments. The General Land Office shall either grant or deny certification of a local government's formally approved dune protection and beach access plan or any amendments within 90 days of receipt of the plan.

(A) Depending upon the degree or complexity of modifications contained in the plan amendment, the local government may request a review period shorter than 90 days based on the following guidelines:

(i) An expedited review period of 30 days may be requested for review of a plan amendment that is administrative in nature and does not contain variances nor substantially alter beach access or dune protection.

(ii) A standard review period of 60 days may be requested for review of a plan amendment that does not contain any changes to beach user fees, beach access points, changes to vehicular access, nor substantially alter beach access or dune protection.

(iii) The local government shall provide a reasoned justification with any request for a review period of less than 90 days. It must include a detailed description of the proposed changes that will result from the amendment.

(iv) The General Land Office will make a determination on the eligibility of an amendment for a shortened review period and notify the local government of the determination within 10 working days (to run concurrently with the applicable review period) from the date the request and complete package of information regarding the proposed amendment is received. Review of plan amendments that do not qualify for a shortened review period will be completed by the General Land Office within the allowed 90 day period.

(B) In the event of denial, the General Land Office shall send the plan back to the local government with a statement of specific objections and the reasons for denial of certification, along with suggested modifications. On receipt, the local government shall revise and resubmit the plan for review.

(3) The General Land Office's certification of local government plans shall be by adoption into the rules authorized under the Texas Natural Resources Code, §61.011. The rules adopted by the General Land Office to certify plans will consist of state approval of the plans, but the text of plans will not be adopted by the General Land Office.

(4) A local government may adopt a new or amend their dune protection and beach access plan by submitting the plans or proposed changes to the General Land Office for review, comment, and certification. A request for approval of a plan or any amendments to a plan must include the governing body's formal approval, a description of all major proposed changes, and a version of the plan identifying all proposed changes.

(5) A local government may request General Land Office certification of a plan or a plan amendment that includes a variance regarding any requirement or prohibition of this chapter; however, the local government must include in writing a reasoned justification and clearly demonstrate to the General Land Office and public how the variance is equal to or more protective of the goals and policies contained in §15.1 of this title (relating to Policy).

(p) Submission deadline for dune protection and beach access plans. Local governments shall submit dune protection and beach access plans to the General Land Office no later than 180 days from the effective date of this subchapter. If the General Land Office does not approve a plan, the local government shall submit revisions of the plan until the plan is approved. However, any local government that submits a revised plan that has not been modified to address the state comments regarding the statutory requirements and the minimum standards identified in this subchapter is presumed to be in violation of this subchapter, the Open Beaches Act, and the Dune Protection Act. Local governments that fail to submit plans within 180 days of the effective date of this subchapter will be liable for penalties as provided in §15.9 of this title (relating to Enforcement, Penalties and Remedial Orders). Further, local governments that fail to submit plans by that deadline will not be authorized to permit construction within the geographic scope of this subchapter.

(q) Compliance with the Open Beaches Act and exemptions from local government plan requirements.

(1) Local government dune protection and beach access plans shall not include the following areas, which are exempt from regulation by local governments:

(A) national park areas, national wildlife refuges, or other designated national natural areas;

(B) state park areas, state wildlife refuges, or other designated state natural areas; and

(C) beaches on islands and peninsulas not accessible by public road or ferry facility for as long as that condition exists.

(2) The Open Beaches Act applies to state and national park and wildlife management areas located on islands or peninsulas, regardless of whether the park is accessible by public road or ferry, as provided for in Texas Natural Resources Code, §61.0211.

(r) State-owned or public land not exempt from local government plans. Local government plans shall apply to all state-owned or public land other than parks and refuges, as provided for in Texas Natural Resources Code, §61.022 and §63.015, subject to the provisions of the Texas Natural Resources Code, §§31.161 and 31.167.

(s) Acts prohibited without a dune protection permit or beachfront construction certificate. An activity requiring a dune protection permit may typically also require a beachfront construction certificate and vice versa. Local governments shall, whenever possible, issue permits and certificates concurrently when an activity requires both. In their dune protection and beach access plans, local governments may combine the dune protection permit and the beachfront construction certificate into a single permit or a two-part permit; however, they are not required to do so.

(1) Acts prohibited without a dune protection permit. Unless a dune protection permit is properly issued by a local government authorizing the conduct, no person shall:

(A) damage, destroy, or remove a sand dune or a portion of a sand dune seaward of a dune protection line or within a critical dune area; or

(B) kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of a dune protection line or within a critical dune area.

(2) Activities exempt from dune protection permit requirements. Pursuant to the Dune Protection Act, §63.052, the following activities are exempt from the requirement for a dune protection permit, but are subject to the requirements of the Open Beaches Act and the rules promulgated under the Open Beaches Act. Where local governments have separate authority to regulate the following activities, persons shall comply with the local laws as well. The activities exempt from the dune protection permit requirements are:

(A) exploration for and production of oil and gas and reasonable and necessary activities directly related to such exploration and production, including construction and maintenance of production and gathering facilities located in a critical dune area which serve wells located outside of a critical dune area, provided that such facilities are located no farther than two miles from the well being served;

(B) grazing livestock and reasonable and necessary activities directly related to grazing; and

(C) recreational activities as defined in §15.2 of this title other than operation of a recreational vehicle.

(3) Acts prohibited without a beachfront construction certificate. No person shall cause, engage in, or allow construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public use of and access to and from public beaches unless the construction is properly certified by the appropriate local government as consistent with its local plan, this subchapter, and the Open Beaches Act.

(4) No person shall violate Texas Natural Resources Code Chapter 61 and 63, these rules, the requirements of a local government plan, or the terms of a certificate or permit issued pursuant to this chapter.

(5) Dune protection permit and beachfront construction certificate application requirements. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make a determination regarding a permit or certificate. Local governments may require more information, but they shall require that applicants for dune protection permits and beachfront construction certificates provide, at a minimum, the following items and information.

(A) Dune protection permit application requirements for large- and small-scale construction. For all proposed construction, local governments shall require applicants to submit the following items and information:

(i) the name, address, phone number, and, if applicable, electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(ii) a complete legal description of the tract and a statement of its size in acres or square feet;

(iii) a description of the proposed structures, the number of structures, and whether the structures are amenities or habitable structures;

(iv) the number of parking spaces;

(v) the approximate percentage of existing and finished open spaces (those areas completely free of structures);

(vi) the floor plan and elevation view of the structure proposed to be constructed or expanded;

(vii) the approximate duration of the construction;

(viii) a description (including location) of any existing dune walkovers and walkways, and design plans and elevation views for any proposed walkways or dune walkovers on the tract;

(ix) a grading and layout plan identifying all existing and proposed elevations (in reference to the National Oceanic and Atmospheric Administration data), existing contours of the project area (including the location of dunes and swales), and proposed contours for final grade;

(x) current color photographs of the site which clearly show the current location of the vegetation line and the existing dunes on and immediately adjacent to the tract;

(xi) a description of the effects of the proposed activity on the beach/dune system which cannot be avoided should the proposed activity be permitted, including, but not limited to, damage to dune vegetation, alteration of dune size and shape, and changes to dune hydrology;

(xii) a comprehensive mitigation plan which conforms with the requirements in §15.4 of this title (relating to Dune Protection Standards) and §15.7 of this title (relating to Local Government Management of the Public Beach) which, at a minimum, includes a detailed description of the methods which will be used to avoid, minimize, mitigate, and/or compensate for any adverse effects on dunes or dune vegetation;

(xiii) where a mitigation plan is required, the contact information for all landowners immediately adjacent to the tract and affirmation by the applicant that the adjacent landowners will be provided with notice of the hearing at least 10 days prior to the hearing on the application;

(xiv) proof of the applicant's financial capability acceptable to the local government to mitigate or compensate for adverse effects on dunes and dune vegetation;

(xv) an accurate map, site plan, survey, or plat of the site identifying:

(I) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(II) the location of the property lines and a notation of the legal description of adjoining tracts;

(III) the location of the dune protection line, the line of vegetation, proposed and existing structures, and the project area of the proposed construction on the tract;

(IV) proposed roadways and driveways and proposed landscaping activities on the tract;

(V) the location of any retaining walls, seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract and within 100 feet of the common property line; and

(VI) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(B) Certificate application requirements for large- and small-scale construction. For all proposed construction, local governments shall require applicants to submit the following items and information:

(i) the name, address, phone number, and, if applicable, electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(ii) a complete legal description of the tract and a statement of its size in acres or square feet;

(iii) a description of the proposed structures, the number of structures, and whether the structures are amenities or habitable structures;

(iv) a statement written by the applicant affirming that the construction, the completed structure, and use of or access to and from the structure will not adversely affect the public beach or public beach access ways or exacerbate erosion;

(v) the approximate duration of the construction;

(vi) a description (including location) of any existing dune walkovers and walkways, and design plans and elevation views for any proposed walkways or dune walkovers on the tract;

(vii) current color photographs of the site which clearly show the current location of the vegetation line and any dunes on the tract which are seaward of the dune protection line;

(viii) an accurate map, site plan, survey, or plat of the site identifying:

(I) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(II) the location of the property lines and a notation of the legal description of adjoining tracts;

(III) the location of the proposed construction and the distance between the proposed construction and mean high tide, the line of vegetation, the dune protection line, and the landward limit of the beachfront construction area;

(IV) the location of proposed and existing structures, and the size (in acres or square feet) of the proposed project area;

(V) proposed roadways and driveways;

(VI) proposed landscaping activities within 200 feet of the line of vegetation, including the installation of fencing; and

(VII) the location of any retaining walls, seawalls, or erosion response structures on the tract and on the properties immediately adjacent to the tract and within 100 feet of the common property line.

(C) Permit and certificate applications for large-scale construction. For all proposed large-scale construction, local governments shall require applicants to submit the following additional items and information:

(i) if the tract is located in a subdivision and the applicant is the owner or developer of the subdivision, a certified copy of the recorded plat of the subdivision, or, if not a recorded subdivision, a plat of the subdivision certified by a licensed surveyor, (if the area is located within an unplatted tract, a survey will suffice) and a statement of the total area of the subdivision in acres or square feet;

(ii) in the case of multiple-unit dwellings, the number of units proposed;

(iii) alternatives to the proposed location of construction on the tract or to the proposed methods of construction which would cause fewer or no adverse effects on dunes and dune vegetation or less impairment of beach access; and

(iv) the proposed activity's impact on the natural drainage pattern of the site and the adjacent lots.

(D) Submission of readily available information with permit and certificate applications. For all proposed construction (large- and small-scale), if applicants already have the following items and information, local governments shall require them to be submitted in addition to the other information required:

(i) the most recent local historical erosion rate data (as determined by the University of Texas at Austin, Bureau of Economic Geology) and the activity's potential impact on coastal erosion; and

(ii) a copy of the FEMA "Elevation Certificate."

(E) Submission of information by local governments. For all proposed construction (large- and small-scale), local governments shall provide to the General Land Office the following information:

(i) a copy of the community's most recent flood insurance rate map identifying the site of the proposed construction;

(ii) a preliminary determination as to whether the proposed construction complies with all aspects of the local government's dune protection and beach access plan;

(iii) the activity's potential impact on the community's natural flood protection and protection from storm surge;

(iv) a description as to how the proposed beachfront construction complies with and promotes the local government's beach access policies and requirements, particularly, the dune protection and beach access plan's provisions relating to public beach ingress/egress, off-beach parking, and avoidance of reduction in the size of the public beach due to erosion; and

(v) copies of aerial photographs of the proposed construction site with a delineation of the footprint of the proposed construction.

(F) Dissemination of erosion data and other technical information. For all proposed construction (large- and small-scale), the General Land Office shall be the state contact for erosion rate data questions and supply available technical information to a local government, upon request.

(6) Master plan. Local governments may adopt separate ordinances or county commissioners court orders authorizing master plans located within the geographic scope of this subchapter. These ordinances and orders shall be consistent with and address the dune protection and beach access requirements of this subchapter, the Dune Protection Act and Open Beaches Act. The ordinances and orders shall be submitted to the General Land Office for review and approval to ensure consistency with this subchapter. When considering approval of a master planned development or construction plans and setting conditions for operations under such plans, local governments shall consider:

(A) the plan's potential effects on dunes, dune vegetation, public beach use and access, and the applicant's proposal to mitigate for such effects throughout the construction;

(B) the contents of the master planned development; and

(C) whether any component of the master plan, such as installation of roads or utilities, or construction of structures in critical dune areas or seaward of a dune protection line, will subsequently require a dune protection permit or a beachfront construction certificate. If a dune protection permit or beachfront construction certificate will be necessary, the local government shall require the developer to apply for the permit and/or certificate as part of the master plan approval process. This requirement only applies if the local government is authorizing activities impacting critical dune areas and public beach use and access under its dune protection and beach access plan.

(7) General Land Office comments.

(A) A person proposing to conduct an activity for which a permit or certificate is required shall submit a complete application to the appropriate local government. The local government shall forward the complete application, any associated material, and, where applicable, notice of public hearing to the General Land Office. The application, hearing notice, any documents associated with the application, and information as to when the decision will be made must be received by the General Land Office no later than 10 working days for small-scale construction and 30 working days for large-scale construction before the date of the local government's public hearing on the application or when the local government is first scheduled to act on the permit or certificate. A local government may act on such applications following the public hearing or a decision by the commissioner's court or municipal governing body if the General Land Office received the application within the proper time frame and the General Land Office provides comments or does not submit comments on the application to the local government.

(B) The General Land Office may submit comments on the proposed activity to the local government. The review period for comments of 10 working days for small-scale construction and 30 working days for large-scale construction is initiated only after the receipt by the General Land Office of all information required by this section.

(8) Local government review. When determining whether to approve a proposed activity, a local government shall review and consider:

(A) the permit or certificate application;

(B) the proposed activity's consistency with this subchapter and the local government's dune protection and beach access plan, including the dune protection and beachfront construction standards contained in both;

(C) any other law relevant to dune protection and public beach use and access which affects the activity under review;

(D) the comments of the General Land Office; and

(E) any other information the local government may consider useful to determine consistency with the local government's

dune protection and beach access plan, including resource information made available to them by federal and state natural resource entities and landowners immediately adjacent to the tract. A local government shall not issue a dune protection permit or beachfront construction certificate that is inconsistent with its plan, this subchapter, and other state, local, and federal laws related to the requirements of the Dune Protection Act and Open Beaches Act.

(t) Term, amendment, and renewal of permits and certificates.

(1) A local government's dune protection permits or beachfront construction certificates shall be valid for no more than three years from the date of original issuance, unless additional time has been provided by a renewal.

(2) Prior to the expiration of a certificate or permit, a local government may renew a dune protection permit or beachfront construction certificate allowing proposed construction to continue if there are no material changes to the site or proposed activities and the activity in the application for renewal meets the applicable state and local standards.

(A) As part of a renewal request, the permittee shall supplement the information provided in the original permit or certificate application materials with a statement describing the absence of or any changes to the site, project plans, or any other original information provided by the permittee.

(B) For the purpose of maintaining administrative records, local governments shall keep all original application and renewal materials submitted by any applicant as provided in subsection (u) of this section.

(C) Each renewal of a permit and certificate allowing construction shall be valid for no more than 90 days.

(D) A local government shall issue only two renewals for each permit or certificate. After the local government issues two renewals, the permittee must apply for a new permit or certificate.

(3) Local governments that choose to authorize master plans may adopt a different term limit for permits and certificates only if the master plans are authorized under a separate, General Land Office-approved ordinance or county commissioner's court order. Each master plan will be deemed to be a new local ordinance or county commissioners court order subject to state approval regarding effects on dunes, dune vegetation, and public beach use and access.

(4) Any dune protection permit or beachfront construction certificate allowing beachfront construction issued by a local government pursuant to its dune protection and beach access plan shall be voidable by the local government under the following circumstances.

(A) The permit or certificate is inconsistent with this subchapter or the local government's plan at the time the permit or certificate was issued.

(B) A material change occurs after the permit or certificate is issued.

(C) A permittee fails to disclose any material fact in the application.

(5) In the event of a material change to the site conditions or the proposed construction since approval of the original application, a local government shall require that an applicant or permittee amend an application for a permit or certificate, or obtain a new permit or certificate. All information relevant to the material changes, such as site conditions, project plans, and required changes to mitigation or compensation, must be disclosed by the applicant or permittee to the local government. The local government will submit the amended application for a permit or certificate or new application to the General Land Office for review and comment.

(6) A permit or certificate automatically terminates in the event the certified construction comes to lie within the boundaries of the public beach by artificial means or by action of storm, wind, water, or other naturally influenced causes. Nothing in the certificate shall be construed to authorize the construction, repair, or maintenance of any construction within the boundaries of the public beach at any time.

(u) Administrative record.

(1) Local governments shall compile and maintain an administrative record which demonstrates the basis for each final decision made regarding the issuance of a dune protection permit or beachfront construction certificate. The administrative record shall include copies of the following:

(A) the permit, certificate, and any other relevant authorization that was issued in response to the application or in connection with the permit or certificate issued;

(B) all materials the local government received from the applicant as part of or regarding the permit or certificate application or any association renewal or amendment;

(C) the transcripts, if any, or the minutes and recordings of the local government's meeting during which a final decision regarding the permit or certificate was made; and

(D) all comments and other correspondence sent or received by the local government regarding the permit or certificate.

(2) Local governments shall keep the administrative record for a minimum of four years from the expiration date of a permit or certificate.

(A) Local governments shall send to the General Land Office upon request a copy of those portions of the administrative record that were not originally sent to the General Land Office for permit or certificate application review and comment. The record must be received by the General Land Office no later than 10 working days after the local government receives the request.

(B) The General Land Office shall notify the appropriate permittee of the request for a copy of the administrative record from the local government. Upon request of the permittee, a local government shall provide to the permittee copies of any materials in the administrative record regarding the permit or certificate which were not submitted to the local government by the permittee (i.e., the permit application) or given to the permittee by the local government (i.e., the permit).

§15.4. Dune Protection Standards.

(a) Dune protection required. This section provides the standards and procedures local governments shall follow in issuing, denying, or conditioning dune protection permits. A local government shall protect dunes and dune vegetation from adverse effects resulting directly or indirectly from construction in a critical dune area or seaward of its dune protection line, as cumulatively required by the Dune Protection Act, this subchapter, and that local government's dune protection and beach access plan. No person shall initiate or perform construction in violation of TNRC §§63.051, 63.091, or this chapter.

(b) Procedures for local government permit determinations and permit issuance. Before issuing a dune protection permit, a local government shall make the following determinations.

(1) The proposed activity is not a prohibited activity as defined in subsection (c) of this section, §15.5 of this title (relating to

Beachfront Construction Standards), or §15.6 of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(2) The proposed activity will not materially weaken dunes or materially damage dune vegetation based on the application of technical standards resulting in substantive findings under subsection (d) of this section.

(3) There are no practicable alternatives to the proposed activity and the impacts cannot be avoided as provided in subsection (f)(1) of this section.

(4) The applicant's mitigation plan will adequately minimize, mitigate, and/or compensate for any unavoidable adverse effects, as provided in subsection (f)(2) - (5) of this section and the applicant has affirmatively demonstrated the ability to mitigate adverse effects on dunes and dune vegetation.

(5) Where mitigation is required, that the applicant has provided landowners immediately adjacent to the tract with notice of the hearing at least 10 days prior to the hearing on the application.

(c) Prohibited activities. A local government shall not issue a permit or certificate authorizing the following actions within critical dune areas or seaward of that local government's dune protection line:

(1) activities that are likely to result in the temporary or permanent removal of sand from the portion of the beach/dune system located on or adjacent to the construction site, including:

(A) moving sand to a location landward of the critical dune area or dune protection line; and

(B) temporarily or permanently moving sand off the site, except for purposes of permitted mitigation, compensation, or an approved dune restoration or beach nourishment project and then only from areas where the historical accretion rate is greater than two feet per year, and the project does not cause any adverse effects on the sediment budget;

(2) depositing sand, soil, sediment, or dredged spoil which contains the hazardous substances listed in Volume 40 of the Code of Federal Regulations, Part 302.4, in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments;

(3) depositing sand, soil, sediment, or dredged spoil which is of an unacceptable mineralogy or grain size when compared to the sediments found on the site (this prohibition does not apply to materials related to the installation or maintenance of public beach access roads running generally perpendicular to the public beach);

(4) creating dredged spoil disposal sites, such as levees and weirs, without the appropriate local, state, and federal permits;

(5) constructing or operating industrial facilities not in full compliance with all relevant laws and permitting requirements prior to the effective date of this subchapter;

(6) operating recreational vehicles on a sand dune;

(7) mining dunes;

(8) constructing concrete slabs or other impervious surfaces within 200 feet landward of the line of vegetation. Local governments may authorize construction of a concrete slab or other impervious surface beneath a habitable structure elevated on pilings provided the slab will not extend beyond the footprint of the structure and will not be structurally attached to the building's foundation. Local governments shall not authorize the construction, outside the footprint of a habitable structure, of a concrete slab or other impervious surface whose area exceeds 5.0% of the footprint of the habitable structure. The use of permeable materials such as brick pavers, limestone, or gravel is recommended for drives or parking areas;

(9) depositing trash, waste, or debris including inert materials such as concrete, stone, and bricks that are not part of the permitted on-site construction;

(10) constructing cisterns, septic tanks, and septic fields seaward of any structure serviced by the cisterns, septic tanks, and septic fields; and

(11) detonating bombs or explosives.

(d) Technical standards for local government determination as to material weakening of dunes and material damage of dune vegetation within a critical dune area or seaward of a dune protection line. A local government may approve a permit application only if it finds as a fact, after a full investigation, that the particular conduct proposed will not materially weaken any dune or materially damage dune vegetation or reduce the effectiveness of any dune as a means of protection against erosion and high wind and water. In making the finding as to whether such material weakening or material damage will occur, a local government shall use the following technical standards. Failure to meet any one of these standards will result in a finding of material weakening or material damage and the local government shall not approve the application for the construction as proposed.

(1) The activity shall not result in the potential for increased flood damage to the proposed construction site or adjacent property.

(2) The activity shall not result in runoff or drainage patterns that aggravate erosion on or off the site.

(3) The activity shall not result in significant changes to dune hydrology.

(4) The activity shall not disturb unique flora or fauna or result in adverse effects on dune complexes or dune vegetation.

(5) The activity shall not significantly increase the potential for washovers or blowouts to occur.

(e) Local government considerations when determining whether to issue a dune protection permit. Local governments shall consider the following items and information when determining whether to grant a permit:

(1) all comments submitted to the local government by the General Land Office;

(2) cumulative impacts and indirect effects of the proposed construction on all dunes and dune vegetation within critical dune areas or seaward of a dune protection line;

(3) cumulative impacts and indirect effects of other activities on dunes and dune vegetation located on the proposed construction site;

(4) the pre-construction type, height, width, slope, volume, and continuity of the dunes, the pre-construction condition of the dunes, the type of dune vegetation, and percent of vegetative cover on the site;

(5) the most recent historical erosion rate as determined by the University of Texas at Austin, Bureau of Economic Geology, and whether the proposed construction may alter dunes and dune vegetation in a manner that may aggravate erosion;

(6) the applicant's mitigation plan for any unavoidable adverse effects on dunes and dune vegetation and the effectiveness, feasi-

bility, and desirability of any proposed dune reconstruction and revegetation;

(7) the impacts on the natural drainage patterns of the site and adjacent property;

(8) any significant environmental features of the potentially affected dunes and dune vegetation such as their value and function as floral or faunal habitat or any other benefits the dunes and dune vegetation provide to other natural resources;

(9) wind and storm patterns including a history of washover patterns;

(10) location of the site on the flood insurance rate map; and

(11) success rates of dune stabilization projects in the area.

(f) Mitigation. The mitigation sequence shall be used by local governments in determining whether to issue a permit, after the determination that no material weakening of dunes or material damage to dunes or dune vegetation will occur within critical dune areas or seaward of the dune protection line. The mitigation sequence consists of the following steps: avoiding the impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; and compensating for the impact by replacing resources lost or damaged. If, for any reason, an applicant cannot demonstrate the ability to mitigate adverse effects on dunes and dune vegetation, the local government is not authorized to issue the permit. A local government shall require a permittee to use the mitigation sequence, as provided in this subsection, as a permit condition if that local government finds that an activity will result in any adverse effects on dunes or dune vegetation seaward of a dune protection line or on critical dune areas and add a permit condition that the applicant will mitigate for the adverse effects in accordance with the mitigation plan. When a mitigation plan is required, the applicant must provide landowners immediately adjacent to the tract with notice of the hearing on the permit at least 10 days prior to the hearing. Such notice to adjacent landowners may be made by sending a copy of the hearing notice by certified mail to the adjacent property owner's address listed in the county central appraisal district records.

(1) Avoidance. Avoidance means avoiding the effect on dunes and dune vegetation altogether by not taking a certain action or parts of an action. Local governments shall require permittees to avoid adverse effects on dunes and dune vegetation. Local governments shall not issue a permit allowing any adverse effects on dunes and dune vegetation located in critical dune areas or seaward of the dune protection line unless the applicant proves there is no practicable alternative to the proposed activity, proposed site or proposed methods for conducting the activity, and the activity will not materially weaken the dunes or dune vegetation. Local governments shall require applicants to include information as to practicable alternatives in the permit application. Local governments shall review the permit application to determine whether the applicant has considered all practicable alternatives and whether one of the practicable alternatives would cause no adverse effects on dunes and dune vegetation than the proposed activity. Local governments shall require applicants to employ construction methods which will have no adverse effects, unless the applicant can demonstrate that the use of such methods is not practicable. Local governments shall require that permittees undertaking construction in critical dune areas or seaward of a dune protection line use the following avoidance techniques.

(A) Routing of nonexempt pipelines. Nonexempt pipelines are any pipelines other than those subject to the exemption in §15.3(s)(2)(A) of this title (relating to Administration). Local governments shall not allow permittees to construct nonexempt pipelines within critical dune areas or seaward of a dune protection line unless there is no practicable alternative.

(B) Location of construction and beach access. Local governments shall require permittees proposing construction seaward of dune protection lines and within critical dune areas to locate all such construction as far landward of dunes as practicable. Local governments shall not restrict construction which provides access to and from the public beach pursuant to this provision.

(C) Location of roads. Local governments shall require permittees constructing roads parallel to beaches to locate the roads as far landward of critical dune areas as practicable and shall not allow permittees to locate such roads within 200 feet landward of the line of vegetation.

(D) Artificial runoff channels. Local governments shall not permit construction of new artificial channels, including stormwater runoff channels, unless there is no practicable alternative.

(2) Minimization. Minimization means minimizing effects on dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. Local governments shall require that applicants minimize adverse impacts to dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. If an applicant for a dune protection permit demonstrates to the local government that adverse effects on dunes or dune vegetation cannot be avoided and the activity will not materially weaken dunes and dune vegetation, the local government may issue a permit allowing the proposed alteration, provided that the permit contains a condition requiring the permittees to minimize adverse effects on dunes or dune vegetation to the greatest extent practicable.

(A) Routing of nonexempt pipelines. Nonexempt pipelines are any pipelines other than those subject to the exemption in §15.3(s)(2)(A) of this title (relating to Administration). If a permittee demonstrates that there is no practicable alternative to crossing critical dune areas, the local government may allow a permittee to construct a pipeline across previously disturbed areas, such as blowout areas. Where use of previously disturbed areas is not practicable, the local government shall require the permittees to avoid adverse effects on or disturbance of dune surfaces and shall require the mitigation sequence if the adverse effects are unavoidable.

(B) Location of construction and beach access.

(i) Local governments shall require permittees to minimize construction and pedestrian traffic on or across dune areas to the greatest extent practicable, taking into account trends of dune movement and beach erosion in that area.

(ii) Local governments may allow permittees to route private and public pedestrian beach access to and from the public beach through washover areas or over elevated walkways in their approved dune protection and beach access plans. All pedestrian access routes and walkways shall be clearly and conspicuously marked with permanent signs by the local government if the beach access is public.

(iii) When approving proposed plats for subdivision, multiple dwelling, or commercial facilities, or other new developments, local governments should use their authority to limit private access points to the public beach to the minimum amount needed to service the development.

(iv) Local governments shall minimize proliferation of excessive private access by permitting only the minimum necessary private beach access points to the public beach from any proposed subdivision, multiple dwelling, or commercial facility. In some cases, the minimum beach access points may be only one access point. In determining the appropriate grouping of access points, the local government shall consider the size and scope of the development.

(v) Local governments and the owners and operators of commercial facilities, subdivisions, and multiple dwellings shall post signs in areas where pedestrian traffic is high, explaining the functions of dunes and the importance of vegetation in preserving dunes.

(vi) Local governments shall not allow a permittee to construct or maintain a structure on previously mitigated or compensated dunes that are seaward of a dune protection line, where practicable, except for specifically permitted dune walkovers or similar access ways.

(C) Location of roads.

(i) Wherever practicable, local governments may require permittees to locate beach access roads in washover areas, blowout areas, or other areas where dune vegetation has already been disturbed; local governments shall require permittees to build such roads along the natural land contours, to minimize the width of such roads, and where possible, to improve existing access roads with elevated berms near the beach that prevent channelization of floodwaters. Where practicable, local governments shall require permittees to locate roads at an oblique angle to the prevailing wind direction.

(ii) Wherever practicable, local governments shall provide vehicular access to and from beaches by using existing roads or from roads constructed in accordance with paragraph (1)(C) of this subsection and clause (i) of this subparagraph. Local governments shall not apply this provision in a manner which restricts public beach access.

(iii) Local governments shall include in any permit authorizing the construction of roads a permit condition prohibiting persons from using or parking any motor vehicle on, through, or across dunes in critical dune areas except for the use of vehicles on designated access ways.

(D) Artificial runoff channels. Local governments shall only authorize construction of artificial runoff channels (that direct stormwater flow) if the channels are located in a manner which avoids erosion and unnecessary construction of additional channels. Local governments shall require that permittees make maximum use of natural or existing drainage patterns, whenever practicable, when locating new channels and stormwater retention basins. However, if new channels are necessary, local governments shall require that permittees direct all runoff inland and not to the Gulf of Mexico through critical dune areas, where practicable.

(3) Mitigation. Mitigation means repairing, rehabilitating, or restoring affected dunes and dune vegetation. Local governments shall require permittees, as a condition of the permit, to mitigate all adverse effects to dunes and dune vegetation which will occur after a permittee has avoided and minimized such adverse effects to the greatest extent practicable. Local governments shall require the permittee to mitigate damage to dunes and dune vegetation so as to provide, when compared to the pre-existing dunes and dune vegetation, an equal or greater area of vegetative cover and dune volume, an equal or greater degree of protection against damage to natural resources, and an equal or greater degree of protection against flood and erosion damage and other nuisance conditions to adjacent properties. When determining the appropriate mitigation method, local governments shall consider the recommendations of the General Land Office, federal and state natural resource agencies, and dune vegetation experts.

(A) Mitigation standards for dunes. Local governments may allow a permittee to mitigate adverse effects on dunes using vegetative or mechanical means. Local governments shall require that a permittee proposing to restore dunes and dune vegetation as provided in §15.7(e) of this title (relating to Local Government Management of the Public Beach) use the following techniques:

(i) restore dunes to approximate the naturally formed dune position or location, contour, volume, elevation, vegetative cover, and sediment content in the area;

(ii) allow for the natural dynamics and migration of dunes;

(iii) use discontinuous temporary sand fences or an approved method of dune restoration, where appropriate, considering the characteristics of the site; and

(iv) restore or repair dunes using indigenous vegetation that will achieve the same protective capability or greater capability as the surrounding natural dunes.

(B) Stabilization of critical dune areas. Local governments shall give priority for stabilization to blowouts and breaches when permitting restoration of dunes. Before permitting stabilization of washover areas, local governments shall:

(i) assess the overall impact of the project on the beach/dune system;

(ii) consider any adverse effects on hydrology and drainage which will result from the project; and

(iii) require that equal or better public beach access be provided to compensate for impairment of any public beach access previously provided by the washover area.

(4) Compensation. Compensation means compensating for effects on dunes and dune vegetation by replacing or providing substitute dunes and dune vegetation. Local governments shall require the permit holder to compensate for the adverse effects to dunes and dune vegetation at a 1:1 ratio. Compensation may be undertaken both on-site and off-site; however, off-site compensation may only be allowed as provided in subparagraph (B) of this paragraph.

(A) On-site compensation. On-site compensation consists of replacement of the affected dunes or dune vegetation on the property where the damage to dunes and dune vegetation occurred and seaward of the local dune protection line. A local government shall require permittees to undertake compensation on the construction site, where practicable. A local government shall require a permittee to follow the requirements provided in paragraph (3)(A) of this subsection and paragraph (4)(C)(iii) - (iv) of this subsection when replacing dunes or dune vegetation.

(B) Off-site compensation. Off-site compensation consists of replacement of the affected dunes or dune vegetation in a location outside the boundary of the property where the damage to dunes and dune vegetation occurred. The landward limit of allowable off-site mitigation is the local dune protection line. Local governments shall require that a permittee's compensation efforts take place on the construction site unless the permittee demonstrates the following facts to the local government:

(i) on-site compensation is not practicable;

(ii) the off-site compensation will be located as close to the construction site as practicable;

(iii) the proffered off-site compensation has achieved a 1:1 ratio of proposed adverse effects on successful, completed, and stabilized restoration prior to beginning construction;

(iv) the permittee has notified FEMA, Region 6, Risk Analysis Branch, of the proposed off-site compensation.

(C) Information required for off-site compensation. Local governments shall require permittees to provide the following information when proposing off-site compensation:

(i) the name, address, phone number, and electronic mail address, if applicable, of the owner of the property where the off-site compensation will be located;

(ii) a legal description of property intended to be used for the proposed off-site compensation;

(iii) the source of sand and the dune vegetation;

(iv) all information regarding permits and certificates issued for the restoration of dunes on the compensation site;

(v) all relevant information regarding the success, current status, and stabilization of the dune restoration efforts on the compensation site;

(vi) any increase in potential flood damage to the site where the adverse effects on dunes and dune vegetation will occur and to the public and private property adjacent to that site; and

(vii) the proposed date of initiation of the compensation. Local governments shall include a condition in each permit authorizing off-site compensation which requires permittees to notify local governments in writing of the actual date of initiation within 10 working days after compensation is initiated. If the permittee fails to begin compensation on the date proposed in the application, the permittee shall provide the local government with the reason for the delay. Local governments shall take this reason into account when determining whether a permittee has violated the compensation deadline.

(5) Compensation for adverse effects on dune vegetation. Local governments shall require that permittees compensate for adverse effects on dune vegetation by planting indigenous vegetation on the affected dunes and shall consider the recommendations of the General Land Office, federal and state natural resource agencies, and dune vegetation experts. Local governments may allow a permittees to use temporary sand fencing or another approved method of dune restoration. Local governments shall prohibit a permittee from compensating for adverse effects on dune vegetation by removing existing vegetation from private or state-owned property unless the permittee has received prior written permission from the property owner or the state. In addition to the requirement that permission be obtained from the property owner, all persons are prohibited from removing vegetation from a critical dune area or seaward of a dune protection line unless specifically authorized to do so in a dune protection permit. Local governments shall include conditions in such permits requiring the permittee to provide a copy of the written permission for vegetation removal and to identify the source of any sand and vegetation which will be used to compensate for adverse effects on dunes and dune vegetation in the mitigation plan contained in the permit application.

(g) Mitigation or compensation deadline.

(1) Initiation of mitigation or compensation. Local governments shall require permittees to begin mitigation or compensation for any adverse effect(s) to dunes and dune vegetation prior to or concurrent with the commencement of construction. If mitigation or compensation is not completed in accordance with the mitigation or compensation plan prior to commencement of construction of any structure, the local government shall require that the permittee provide the local government with proof of financial responsibility in an amount equal to that necessary to complete the mitigation or compensation. This can be done in the form of an irrevocable letter of credit, performance bond, or any other instrument acceptable to the local government.

(2) Completion of mitigation or compensation. Local governments shall require permittees to conduct compensation efforts continuously until the repaired, rehabilitated, and restored dunes and dune vegetation are equal or superior to the pre-existing dunes and dune vegetation. These efforts shall include preservation and maintenance pending completion of mitigation or compensation.

(3) Local government determination of completion of mitigation or compensation. Local governments shall determine a mitigation or compensation project is complete when the dune restoration project's position, contour, volume, elevation, and vegetative cover matches or exceeds the surrounding naturally formed dunes.

(4) General Land Office notification of mitigation or compensation certification. Local governments shall provide written notification to the General Land Office after determining that the mitigation or compensation is complete as defined in paragraph (3) of this subsection. The General Land Office may conduct a field inspection to verify compliance with this subchapter. If the local government does not receive an objection from the General Land Office regarding the completion of mitigation or compensation within 30 working days after the General Land Office is notified in writing, the local government may certify that the mitigation or compensation is complete.

(5) Violation of mitigation or compensation deadline. The General Land Office (GLO) recognizes that the time necessary to restore dunes and dune vegetation varies with factors such as climate, time of year, soil moisture, plant stability, and storm activity. The permittee must complete the sand placement, and, if applicable, the dune vegetation relocation or planting portions of the mitigation or compensation plan within one year of initiation of construction. The permittee shall be deemed to have failed to achieve mitigation or compensation if a 1:1 ratio has not been achieved within three years after initiation of construction, and the GLO may initiate enforcement as provided in Section 15.9 of this title (relating to Enforcement, Penalties and Remedial Orders).

§15.5. Beachfront Construction Standards.

(a) Local government certification of beachfront construction. This section provides the standards local governments shall follow when preparing that portion of the dune protection and beach access plan specifically related to issuing or conditioning beachfront construction certificates.

(1) In general, within its jurisdiction, a local government shall not allow diminution of the size of public beaches and shall preserve and enhance public access between public beaches and public roads lying landward. A local government certification shall consist of one of two affirmative findings: an affirmative finding by a local government that the proposed construction is consistent with the beach access portion of a local government's dune protection and beach access plan and does not encroach upon the public beach, nor does it interfere with, or otherwise restrict, the public's right to use and have access to and from the public beach; or an affirmative finding that the proposed construction is inconsistent with the beach access portion of a local government's dune protection and beach access plan. The beach access portion of the local government's dune protection and beach access plan shall provide that beachfront construction will not adversely affect or allow encroachments upon the public beach or interfere with or otherwise impair the public's right to use and have access to and from the public beach.

(2) No person shall initiate or perform construction in violation of Texas Natural Resources Code, §61.013 or this Chapter.

(b) Prohibition of certification. Local governments shall not issue a certificate authorizing beachfront construction if the local government determines that the construction:

(1) reduces the size of the public beach in any manner;

(2) closes or otherwise impairs any existing public beach access point unless the local government simultaneously provides or requires the permittee to provide equivalent or better public access; or

(3) includes a proposal to construct a concrete slab or other impervious surfaces within 200 feet of the line of vegetation or within the eroding area boundary (if such a boundary is established in the local beach/dune plan), whichever distance is greater. Local governments may authorize construction of a concrete slab or other impervious surfaces beneath the footprint of a habitable structure elevated on pilings provided the concrete slab or impervious surface will not extend beyond the footprint of the structure and will not be structurally attached to the building's foundation. Local governments shall not authorize the construction, outside the footprint of a habitable structure, of a concrete slab or other impervious surface whose area exceeds 5.0% of the footprint of the habitable structure. Permeable materials such as brick pavers, limestone, or gravel may be used to construct driveways or parking areas.

(c) Encroachments on public beaches.

(1) Prohibition of construction on the public beach. Except as provided in §15.11 (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach), a local government is prohibited from issuing a certificate authorizing any person to undertake any construction on the public beach or any construction that encroaches in whole or in part on the public beach. This prohibition does not prevent the approval of man-made vegetated mounds and dune walkovers under a properly issued dune protection permit and beachfront construction certificate. Any issuance or approval of a permit, certificate, or any other instrument contrary to this subsection is void.

(2) Construction landward of the public beach. Except as provided in §15.11, local governments shall not issue any beachfront construction certificate authorizing construction landward of the public beach that functionally supports or depends on, or is otherwise related to, proposed or existing structures that encroach on the public beach, regardless of whether the encroaching structure is on land that was previously landward of the public beach.

(d) Dedication of new beach access points.

(1) Pursuant to the authority provided in the Open Beaches Act, §61.015(g), and as a condition of beachfront construction certification as to consistency with a local government's plan, a local government shall require a permittee to dedicate to the public new public beach access or parking area(s), where necessary, for consistency with the beach access and use, vehicular control, or beach user fee provisions of the pertinent state-approved dune protection and beach access plan. Such provisions shall incorporate the standards for pedestrian and vehicular access established in §15.7 of this title (relating to Local Government Management of the Public Beach).

(2) A local government shall require a permittee to dedicate an access area if it issues a certificate allowing a permittee to conduct activities which will impair access to and from the beach in any manner. Such a dedicated access area shall provide access equivalent to or better than the access impaired by the permittee's activity and shall be consistent with the pertinent provisions regarding beach access and use, vehicular controls.

§15.6. Concurrent Dune Protection and Beachfront Construction Standards.

(a) Local government application of standards. This section provides the standards local governments shall follow when issuing, denying, or conditioning dune protection permits and beachfront construction certificates. This section applies to all construction within the geographic scope of this subchapter and to either permits or certificates or both. The requirements of this section are in addition to the requirements in §15.4 of this title (relating to Dune Protection Standards), and §15.5 of this title (relating to Beachfront Construction Standards).

(b) Location of construction. Local governments shall require permittees to locate all construction as far landward as is practicable and shall not allow any construction which may aggravate erosion.

(c) Prohibition of erosion response structures. Local governments shall not issue a permit or certificate allowing construction of an erosion response structure. Notwithstanding the general prohibition on constructing erosion response structures, a local government may authorize the construction of a structural shore protection project that conforms with the policies of the General Land Office promulgated in 31 TAC §26.26(b) of this title (relating to Policies for Construction in the Beach/Dune System). However, a local government may issue a permit or certificate authorizing construction of a retaining wall, as defined in §15.2 of this title (relating to Definitions), under the following conditions. These conditions only apply to the construction of a retaining wall; all other erosion response structures are prohibited.

(1) A local government shall not issue a permit authorizing the construction of a retaining wall within the area 200 feet landward of the line of vegetation.

(2) A local government may issue a permit authorizing construction of a retaining wall in the area more than 200 feet landward of the line of vegetation.

(d) Existing erosion response structures. In no event shall local governments issue permits or certificates authorizing maintenance or repair of an existing erosion response structure seaward of the line of vegetation or the enlargement or improvement of the structure within 200 feet landward of the line of vegetation. Notwithstanding the general prohibition on maintaining or repairing erosion response structures, a local government may authorize the maintenance or repair of a structural shore protection project that conforms with the policies of the General Land Office promulgated in 31 TAC §26.26(b). Also within 200 feet landward of the line of vegetation, local governments shall not issue a permit or certificate allowing any person to maintain or repair an existing erosion response structure if the structure is more than 50% damaged, except under the following circumstances.

(1) When failure to repair the structure will cause unreasonable hazard to a public building, public road, public water supply, public sewer system, or other public facility immediately landward of the structure.

(2) When failure to repair the structure will cause unreasonable flood hazard to habitable structures because adjacent erosion response structures will channel floodwaters to the habitable structure.

(e) Construction in flood hazard areas.

(1) A local government shall not issue a permit or certificate that does not comply with FEMA's regulations governing construction in flood hazard areas. FEMA prohibits man-made alteration of sand dunes and mangrove stands within Zones V1-30, V, and VE on the community's flood insurance rate maps which would increase the potential for flood damage.

(2) A local government shall inform the General Land Office and the FEMA regional representative in Texas before it issues any variance from FEMA regulations or allows any activity done in variance of FEMA's regulations found in Volume 44 of the Code of Federal Regulations, Parts 59-77. Variances may adversely affect a local government's participation in the National Flood Insurance Program.

(3) A local government shall not issue a permit or certificate that does not comply with FEMA minimum requirements or with the FEMA-approved local ordinance or county commissioners court order.

(f) Construction in eroding areas. Local governments with jurisdiction over eroding areas shall follow the standards provided in §15.4 of this title and §15.5 of this title. If there is any conflict between this subsection, §15.4 of this title, and §15.5 of this title, this subsection applies. The General Land Office shall supply information for or assist a local government in determining eroding areas and the landward boundary of eroding areas. In addition, because of the higher risk of damage from flooding or erosion in such areas, local governments shall:

(1) require that structures built in eroding areas be elevated on pilings in accordance with FEMA minimum standards or above the natural elevation (whichever is greater);

(2) require that structures located on property adjacent to the public beach be designed for feasible relocation;

(3) allow a permittee to alter or pave only the ground within the footprint of the habitable structure, not including amenities (however, permeable materials such as brick pavers, gravel or crushed limestone may be used to construct driveways) only if the alteration or paving will be entirely undertaken, constructed, and located landward of 200 feet from the line of vegetation or landward of an eroding area boundary established in the local beach/dune plan, whichever distance is greater; and

(4) Unless otherwise restricted by the local plan, and if consistent with the requirements of National Flood Insurance Program, local governments may permit the construction of a storage area or areas with breakaway or louvered walls or for enclosures required by local building or safety codes.

(5) Notwithstanding the provisions of paragraph (3) of this subsection, a local government may allow a permittee to place unreinforced fibercrete in 4 foot by 4 foot sections, 4 inches thick separated by expansion joints beneath the footprint of the habitable structure, as defined in Section 15.2 of this title, only if the fibercrete is not structurally attached to the pilings. The placement of unreinforced fibercrete will be entirely undertaken, constructed, and located at least 25 feet from the landward toe of the foredunes. If no dunes exist, placement of unreinforced fibercrete will only be undertaken, constructed, and located at least 100 feet landward of the line of vegetation, or landward of an eroding area boundary established in the local dune protection and beach access plan, whichever distance is greater. Gravel or crushed limestone may be used to construct driveways and parking areas in the area 50 feet landward of the line of vegetation to the Dune Protection Line.

(g) Construction of certain parking areas or walkways. Notwithstanding the standards provided in §15.4(c)(8) of this title, §15.5(b)(3) of this title, and subsection (f) of this section, if parking areas or walkways for commercial facilities or public beach access facilities are required to be accessible for persons with disabilities and the use of permeable materials is not practicable, a local government may allow a concrete slab or other impervious surface whose area does not exceed 5.0% of the square footage of the property, upon demonstration of necessity by the applicant. If there is any conflict between this subsection, §15.4(c)(8) of this title, §15.5(b)(3) of this title, and subsection (f) of this section, this subsection applies.

(h) Construction affecting natural drainage patterns. Local governments shall not issue a certificate or permit authorizing construction unless the construction activities will minimize impacts on natural hydrology. Such projects shall not cause erosion of adjacent properties, critical dune areas, or the public beach.

(i) Construction of dune walkovers or similar structures. Proliferation of dune walkovers shall be minimized as provided for in 15.4(f)(2)(B) of this title. Local governments shall require permittees to construct dune walkovers in the following manner:

(1) Dune walkovers shall be constructed to allow for the growth of dune vegetation and the migration of dunes under the walkovers.

(A) The width of a dune walkover or similar structure is limited to 4 feet wide, where practicable. An increased width may be permitted for public access walkovers, shared walkovers for three or more residences, or for wheelchair or golf-cart use with approval of the local government. The need for a dune walkover or similar structure wider than 4 feet must be demonstrated during the permit application process.

(B) The lowest level of the walkover must be of sufficient elevation to accommodate expected increases in dune height. At a minimum, the lowest level of the dune walkover with a width of 4 feet or less must be constructed at a height of at least 3 feet above the highest point of the tallest dune crest beneath and immediately adjacent to the dune walkover. A dune walkover with a width of greater than 4 feet must be constructed at an adequate height that will allow for the growth of dune vegetation and migration of dunes under the walkover. Exceptions to the height requirement may be made for walkovers to descend to the beach over the foredune ridge.

(C) Slats forming the deck of the dune walkover shall be spaced at least 1/2 inches apart so that sunlight and rainfall can penetrate to vegetation below and so that sand will not accumulate on the deck.

(2) Use of concrete to stabilize dune walkover pilings is prohibited.

(3) For all new construction of public dune walkovers in areas where vehicles are prohibited from driving on and along the public beach, local governments are required to construct walkovers accessible for persons with disabilities, where practicable.

(4) The requirements in paragraphs (1) - (3) of this subsection apply to all new construction of dune walkovers and similar structures and any major repairs to existing dune walkovers and similar structures.

(j) Emergency response to oil or hazardous substance spills. Any person responding to spills shall comply with the following regulations when cleaning up or disposing of oil or hazardous substances in the beach/dune system.

(1) The state on-scene coordinator is responsible for contacting the GLO Beach/Dune Team regarding proposed cleanup and disposal methods.

(2) The state on-scene coordinator shall, in consultation with the state natural resource trustees and the GLO Beach/Dune Team and through the Incident Command System, determine the appropriate depth for excavation and the appropriate quantity of sand to be removed, if any, from the beach/dune system.

(A) Spill cleanup. Cleanup methods shall avoid and otherwise minimize adverse impacts to the beach/dune system by ensuring that:

(i) Removal of sand from the beach is limited to the absolute minimum and will not exacerbate shoreline erosion.

(ii) Manual cleanup methods are used, if practicable.

(iii) Grading or scraping of the beach is minimized, and grading of non-oiled or non-hazardous areas is prohibited.

(B) Disposal of contaminated sand. Disposal methods shall avoid adverse impacts to the beach/dune system by ensuring that:

(i) Before any scraped sand is relocated within the beach/dune system, the material shall be tested for toxicity and percent of oiling. Only material that does not pose a threat to human health and the environment may remain in the beach/dune system. New dunes (man-made mounds) may be built with non-hazardous material provided that they are built in accordance with §15.7(e) of this title (relating to Local Government Management of the Public Beach) and placed in areas preapproved by the state natural resource trustees. A dune protection permit is not required for such new dune creation. The disposal shall be in accordance with applicable, relevant, and appropriate requirements established by local state and federal laws.

(ii) Hazardous materials shall be removed and disposed of as required by local, state, and federal laws.

(iii) Disposal of waste must be in compliance with applicable state and federal laws and regulations of the Texas Commission on Environmental Quality and the United States Environmental Protection Agency. Disposal of oiled, non-hazardous sand shall be in accordance with applicable state and federal law, except that such sand shall not be disposed of in a location on or adjacent to dune vegetation, as defined in §15.2 of this title.

§15.7. Local Government Management of the Public Beach.

(a) Standards applicable to local governments. This section provides standards applicable to local government issuance, denial, or conditioning of permits or certificates, as well as all other local government activities relating to management of public beaches.

(b) Construction of coastal and shore protection projects. Local governments shall encourage carefully planned beach nourishment and sediment bypassing for erosion response management and prohibit erosion response structures within the public beach and 200 feet landward of the line of vegetation.

(c) Monitoring. A local government or the state may require a permittee to conduct or pay for a monitoring program to study the effects of a coastal and shore protection project on the public beach. Further, permittees are required to notify the state and the appropriate local government of any discernible change in the erosion rate on their property.

(d) Requirements for beach nourishment projects. A local government shall not allow a beach nourishment project unless it finds and the project sponsor demonstrates that the following requirements are met.

(1) The project is consistent with the local government's dune protection and beach access plan.

(2) The sediment to be used is of effective grain size, mineralogy, and quality or the same as the existing beach material.

(3) The proposed nourishment material does not contain any of the hazardous substances listed in the Code of Federal Regulations, Volume 40, Part 300, in concentrations which are harmful to human health or the environment as determined by applicable, relevant, and appropriate requirements established by the local, state, and federal governments.

(4) There will be no adverse environmental effects on the property surrounding the area from which the sediment will be taken or to the site of the proposed nourishment.

(5) The removal of sediment will not have any adverse impacts on flora and fauna.

(6) There will be no adverse effects caused from transporting the nourishment material.

(e) Restoration of dunes on public beaches. Sand dunes, either naturally created or restored, may aid in the preservation of the coastal environment by providing a protective barrier against beach erosion processes. Except as otherwise provided, local governments shall allow restoration of dunes on the public beach no more than 20 feet seaward of the landward boundary of the public beach. Restored dunes may be located farther seaward than the 20-foot restoration area only upon an affirmative demonstration by the permit applicant that substantial dunes would likely form farther seaward naturally and would not restrict or interfere with public access to the beach at normal high tide. Such seaward extension past the 20-foot area must first receive prior written approval of the General Land Office. In the absence of such an affirmative demonstration by the applicant, a local government shall require the applicant to meet the requirements provided in §15.4(f)(3) of this title (relating to Dune Protection Standards) and the following standards relating to the location of restored dunes.

(1) Local governments shall require persons to locate restored dunes in the area extending no more than 20 feet seaward of the landward boundary of the public beach. Local governments shall ensure that the 20-foot restoration area follows the natural migration of the vegetation line.

(2) Local governments shall not allow any person to restore dunes, even within the 20-foot corridor, if such dunes would restrict or interfere with the public use of the beach at normal high tide.

(3) Local governments shall require persons to restore dunes to be continuous with any surrounding naturally formed dunes and shall approximate the natural position, contour, volume, elevation, vegetative cover, and sediment content of any naturally formed dunes in the proposed dune restoration area.

(4) Local governments shall require persons restoring dunes to use indigenous vegetation that will achieve the same protective capability as the surrounding natural dunes.

(5) Local governments shall not allow any person to restore dunes using any of the following methods or materials:

(A) hard or engineered structures;

(B) materials such as bulkheads, riprap, concrete, asphalt rubble, building construction materials, and any non-biodegradable items;

(C) fine, clayey, or silty sediments;

(D) sediments containing the toxic materials listed in Volume 40 of the Code of Federal Regulations, Part 302.4 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; and

(E) sand obtained by scraping or grading dunes or the beach.

(6) Local governments may allow persons to use the following dune restoration methods or materials:

(A) piles of sand having similar grain size and mineralogy as the surrounding beach;

(B) temporary, discontinuous sand fences conforming to the most recent edition of the General Land Office Dune Protection and Improvement Manual for the Texas Gulf Coast guidelines;

(C) organic brushy materials such as used Christmas trees and seaweed; and

(D) sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the project is monitored to determine any changes that may increase erosion of the public beach.

(7) Local governments shall protect restored dunes under the same restrictions and requirements as natural dunes under the local government's jurisdiction.

(8) Local governments shall not allow a permittee to construct or maintain a structure on the restored dunes that are seaward of a dune protection line, except for specifically permitted dune walkovers or similar access ways.

(9) All applications submitted to a local government for the restoration of dunes on the public beach shall be forwarded to the General Land Office at least 10 working days prior to the local government's consideration of the permit. Failure of the General Land Office to submit comments on an application shall not waive, diminish, or otherwise modify the beach access and use rights of the public.

(f) Scientific research projects. Local governments may exempt a scientific research project from the requirements of §15.4(c) of this title or subsection (e) of this section provided the research is conducted by an academic institution or state, federal, or local government. Prior to conducting the research, the project manager shall submit a detailed work plan and monitoring plan for approval by the General Land Office. The research activities shall not materially weaken existing dunes or dune vegetation or increase erosion of adjacent properties.

(g) Dune walkovers. Local governments shall only allow dune walkovers, including other similar beach access mechanisms, which extend onto the public beach under the following circumstances.

(1) Local governments shall require that permittees restrict the walkovers, to the greatest extent possible, to the most landward point of the public beach.

(2) Local governments shall require that permittees construct and locate the walkovers in a manner that will not interfere with or otherwise restrict public use of the beach at normal high tides.

(3) Local governments shall require permittees to construct dune walkovers in a manner that complies with §15.6(i) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(4) Local governments shall require that permittees relocate walkovers to follow any landward migration of the public beach or seaward migration of dunes using the following procedures and standards.

(A) After significant landward migration of the landward boundary of the public beach, local governments shall require permittees to shorten any dune walkovers encroaching on the public beach to the appropriate length for removal of the encroachment. This requirement shall be contained as a condition in any permit and certificate issued authorizing construction of walkovers.

(B) In cases where a dune walkover needs to be lengthened because of the seaward migration of dunes, the permittee shall apply for a permit or certificate authorizing the modification of the structure.

(h) Preservation and enhancement of public beach use and access. A local government shall regulate pedestrian or vehicular beach access, traffic, and parking on the beach only in a manner that preserves or enhances existing public right to use and have access to and from the beach. A local government shall not impair or close an existing access point, close a public beach to pedestrian or vehicular traffic, or modify public beach parking without prior approval from the General Land Office. The General Land Office may approve and certify a local government's modification to their beach access and use plan based upon the General Land Office's affirmative finding that such modifications preserve or enhance the public's right to use and access the public beach.

(1) For the purposes of this subchapter, beach access and use is presumed to be preserved if the following criteria are met.

(A) Parking on or adjacent to the beach is adequate to accommodate one car for each 15 linear feet of beach.

(B) Where vehicles are prohibited from driving on and along the beach, ingress/egress access ways are no farther apart than 1/2 mile.

(C) Signs are conspicuously posted which explain the nature and extent of vehicular controls, parking areas, and access points, including access for persons with disabilities.

(2) A local government shall have an adopted, enforceable, written policy prohibiting the local government's abandonment, relinquishment, or conveyance of any right, title, easement, right-of-way, street, path, or other interest that provides existing or potential beach access, unless an alternative equivalent or better beach access is first provided by the local government consistent with its dune protection and beach access plan and this subchapter.

(3) This provision does not apply to any existing local government traffic regulations enacted before the effective date of this subchapter, and the former law is continued in effect until the regulations are amended or changed in whole or in part. New or amended vehicular traffic regulations enacted for public safety, such as establishing speed limits and pedestrian rights-of-way, are exempt from the certification procedure but must nevertheless be consistent with the Open Beaches Act and this subchapter.

(4) This subchapter does not prevent a local government from using its existing authority to close individual beach access points for emergencies related to public safety. However, the standards and procedures for such emergency closures shall be included in its state-approved dune protection and beach access plan. The GLO must be notified by the local government as soon as practicable of any emergency closures.

(5) A local government may not restrict vehicular traffic from a public beach unless it preserves or enhances beach access for persons with disabilities. For the purposes of vehicular restrictions only, beach access for persons is preserved if the following criteria are met:

(A) Where vehicles are prohibited from driving to mean high tide, at least one access way with a stable, slip-resistant surface to the approximate high tide line is provided in each jurisdiction and signs identifying the accessible beach access route are conspicuously posted at the landward terminus of the access route.

(i) Where a local government can demonstrate that providing and maintaining a stable, slip-resistant surface to the approximate high tide line is not practicable, local governments shall provide an alternate means of access for persons with disabilities, such as beach wheelchairs.

(ii) In areas where vehicular access is prohibited, local governments have until December 31, 2023 to come into compliance with the above provisions.

(B) In areas where vehicles are prohibited from driving on and along the beach, golf carts must also be prohibited. However, the local government must allow the use on the beach of a golf cart, as defined by §551.401, Texas Transportation Code, if:

(i) the golf cart is being operated by or for the transportation of a veteran with disabilities or a person with a physical disability; and

(ii) a disabled parking placard issued under §681.004, Texas Transportation Code, is displayed in a conspicuous manner on the golf cart.

(C) The local government must provide at least one ingress/egress access way accessible to golf carts for each area of the beach where vehicles are prohibited.

(D) A local government may limit the use of golf carts for the transportation of a person with a physical disability to electric powered golf carts.

(E) In this section, "golf cart" has the meaning assigned by §331.401, Texas Transportation Code and "public highway" has the meaning assigned by §502.001, Texas Transportation Code.

(i) Request for General Land Office approval of beach access plans. When requesting approval of or an amendment to a beach access plan, a local government shall submit a new or amended plan to the General Land Office providing the information and following procedures outlined in §15.3(o) of this title (relating to Administration) and the following information:

(1) a current description and map of the entire beach access system within its jurisdiction;

(2) a detailed status of beach access demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(3) a detailed description of the proposed beach access plan replacing the existing beach access system. Such description shall demonstrate the method of providing equivalent or better access to and from the public beaches, including access for persons with disabilities; and

(4) a vehicular control plan, if the local government proposes either new or amended vehicular controls for the public beach. The vehicular control plan must include, at a minimum, the following information:

(A) an inventory and description of all existing vehicular access ways to and from the beach and existing vehicular use of the beach;

(B) all legal authority, including local government ordinances that impose existing vehicular controls;

(C) a detailed description of any proposed changes to vehicular access;

(D) a statement of short-term or long-range goals for restricting or regulating vehicular access and use;

(E) an analysis and statement of how the proposed vehicular controls are consistent or inconsistent with the state standards for preserving and enhancing public beach access set forth in this subchapter; and

(F) a description of how vehicular management relates to beach construction management, beach user fees, and dune protection within the jurisdiction of the local government.

(j) Integration of vehicular control plan and other plans. The vehicular control plan may be a part of a local government's beach access and use plan required under the Texas Natural Resources Code, §61.015, any beach user fee plan required under the Texas Natural Resources Code, §61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office encourages local governments to combine and integrate these various plans and programs.

(k) General Land Office approval of vehicular control plan adopted or amended after the effective date of this subchapter. A local government shall submit the vehicular control plan to the General Land Office no later than 90 working days prior to taking any action on the plan. This provision does not prevent a local government from exercising its existing authority over vehicular controls in emergencies. The standards and procedures for such emergency vehicular controls shall be submitted to the state in the vehicular control portion of a local government's dune protection and beach access plan. A plan may be approved if the vehicular controls are found to be consistent with the Open Beaches Act and with this subchapter. Prior to final adoption or implementation of a new or amended vehicular control ordinance, the local government shall obtain state certification of the plan for vehicular control pursuant to the Open Beaches Act, Texas Natural Resources Code, §61.022.

(l) If the General Land Office determines that existing beach access or proposed changes to vehicular controls are not consistent with state standards, the local government shall prepare a plan for achieving consistency within a period of time to be determined by the General Land Office. This plan shall include a detailed description of the means and methods of upgrading the availability of public parking and access ways, including funding for such improvements.

(m) Maintaining the public beach. Local governments shall prohibit beach maintenance activities unless maintenance activities will not materially weaken dunes or dune vegetation or reduce the protective functions of dunes. Local governments shall prohibit beach maintenance activities which will result in the significant redistribution of sand or which will significantly alter the beach profile or the line of vegetation. All sand moved or redistributed due to beach maintenance activities shall be returned to the area between the line of vegetation and mean high tide. The General Land Office encourages the removal of litter and other debris by handpicking or raking and strongly discourages the use of machines (except during peak visitation periods which disturb the natural balance of gains and losses in the sand budget and the natural cycle of nutrients.

(n) Request for temporary approval of seaweed relocation. During an extraordinary seaweed landfall event, a local government may submit a written request to the General Land Office for approval to relocate seaweed.

(1) Approval to relocate seaweed may be requested in areas where:

(A) the beach is restricted by an erosion response structure;

(B) the erosion response structure prevents the reasonable employment of GLO approved routine seaweed maintenance practices, and

(C) the use of routine seaweed maintenance practices in such areas would significantly restrict or impair public beach access and use.

(2) The General Land Office will review each request to determine whether a seaweed landfall event is extraordinary and if it impairs or restricts public beach access and use. The General Land Office will evaluate any proposed seaweed management activities for consistency with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune rules. The General Land Office's approval will be valid for up to 120 days. The request must include a comprehensive seaweed management plan that, at a minimum, provides the following items:

(A) a description of how the seaweed event is extraordinary, including supporting documentation, such as color photographs;

(B) information justifying how routine maintenance practices cannot be reasonably employed without restricting or impairing public beach access and use during the seaweed landfall event;

(C) a complete description of the geographic scope of proposed seaweed management activities, including a map or site plan which identifies the line of vegetation in relation to the seaweed placement area;

(D) a complete description of the proposed seaweed management activities, expected schedule of activities, and why other alternatives are not practicable;

(E) a detailed description of how the proposed seaweed management activities will not materially affect the beach profile, public beach access and use, dunes and dune vegetation, dune hydrology, or beach erosion;

(F) a detailed description of how the seaweed management activities will not result in significant or permanent removal of sand from the beach and dune system;

(G) a description of the equipment to be used;

(H) a comprehensive dune mitigation plan, if dunes or dune vegetation will be adversely affected;

(I) information describing how wildlife will be avoided and a copy of the wildlife monitor's certificate or a certification that a monitor is not required; and

(J) a description of any coordination with applicable local, state, and federal agencies that will be required.

(3) Within 60 days after the expiration of the approved seaweed management plan, the local government must assess the impacts of the seaweed management activities, and provide the General Land Office with a detailed assessment report describing any benefits or challenges with implementing the activities employed and any affects those activities had on the beach profile, public beach access and use, dunes and dune vegetation, dune hydrology, beach erosion, and any mitigation activities conducted.

(o) Prohibitions on signs. A local government shall not cause any person to display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or allow to be made any written or oral communication which states that the public beach is private property or represent in any other manner that the public does not have the right of access to and from the public beach or the right to use the public beach as guaranteed by this subchapter, the Open Beaches Act, and the common law right of the public.

§15.8. Beach User Fees.

(a) Eligibility. Local governments shall not initiate or amend a beach user fee unless the governing body of the local government with jurisdiction over the area subject to the fee has a state approved dune protection and beach access plan.

(b) Reciprocity of fees. Within each county, local governments are required to establish a state-approved system for reciprocity of fees and fee privileges among the county and the different local governments authorized to charge beach user fees. The establishment of a system of beach user fee reciprocity shall be a condition of state approval of local dune protection and beach access plans.

(c) Approval of beach user fees.

(1) A local government shall not impose a fee or charge for the exercise of the public right of access to and from public beaches. A local government may charge beach users a fee in exchange for providing beach-related services to beach users in general.

(2) The General Land Office will only approve a beach user fee if the fee is reasonable taking into account the cost to the local government of providing public services and facilities directly related to the public beach. A reasonable fee is one that recovers the cost of providing and maintaining beach-related services. In addition, any fee collected for off-beach parking to provide access to and from the public beach is considered a beach user fee.

(3) Local governments shall not impose a beach user fee which:

(A) exceeds the necessary and actual cost of providing reasonable beach-related public facilities and services;

(B) unfairly limits public use of and access to and from public beaches in any manner;

(C) is inconsistent with this subsection or the Open Beaches Act; or

(D) discriminates on the basis of residence.

(d) Beach user fee plan. A local government that proposes a new or amended beach user fee shall first prepare and submit to the General Land Office for review and approval a plan that includes, at a minimum, the following information:

(1) a description of the current beach access system within its jurisdiction demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(2) a listing and description of all existing beach user fees charged by the local government and by all other local governments in the same county;

(3) all legal authority for charging a beach user fee, including local ordinances that authorize the collection of existing beach user fees, and the proposed ordinances for a new or amended beach user fee;

(4) an analysis and statement of how the proposed user fee is or is not consistent with state standards set forth in this subchapter for preserving and enhancing public beach access, including how the fee is non-discriminatory and how and where adequate free access will be maintained;

(5) a detailed description of how the beach user fee is reasonable and how it relates to beach-related services such as beachfront amenities, vehicular controls and parking, and dune protection within the jurisdiction of the local government;

(6) a report detailing the previous five years of beach user fee revenue and expenditures on beach-related services, if applicable;

(7) an estimate of the projected beach user fee revenues and the expected budget for expenditures on beach-related services, including a description of how the projections and budget were determined, for the next five years;

(8) a description of short-term and long-range goals relating to the collection and use of beach user fees and beach related services that will be provided;

(9) a description of how access for persons with disabilities will be provided or enhanced;

(10) a description of how the beach user fee will be collected and managed by the local government and an explanation of how the method of collection and management is consistent with the requirements of this chapter;

(11) where appropriate, evidence of the cost to the local government of providing existing beach-related services and how the proposed beach user fee will maintain or enhance those or additional beach-related services; and

(12) any other information required for the General Land Office to determine if the fee is reasonable.

(e) General Land Office approval and certification of beach user fees. A local government shall not impose a beach user fee or amend an existing beach user fee that is inconsistent with the beach user fee portion of its dune protection and beach access plan. To receive General Land Office approval for initiating its beach user fee plan or amending a beach user fee, a local government shall submit its beach user fee plan to the General Land Office no later than 90 days prior to any local government action on the beach user fee. The General Land Office shall certify whether the initiation or amendment of a beach user fee is consistent with this subchapter and the Open Beaches Act, as provided in §15.3(o) of this title (relating to Administration).

(f) Beach user fee revenues. Revenues from beach user fees may be used only for beach-related services, as defined in §15.2 of this title (relating to Definitions). For each fiscal year, a local government shall not spend more than 10% of beach user fee revenues on reasonable administrative costs. Administrative costs must be directly related to providing support for beach-related services, such as accounting, record keeping, some personnel services, insurance, and office costs such as rent, utilities and supplies.

(g) Recordkeeping and Reporting. Each local government shall send quarterly reports to the General Land Office on the collection and expenditures of its beach user fees.

(1) The quarterly report must state the amount of beach user fee revenues collected and itemize itemizing how beach user fee revenues are expended. The General Land Office, at its own discretion, may prescribe reporting forms or methods. Reports are due no later than 60 days after the end of each quarter of the State fiscal year. The General Land Office may request additional information, as appropriate, to evaluate a local government's compliance with these rules and the local government's beach user fee plan.

(2) Documentation sufficient to substantiate the proper collection and expenditure of beach user fees must be maintained by the local government. Such documents may include, but are not limited to, records of equipment use, payroll records, invoices, contracts, and proof of payment. Substantiating documentation must be kept by the local government for four years following the date the fees are spent. Documentation substantiating the collection or expenditures of beach user fees must be provided to the GLO within 10 working days of the local government's receipt of the request.

(h) Beach user fee accounts. Local governments shall use the following methods for administering beach user fee accounts.

(1) Beach user fee revenues shall be maintained and accounted for so that fee collections can be directly traced to expenditures on beach-related services. Beach user fee revenues shall not be commingled with any other funds. Each beach user fee revenue shall be maintained in separate revenue accounts, or be separately tracked in the local governments accounting system.

(2) Beach user fee revenues shall be maintained in a separate revenue account and documented in a separate financial statement for each beach user fee or shall have a unique revenue code and be documented.

(3) Beach user fee revenue account balances and expenditures shall be documented according to generally accepted accounting principles.

(i) The General Land Office shall suspend the local government's privilege to collect fees and shall revoke approval of any pertinent section of a dune protection and beach access plan if the beach user fee revenues have been spent on services which are not beach-related services.

(j) Free beach access. Local governments that collect a beach user fee for on-beach parking or for off-beach parking for beach access shall maintain free public beach access by providing areas where no fee is charged for reasonably accessible parking on or off the beach and for pedestrian access in proximity to each area where a beach user fee is charged.

(k) Access for persons with disabilities. Local governments shall establish, preserve, and enhance access for persons with disabilities as provided by law, including §15.7(h)(5) of this title (relating to Local Government Management of the Public Beach). The General Land Office may provide guidance recommending additional measures to preserve and enhance access for persons with disabilities. Provisions for access for persons with disabilities shall be included in local government dune protection and beach access plans.

(l) Identification of fee and non-fee areas. For any local government collecting a beach user fee for on-beach parking, both fee and non-fee beach areas shall be conspicuously marked with signs that clearly indicate, at a minimum, the location of both the fee and non-fee areas and the identity of the local government collecting the fee. In addition, maps identifying fee and non-fee areas shall be provided to the public by any local government collecting a beach user fee.

(m) Coordination with other beach-related plans. The beach user fee plan shall be a part of a local government's beach access and use plan required under the Open Beaches Act, §61.015, any vehicular control plan required under the Open Beaches Act, §61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office requires local governments to combine and integrate these various plans.

§15.9. Enforcement, Penalties and Remedial Orders.

(a) Penalties.

(1) Civil Penalties.

(A) In addition to any penalties assessed by a local government, any person who violates either the Dune Protection Act, the Open Beaches Act, this subchapter, a removal order issued pursuant to subsection (b) of this section, a restoration order issued pursuant to subsection (c) of this section, or a permit or certificate condition is liable for a civil penalty of not less than $50 nor more than $2000 per violation per day as provided in the Dune Protection Act, §63.181(b) and the Open Beaches Act, §61.018(c). Each day the violation occurs

or continues constitutes a separate violation. Violations of the Dune Protection Act, the Open Beaches Act, and the rules adopted pursuant to those statutes are separate violations, and the General Land Office may assess separate penalties. The assessment of penalties under one Act does not preclude another assessment of penalties under the other Act for the same act or omission. Conversely, compliance with one statute and the rules adopted thereunder does not preclude the General Land Office from assessing penalties under the other statute and the rules adopted pursuant to that statute.

(B) A local government may recover civil penalties in a suit by a county attorney, district attorney, or criminal district attorney as authorized in the Dune Protection Act, §63.181(a), and the Open Beaches Act, §61.018(b).

(2) Administrative Penalties.

(A) Any person who violates the Dune Protection Act, the Open Beaches Act, this subchapter, or a permit or certificate condition is also liable to the General Land Office for an administrative penalty of not less than $50 nor more than $2000 per violation per day as provided in the Dune Protection Act, §63.1811, and the Open Beaches Act, §61.0181. Provided, however, if a structure that is the subject of an administrative penalty assessed pursuant to the Open Beaches Act, §61.0181, has been used as a permanent, temporary, or occasional residential dwelling by at least one person during the year before the date on which the penalty is assessed, the amount of the administrative penalty may not exceed $1000 per day the violation occurs or continues.

(B) Administrative penalties assessed by the Commissioner of the General Land Office (commissioner) as part of an order pursuant to the Dune Protection Act or the Open Beaches Act are subject to the notice, orders, and hearing requirements outlined in subsections (b) - (d) of this section, respectively. In determining the amount of the administrative penalty for violations of the Dune Protection Act and the Open Beaches Act, the General Land Office will consider the following:

(i) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused thereby;

(ii) the degree of cooperation and quality of response;

(iii) the degree of culpability and history of previous violations by the person subject to the penalty;

(iv) the amount of penalty necessary to deter future violations; and

(v) any other matter justice requires.

(3) Local governments are included in the definition of "person" in §15.2 of this title (relating to Definitions), and as such, they are liable for penalties for any violations of this subchapter, the Dune Protection Act, and the Open Beaches Act. A local government will be liable for penalties for such violations, including, but not limited to, failure to submit a dune protection and beach access plan to the General Land Office; failure to maintain and enforce its plan; and failure to implement the plan. These violations are in addition to any other violations of this subchapter for which a local government may be liable for penalties.

(4) The provisions of this section are cumulative of all other civil and administrative penalties, remedies, and enforcement and liability provisions.

(5) In determining whether the assessment of penalties is appropriate, the General Land Office will consider the following mitigating circumstances: acts of God, war, public riot, or strike; unforeseeable, sudden, and natural occurrences of a violent nature; and willful misconduct by a third party not related to the permittee or person responsible for the violation by employment or contract.

(b) Administrative Penalties and Restoration for Damage, Destruction, or Removal of Dunes or Dune Vegetation.

(1) Pursuant to the Dune Protection Act, §63.1813, the commissioner may order restoration or contract for restoration for damage, destruction, or removal of a sand dune or a portion of a sand dune or the killing, destruction, or removal of any vegetation growing on a sand dune seaward of the dune protection line or within a critical dune area in violation of the Dune Protection Act, this subchapter, or any rule, permit, or order issued under the Dune Protection Act.

(2) A person is considered to be engaging in or to have engaged in conduct that violates the Dune Protection Act or any rule, permit, or order issued under this Act if the person is the person who most recently owned, maintained, controlled, or possessed the real property on which the conduct occurred.

(3) A person damages a dune or dune vegetation when the conduct results in the destruction or removal of a dune or dune vegetation or weakens a dune or dune vegetation by increasing the potential for flood damage, washovers or blowouts; changing runoff or drainage patterns that aggravate erosion on or off the site; or may result in adverse effects to dune hydrology and dune complexes or dune vegetation.

(4) After issuance of a notice of violation under Texas Natural Resources Code, §63.1814, a person must request a hearing to contest the commissioner's findings or initiate restoration by filing an application for a dune protection permit with the local government with jurisdiction in the area in which the violation occurred within 60 days after service of the notice of violation. The permit application must address any technical specifications and monitoring requirements described in the commissioner's notice of violation.

(5) If the person fails to apply for a permit and complete restoration as required by this section or make a timely written request for a hearing, the commissioner may order restoration, assess restoration costs, fees and expenses, impose an administrative penalty, or use any combination of these remedies. The order may specify the technical specifications for restoration and monitoring requirements.

(6) Notice, Orders, and Hearings.

(A) When the commissioner has determined that damage, destruction, or removal of dunes or dune vegetation is a violation of the Dune Protection Act, §63.091 or any rule, permit, or order issued under the Dune Protection Act, the commissioner must give written notice to the person that is taking or has taken actions that violate the Dune Protection Act, 63.091 or any rule, permit, or order issued under the Dune Protection Act. The notice must state:

(i) the specific conduct that violates the Dune Protection Act, this subchapter, or any permit or order issued under the Dune Protection Act;

(ii) that the person who has engaged in or has been engaged in the conduct that violates the Dune Protection Act, this subchapter, or any permit or order issued under the Dune Protection Act must perform restoration for the damage caused by the violation not later than the 60th day after the day the notice is served;

(iii) that failure to perform restoration for the damage caused by the violation may result in a liability for a civil penalty

under the Dune Protection Act, §63.0181(b) in an amount specified, restoration contracted or undertaken by the commissioner, and liability for the costs of restoration, or any combination of those remedies; and

(iv) that the person who is engaging in or has engaged in conduct that violates the Dune Protection Act or any rule, permit, or order under the Dune Protection Act may submit, not later than the 60th day after the date on which the notice is served, a written request for a hearing to contest the commissioner's findings.

(B) The notice required by this subsection must be given in accordance with subsection (d) of this section.

(7) If the person who is engaged in or has been engaged in conduct that violated the Dune Protection Act, §63.091 or any rule, permit, or order issued under the Dune Protection Act does not pay assessed administrative penalties, mitigation costs, other assessed fees and expenses, or file an application for a dune protection permit on or before the 60th day after the date of entry of a final order assessing the penalties, costs, and expenses, the commissioner may:

(A) contract for restoration;

(B) request that the attorney general institute civil proceedings to collect the penalties, costs of restoration, and other fees and expenses remaining unpaid; or

(C) use any combination of the remedies prescribed by this section, or other remedies authorized by law, to collect the unpaid penalties, costs of restoration, and other fees and expenses assessed because of unauthorized conduct and its mitigation by the commissioner.

(c) Administrative Penalties and Removal of Certain Structures, Improvements, Obstructions, Barriers, and Hazards on the Public Beach.

(1) The commissioner may order the removal of a structure, improvement, obstruction, barrier, or hazard from a public beach or assess an administrative penalty in accordance with the Open Beaches Act, §§61.0181 - 61.0184 and this subsection. The term "structure" as used in this subsection has the meaning assigned in §15.2(67) of this title (relating to Definitions) and includes any improvement, obstruction, barrier or hazard on the public beach.

(2) For the purposes of this subsection, a person is considered to be the person who owns, maintains, controls, or possesses a structure or other encroachment on the public beach for the purposes of this subsection if the person is the person who most recently owned, maintained, controlled, or possessed the structure or other encroachment on the public beach.

(3) The commissioner may conduct an evaluation to determine if grounds for removal of a structure exist pursuant to the Open Beaches Act, §61.0183. The evaluation will include:

(A) a determination of whether the structure is located wholly or partially on the public beach in accordance with §15.3(b) of this title (relating to Administration).

(B) if the structure is determined to be located on the public beach, the evaluation will also include:

(i) a determination as to whether the structure constitutes an imminent hazard to safety, health, or public welfare as provided in §15.15 of this title (relating to Criteria for Determining Health and Safety Hazards Associated with Structures on the Public Beach), or

(ii) a determination as to whether the structure was constructed or placed on the beach in a manner that is inconsistent with the local government's beach access and use plan.

(4) Before the commissioner orders the removal of a structure or imposes an administrative penalty, the commissioner must give written notice and an opportunity for hearing to the person who is constructing, maintaining, controlling, owning, or possessing the structure on the public beach in accordance with the Open Beaches Act, §61.0184 and the procedures outlined in paragraph (6) of this subsection. The person must forward a copy of the notice to any entity or individual holding a lien, mortgage or any other property interest in the structure and provide evidence of compliance with this requirement to the General Land Office within 10days of receiving the notice.

(5) If the person fails to remove the structure or make a timely written request for a hearing, the commissioner may order the removal of the structure, assess removal costs, fees and expenses, impose an administrative penalty, or use any combination of these remedies.

(6) Notice, Orders and Hearings.

(A) Before the commissioner may order the removal of a structure, improvement, obstruction, barrier, or hazard under the Open Beaches Act, §61.0183, or impose an administrative penalty under the Open Beaches Act, §61.0181, the commissioner must provide written notice to the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard on the public beach. The notice must:

(i) describe the specific structure that violates the Open Beaches Act or this subchapter;

(ii) state that the person who is constructing, maintains, controls, owns, or possess the structure is required to remove the structure:

(I) within a reasonable time specified by the commissioner if the structure is an imminent threat to public health, safety or welfare as provided in §15.15 of this title; or

(II) not later than the 30th day after the date on which the notice is served if the structure was constructed or placed on the beach in a manner that is inconsistent with the local government's beach access and use plan; or

(III) not later than the 90th day after the date on which the notice is served if the structure has been used as a permanent, temporary, or occasional residential dwelling by at least one individual at any time during the year preceding the date of the notice.

(iii) state that the failure to remove the structure may result in liability for a civil penalty under the Open Beaches Act, §61.018(c) in an amount specified, removal of the structure by the commissioner, and liability for the costs of removal, or any combination of these remedies;

(iv) state that the person may submit, not later than the 30th day after the date on which the notice is served, a written request for a hearing to contest the commissioner's findings. Provided, however, if the structure has been used as a permanent, temporary, or occasional residential dwelling by at least one individual at any time during the year before the date on which the notice is served, the person may submit, not later than the 90th day after the date on which the notice is served, a written request for a hearing. If the person does not make a timely request for a hearing, the person waives all rights to judicial review of the commissioner's findings or orders.

(B) The notice given by this subsection must be given in accordance with subsection (d) of this section.

(7) If the person does not comply with a removal order of the commissioner or pay assessed penalties, removal costs, or other

assessed fees and expenses on or before the 30th day after the date of entry of the final order, the commissioner may:

(A) contract for removal and disposal of the structure;

(B) sell salvageable parts of the structure to offset costs of removal;

(C) request that the attorney general institute civil proceedings to collect the penalties, costs of removal, and other fees and expenses assessed because of the structure's placement on the public beach and the removal order by the commissioner; or

(D) use any combination of remedies prescribed by this subsection, or other remedies authorized by law, to collect the unpaid penalties, costs of removal, and other fees and expenses assessed because of the structure's placement on the public beach and the removal order by the commissioner.

(d) Notice of Violation and Hearing Requirements.

(1) Before the commissioner may order restoration or removal of a structure or assess administrative penalties under this section, the commissioner must give written notice and an opportunity to request a hearing to the person charged with the violation.

(2) The notice required by this subsection must be given:

(A) by service in person, by registered or certified mail, return receipt requested, or by priority mail; or

(B) if personal service cannot be obtained or the address of the person is unknown, by:

(i) electronic mail if the electronic mail address is verifiable; or

(ii) posting a copy of the written notice at the site where the conduct was engaged in and by publishing notice in a newspaper with general circulation in the county in which the site is located at least two times within 10 consecutive days.

(3) If the person requests a hearing, the commissioner must grant the hearing before an administrative law judge employed by the State Office of Administrative Hearings as provided in the Dune Protection Act, §63.1814 and the Open Beaches Act, §61.0184(g).

(4) The right to appeal an order is subject to Dune Protection Act, §63.151, and the Open Beaches Act, §61.0184(h).

§15.10. General Provisions.

(a) A local government's ordinances, orders, resolutions, or other enactments covered by this subchapter shall be read in harmony with this subchapter. If there is any conflict between them which cannot be reconciled by ordinary rules of legal interpretation, this subchapter controls. Certification of a local government's beach access and use plan by the General Land Office may not be construed to expand or detract from the statutory or constitutional authority of that local government or any other governmental entity, nor may any person construe such certification to authorize a local government or any other governmental entity to alienate public property rights in public beaches.

(b) Boundary of the public beach. The commissioner shall make determinations on issues related to the location of the boundary of the public beach and encroachments on the public beach pursuant to the requirements of the Open Beaches Act, §§61.016 - 61.017 and §15.3(b) of this title (relating to Administration) and §15.12(e) of this title (relating to Temporary Orders Issued by the Land Commissioner). The General Land Office and the local governments may refer enforcement cases to the attorney general whenever questions of encroachment and boundaries arise with respect to the public beach.

(c) Public beach presumption. Except for beaches on islands or peninsulas not accessible by public road or ferry facility, in administering its plan a local government shall presume that any beach fronting the Gulf of Mexico within its jurisdiction is a public beach unless the owner of the adjacent land obtains a declaratory judgment otherwise under the Open Beaches Act, §61.019. That section provides that any person owning property fronting the Gulf of Mexico whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(d) Violations. A violation of any provision of this subchapter, a local government dune protection and beach access plan, or any permit or certificate or the conditions contained therein will subject a person to the potential assessment of administrative or civil penalties.

(e) Reporting violations. Any local government with knowledge of a violation or a threatened violation of a permit, a certificate, its dune protection and beach access plan, the Dune Protection Act, the Open Beaches Act, or this subchapter shall inform the General Land Office of the violation(s) within 24 hours.

(f) Withdrawal of plan certification. The General Land Office may withdraw certification of all or any part of a local government's dune protection and beach access plan if the local government does not comply with its plan, this subchapter, the Dune Protection Act, or the Open Beaches Act. Without further action by the General Land Office, a local government loses, by operation of law, the authority to issue permits or certificates authorizing construction within the geographic scope of this subchapter and the privilege to collect beach user fees if state agency certification of its dune protection and beach access plan is withdrawn.

(g) Notice of withdrawal of plan certification. The General Land Office will notify the local government 60 days prior to withdrawing certification of the local government's plan. The local government may submit to the General Land Office any evidence demonstrating full compliance with its plan, this subchapter, the Dune Protection Act, and the Open Beaches Act. The General Land Office will consider the good faith efforts of any local government to immediately and fully comply with those laws during the 60-day period after the notification of intent to withdraw certification.

(h) The provisions contained in this subchapter do not limit the authority of the General Land Office and the attorney general's office to enforce this subchapter, the Dune Protection Act, and the Open Beaches Act pursuant to the Texas Natural Resources Code, §63.181 and §61.018.

(i) Appeals. The Dune Protection Act, §63.151, and the Open Beaches Act, §61.019, contain the provisions for appeals related to this subchapter.

§15.11. Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach.

(a) Purpose. The purpose of this section is to provide authority for local governments to issue permits or certificates for repairs to certain houses if any portion of the house is located seaward of the boundary of the public beach.

(b) Definitions. In addition to the definitions contained in §15.2 of this title (relating to Definitions), the following words and terms shall have the following meanings:

(1) Beach debris--Anything that is not native to the beach and beach/dune system, including, but not limited to, pilings, concrete, fibercrete, rebar, riprap, boulders, automobile parts, rubble mounds, damaged dune walkovers, garbage, septic systems, and other objects, that may pose a hazard to public health and safety and/or no longer serve the purpose for which they were originally intended.

(2) Boundary of the public beach--The landward edge of the public beach, as described in §15.3(b) of this title (relating to Administration) or an order issued under §15.12(e) of this title (relating to Temporary Orders Issued by the Land Commissioner). For purposes of this section, the location of the natural line of vegetation shall be determined by the General Land Office on a case-by-case basis.

(3) Habitable--The condition of the premises which permits the inhabitants to live free of serious hazards to health and safety.

(4) House--A single or multi-family structure that serves as permanent, temporary, or occasional living quarters for one or more persons or families.

(c) Eligible houses. To find a house eligible for a permit or certificate to make repairs under this section, the Land Office must determine that:

(1) The line of vegetation establishing the boundary of the public beach has moved as a result of erosion or a meteorological event;

(2) The house was located landward of the line of vegetation before the erosion or meteorological event occurred;

(3) No portion of the house is located seaward of the boundary of coastal public land;

(4) The house was not damaged more than 50 percent or destroyed as the result of a meteorological event; and

(5) The house does not present an imminent threat to public health and safety.

(d) For a house eligible under this section, a local government may issue a certificate or permit authorizing repair of an eligible house if the local government determines that the repair:

(1) is solely to make the house habitable including reconnecting the house to utilities;

(2) does not increase the footprint of the house;

(3) does not include the use of impervious material, including, but not limited to, concrete or fibercrete, seaward of the boundary of the public beach;

(4) does not include the construction of an enclosed space below the base flood elevation and seaward of the boundary of the public beach;

(5) does not include the repair, construction, or maintenance of an erosion response structure seaward of the boundary of the public beach;

(6) does not occur seaward of the boundary of coastal public land; and

(7) does not include construction underneath, outside or around the house other than for reasonable access to or structural integrity of the house, provided that such repair does not create an additional obstruction to public use of and access to the beach.

(e) Debris removal. Debris on the public beach creates a hazard to public health and safety and can threaten Gulf-facing properties. A local government shall coordinate with owners of eligible houses to remove personal property and beach debris related to the structure from the public beach and dune complex as soon as possible. The local government may require debris removal as a condition of the issuance of a certificate or permit under this section. All beach debris collected from the public beach shall be removed from the beach/dune system and disposed of in an appropriate landfill.

(f) Sand placement. Only beach-quality sand may be placed underneath the footprint of an eligible house and in an area up to five feet seaward of the house, provided that the sand may not be placed seaward of mean high tide except as part of an approved beach nourishment project. The beach-quality sand must remain loose and unconsolidated and cannot be placed in bags or other formed containment. In addition, the beach-quality sand must be an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system. The use of clay or clayey material is not allowed.

(g) Land Office review. A local government shall submit the certificate or permit application for repair of an eligible house under this section to the commissioner for review and determination of eligibility as provided in subsections (b)(2) and (c) of this section. If the commissioner does not object to or otherwise comment on the application within 10 working days of receipt of the application, the local government may act on the application. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make an affirmative determination regarding a permit or certificate for repairs. Local governments may require more information, but they shall submit to the Land Office the following information:

(1) the name, address, phone number, and, if applicable, electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(2) a complete legal description of the tract and a statement of its size in acres or square feet including the location of the property lines and a notation of the legal description of adjoining tracts;

(3) the floor plan, footprint or elevation view of the house identifying the proposed repairs;

(4) photographs of the site which clearly show the current conditions of the site; and

(5) an accurate map, site plan, plat, or survey of the site identifying:

(A) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(B) the location of the property lines and a notation of the legal description of adjoining tracts, and the location of any roadways, driveways and landscaping that currently exist on the tract;

(C) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract;

(D) the location of the house and the distance between the house and mean high tide, mean low tide, and the line of vegetation; and,

(E) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(h) Monitoring. A local government is responsible for monitoring the repair of an eligible house under this section. A local government may conduct a monitoring program to study the effects of permitting repairs to an eligible house on the public's access to and use of the public beach. Expenses related to the monitoring program are considered beach-related services for the purpose of this subchapter.

(i) Effect on actions for removal. This section does not create a property right of any kind in the littoral property owner. Houses eligible for repairs to maintain habitability under this section may also be encroachments on and interferences with the public beach easement. Except as provided in an unexpired temporary order issued by

the commissioner under §61.085 of the Texas Natural Resources Code, the commissioner, the attorney general, a county attorney, district attorney, or criminal district attorney may file suit under Texas Natural Resources Code §61.018(a) to obtain a temporary or permanent injunction, either prohibitory or mandatory, to remove a house from the public beach without regard to whether the house is eligible for repairs under this section.

§15.12. Temporary Orders Issued by the Land Commissioner.

(a) Purpose. The purpose of this section is to provide standards and procedures after a meteorological event for the temporary suspension under §61.0185 of the Texas Natural Resources Code of enforcement of the prohibition against encroachments on and interferences with the public beach easement and suspension under §61.0171 of the Texas Natural Resources Code of line of vegetation determinations where the natural line of vegetation has been obliterated. This rule is promulgated under the authority of §61.011(d) of the Texas Natural Resources Code.

(b) Definitions. In addition to the definitions contained in §15.2 of this title (relating to Definitions), the following words and terms, as used in this section, shall have the following meanings:

(1) Beach debris--Anything that is not native to the beach and beach/dune system, as described in §15.11(b) of this title (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach).

(2) Boundary of the public beach--The landward edge of the public beach, as described in §15.3(b) of this title (relating to Administration) or this section, or an order issued under this section or §15.13 of this title (relating to Disaster Recovery Orders).

(3) Habitable--The condition of the premises, as described in §15.11(b) of this title.

(4) House--A single or multi-family structure, as described in §15.11(b) of this title.

(c) Any order issued by the commissioner under subsection (d) or (e) of this section shall be:

(1) posted on the General Land Office's Internet Web Site, www.glo.texas.gov;

(2) published by the General Land Office as a miscellaneous document in the *Texas Register;* and:

(3) filed by the General Land Office in the real property records of the county in which the structure is located if the order is for suspension of enforcement under subsection (d) of this section.

(d) Orders suspending enforcement of the prohibition against encroachments on and interferences with the public beach easement.

(1) An order for temporary suspension of enforcement under §61.0185 may be issued for a period of three years. While an order issued under this section is in effect, a local government may issue a certificate or permit authorizing repair of a house subject to the order if the local government determines that the repair:

(A) is solely to make the house habitable including reconnecting the house to utilities;

(B) does not increase the footprint of the house;

(C) does not include the use of impervious material, including, but not limited to, concrete or fibercrete, seaward of the natural line of vegetation;

(D) does not include the construction of an enclosed space below the base flood elevation and seaward of the natural line of vegetation;

(E) does not include the repair, construction, or maintenance of an erosion response structure seaward of the natural line of vegetation;

(F) does not occur seaward of the boundary of coastal public lands; and

(G) does not include construction underneath, outside or around the house other than for reasonable access to or structural integrity of the house, provided that such repair does not create and additional obstruction to public use of and access to the beach.

(2) Debris on the public beach creates a hazard to public health and safety and can threaten Gulf-facing properties. The GLO is responsible for clearing debris from the public beach in accordance with Texas Natural Resources Code, §61.067. While an order issued under this section is in effect, a local government with the duty to clean and maintain the public beach shall coordinate with the GLO and, where appropriate, littoral property owners to remove beach debris from the public beach as soon as possible. All beach debris collected from the public beach shall be removed from the beach/dune system and disposed of in an appropriate landfill.

(3) While an order issued under this section is in effect, only beach-quality sand may be placed underneath the footprint of the house and in an area up to five feet seaward of the house. The beach-quality sand must remain loose and unconsolidated, and cannot be placed in bags or other formed containment. In addition, the beach-quality sand must be an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system. The use of clay or clayey material is not allowed.

(4) While an order issued under this section is in effect, a local government shall submit the certificate or permit application for repair of a house under this section to the commissioner for review. If the commissioner does not object to or otherwise comment on the application within 10 working days of receipt of the application, the local government may act on the application. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make an affirmative determination regarding a permit or certificate for repairs. Local governments may require more information, but they shall submit to the Land Office the following information:

(A) the name, address, phone number, and, if applicable, electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(B) a complete legal description of the tract and a statement of its size in acres or square feet including the location of the property lines and a notation of the legal description of adjoining tracts;

(C) the floor plan, footprint, or elevation view of the house identifying the proposed repairs;

(D) photographs of the site that clearly show the current conditions of the site; and

(E) an accurate map, site plan, plat, or survey of the site identifying:

(i) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(ii) the location of the property lines and a notation of the legal description of adjoining tracts, and the location of any roadways, driveways, and landscaping that currently exist on the tract;

(iii) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract;

(iv) the location of the house and the distance between the house and mean high tide, mean low tide, and the line of vegetation; and

(v) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(5) While an order issued under this section is in effect, a local government is responsible for monitoring the repair of the house under this section. Any permit or certificate issued by a local government under this order expires automatically on the date the order expires. Except as provided in §15.11 of the title, local governments may not issue permits or certificates for repairs to houses located on the public beach easement that are not subject to an order issued under this section.

(e) Orders suspending line of vegetation determinations where the line of vegetation has been obliterated as a result of a meteorological event.

(1) The commissioner may, by order, suspend action on conducting a line of vegetation determination for a period of up to three years from the date the order is issued if the commissioner determines that the line of vegetation was obliterated as a result of a meteorological event.

(2) For the duration of the order, the public beach shall not extend inland further than 200 feet from the seaward line of mean low tide as established by a licensed state land surveyor.

(3) While an order issued under this section is in effect, a local government may issue a certificate or permit based upon the boundary of the public beach.

(4) Following the expiration of an order issued under this section, the commissioner shall make a determination regarding the line of vegetation in accordance with Texas Natural Resources Code, §61.016 and §61.017, taking into consideration the effect of the meteorological event on the location of the public beach easement. The commissioner may consult with the Bureau of Economic Geology of The University of Texas at Austin or a licensed state land surveyor and consider other relevant factors when making a determination under this subsection regarding the annual erosion rate for the area of beach subject to the order issued under this section.

§15.13. Disaster Recovery Orders.

(a) Purpose. This section provides procedures for the commissioner to adopt a disaster recovery order with temporary standards for stabilization and repair of structures and dune restoration during a period of recovery following a declared or natural disaster and to assist local governments in restoring beach access and dune protection.

(b) Applicability. This section applies only to a local government with a local dune protection and beach access plan within a coastal county that has been included in a disaster declaration made by the governor under §418.014, Texas Government Code or in which a natural disaster has occurred, as determined by the commissioner.

(c) Disaster recovery orders. The commissioner may issue a disaster recovery order pursuant to this section to authorize temporary standards for stabilization and repair of structures, dune restoration, and other minimum measures needed to mitigate for adverse effects to the public beach, public access points, and dune areas caused by a damaging declared or natural disaster. The temporary standards authorized by this section shall be effective for a period of two years from the date of the issuance of disaster recovery order by the commissioner, unless a shorter period of recovery is specified in the order.

(1) The disaster recovery order shall identify the nature of the disaster, the name of the disaster and the time and location of landfall (if applicable), any coastal county or counties to which the order applies, the date of issuance, and the expiration date. The order is effective upon issuance by the commissioner.

(2) Notice of the order issued under this section shall be:

(A) posted on the General Land Office's (GLO) Internet website;

(B) published by the GLO as a miscellaneous document in the *Texas Register;* and

(C) sent to the governing body of a local government to which the order applies.

(d) Conflict. The provisions of this section supplement the Beach/Dune Rules (§§15.1 - 15.12 of this title). However, if there is a conflict between this section and the provisions of the Beach/Dune Rules, this section applies.

(e) Definitions. In addition to the definitions contained in §15.2 of this title (relating to Definitions), the following words and terms, as used in this section, shall have the following meanings:

(1) Beach debris--Anything that is not native to the beach and beach/dune system, as described in §15.11(b) of this title (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach).

(2) Boundary of the public beach--The landward edge of the public beach, as described in §15.3(b) of this title (relating to Administration). For purposes of this section, the commissioner may provide local governments with a temporary standard that includes a demarcation of the landward boundary of the public beach based on the standards set forth in Texas Natural Resources Code Ch. 61 when issuing beachfront construction certificates and dune protection permits in locations where the line of vegetation has been severely damaged by the disaster that precipitated the recovery order.

(3) Coastal county--Any Texas county with a Gulf-facing beach within its boundaries.

(4) Declared disaster--An event declared to be a disaster by the governor under §418.014, Texas Government Code.

(5) Habitable--The condition of a premises, as described in §15.11(b) of this title.

(6) House--A single or multi-family structure, as described in §15.11(b) of this title.

(7) Natural disaster--An event or force of nature that has catastrophic consequences, including, but not limited to, tropical storms, hurricanes, extreme high tides, tsunamis, earthquakes, tornadoes, and floods.

(8) Recovery dune restoration--Those response measures that must be undertaken during a recovery period to construct a dune, repair a damaged dune, or stabilize an existing dune in order to minimize further threat or damage to coastal residents, structures and littoral property.

(9) Recovery period--A period of time commencing with the issuance of a disaster recovery order under this section and ending with the expiration of the order, during which temporary standards for stabilization and repair of structures and dune restoration are in effect.

(10) Recovery repair--Those actions that must be undertaken to render a structure habitable or to prevent further damage during the recovery period. The term "recovery repair" does not include reconnecting a house to utilities such as sewer, water, and electricity. Reconnection to such utilities may only be made in accordance with other applicable law or local ordinances.

(11) Recovery stabilization--Those actions that must be undertaken to stabilize a residential structure that is subject to collapse or substantial further damage as a result of erosion or undermining caused by waves or currents of water exceeding normally anticipated cyclical levels during a period of recovery from a disaster.

(12) Restoration Area--With respect to a dune restoration project on the public beach, an area extending to the line of vegetation as delineated by the commissioner in an order under this subsection or an order issued under §15.12(e) of this title (relating to Temporary Orders Issued by the Land Commissioner).

(13) Shoreline protection project repairs--Those response measures that must be undertaken during a period of recovery from a disaster to repair an existing shoreline protection project to a condition that affords protection from subsequent storms or tidal events or prevents accelerated damage to littoral property.

(f) Recovery repair and recovery stabilization of structures on the public beach.

(1) A local government may issue a certificate or permit in accordance with this section for recovery repair and recovery stabilization of a structure that encroaches or may encroach on the public beach to the extent necessary to prevent an immediate threat to public health, safety, and welfare.

(2) A local government may authorize construction of an enclosed space with breakaway or louvered walls at ground level that is consistent with the local dune protection and beach access plan and National Flood Insurance Program, if the foundation of the structure is intact.

(3) A local government may grant authorization in accordance with this section for recovery repair of a residential structure that encroaches or may encroach on the public beach, but only if the structure is an eligible house under §15.11 of this title and is not subject to a pending enforcement action under this subchapter, the Open Beaches Act (Texas Natural Resources Code, Chapter 61), or the Dune Protection Act (Texas Natural Resources Code, Chapter 63). An enforcement action includes the filing of a suit in district court, the referral of a matter for enforcement to the attorney general or other public prosecutor, the initiation of an enforcement action by the commissioner, or the issuance of a citation by a local government for a violation of its dune protection and beach access plan.

(4) A local government may authorize the placement of beach-quality sand underneath the footprint of an eligible house and in the area up to a distance of not more than five feet from the structure's footprint where necessary to prevent further erosion due to wind or water. The beach-quality sand must remain loose and cannot be placed in bags.

(5) Clay or sandy clay may be placed to fill voids under the footprint of a residential structure seaward of the line of vegetation and beyond the footprint to the extent necessary to restore a natural angle of repose up to a distance of not more than five feet from the structure's footprint; provided, however, that clay or sandy clay used for this purpose must be covered with beach quality sand, where practicable, to a depth of at least 12 inches. Such actions are authorized in situations where protection of the land immediately seaward of a structure is required to prevent foreseeable undermining of habitable structures in the event of such erosion.

(6) A local government may authorize the use of clay or sandy clay to fill voids in order to protect public infrastructure; provided, however, that clay or sandy clay sand used for this purpose must be covered with beach quality sand, where practicable, to a depth of at least 12 inches.

(7) Beach-quality sand, clay, or sandy clay must not be placed seaward of mean high tide without the consent of the commissioner.

(g) Authorized recovery dune restoration.

(1) A local government may issue a certificate or permit for persons to construct clay core dunes and dunes created solely with beach quality sand landward of the public beach and seaward of the boundary of the public beach in the restoration area. A local government shall ensure that the restoration area shall follow the natural meander or migration of the post-storm boundary of the public beach. A local government may issue permits and certification to allow the restoration of dunes on the public beach only under the following conditions:

(A) Restored dunes may be located farther seaward than the restoration area only to the limited extent necessary to minimize further damage to coastal residents and littoral property, provided such dunes shall not substantially restrict or interfere with the public use of the beach at normal high tide.

(B) A local government shall not allow any person to restore dunes, even within the restoration area, if such dunes would effectively prohibit access to or use of the public beach at normal high tide.

(2) Under no circumstances may sand or other materials be placed below mean high tide without the consent of the commissioner.

(h) Authorized methods and materials for recovery dune restoration. A local government may allow the following methods or materials for recovery dune restoration:

(1) Dune restoration methods or materials allowed in §15.7(e)(6) of this title (relating to Local Government Management of the Public Beach);

(2) Clay core dunes; provided, that clay or sandy clay used for this purpose must be covered with beach-quality sand, to a depth of at least 24 inches, and such sand cover must be maintained; provided, if clay is exposed, it must be recovered with sand to maintain the minimum 24-inch cover or removed; and

(3) Recovery dunes constructed under this section must not:

(A) result in increased flooding to the site or adjacent property;

(B) aggravate erosion;

(C) result in adverse effects to dune hydrology;

(D) increase the vulnerability to washouts or blowouts; or

(E) interfere with the public's access to the beach at normal high tide.

(4) A local government shall require persons using vegetation to restore dunes to use indigenous dune vegetation.

(i) Review of dune protection line. A local government having the authority to set the dune protection line shall review the dune protection line within one year from the date of the disaster recovery order issued under this section rather than 90 days required under §15.3(k) of this title. All other requirements of §15.3(k) of this title shall apply.

(j) Authorized beach access and dune protection measures.

(1) In areas within 200 feet of the line of vegetation in an eroding area, the local government may:

(A) use the landward toe of a restored dune for determining the area in which the use of fibercrete is allowed unless natural dunes form further landward. In eroding areas where there is no dune or the dune has been obliterated by the disaster that precipitated the order, the provisions of §15.6(f)(5) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards) apply until a restored dune has been established in the area as determined by a local government.

(B) allow construction underneath, outside, or around the house that includes fibercrete or other materials necessary to restore reasonable access to a house for disabled persons; provided that such access existed prior to the disaster that is the subject of an order under this section. This provision also applies to a house that has become located on the beach or where there is no dune.

(2) A local government may provide temporary access to beaches from off-beach parking areas by directing the public to the nearest existing pathways to minimize the effects on dunes and dune vegetation until dunes and walkovers are re-established or rebuilt. Temporary pathways shall be conspicuously marked as beach access paths.

(3) A local government may, without a plan amendment, temporarily close beach access points damaged beyond repair or temporarily blocked by emergency shore protection projects to prevent damage to infrastructure. In order to comply with this rule a local government must notify the commissioner in writing of the temporary closure of such damaged beach access point within 10 calendar days and specify the duration of the closure. The local government must ensure that the period of limited beach access in that area does not exceed the duration of the disaster recovery order and must submit to the commissioner a timeline for amending the local plan or a remedy to restore access no later than six months prior to the expiration of the disaster recovery order issued under this section.

(k) Shoreline protection project repairs. Except for the general prohibition on maintaining or repairing erosion response structures in §15.6(d) of this title, a local government may authorize repairs to an existing shoreline protection project, subject to the following limitations:

(1) Repairs to existing shoreline protection projects may be permitted to minimize further damage to coastal residences and littoral property, provided the existing shoreline protection project does not substantially restrict or interfere with the public use and access of the beach at normal high tide;

(2) A local government shall not authorize any person to repair a shoreline protection project that is located below the boundary of coastal public land; and

(3) The existing shoreline protection project must conform to the policies of the General Land Office promulgated in §26.26(b) of this title (relating to Policies for Construction in the Beach/Dune System).

(l) Prohibition on certain materials. A local government shall not allow any person to undertake dune restoration projects or temporary shoreline protection projects using any of the following methods or materials:

(1) Materials such as bulkheads, riprap, concrete (including sprayed concrete), or asphalt rubble, building construction materials, and any non-biodegradable items;

(2) Sediments containing the hazardous substances listed in Appendix A to §302.4 in Volume 40 of the Code of Federal Regulations, Part 302 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; or

(3) Sand obtained by scraping or grading dunes, or from beaches in eroding areas.

(m) Repair of sewage or septic systems. If the Texas Commission on Environmental Quality or its designated local authority, the Texas Department of State Health Services, or a local health department has made a determination that a sewage or septic system located on or adjacent to the public beach poses a threat to the health of the occupants of the property or public health, safety, or welfare, and requires removal of the sewage or septic system, the sewage or septic system shall be located in accordance with §15.5(b)(1) of this title (relating to Beachfront Construction Standards) and §15.6(b) and (e)(1) of this title.

(n) Authorized beach maintenance practices. If a material change in conditions occurs, such as significant beach erosion caused by a declared or natural disaster, the commissioner may require a local government affected by an order issued under this section to suspend the authority of a permittee to scrape a beach under a previously issued beach maintenance permit. The local government may require a permittee to obtain a new permit incorporating beach maintenance practices consistent with the changed conditions. The commissioner shall be given an opportunity to comment on any such new permit application.

(o) Removal of beach debris. The GLO is responsible for clearing debris from the public beach in accordance with Texas Natural Resources Code, §61.067. While an order issued under this section is in effect, a local government with the duty to clean and maintain the public beach shall coordinate with the GLO and, where appropriate, littoral property owners to remove beach debris from the public beach as soon as possible. All beach debris collected from the public beach shall be removed from the beach/dune system and disposed of in an appropriate landfill.

(p) GLO review. A local government shall submit the certificate or permit applications for recovery repair, recovery dune restoration, or any other activity authorized under this section to the commissioner for review. If the commissioner does not object to or otherwise comment on the application within 10 working days of receipt of an application, the local government may act on the application. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make a determination regarding a permit or certificate for repairs. Local governments may require more information, but the following information shall be submitted to the GLO:

(1) the name, address, phone number, and, if applicable, electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(2) a complete legal description of the tract and a statement of its size in acres or square feet including the location of the property lines and a notation of the legal description of adjoining tracts;

(3) the floor plan, footprint or elevation view of the house identifying the proposed repairs;

(4) color photographs of the site which clearly show the current conditions of the site; and

(5) an accurate map, site plan, plat, or survey of the site identifying:

(A) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(B) the location of the property lines and a notation of the legal description of adjoining tracts, and the location of any roadways, driveways and landscaping that currently exist on the tract;

(C) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract;

(D) the location of the house and the distance between the house and mean high tide, mean low tide, and the line of vegetation;

(E) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract; and

(F) if the proposed action includes a recovery dune restoration project, grading and layout plan identifying existing contours of the project area (including the location of dunes and swales), and proposed contours for final grade.

(6) the source of any sand and vegetation used for a recovery dune restoration project; and;

(7) any other information requested by the local government or the GLO that is necessary to determine whether the application is consistent with this section.

(q) Monitoring. A local government is responsible for monitoring a recovery stabilization, recovery repair, recovery dune restoration project, or shoreline protection project repair under this section. A local government may conduct a monitoring program to study the effects of such projects on the public's access to and use of the public beach. Expenses related to the monitoring program are considered beach-related services for the purpose of this subchapter.

(r) Effect on actions for removal. This section does not create a property right of any kind in the littoral property owner. Houses eligible for repairs to maintain habitability under this section may also be encroachments on and interferences with the public beach easement. Except as provided in an unexpired temporary order issued by the commissioner under §61.0185 of the Texas Natural Resources Code, the commissioner, the attorney general, a county attorney, district attorney, or criminal district attorney may file suit under Texas Natural Resources Code §61.018(a) to obtain a temporary or permanent injunction, either prohibitory or mandatory, to remove a house from the public beach without regard to whether the house is eligible for repairs under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2023.

TRD-202301405
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: May 8, 2023
Proposal publication date: December 30, 2022
For further information, please call: (512) 475-1859

♦ ♦ ♦

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 520. DISTRICT OPERATIONS
SUBCHAPTER A. ELECTION PROCEDURES

31 TAC §§520.2, 520.3, 520.5

The Texas State Soil and Water Conservation Board (State Board) adopts an amendment to §520.2 (1-4) Definitions, §520.2(5) the change to the physical address of the Texas State Soil and Water Conservation Board state office, and the agency further adopts the amendment to §520.3(4)(b) regarding rules for district elections and §520.5(b) regarding the submittal of electronic forms without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8245). The text of the rules will not be republished.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2023.

TRD-202301398
Heather Bounds
Government Relations Specialist
Texas State Soil and Water Conservation Board
Effective date: May 8, 2023
Proposal publication date: December 16, 2022
For further information, please call: (254) 778-8741

♦ ♦ ♦

CHAPTER 529. FLOOD CONTROL
SUBCHAPTER B. STRUCTURAL REPAIR GRANT PROGRAM

31 TAC §§529.51, 529.52, 529.55 - 529.57, 529.62

The Texas State Soil and Water Conservation Board (Board) has completed the review of Title 31, Texas Administrative Code, Part 17, Chapter 529, Subchapter B, Structural Repair Grant Program as required by the Texas Government Code §2001.039, Agency Review of Existing Rules. These rules were published for comment in the December 16, 2022, issue of the *Texas Reg-*

ister (47 TexReg 8247). As a result, the Board adopts amendments to §529.51, Definitions, §529.52, Submitting an application, §529.56, Review and Selection of Applications, §529.57, Contracts Between the State Board and Sponsors, and §529.62, Structural Repair Grants Used as Match for Federal Projects without changes. The rules will not be republished. Section 529.55, Administration of Funds, is adopted with changes and will be republished.

Texas Government Code §2001.039 requires that each state agency review and re-adopt, re-adopt with amendments, or repeal the rules adopted by that agency under Texas Government Code, chapter 2001, subchapter B, Rulemaking. As required by §2001.039(e), this review assesses whether the reasons for adopting or re-adopting the Board's flood control dam Structural Repair Grant Program rules continue. Therefore, the Board requested specific comments from interested persons on whether the reasons for adopting Title 31, Texas Administrative Code, Part 17, Chapter 529, Subchapter B, Structural Repair Grant Program continue to exist. In addition, the Board welcomed comments on any amendments that would improve the rules.

The Board received no comments in response to its request for comment published in the December 16,2022, issue of the *Texas Register* (47 TexReg 8247). However, the Sunset Advisory Commission reviewed the agency from September 2021 through March 2022. In their final adopted report titled Sunset Advisory Commission Staff Report with Commission Decisions on the Texas State Soil and Water Conservation Board and Texas Invasive Species Coordinating Committee, the Commission required the agency "to ensure the local match requirement for state-funded dam upgrades and state-funded dam repairs equitably accounts for the financial capacity of local sponsors, especially taking into account high-hazard dams." This requirement, detailed in Recommendation 1.1 of the Staff Report, resulted in an internal review of the benefits the program and the State receive by requiring various percentages of matching funds to receive the state grant funds.

After careful analysis and consultation with stakeholders and interested members of the Legislature, the Board considered several options for addressing the non-state matching funds requirement of the program. After considering all the options, the Board believes the financial burden any matching requirement imposes on a local government negatively affects their participation as much as it generates accountability and buy-in on their part. As a result, the Board approved the amending of numerous sections of Subchapter B that would eliminate the non-state match requirement for structural repairs, including rehabilitation and upgrades. The proposed amendments would not change the 10% non-state matching funds requirement for operation and maintenance grants awarded under the O&M Program in 31TAC529, Subchapter A.

STATUTORY AUTHORITY. These amendments are adopted pursuant to Texas Agriculture Code, §201.020, which authorizes the Board to adopt rules for this purpose.

§529.55. Submitting an Application.

(a) Applications must be submitted on forms provided by the State Board.

(b) All applications must have certification signatures by authorized individuals from all sponsors identified in the applicable watershed agreement with O&M responsibility for the flood control dam(s) on which repairs are proposed acknowledging and approving the application prior to it being submitted to the State Board for consideration. Certification by signature means the sponsor agrees to cooperate on the project with the other sponsors and may consider entering into a contract with the State Board relating to the project's completion. Where one or more of the sponsors listed on the watershed agreement is no longer formally in existence, the remaining sponsors should contact the State Board prior to submitting an application for additional guidance.

(c) Each application must identify one individual as the person that will represent all sponsors identified on the application. The authorized representative shall be the single point of contact for all communications regarding an application.

(d) Each application must include cost estimates for the entire project. Cost estimates must be categorized by construction, easement purchasing, and legal fees.

(e) Each application must specify the length of time in which the project is anticipated to be completed.

(f) Submittal of an application does not constitute a contractual agreement or a promise of a contractual agreement between the State Board and any entity.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 17, 2023.

TRD-202301393
Heather Bounds
Government Relations Specialist
Texas State Soil and Water Conservation Board
Effective date: May 7, 2023
Proposal publication date: December 16, 2022
For further information, please call: (254) 778-8741

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 27. CRIME RECORDS
SUBCHAPTER A. REVIEW OF PERSONAL CRIMINAL HISTORY RECORD

37 TAC §27.1

The Texas Department of Public Safety (the department) adopts amendments to §27.1, concerning Right of Review. This rule is adopted without changes to the proposed text as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1269) and will not be republished.

These amendments update and clarify language related to current procedures for the personal review of criminal history record information and the required fees.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.083(b)(3), which requires the department to

grant access to criminal history record information to the person who is the subject of the information; and §411.086, which requires the department to adopt rules that provide for a uniform method of requesting criminal history record information from the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 2023.

TRD-202301438
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: May 11, 2023
Proposal publication date: March 3, 2023
For further information, please call: (512) 424-5848

♦ ♦ ♦

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES
SUBCHAPTER C. PROGRAM SERVICES
DIVISION 4. HEALTH CARE SERVICES

37 TAC §§380.9187 - 380.9189

The Texas Juvenile Justice Department (TJJD) adopts amendments to Texas Administrative Code Chapter 380, Subchapter C, §§380.9187 - 380.9189 with changes to the proposed text as published in the October 28, 2022, issue of the *Texas Register* (47 TexReg 7240). The amended sections will be republished.

SUMMARY OF CHANGES

The amendments to §380.9187, concerning Suicide Alert Definitions, include adding that suicide risk screenings and assessments must be done either in person *or via remote computer service that allows both parties to see and hear one another*; modifying several definitions to remove the requirement for a suicide risk screening or assessment to be face-to-face, to list self-harming behavior separately from suicidal behavior, and to require *staggered intervals* for room checks and for documenting certain status checks (rather than a *not-to-exceed* time frame); increasing how often staff must document the status of youth on constant observation during waking hours and youth on one-to-one observation during all hours; and removing the prohibition on using close observation for youth in a crisis stabilization unit or security unit. (Such youth will be on maximum 5-minute checks rather than the standard maximum 10-minute checks for close observation.)

Other changes to §380.9187 include removing the requirement for staff to conduct an additional type of room check referred to as a constant motion check; removing the listing of specific staff positions that must be trained to conduct a suicide risk screening; replace the term *Self-Injurious Behavior* with *Self-Harming Behavior;* revising the definitions of *Designated Mental Health Professional, Rescue Kit, Suicidal Behavior, Suicidal Ideation, Suicide Alert, Suicide Observation Folder, One-to-One Observation, Constant Observation, and Suicide Risk Screening;* adding definitions for *Completed Suicide, Staggered Intervals,* and *Suicide-Resistant Clothing;* and making non-substantive revisions to the definitions of *Suicide Observation Level* and *Suicide-Resistant Room.*

The new amendment to §380.9187 clarifies the definition of *Life-Threatening Suicide Attempt.*

The amendments to §380.9188, concerning Suicide Alert for High Restriction Facilities, include changes in a number of areas.

General changes to §380.9188 include removing several references to which TJJD staff members are responsible for certain actions, such as family notifications, internal facility notifications, and transferring records; removing the requirement for suicide risk assessments to be conducted face-to-face; replacing the phrases *self-injurious behavior* and *self-injury* with either *self-harming behavior* or *suicidal and/or self-harming behavior,* as appropriate; specifying that certain screenings and assessments must be *initiated* (rather than conducted) within an identified time frame; and replacing references to *on-duty supervisor* and *duty officer* with *campus shift supervisor.*

The amendments to §380.9188 related to initial intake and youth arrival at a facility after initial intake include adding that the designated mental health professional *reviews* (rather than signs) the suicide risk assessments conducted by other mental health professionals upon a youth's admission to TJJD; adding that, when a youth transfers from one high-restriction facility to another, a suicide risk screening is conducted by trained staff within one hour after arrival, which is separate from the suicide screening completed by nursing staff as part of the intrasystem health screening; adding that a suicide risk screening is conducted upon a youth's return after spending any amount of time out of TJJD's physical custody due to a significant life event, regardless of whether the absence was at least 48 hours; clarifying that the requirement for conducting a screening or assessment within one hour after an intrasystem transfer or return from an absence does not apply to youth who are already on suicide alert at the time of arrival; and adding that, following a suicide risk screening performed due to intrasystem transfer or return from an absence, the level of observation is determined by a mental health professional (rather than specifying that all youth identified as at risk for suicide are placed on at least constant observation), and the suicide risk assessment is conducted *within an appropriate time frame, as established in agency procedures, based on the youth's assigned observation level and screening result* (rather than specifying within four hours for youth who are actively suicidal or engaged in a suicide attempt, 24 hours for youth who engaged in some other type of suicidal behavior or ideation, or seven days for youth not identified as being at risk).

The amendments to §380.9188 related to responding to youth actions include clarifying that staff must take the same immediate actions for a youth who has demonstrated self-harming behavior as for a youth who has demonstrated suicidal behavior; removing a reference to which form is used to document that a staff member has notified the shift supervisor of a youth's behavior or ideation; adding that any type of suicidal behavior or ideation or self-harming behavior must be referred for a suicide screening by staff who observe the behavior; removing a requirement to document suicidal behavior on an incident report; adding that the screening or assessment initiated within one hour after notification of a youth's suicidal or self-harming behavior or sui-

cidal ideation is not required when deemed inappropriate due to a medical emergency; adding that, when a screening is conducted after a youth's suicidal or self-harming behavior or suicidal ideation, the suicide risk assessment is conducted *within an appropriate time frame, as established in agency procedures, based on the youth's assigned observation level and screening result* (rather than specifying within four hours for youth who are actively suicidal or engaged in a suicide attempt or 24 hours for youth who engaged in some other type of suicidal behavior); and adding that youth who return to the facility after being taken to the emergency room are placed on *one-to-one observation* (rather than either constant or one-to-one observation) until assessed by a mental health professional.

The amendments to §380.9188 related to the time after a suicide risk assessment include specifying that, the *designated mental health professional* (rather than the mental health professional who assessed a youth) ensures the updated suicide alert list is distributed to staff; and clarifying that the campus shift supervisor *ensures a staff member is assigned* (rather than assigns a staff member) to monitor a youth placed on suicide alert.

The amendments to §380.9188 related to supervising youth on suicide alert include adding that, in addition to maintaining visual observation and documenting status, the staff member assigned to monitor a youth must follow any precautions set by the mental health professional; clarifying that, for youth on the constant observation level, the requirement to not let the youth out of the monitoring staff member's sight applies only during waking hours (such youth are on maximum five-minute checks during sleeping hours); adding breasts and buttocks to the list of body parts that staff are prohibited from observing when a youth is in the bathroom or shower and is also on one-to-one or constant observation; and adding that a decision to use force to remove clothing after issuing suicide-resistant clothing requires a recommendation from a mental health professional and approval from the directors over treatment and facility operations or the directors' designees.

The amendments to §380.9188 related to treatment and assessment include clarifying that the mental health professional consults with the youth's case manager, *as needed,* to recommend modifications to the youth's individual case plan; clarifying that mental health professionals review suicide risk assessments from other mental health professionals when assessing a youth currently placed on suicide alert; clarifying that the mental health professional's assessment does not need to be documented as a progress note; adding that, when changes are made to a youth's observation level or other safety precautions, *updated information regarding the youth* (rather than an updated suicide alert list) is distributed to *designated* facility staff; and specifying that, when information about youth on suicide alert is discussed during meetings between the psychology department and the psychiatric provider, *only youth who are on the psychiatric caseload are discussed.*

The amendments to §380.9188 related to other placement options include removing information regarding criteria and referral for placement in the protective custody program, which is addressed in a separate rule; and clarifying that emergency psychiatric placement may be pursued when it is determined a youth cannot be safely or appropriately managed *within TJJD custody* (rather than in protective custody).

The amendments to §380.9188 related to transferring youth on suicide alert to the next placement include adding that, when a youth on suicide alert is moved to a less restrictive placement, the mental health professional communicates observation level and precautions to facility staff, if applicable. In addition, amendments specifically related to situations in which a youth on suicide alert will be transferred to another high-restriction facility will include adding that *self-harming behavior* (not just suicidal behavior) is also included in the summary that is sent to the receiving facility; removing requirements for a mental health professional at the sending facility to call the designated mental health professional at the receiving facility and to notify the health services administrator at the receiving facility; clarifying that a mental health professional at the receiving facility *initiates a suicide risk assessment* (rather than *meets with the youth*) within four hours of arrival; and adding that a mental health professional at the receiving facility consults with the designated mental health professional *or a designee* regarding the plan for treatment and assessment.

The amendments to §380.9188 related to reducing the observation level/removing youth from suicide alert, training, and other issues include specifying that, when a youth's observation level is lowered or a youth is removed from suicide alert, the psychiatric provider is notified *only for youth who are on the psychiatric caseload;* specifying that staff who have *regular, direct* contact (rather than just *direct* contact) with youth receive initial and annual suicide prevention training; adding self-harming behavior to several components of the new-hire suicide prevention training; adding that using force to remove clothing shall be avoided whenever possible and used only as a last resort when a youth is physically engaging in suicidal and/or self-harming behavior; and removing a reference to notifying parents/guardians after a completed suicide, which is addressed in a separate TJJD rule.

The new amendments to §380.9188 include adding that, if force is used to remove a youth's regular clothing, a mental health professional must evaluate the youth's need for trauma symptom care and ensure the care is provided if appropriate; clarifying that staff designated to conduct suicide screenings receive *annual* training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening; and adding that all training described shall be accompanied by a test or demonstration to establish competency in the subject matter.

The amendments to §380.9189, concerning Suicide Alert for Medium Restriction Facilities, include changes in a number of areas.

General changes to §380.9189 include removing several references to which TJJD staff members are responsible for certain actions, such as family notifications and internal facility notifications; and removing the requirement for suicide risk assessments to be face-to-face. General changes also include adding the following provisions for medium-restriction facilities that do not have a TJJD-employed mental health professional on staff and during times when a TJJD-employed mental health professional is not on call or on duty: 1) TJJD uses community resources such as local mental health authorities and psychiatric hospitals for clinical services; 2) TJJD will attempt to obtain guidance from the mental health professional regarding frequency of follow-up assessments and any enhanced precautions or supervision requirements, consistent with TJJD's observation levels when possible; 3) TJJD staff follow the guidance of the community mental health professional regarding precautions and supervision even when such differ from requirements of this rule; and 4) TJJD staff are authorized to seek additional direction from mental health professionals within TJJD or in the community at

any time if there are concerns about the appropriateness of precautions or supervision level.

The amendments to §380.9189 related to intake screening include adding that youth are placed on *one-to-one observation* (rather than an observation level assigned by the facility administrator or designee) until assessed by a mental health professional if the intake screening identifies the youth as at risk for suicide; and clarifying that the 72-hour time frame for conducting a suicide risk assessment after a youth is identified as at risk during an intake screening applies only when a TJJD-employed mental health professional is contacted to do the assessment.

The amendments to §380.9189 related to responding to youth actions include clarifying that staff must take the same immediate actions for a youth who has demonstrated self-harming behavior as for a youth who has demonstrated suicidal behavior; adding that staff must begin providing *one-to-one* observation (rather than constant observation unless the facility administrator/designee directs a higher level) when responding to suicidal or self-harming behavior or suicidal ideation; adding that the staff member who observes the youth's behavior or ideation is responsible for beginning the observation log (rather than the facility administrator or designee being responsible); removing a reference to which form is used to document that a staff member has notified the facility administrator or designee of a youth's behavior or ideation; clarifying that the staff who observes the behavior or ideation refers the youth for a suicide screening. Removed a requirement to document suicidal behavior on an incident report; adding that a suicide risk screening is not required if a mental health professional initiates a suicide risk assessment within one hour after being notified of a youth's behavior or ideation; adding that it is the responsibility of the facility administrator or designee to ensure the youth is assessed by a mental health professional; adding that the screening or assessment within one hour after a youth's behavior or ideation is not required when deemed inappropriate due to a medical emergency; removing the provision that directed the facility administrator or designee to assign the observation level following a screening; adding that, *in cases where a TJJD-employed mental health professional has been contacted,* the *mental health professional* assigns the observation level following a screening; adding that *one-to-one* observation (rather than *at least constant* observation) is required for a youth who is allowed to leave the facility while waiting for a suicide risk assessment; adding that youth who had been to the emergency room must be on one-to-one observation upon return to the facility until assessed by a mental health professional; removing time frames for when a mental health professional must complete a suicide risk assessment; adding that, in facilities with a TJJD-employed mental health professional who is on call or on duty, the assessment must be conducted within an appropriate time frame, as established in agency procedures, based on the youth's assigned observation level and screening result; removing the provision that required, in cases where the time frame to conduct a suicide risk assessment has been exceeded, at least constant observation for the youth until assessed; and removing a reference to the ability of the facility administrator or designee to secure emergency psychiatric care to obtain an evaluation of the youth.

The amendments to §380.9189 related to the time after a suicide risk assessment include clarifying that the documentation requirements following a suicide risk assessment apply to TJJD-employed mental health professionals; adding that the facility administrator or designee ensures appropriate facility staff are notified of the results of an assessment; removing a requirement for the mental health professional to communicate the results to the facility administrator or designee; and adding that the youth's case manager is also notified if the youth was assessed but not placed on suicide alert.

The amendments to §380.9189 related to supervising youth on suicide alert include adding that, in addition to maintaining visual observation and documenting status, the staff member assigned to monitor a youth must follow any precautions set by the mental health professional; clarifying that, for youth on the constant observation level, the requirement to not let the youth out of the monitoring staff member's sight applies only during waking hours (such youth are on maximum five-minute checks during sleeping hours); adding breasts and buttocks to the list of body parts that staff are prohibited from observing when a youth is in the bathroom or shower and is also on one-to-one or constant observation; removing the provision stating who may approve a youth on suicide alert to have access to off-site activities and added that such decisions must be approved on a case-by-case basis; and adding that youth must be supervised on *one-to-one* observation (rather than at least constant observation) during any such off-site activities.

The amendments to §380.9189 related to treatment and reassessment include specifying that the responsibilities concerning a treatment plan, modifications to the case plan, schedule for reassessment, and required components of each assessment apply only to TJJD-employed mental health professionals; and specifying that the requirement to notify a youth's psychiatric provider of the youth's placement on suicide alert and other related information applies only when the youth is receiving *routine* psychiatric services.

The amendments to §380.9189 related to other placement options include adding that emergency psychiatric placement may be obtained at a TJJD crisis stabilization unit or in a private psychiatric hospital; removed the provision stating that obtaining such placement must be in accordance with §380.8771; adding the facility administrator *or designee* (rather than just the administrator) may seek temporary admission to the protective custody program in a high-restriction TJJD facility in certain circumstances; and removing the requirement for the facility administrator to initiate alternate placement in a more secure facility if the emergency psychiatric placement exceeds five days.

The amendments to §380.9189 related to reducing observation levels and removing youth from suicide alert include adding that the suicide observation level may be lowered by no more than one level every 24 hours; adding that only youth on the lowest observation level may be removed from suicide alert; removing the requirement for the facility staff to notify the psychiatric provider when a youth's observation level is lowered or when a youth is removed from suicide alert; and adding that TJJD-employed mental health professionals must identify in the treatment plan any needed follow-up mental health services when a youth is removed from suicide alert.

The amendments to §380.9189 related to release or discharge of youth while on suicide alert include removing a listing of which specific steps are taken by the mental health professional when a youth on suicide alert will be released or discharged; and adding that the facility administrator or designee is responsible for ensuring a mental health professional has arranged for appropriate continuity of care in these situations, when possible.

The amendments to §380.9189 related to training and other changes include specifying that *staff who have regular, direct*

contact with youth (rather than direct care staff) receive initial and annual suicide prevention training; adding self-harming behavior to several components of the new-hire suicide prevention training; moving the reference to annual training to a separate item from the new-hire training, which clarifies that the listing of topics for new-hire training does not apply to the annual training; removing wording that allowed only mental health professionals to make decisions about exceptions to regular programming, community access, housing, or clothing for youth determined to be at risk for suicide; specifying that *at least one* rescue kit (rather than multiple rescue kits) must be present in the facility; and removing a reference to notifying parents/guardians after a completed suicide, which is addressed in a separate TJJD rule.

The new amendments to §380.9189 include clarifying that staff designated to conduct suicide screenings receive *annual* training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening; and adding that all training described shall be accompanied by a test or demonstration to establish competency in the subject matter.

PUBLIC COMMENTS

TJJD received public comments from two organizations, Disability Rights Texas and the Texas Council for Developmental Disabilities.

Comment 1, relating to §380.9187, Suicide Alert Definitions: Regarding the definition of *Trained Designated Staff Member*, language should be added to the rule to specify which entity provides the training and mandate the frequency of the training.

TJJD Response: The proposed rule text at §380.9188(n)(3) and §380.9189(m)(3) says, "Staff designated to conduct suicide screenings receive training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening." TJJD believes this language is sufficient. TJJD agrees that the rule should include a requirement regarding the frequency of the training. However, TJJD believes this requirement would better fit within §380.9188 and §380.9189. Language requiring annual training has been added to the adopted rule text.

Comment 2, relating to §380.9188, Suicide Alert for High-Restriction Facilities: The rule should include information about counseling or trauma care being provided to the youth when, as a last resort, force is used to remove clothing.

TJJD Response: Although the rule is not a comprehensive listing of all the assessments performed, each facility has the ability to deliver trauma reduction therapy and trauma assessments. While it is rare that force is used to remove clothing for youth who are physically engaging in suicidal and/or self-harming behavior and such actions will be allowed only upon the recommendation of a mental health professional and approval of the directors over treatment and facility operations or their designees, TJJD agrees that the rule should address the provision of trauma symptom care in such instances. Language regarding provision of trauma symptom care has been added to the adopted rule text.

Comment 3, relating to §380.9188, Suicide Alert for High-Restriction Facilities: Regarding subsection (e)(1)(B), the rule should include language to address the screening and documentation of individuals with intellectual or developmental disability, which professional is responsible for the screening, and that the risk of suicide or self-harm and referrals for follow-up treatment or further assessment be documented.

TJJD Response: The screening described in the rule is specific to the youth's arrival at the Orientation and Assessment Unit, which is administered by a mental health professional, as defined in §380.9187. While TJJD has rules on assessing all youth for specialized treatment needs, including intellectual disability, while at the Orientation and Assessment Unit (see §380.8751), the initial screening described by §380.9188 must be administered within the first hour after the youth's arrival for the purpose of identifying any youth at immediate risk for suicide and self-harm. TJJD believes this rule appropriately addresses the need to screen all youth, including those with intellectual or developmental disability, for immediate risk of suicide or self-harm.

Comment 4, relating to §380.9188, Suicide Alert for High-Restriction Facilities: The rule should mandate that all training relating to suicide prevention and response be competency-based.

TJJD Response: TJJD acknowledges the importance of suicide prevention and response training and evaluating whether participants have learned the material. Language requiring competency-based training has been added to the adopted rule text.

Comment 5, relating to §380.9188, Suicide Alert for High-Restriction Facilities: The rule should mandate that a debriefing also be conducted with the family or the legally authorized representative.

TJJD Response: Debriefing is for the purpose of identifying insufficiencies for internal institutional operation and safety. The purpose of this provision is specific to agency staff, what might have led to the given situation, and how to prevent such situations in the future. It is not intended to be a way of communicating with the family or legally authorized representative.

STATUTORY AUTHORITY

The amended sections are adopted under Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this adoption.

§380.9187. Suicide Alert Definitions.

(a) Purpose. This rule establishes definitions of terms used in the Texas Juvenile Justice Department's (TJJD's) suicide prevention policies as set forth in §§380.9188, 380.9189, 380.9190, and 380.9745 of this chapter.

(b) Definitions.

(1) Completed Suicide--a death resulting from deliberate actions to harm oneself.

(2) Critical Incident Review--a review conducted by a multi-disciplinary team designed to critically review the circumstances surrounding a death or serious incident and to recommend corrective action where necessary. The critical incident review may consider information such as incident reports, training/personnel records, policies/procedures, other relevant documents, facility practices, any non-confidential information resulting from a morbidity and mortality review, and any other information the review team determines is necessary for a comprehensive review.

(3) Critical Incident Support Team--a team used to provide support to youth, employees, and families involved in or adversely affected by the death of a TJJD youth or staff member.

(4) Designated Mental Health Professional--a doctoral-level psychologist who has primary responsibility and accountability for the evaluation, monitoring, and treatment of youth referred

for suicide risk in high-restriction facilities. In the absence of a doctoral-level psychologist, a licensed mental health professional may be appointed to serve as the designated mental health professional with the approval of the Central Office director over treatment services.

(5) Life-Threatening Suicide Attempt--a suicide attempt that a health care professional determines would have likely resulted in death except for circumstances beyond the youth's control.

(6) Mental Health Professional--a doctoral-level psychologist, masters-level mental health specialist, licensed professional counselor, licensed psychological associate, or licensed clinical social worker.

(7) Morbidity and Mortality Review--an assessment of the overall clinical care provided and the circumstances leading up to a death or certain serious medical incidents. Its purpose is to identify program strengths and opportunities for improvement in clinical care.

(8) Protective Custody--a temporary program in high-restriction facilities designed for the placement of youth who cannot be safely managed in the current dorm or living unit due to risk of suicidal and/or self-harming behavior, as determined by a mental health professional.

(9) Psychiatric Provider--a:

(A) Texas-licensed psychiatrist; or

(B) Texas-licensed physician assistant or psychiatric nurse practitioner acting under the authorization of a psychiatrist.

(10) Rescue Kit--emergency medical items such as a CPR pocket mask, disposable gloves, and a tool capable of cutting ligatures.

(11) Self-Harming Behavior--behavior that causes harm, such as self-laceration, self-battering, taking overdoses, or exhibiting deliberate recklessness. Self-harming behavior is not considered a type of suicidal behavior, unless designated as such by a mental health professional.

(12) Staggered Intervals--periods of time that are irregular and unpredictable.

(13) Suicidal Behavior--includes suicide attempts or taking deliberate action toward carrying out a specific plan or strategy to injure oneself or to cause one's own death.

(14) Suicidal Ideation--thoughts of engaging in suicide-related behavior. This means a youth expresses thoughts or fantasies about committing suicide or expresses a desire to commit suicide.

(15) Suicide Alert--a status that begins following a suicide risk assessment by a mental health professional, indicating that a youth is at risk to attempt suicide or self-harming behavior and requires increased supervision and/or precautions designed to limit the risk.

(16) Suicide Attempt--an act apparently intended to end one's life. A suicide attempt is a type of suicidal behavior.

(17) Suicide Observation Folder--a folder containing completed and/or active suicide observation logs/check sheets and any other pertinent information as determined by a mental health professional.

(18) Suicide Observation Level--levels of observation determined by a mental health professional to provide enhanced supervision for youth who are awaiting a suicide risk assessment or who have been placed on suicide alert. General criteria for determining the appropriate level of observation are provided in subparagraphs (A) - (C) of this paragraph, however the mental health professional may assign any level of observation deemed appropriate under the circumstances based on the professional's clinical judgment.

(A) One-to-One Observation--generally considered appropriate for a youth who is actively suicidal, either by threatening or engaging in suicidal and/or self-harming behavior, and who may require emergency psychiatric placement. One-to-one observation includes the following:

(i) Assigned staff may not have any other concurrent duties.

(ii) Assigned staff remains within six feet of the youth and maintains continuous, direct visual observation of the youth at all times, including while the youth is in the youth's room or while the youth is sleeping.

(iii) Assigned staff documents the youth's status at least once every five minutes.

(iv) Assigned staff must be formally relieved by another staff or by the discontinuation of the one-to-one status.

(v) Doors to individual rooms remain unlocked, except when a youth presents an imminent danger to staff due to aggressive behavior.

(B) Constant Observation--generally considered the appropriate level of observation for a youth who is actively suicidal, either by threatening or engaging in suicidal and/or self-harming behavior, but does not appear to require emergency psychiatric placement. Constant observation includes the following:

(i) During waking hours, the youth is within 12 feet and within sight of assigned staff at all times. Staff may have concurrent duties if the duties do not interfere with observation of the youth. The assigned staff documents the youth's status at staggered intervals not to exceed every five minutes.

(ii) During sleeping hours, assigned staff observes and documents the youth's status at staggered intervals not to exceed every five minutes.

(iii) For youth in a security unit or crisis stabilization unit, doors to individual rooms remain locked.

(C) Close Observation--generally considered the appropriate level of observation for a youth who is not actively suicidal and would be considered a lower risk for suicide but expresses suicidal ideation and/or has a recent history of suicidal and/or self-harming behavior. In addition, close observation would be appropriate for a youth who denies suicidal ideation or does not threaten suicide but demonstrates other concerning behavior (through actions, current circumstances, or recent history) indicating the potential for self-harm. With close observation, the assigned staff is generally involved in concurrent duties that do not interfere with required observation of the youth. The frequency of checks for youth on close observation is as follows:

(i) for youth in a security unit or crisis stabilization unit, assigned staff observes and documents the youth's status at staggered intervals not to exceed every five minutes; and

(ii) for all other youth, assigned staff observes and documents the youth's status at staggered intervals not to exceed 10 minutes.

(19) Suicide-Resistant Clothing--tear-resistant, single-piece attire designed to promote a youth's safety while still providing warmth and coverage.

(20) Suicide-Resistant Room--a room that provides a safe environment and has no obvious materials or possessions that can be used in suicidal and/or self-harming behavior or any item that can be used for hanging. The room is free of all obvious protrusions and any items that provide an easy anchoring device for hanging. Lighting is tamper-proof, and there are no switches or electrical outlets in the room. The door of the room has a heavy-gauge, clear panel that provides staff an unobstructed view of the room.

(21) Suicide Risk Assessment--a standardized assessment by a mental health professional that:

(A) is conducted in-person or via remote computer service that allows both parties to see and hear one another; and

(B) contains specific lines of inquiry regarding suicide risk, a mental status examination, and clinical observations and recommendations.

(22) Suicide Risk Screening--a standardized interview to determine the appropriate suicide observation level until a suicide risk assessment is conducted. The screening is conducted in-person or via remote computer service that allows both parties to see and hear one another.

(23) Trained Designated Staff Member--a staff member trained to conduct a suicide risk screening.

§380.9188. Suicide Alert for High-Restriction Facilities.

(a) Purpose. This rule establishes procedures for identification, assessment, treatment, and protection of youth in high-restriction facilities who may be at risk for suicide.

(b) Applicability. This rule applies to all youth currently placed in high-restriction facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. Definitions pertaining to this rule are under §380.9187 of this chapter.

(d) General Provisions.

(1) Treatment for youth determined to be at risk for suicide is provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide participate in regular programming to the extent possible, as determined by a mental health professional. Only a mental health professional may make exceptions to the provision of regular programming, housing placement, or clothing.

(3) Using force to remove clothing shall be avoided whenever possible and used only as a last resort when the youth is physically engaging in suicidal and/or self-harming behavior.

(4) Designated staff carry rescue kits at all times while on duty for use in the event of a medical emergency caused by a suicide attempt. Rescue kits are also placed in designated buildings or areas of the campus that are not accessible to youth.

(5) As soon as possible, but not to exceed two hours, after a suicide attempt, the youth's parent or guardian is notified (with the youth's consent if the youth is age 18 or older).

(e) Intake Screening and Assessment.

(1) Upon Initial Admission to TJJD.

(A) Upon arrival to a TJJD orientation and assessment unit, designated intake staff keep youth within direct line-of-sight supervision until the youth is screened or assessed for suicide risk.

(B) Within one hour after the youth's arrival to a TJJD orientation and assessment unit, a mental health professional initiates an initial mental health screening and documents the results.

(C) If the mental health professional identifies the youth as potentially at risk for suicide, the mental health professional immediately conducts a suicide risk assessment.

(D) Within 14 days after arrival at the orientation and assessment unit, all youth receive a comprehensive mental health evaluation conducted by a mental health professional. The mental health evaluation will include a suicide risk assessment if one has not already been completed.

(E) The suicide risk assessment completed upon initial admission includes, at a minimum:

(i) a mental status exam;

(ii) a review of all mental health and medical records submitted from the courts, county juvenile detention facilities, or any other medical or mental health provider, to include any assessments by mental health professionals relating to prior suicide alerts during confinement;

(iii) a review of all other available screenings and assessments; and

(iv) referrals for follow-up treatment or further assessment, as indicated.

(F) The designated mental health professional reviews the suicide risk assessment.

(2) Upon Arrival at a TJJD Facility after Intake.

(A) Except for youth who are on suicide alert at the time of arrival, the following actions must occur within one hour after a youth's arrival at a high-restriction facility following an intrasystem transfer, any period of time spent out of TJJD's physical custody due to a significant life event, or a period of at least 48 hours spent out of TJJD's physical custody for any reason:

(i) a trained designated staff member initiates a suicide risk screening; or

(ii) a mental health professional initiates a suicide risk assessment.

(B) The youth is kept within direct line-of-sight supervision until the youth is screened or assessed.

(C) If a screening is conducted:

(i) the trained designated staff member immediately contacts a mental health professional to assign an observation level, if appropriate, based on results of the screening; and

(ii) the youth is immediately placed on the observation level directed by the mental health professional; and

(iii) the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result.

(D) The suicide risk assessment conducted upon a youth's arrival at a TJJD facility includes, at a minimum:

(i) a mental status exam;

(ii) a review of the youth's masterfile and medical record, as indicated;

(iii) referrals for follow-up treatment or further assessment, as indicated;

(iv) a determination of whether to place the youth on suicide alert, and if placed, designation of the appropriate observation level and other safety precautions; and

(v) a review by the designated mental health professional of the assessment.

(3) Additional Screening by Infirmary for Intrasystem Transfers.

(A) Upon arrival of a youth from another high-restriction TJJD facility, a nurse completes an intrasystem health screening, including questions relating to suicidal ideation and suicidal behavior.

(B) If the youth is identified by the screening as potentially at risk for suicide, the nurse immediately contacts a mental health professional and communicates the results of the screening.

(f) Responding to Suicidal Ideation, Self-Harming Behavior, or Suicidal Behavior.

(1) A staff member who has reason to believe that a youth has verbalized suicidal ideation or demonstrated self-harming or suicidal behavior must:

(A) immediately use the rescue kit if appropriate and seek medical attention if there is a medical emergency;

(B) verbally engage the youth;

(C) provide constant observation unless a mental health professional directs a higher observation level;

(D) begin a suicide observation log to document status checks of the youth;

(E) immediately notify the campus shift supervisor and document the notification; and

(F) refer the youth for a suicide screening.

(2) As soon as possible, but no later than one hour after notification, the campus shift supervisor ensures a trained designated staff member initiates a suicide risk screening or a mental health professional initiates a suicide risk assessment. This screening or assessment is not required when deemed inappropriate due to a medical emergency.

(3) If a screening is conducted:

(A) the trained designated staff member immediately contacts a mental health professional to assign an observation level based on results of the screening; and

(B) the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result.

(4) If the youth is transported to the emergency room:

(A) upon return to the facility, the youth is placed on one-to-one observation until assessed by a mental health professional; and

(B) a mental health professional initiates a suicide risk assessment within four hours after the youth's return to the facility.

(5) The suicide risk assessment conducted in response to suicidal behavior or ideation includes:

(A) a mental status exam;

(B) a review of the youth's masterfile and medical record, as indicated;

(C) referrals for follow-up treatment or further assessment, as indicated;

(D) a determination of whether to place the youth on suicide alert, and if placed, designation of the appropriate observation level and other safety precautions; and

(E) a review by the designated mental health professional of the assessment.

(6) Whenever possible, suicide risk screenings and assessments are conducted in a confidential setting.

(g) Actions Taken Upon Completion of Suicide Risk Assessment.

(1) Documentation Requirements.

(A) Upon completion of a suicide risk assessment, the mental health professional documents the results of the assessment, including any changes in the youth's observation level.

(B) If the youth is placed on suicide alert, the mental health professional ensures the youth's name is placed on the facility's suicide alert list. The designated mental health professional ensures the updated list is distributed to facility staff.

(2) Notification of Assessment Results.

(A) If the youth is placed on suicide alert:

(i) as soon as possible, infirmary staff, the youth's case manager, staff responsible for supervising the youth, and the campus shift supervisor are notified of the youth's observation level, other safety precautions, and any additional instructions; and

(ii) the youth's parent or guardian is notified as soon as possible after the youth is placed on suicide alert (with the youth's consent if the youth is age 18 or older).

(B) If the youth is not placed on suicide alert, the mental health professional notifies the referring staff and the youth's case manager that the youth was assessed but not placed on suicide alert.

(3) Assignment of Staff to Monitor Youth. If the youth is placed on suicide alert, the campus shift supervisor ensures a specific staff member is assigned to monitor the youth and carry the suicide observation folder.

(h) Supervision of Youth on Suicide Alert.

(1) Unless the youth is already placed in a suicide-resistant room, the campus shift supervisor or trained designated staff member coordinates a search of the youth's room or personal area and removes any potentially dangerous items.

(2) The suicide observation folder must be in the possession of the monitoring staff member at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation folder.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the folder and document the transfer of supervision in the folder.

(3) As required by the suicide observation level and other safety precautions assigned to the youth, the monitoring staff member must:

(A) maintain direct visual observation of the youth;

(B) document the youth's status at the required interval; and

(C) follow any precautions set by the mental health professional.

(4) The monitoring staff member must not leave a youth assigned to one-to-one observation unattended or let the youth out of the staff member's sight.

(5) During waking hours, the monitoring staff must not leave a youth assigned to constant observation unattended or let the youth out of the staff member's sight.

(6) Any time a youth on one-to-one or constant observation is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(A) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts, excluding genitalia, breasts, and buttocks); and/or

(B) maintain verbal contact.

(7) When a youth on one-to-one or constant observation is engaged in regular programming (e.g., education, group sessions, recreation), the monitoring staff will accompany the youth to the activity and remain within the required distance (i.e., 6 or 12 feet). If the youth cannot be maintained within the required distance without disrupting the program, a mental health professional must be consulted to consider possible modifications to the youth's supervision plan or scheduled routine to ensure the youth can be appropriately monitored.

(8) Issuing suicide-resistant clothing and removing a youth's clothing, as well as canceling programming and routine privileges, will be avoided whenever possible and used only as a last resort for periods during which the youth is physically engaging in suicidal and/or self-harming behavior.

(A) Decisions regarding issuance of suicide-resistant clothing and restrictions in programming and/or routine privileges may be made only by a mental health professional.

(B) A decision to conduct a strip search if criteria in §380.9709 of this chapter are met may be made only in consultation with a mental health professional.

(C) A decision to use force in order to remove a youth's regular clothing after a youth has been issued suicide-resistant clothing may occur only upon the recommendation of a mental health professional and with the approval of the directors over treatment and facility operations or the directors' designees.

(D) If force is used to remove a youth's regular clothing as provided by subparagraph (C) of this paragraph, a mental health professional must evaluate the youth's need for trauma symptom care and ensure the care is provided if appropriate.

(9) Unless approved by the designated mental health professional in consultation with the facility administrator, youth on suicide alert are not allowed access to off-campus activities or non-medical appointments. Decisions regarding off-campus medical appointments are made by medical staff.

(i) Treatment and Reassessment of Youth on Suicide Alert.

(1) A mental health professional develops a written treatment plan (or revises an existing care plan) that includes treatment goals and specific interventions designed to address and reduce suicidal ideation and threats, suicidal and/or self-harming behavior, and suicidal threats perceived to be based upon attention-seeking or manipulative behavior. The treatment plan describes:

(A) signs, symptoms, and circumstances under which the risk for suicide or other self-harming behavior is likely to reoccur;

(B) how reoccurrence of suicidal and other self-harming behavior can be avoided; and

(C) actions the youth and staff can take if the suicidal and other self-harming behavior does occur.

(2) The mental health professional consults with the youth's case manager, as needed, to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan. The mental health professional consults with staff responsible for supervising the youth regarding the youth's progress.

(3) While the youth is on suicide alert, a mental health professional assesses the youth at least once every 48 hours, unless the youth is placed on one-to-one observation, in which case the mental health professional assesses the youth at least once every 24 hours.

(4) For each assessment, the mental health professional:

(A) reviews the contents of the suicide observation folder, as well as suicide risk assessments and progress notes from other mental health professionals as applicable;

(B) determines whether any changes should be made to the youth's observation level or other safety precautions, in consultation with the designated mental health professional;

(C) documents any changes in the observation level or other safety precautions in the suicide observation folder; and

(D) documents the assessment, including a sufficient description of the youth's emotional status, observed behavior, recommended observation level, justification for decision, and any special instructions for staff.

(5) Each time a change is made to the youth's observation level or other safety precautions, staff responsible for supervising the youth are notified and updated information regarding the youth is distributed to designated facility staff, including infirmary staff.

(6) During routine meetings between the psychology department and the psychiatric provider, the designated mental health professional or designee discusses information concerning youth on suicide alert who are on the psychiatric caseload.

(j) Protective Custody or Emergency Psychiatric Placement.

(1) Youth who cannot be safely managed in their assigned living units may be referred for placement in a suicide-resistant room in the protective custody program, in accordance with §380.9745 of this chapter. All treatment, reassessment, and observation requirements established in this rule will continue to apply while a youth is assigned to protective custody unless otherwise noted in §380.9745 of this chapter.

(2) If the designated mental health professional or psychiatric provider determines that a youth is in serious and imminent risk of suicidal and/or self-harming behavior and cannot be safely or appropriately managed within TJJD custody, the designated mental health professional or psychiatric provider may seek emergency psychiatric placement in accordance with §380.8771 of this chapter. The youth will be placed on one-to-one observation until received at the emergency placement.

(k) Intrasystem Transfer of Youth on Suicide Alert.

(1) Prior to transferring a youth on suicide alert to another high-restriction TJJD facility:

(A) within 24 hours prior to transfer, a mental health professional at the sending facility sends a summary of the youth's sui-

cidal and/or self-harming behavior, assessments, and treatment to the designated mental health professional and facility administrator or their designees at the receiving facility and any stopover facilities en route to the receiving facility; and

(B) staff assigned to monitor the youth at the sending facility provide the suicide observation folder to the transporting staff.

(2) A mental health professional at the receiving facility:

(A) as soon as possible, but no later than four hours after the youth's arrival, reviews the transfer summary and initiates a suicide risk assessment;

(B) places the youth on the facility's suicide alert list;

(C) ensures the suicide observation log is provided to the staff assigned to monitor the youth; and

(D) consults with the designated mental health professional or designee regarding the plan for treatment and assessment.

(3) Before the youth is moved to the assigned dorm or living unit at the receiving facility, staff responsible for supervising the youth and nursing staff are notified of the youth's suicide observation level.

(l) Moving a Youth on Suicide Alert to a Less Restrictive Placement.

(1) Prior to moving a youth on suicide alert to a less restrictive placement (i.e., medium-restriction facility or home placement), the mental health professional:

(A) provides the youth (or parent/guardian if the youth is under age 18) with a referral for follow-up care;

(B) coordinates with appropriate clinical staff to schedule a follow-up appointment;

(C) communicates observation level and precautions to facility staff, if applicable;

(D) identifies emergency resources, if needed; and

(E) notifies the youth's parole officer, if applicable.

(2) Mental health records are sent to the receiving mental health provider upon request.

(m) Reduction of Observation Level and Removal from Suicide Alert.

(1) The observation level for a youth on suicide alert may be lowered or discontinued only after a suicide risk assessment by a mental health professional, in consultation with the designated mental health professional.

(2) A mental health professional may lower a youth's suicide observation level by no more than one level every 24 hours unless otherwise approved by the designated mental health professional on a case-by-case basis.

(3) Only a mental health professional or the designated mental health professional may authorize removal of a youth's name from the suicide alert list. Only youth on the lowest available observation level may be removed from suicide alert.

(4) The mental health professional notifies appropriate staff when a youth's observation level is lowered and when a youth is removed from suicide alert. Infirmary staff notify the psychiatric provider of all such changes for youth on the psychiatric caseload.

(5) The youth's parent or guardian is notified when the youth is removed from suicide alert (with the youth's consent if the youth is age 18 or older).

(6) Upon removal from suicide alert, the mental health professional identifies in the treatment plan any needed follow-up mental health services.

(n) Training.

(1) All staff who have regular, direct contact with youth (including, but not limited to, security, direct care, nursing, mental health, and education staff) receive initial training in suicide prevention and response during new-hire training. Training addresses topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal and/or self-harming behavior;

(B) high-risk periods for suicidal and/or self-harming behavior;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence, and precipitating factors;

(D) responding to suicidal youth and youth experiencing mental health symptoms;

(E) communication between correctional and health care personnel;

(F) referral procedures;

(G) housing, observation, and suicide alert procedures; and

(H) follow-up monitoring of youth who engage in suicidal behavior, self-harming behavior, and/or suicidal ideation.

(2) All staff who have regular, direct contact with youth receive annual suicide prevention training.

(3) Staff designated to conduct suicide screenings receive annual training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening.

(4) All training described by this subsection shall be accompanied by a test or demonstration to establish competency in the subject matter.

(o) Post-Incident Debriefing and Analysis.

(1) After a completed suicide or a life-threatening suicide attempt, the facility administrator or designee coordinates a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) After a completed suicide, the executive director or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) After a completed suicide, the medical director conducts a morbidity and mortality review in coordination with appropriate clinical staff. The medical director may conduct a morbidity and mortality review after a life-threatening suicide attempt.

(4) After a completed suicide or a life-threatening suicide attempt, a critical incident review is convened to determine if the incident reveals system-wide deficiencies and to recommend improvements to agency policies, operational procedures, the physical plant, and/or training requirements.

(5) In the event of a completed suicide, all actions, notifications, and reports required under §385.9951 of this chapter must be completed.

§380.9189. Suicide Alert for Medium-Restriction Facilities.

(a) Purpose. This rule establishes procedures for identification, assessment, treatment, and protection of youth in medium-restriction facilities who may be at risk for suicide.

(b) Applicability.

(1) This rule applies to all youth currently placed in medium-restriction facilities operated by the Texas Juvenile Justice Department (TJJD).

(2) Responsibilities assigned to mental health professionals in this rule apply only to mental health professionals employed by TJJD.

(3) For facilities that do not have a mental health professional employed by TJJD and during periods when a TJJD-employed mental health professional is not on call or on duty:

(A) TJJD uses community resources such as local mental health authorities and psychiatric hospitals for all required clinical services;

(B) TJJD staff will attempt to obtain guidance from the mental health professional regarding any enhanced precautions or supervision requirements (consistent with §380.9187 of this chapter when possible) and frequency of follow-up assessments. TJJD staff follow the guidance and instructions provided by the community mental health professional regarding precautions and supervision for youth even when such differ from this rule; and

(C) TJJD staff are authorized to seek additional instruction, guidance, or assessments from mental health professionals within TJJD or in the community at any time if there are concerns about the appropriateness of precautions or required supervision level.

(c) Definitions. Definitions pertaining to this rule are under §380.9187 of this chapter.

(d) General Provisions.

(1) Treatment for youth determined to be at risk for suicide is provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide participate in regular programming to the extent possible.

(3) A rescue kit for use in medical emergencies is placed in at least one designated location within the facility that is not accessible to youth.

(4) As soon as possible, but not to exceed two hours, after a suicide attempt, the youth's parent or guardian is notified (with the youth's consent if the youth is age 18 or older).

(e) Intake Screening.

(1) Upon a youth's admission to a medium-restriction facility, a trained designated staff member conducts a health screening, which includes a review of the youth's file and questions relating to suicidal ideation and behavior. The results of the health screening are documented.

(2) If a youth is identified during the screening as potentially at risk for suicide:

(A) the staff member who conducted the screening immediately notifies the facility administrator or designee;

(B) the facility administrator or designee contacts a mental health professional to conduct a suicide risk assessment; and

(C) the youth is placed on the one-to-one suicide observation level until assessed by a mental health professional.

(3) If a TJJD-employed mental health professional is contacted to conduct the suicide risk assessment, the assessment must be completed as soon as possible, not to exceed 72 hours.

(f) Responding to Suicidal Ideation, Self-Harming Behavior, or Suicidal Behavior.

(1) A staff member who has reason to believe that a youth has verbalized suicidal ideation or demonstrated suicidal or self-harming behavior must:

(A) immediately use the rescue kit if appropriate and seek medical attention if there is a medical emergency;

(B) verbally engage the youth;

(C) immediately notify the facility administrator or designee and document the notification;

(D) provide one-to-one observation;

(E) begin a suicide observation log to document status checks of the youth; and

(F) refer the youth for a suicide screening.

(2) As soon as possible but no later than one hour after notification, a trained designated staff member initiates a suicide risk screening or a mental health professional initiates an assessment. If a screening is conducted:

(A) the staff member who conducted the screening immediately communicates the results of the screening to the facility administrator or designee; and

(B) the facility administrator or designee ensures the youth is assessed by a mental health professional.

(3) This screening or assessment is not required when deemed inappropriate due to a medical emergency.

(4) If a TJJD-employed mental health professional is contacted to conduct the suicide risk assessment, the mental health professional assigns an observation level based on the results of the suicide screening.

(5) Youth who are waiting for a suicide risk assessment are not allowed community access (e.g., community service, employment, academic attendance) unless TJJD staff supervise the youth on one-to-one observation.

(6) If the youth is transported to the emergency room, upon return to the medium-restriction facility, the youth is placed on one-to-one observation until assessed by a mental health professional.

(7) In facilities with a TJJD-employed mental health professional who is either on call or on duty, the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result.

(g) Actions Taken Upon Completion of Suicide Risk Assessment.

(1) Documentation Requirements. Upon completion of a suicide risk assessment conducted by a TJJD-employed mental health professional, the mental health professional documents the results of the assessment, including any changes in the youth's observation level.

(2) Notification of Assessment Results.

(A) Upon completion of a suicide risk assessment, the facility administrator or designee ensures appropriate facility staff are notified of the results.

(B) If the youth is placed on suicide alert:

(i) the facility administrator or designee immediately notifies facility staff of the youth's enhanced supervision requirements and any additional instructions; and

(ii) the youth's parent or guardian is notified as soon as possible after the youth is placed on suicide alert (with the youth's consent if the youth is age 18 or older).

(C) If the youth is not placed on suicide alert, the facility administrator or designee notifies the referring staff and the youth's case manager that the youth was assessed and not placed on suicide alert.

(3) Assignment of Staff to Monitor Youth. If the youth is placed on suicide alert, the facility administrator or designee assigns a specific staff member to monitor the youth and document status checks.

(h) Supervision of Youth on Suicide Alert.

(1) The facility administrator or designee coordinates a search of the youth's room and removes any potentially dangerous items.

(2) A suicide observation monitoring sheet must be in the possession of the monitoring staff member at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation sheet.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the observation sheet and document the transfer of supervision.

(3) The monitoring staff member must:

(A) maintain direct visual observation of the youth if required;

(B) document the youth's status at the required interval; and

(C) follow any precautions set by the mental health professional.

(4) The monitoring staff member must not leave a youth assigned to one-to-one observation unattended or let the youth out of the staff member's sight.

(5) During waking hours, the monitoring staff must not leave a youth assigned to constant observation unattended or let the youth out of the staff member's sight.

(6) Any time a youth on one-to-one or constant observation is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(A) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts, excluding genitalia, breasts, and buttocks); and/or

(B) maintain verbal contact.

(7) Youth on suicide alert are not allowed access to off-site activities or appointments unless it is approved on a case-by-case basis. In such cases, the youth must be supervised on one-to-one observation.

(i) Treatment and Reassessment of Youth on Suicide Alert.

(1) Subparagraphs (A)-(D) of this paragraph apply to TJJD-employed mental health professionals.

(A) A mental health professional prepares a written treatment plan for each youth on suicide alert, updating or revising the plan as necessary. The treatment plan includes:

(i) identification of the crisis stabilization issues to be addressed in ongoing assessment sessions;

(ii) a plan of action to address these issues; and

(iii) the degree of community restriction necessary to provide for the youth's safety.

(B) The mental health professional consults with facility staff to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan.

(C) While the youth is on suicide alert, the mental health professional assesses the youth as needed, but at least once every two calendar days.

(D) For each assessment, the mental health professional:

(i) reviews relevant suicide alert documentation and information;

(ii) determines whether any changes should be made to the youth's observation level or other precautions; and

(iii) documents any changes in the observation level, community restrictions, or other safety precautions.

(2) Each time a change is made to the youth's observation level or other safety precautions, the facility administrator or designee ensures the changes are documented and facility staff are notified.

(3) If the youth is receiving routine psychiatric services, the facility administrator or designee ensures the psychiatric provider is notified of the youth's placement on suicide alert and of any relevant information concerning the youth's treatment and supervision while on suicide alert.

(j) Youth Who Cannot Be Safely Managed in Current Placement.

(1) If the facility administrator or mental health professional determines that a youth cannot be safely managed within the structure of the current placement due to behavior that indicates imminent risk of suicide or serious self-injury, the facility administrator or designee:

(A) ensures one-to-one observation for the youth until an emergency psychiatric placement is obtained;

(B) obtains emergency psychiatric placement at a TJJD crisis stabilization unit or in a private psychiatric hospital. For youth not on parole status, the facility administrator or designee may also seek temporary admission to protective custody in a high-restriction TJJD facility pending emergency psychiatric placement if no such placements are immediately available; and

(C) maintains communication with staff at the emergency placement to obtain current mental status information and to assess the length and suitability of the current placement.

(2) For youth maintained on constant and/or one-to-one observation longer than seven days in a medium-restriction facility, the facility administrator or designee must pursue an alternative placement with longer-term stabilization, clinical resources, and increased supervision.

(k) Reduction of Observation Level and Removal from Suicide Alert.

(1) The observation level for a youth on suicide alert may be lowered or discontinued only after an assessment by a mental health professional.

(A) A youth's suicide observation level may be lowered by no more than one level every 24 hours.

(B) Only youth on the lowest available observation level may be removed from suicide alert.

(2) The facility administrator or designee notifies facility staff when a youth's observation level is reduced and when a youth is removed from suicide alert.

(3) The youth's parent or guardian is notified when the youth is removed from suicide alert (with the youth's consent if the youth is age 18 or older).

(4) For youth being treated by a TJJD-employed mental health professional, the mental health professional identifies in the treatment plan any needed follow-up mental health services when the youth is removed from suicide alert.

(l) Release or Discharge of Youth on Suicide Alert. Prior to releasing or discharging a youth on suicide alert to a community placement (i.e., another non-secure placement or home placement), the facility administrator or designee ensures a mental health professional has arranged for appropriate continuity of care when possible.

(m) Training.

(1) All staff who have regular, direct contact with youth receive initial training in suicide prevention and response during new-hire training. Training addresses topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal and/or self-harming behavior;

(B) high-risk periods for suicidal and/or self-harming behavior;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence, and precipitating factors;

(D) responding to suicidal youth and youth experiencing mental health symptoms;

(E) communication between correctional and health care personnel;

(F) referral procedures;

(G) housing, observation, and suicide alert procedures; and

(H) follow-up monitoring of youth who engage in suicidal behavior, self-harming behavior, and/or suicidal ideation.

(2) All staff who have regular, direct contact with youth receive annual suicide prevention training.

(3) Staff designated to conduct suicide screenings receive annual training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening.

(4) All training described by this subsection shall be accompanied by a test or demonstration to establish competency in the subject matter.

(n) Post-Incident Debriefing and Analysis.

(1) After a completed suicide or a life-threatening suicide attempt, the facility administrator or designee coordinates a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) After a completed suicide, the executive director or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) After a completed suicide, the medical director conducts a morbidity and mortality review in coordination with appropriate clinical staff. The medical director may conduct a morbidity and mortality review after a life-threatening suicide attempt.

(4) After a completed suicide or a life-threatening suicide attempt, a critical incident review is convened to determine if the incident reveals system-wide deficiencies and to recommend improvements to agency policies, operational procedures, the physical plant, and/or training requirements.

(5) In the event of a completed suicide, all actions, notifications, and reports required under §385.9951 of this chapter must be completed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2023.

TRD-202301431
Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
Effective date: August 1, 2023
Proposal publication date: October 28, 2022
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER F. SECURITY AND CONTROL

37 TAC §380.9745

The Texas Juvenile Justice Department (TJJD) adopts amendments to Texas Administrative Code Chapter 380, Subchapter F, §380.9745 without changes to the proposed text as published in the October 28, 2022, issue of the *Texas Register* (47 TexReg 7253). The amended section will not be republished.

SUMMARY OF CHANGES

The amendments to §380.9745, concerning Protective Custody for Youth at Risk of Self-Harm, include removing the requirement for the suicide risk assessments required by this rule to be conducted face-to-face; clarifying that one of the admission criteria is based on protection from *suicidal and/or self-harming behavior* (rather than solely *self-harm*); clarifying that the maximum stay in the protective custody program without director-level approval is *120 hours* (rather than 5 calendar days); adding that the director over facility operations or designee may approve an extension in the protective custody program beyond 120 hours *only after consultation with and agreement of the director over treatment or designee;* adding that, if it is determined that a youth is being held in this program in violation of policy, the *facility administrator and the designated mental health professional* (rather than the facility administrator or duty officer) must be immediately notified; specifying that, if the security dorm supervisor or designee de-

termines that a youth is being held in the protective custody program in violation of policy, the youth must be *released from the program* (rather than returned to the general population) unless the *facility administrator finds that there was no violation* (rather than *unless the facility administrator or duty officer instructs otherwise*); adding that youth may challenge being placed in the program by filing a *grievance* (rather than an appeal) in accordance with the rule on grievances; and removing the requirement for the director of treatment or designee to consult with the designated mental health professional when reviewing the youth's appeal.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The amended section is adopted under Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2023.

TRD-202301432
Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
Effective date: August 1, 2023
Proposal publication date: October 28, 2022
For further information, please call: (512) 490-7278

♦ ♦ ♦

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 461. INCIDENT COMMANDER

37 TAC §461.7

The Texas Commission on Fire Protection (Commission) adopts §461.7 concerning International Fire Service Accreditation Congress (IFSAC) Seal for Incident Commander. The purpose of the new §461.7 is to outline requirements for obtaining an IFSAC seal for Incident Commander. §461.7 is adopted without changes to the text as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1271). The rule will not be republished.

No comments were received from the public regarding the adoption of the new section.

The rule is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2023.

TRD-202301472
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: May 14, 2023
Proposal publication date: March 3, 2023
For further information, please call: (512) 936-3841

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Finance Commission of Texas

Title 7, Part 1

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 9 (Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), comprised of Subchapter A (§§9.1 - 9.3); Subchapter B (§§9.11 - 9.23 and 9.25 - 9.39); Subchapter C (§9.71 and §9.72); and Subchapter D (§§9.81 - 9.85).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register.*

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register.* Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202301492
Catherine Reyer
General Counsel
Finance Commission of Texas
Filed: April 26, 2023

♦ ♦ ♦

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 10 (Contract Procedures), comprised of Subchapter A (§§10.1 - 10.21); Subchapter B (§10.30); and Subchapter C (§10.40).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register.*

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register.* Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202301493
Catherine Reyer
General Counsel
Finance Commission of Texas
Filed: April 26, 2023

♦ ♦ ♦

Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 12 (Loans and Investments), comprised of Subchapter A (§§12.1 - 12.12); Subchapter B (§§12.31 - 12.33); Subchapter C (§12.61 and §12.62); and Subchapter D (§12.91).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register.*

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as a proposed rule in the *Texas Register.* Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202301496
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: April 26, 2023

♦ ♦ ♦

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 25 (Prepaid Funeral Contracts), comprised of Subchapter A (§§25.1 - 25.9); and Subchapter B (§§25.10 - 25.14, 25.17 - 25.19, 25.21 - 25.25, 25.31 and 25.41).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register.*

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as a proposed rule in the *Texas Register.* Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202301497
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: April 26, 2023

♦ ♦ ♦

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 33, Consolidated Permit Processing.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 33 continue to exist.

Comments regarding suggested changes to the rules in Chapter 33 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 33. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-051-033-AI. Comments must be received by June 6, 2023. For further information, please contact David Munzenmaier, Air Permits Division, at (512) 239-6092.

TRD-202301503
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 26, 2023

♦ ♦ ♦

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 90, Innovative Programs.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 90 continue to exist.

Comments regarding suggested changes to the rules in Chapter 90 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 328. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-054-090-AD. Comments must be received by June 6, 2023. For further information, please contact Chris Leahy, External Relations Division, at (512) 239-2427.

TRD-202301504
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 26, 2023

♦ ♦ ♦

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 116 continue to exist.

Comments regarding suggested changes to the rules in Chapter 116 may be submitted during this review but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 116. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment

system. All comments should reference Non-Rule Project Number 2023-055-116-AI. Comments must be received by June 6, 2023. For further information, please contact David Munzenmaier, Air Permits Division, at (512) 239-6092.

TRD-202301505
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 26, 2023

♦ ♦ ♦

Texas Commission on Jail Standards

Title 37, Part 9

In accordance with Texas Government Code §2001.039, the Texas Commission on Jail Standards proposes to review all its rules, Texas Administrative Code Title 37, Part 9. The Administrative Rules Advisory Committee will review the rules and consider which, if any, need to be amended or repealed. Following the review, the Committee will give its recommendations to the Commission.

The Committee will consider the following:

- Do current facts, law, policy, and experience support retaining this rule?

- Are the initial factual, legal, and policy reasons for adopting this rule still relevant?

- Is this rule commonly violated? Would amending the rule improve compliance?

- Does this rule still reflect current practices?

- Rule Vagueness:

-- Is this rule so vague that it impedes jails' ability to understand comply with it or it creates inconsistent rule interpretations? For example, does it use words such as "promptly," "regularly," or "as soon as possible?"

-- Can you amend the rule to reflect informal policies and guidance that staff created to enable jails to comply with this rule?

Comments on the review may be submitted to any of the following: TCJS Rule Review, attention: William Turner, P.O. Box 12985, Austin, Texas 78711-12985; Fax (512) 463-3185; e-mail: will.turner@tcjs.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this notice is published in the *Texas Register*.

TRD-202301484
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Filed: April 25, 2023

♦ ♦ ♦

Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

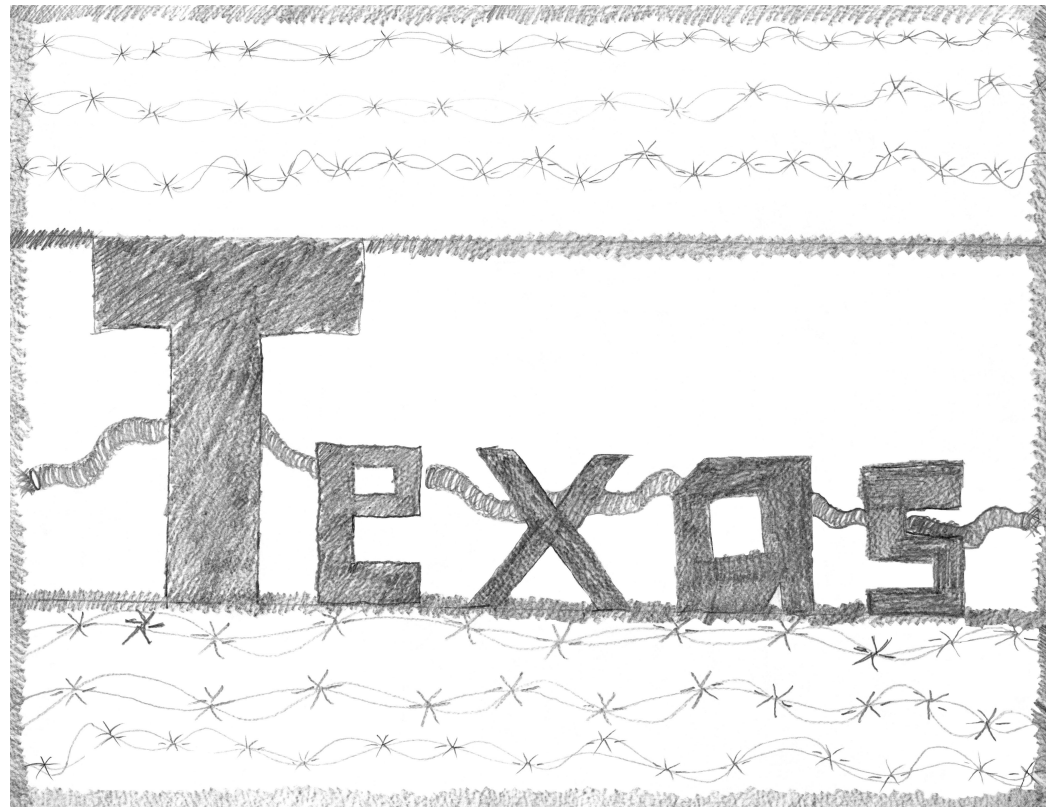
Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, Subchapter AA, Teacher Appraisal; Subchapter BB, Administrator Appraisal; and Subchapter CC, Superintendent Appraisal, pursuant to Texas Government Code, §2001.039. TEA proposed the review of Chapter 150, Subchapters AA-CC, in the November 25, 2022 issue of the *Texas Register* (47 TexReg 7931).

Relating to the review of Chapter 150, Subchapters AA-CC, TEA finds that the reasons for adopting Subchapters AA-CC continue to exist and readopts the rules. TEA received no comments related to the review of Subchapters AA-CC. No changes to Chapter 150, Subchapters AA and CC, are necessary as a result of the review. In the future, TEA anticipates updating Subchapter BB to align the rules with other TEA administrative rules.

This concludes the review of Chapter 150.

TRD-202301491
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 26, 2023

♦ ♦ ♦


TEXAS

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §18.25(b)

# OF PRIOR LATE OFFENSES IN PAST 5 YEARS	ADJUSTED FINE
0	Waiver
1	$100
2	$250
3 or more	No reduction or waiver

Figure: 1 TAC §18.26(b)

Prior Late Offenses	Total Political Expenditures or Contributions in Reporting Period									
	<$5k	<$10k	<$20k	<$30k	<$40k	<$50k	<$60k	<$70k	<$80k	<$90k
0	$0	90%	80%	70%	60%	50%	40%	30%	20%	10%
1	$100	70%	60%	50%	40%	30%	20%	10%	0%	0%
2	$250	50%	40%	30%	20%	10%	0%	0%	0%	0%

Figure: 7 TAC §60.251(d)

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

MAXIMUM ANNUAL ASSESSMENT RATE SCHEDULE

Assets Over	Not Over	Amount	Plus	Over
$0	$2 million	$5,548	0.000000000	$0
2 million	20 million	5,548	0.000219058	2 million
20 million	100 million	9,491	0.000175245	20 million
100 million	200 million	23,510	0.000113940	100 million
200 million	1 billion	34,900	0.000096381	200 million
1 billion	2 billion	112,004	0.000078857	1 billion
2 billion	6 billion	190,861	0.000070094	2 billion
6 billion	20 billion	471,237	0.000059643	6 billion
20 billion	40 billion	1,306,239	0.000044928	20 billion
40 billion	250 billion	2,204,799	0.000035103	40 billion
250 billion		9,576,429	0.000034751	250 billion

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Brazos Valley Council of Governments

Request for Proposal for Program Compliance Monitoring Services

The Workforce Solutions Brazos Valley Board (WSBVB) is soliciting quotes for a qualified contractor with Texas Workforce Commission program knowledge to provide program compliance monitoring services, which shall include, but not be limited to, workforce program compliance review and eligibility and the review of support services, which follow the rules and guidelines of Texas Workforce Commission's and WSBVB's policies and procedures. Program monitoring shall occur monthly, at a minimum, for workforce programs. Other programs shall require quarterly monitoring or monitoring as needed. Some programs occur during specific times of the year and their monitoring shall occur at the end of the specific program. The contract obtained through this procurement shall be a cost reimbursement contract. The actual contract amount for monitoring is dependent on monitoring services needed throughout the year. The Monitoring Services RFP can be downloaded at www.bvjobs.org or by request to Barbara Clemmons via email at *bclemmons@bvcog.org*.

The purpose of the RFP is to solicit quotes for workforce program monitoring and the primary consideration in selecting a vendor will be their ability to provide program monitoring, as specified in the RFP.

The deadline for receipt of proposals will be 2:00 p.m. CST on Thursday, June 8, 2023.

Bidders will have the opportunity to ask questions during the bidder's conference call, which is scheduled for Tuesday, May 16, 2023, 10:00 a.m. CST. Attendance on the bidder's conference call is not mandatory. All answers to questions from the bidder's conference call will be posted at *http://bvjobs.org/about-us/request-for-proposals/* by close of business on Wednesday, May 24, 2023.

Deadline for Questions: The Bidder's Conference Call will be held on **Tuesday, May 16, 2023 at 10:00 a.m. CST. The call in number is (979) 595-2802. If Bidders cannot attend the bidder's conference call on Tuesday, May 16, 2023 at 10:00 a.m. CST, they can submit their questions in writing concerning this RFP to Barbara Clemmons at *bclemmons@bvcog.org* no later than Thursday, May 18, 2023, 5:00 p.m. CST. Answers to all questions received will be posted to *http://bvjobs.org/about-us/request-for-proposals/* no later than Wednesday, May 24, 5:00 p.m. CST.**

TRD-202301483
Duane Peters
Judge - Brazos County
Brazos Valley Council of Governments
Filed: April 25, 2023

♦ ♦ ♦

Coastal Bend Workforce Development Board

Request for Statement of Qualifications for Commercial Real Estate Broker Services (RFQ No. 23-07)

Workforce Solutions Coastal Bend (WFSCB) is requesting qualifications from experienced commercial real estate brokers or brokerage firms to provide advisory services pertaining to its office space needs in the Coastal Bend Region.

The RFQ will be available on Monday, May 1, 2023, at 2:00 p.m. Central Time and can be accessed on our website at: https://www.workforcesolutionscb.org/about-us/procurement-opportunities/ or by contacting Esther Velazquez at (361) 885-3013 or esther.velazquez@workforcesolutionscb.org.

Proposals are due on Monday, May 15, 2023, at 4:00 p.m. Central Time. Responses should be submitted via email to esther.velazquez@workforcesolutionscb.org or may be hand delivered or mailed to: Workforce Solutions Coastal Bend, 400 Mann Street, Suite 800, Corpus Christi, Texas 78401.

Workforce Solutions Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 1-800-735-2989 (TDD) and 1-800-735-2988 or 711 (Voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

Este documento contiene información importante sobre los requisitos, los derechos, las determinaciones y las responsabilidades del acceso a los servicios del sistema de la fuerza laboral. Hay disponibles servicios de idioma, incluida la interpretación y la traducción de documentos, sin ningún costo y a solicitud.

TRD-202301487
Esther Velazquez
Contract and Procurement Specialist
Coastal Bend Workforce Development Board
Filed: April 26, 2023

♦ ♦ ♦

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - March 2023

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period March 2023 is $49.83 per barrel for the three-month period beginning on December 1, 2022, and ending February 28, 2023. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of March 2023, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period March 2023 is $2.13 per mcf for the three-month period beginning on December 1, 2022, and ending February 28, 2023. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of March 2023, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of March 2023 is $73.37 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of March 2023, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of March 2023 is $2.41 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of March 2023, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-202301489
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: April 26, 2023

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/01/23 - 05/07/23 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/01/23 - 05/07/23 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202301481
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 25, 2023

♦ ♦ ♦

Texas Education Agency

Correction of Error

The Texas Education Agency adopted an amendment to 19 TAC §102.1601 in the April 14, 2023, issue of the *Texas Register* (48 TexReg 1957). Due to an error by the Texas Register, the amendment was published with an incorrect rule number listed. The rule number was incorrectly shown as 19 TAC §102.1061 at the beginning of the adopted amendment. The correct text should be shown as follows:

19 TAC §102.1601

TRD-202301486

♦ ♦ ♦

Request for Applications Concerning the 2023-2025 Charter School Program (Subchapter C) Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-23-119 is authorized by Public Law 114-95, Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, Title IV, Part C, Expanding Opportunity Through Quality Charter Schools; Texas Education Code (TEC), Chapter 12; and 19 Texas Administrative Code Chapter 100, Subchapter AA.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-23-119 from eligible applicants, which include open-enrollment charter schools that meet the federal definition of a charter school, have never received funds under this grant program, and meeting the following qualifications: a campus charter school authorized by the local board of trustees pursuant to TEC, Chapter 12, Subchapter C, on or before May 1, 2023, as a new charter school, or as a charter school that is designed to replicate a new charter school campus, based on the educational model of an existing high-quality charter school, and that submits all required documentation as stated in this RFA. The campus must be located in a district that has authorized and had in operation at least one charter prior to the 2022-2023 school year. A campus charter school must apply through its public school district, and the application must be signed by the district's superintendent or the appropriate designee.

Important: Any charter school that does not open prior to Wednesday, September 4, 2024, after having been awarded grant funds may be required to forfeit any remaining grant funds and may be required to reimburse any expended amounts to TEA.

Description. The purpose of the Texas Quality Charter Schools Program Grant (Subchapter C) is to support the growth of high-quality district authorized campus charter schools in Texas, especially those focused on improving academic outcomes for educationally disadvantaged students. This program will provide financial assistance for the planning, program design, and initial implementation of the campus charter school. By administering the 2023-2025 Charter School Program (Subchapter C) Grant, eligible applicants will be supported in opening and preparing for the operation of new district-authorized campus charter schools and replicated high-quality schools.

Dates of Project. The 2023-2025 Charter School Program (Subchapter C) Grant will be implemented during the 2023-2024 school year through the 2024-2025 school year. Applicants should plan for a starting date of no earlier than September 1, 2023, and an ending date of no later than September 30, 2025.

Project Amount. Approximately $5,626,500 million is available for funding the 2023-2025 Charter School Program (Subchapter C) Grant. It is anticipated that approximately six grants will be awarded up to $900,000. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on Wednesday, May 17, 2023, at 10:00 a.m. (Central Time). Register for the webinar at *https://zoom.us/meeting/register/tJwrfuypqT8oHt0c0-aWtYNYgIZEnkWPt_Sk.* Questions relevant to the RFA may be emailed to Charlotte Nicklebur at CharterSchools@tea.texas.gov prior to 5:00 p.m. (Central Time) on Friday, May 12, 2023. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and the RFA.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to CharterSchools@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than May 22, 2023. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by May 30, 2023. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be submitted to competitivegrants@tea.texas.gov. Applications must be received no later than 11:59 p.m. (Central Time), June 20, 2023, to be considered eligible for funding.

TRD-202301494
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 26, 2023

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 6, 2023.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **June 6, 2023.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ADI C-STORE INCORPORATED dba Amigo Food Mart; DOCKET NUMBER: 2021-0881-PST-E; IDENTIFIER: RN101235414; LOCATION: Cypress, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to assure that all recordkeeping requirements are met; PENALTY: $6,248; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 2021-1287-AIR-E; IDENTIFIER: RN100542802; LOCATION: Three Rivers, Live Oak County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(2) and (3), 113.340, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.671(a), New Source Review Permit Numbers 50607, PSDTX331M1, PSDTX804, and PSDTX1017M1, Special Conditions Number 7.D., Federal Operating Permit Number O1450, General Terms and Conditions and Special Terms and Conditions Number 20, and Texas Health and Safety Code, §382.085(b), by failing to calibrate each flare monitoring system at least quarterly in accordance with 40 CFR §63.671; PENALTY: $2,741; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(3) COMPANY: Fort Bend County Municipal Utility District Number 118; DOCKET NUMBER: 2021-1505-MWD-E; IDENTIFIER: RN102963261; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: domestic wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013951001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Hermann Sons Life; DOCKET NUMBER: 2022-1712-PWS-E; IDENTIFIER: RN101256816; LOCATION: Comfort, Kerr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; PENALTY: $550; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL

OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: INEOS OLIGOMERS USA LLC; DOCKET NUMBER: 2021-0553-AIR-E; IDENTIFIER: RN108783614; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 136130 and N250M1, Special Conditions Number 1, Federal Operating Permit Number O4123, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2023-0064-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 95 and PSDTX854M2, Special Conditions Number 2, Federal Operating Permit Number O2327, General Terms and Conditions and Special Terms and Conditions Number 26, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,425; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Kevin Glass Construction LLC; DOCKET NUMBER: 2021-1336-AIR-E; IDENTIFIER: RN111337697; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(8) COMPANY: North Milam Water Supply Corporation; DOCKET NUMBER: 2022-1471-UTL-E; IDENTIFIER: RN102681889; LOCATION: Cameron, Milam County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $600; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Targa Gas Processing LLC; DOCKET NUMBER: 2021-0661-AIR-E; IDENTIFIER: RN106579683; LOCATION: Midland, Midland County; TYPE OF FACILITY: gas processing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O4115/ General Operating Permit (GOP) Number 514, Terms and Conditions Number (b)(40)(F), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §101.201(b)(1)(H) and §122.143(4), FOP Number O4115/GOP Number 514, Terms and Conditions Number (b)(40)(F), and THSC, §382.085(b), by failing to identify all required information on the final records for reportable emissions events; and 30 TAC §§116.115(c), 116.615(2), and 122.143(4), Standard Permit Registration Number 107601, FOP Number O4115/GOP Number 514, Terms and Conditions Number (b)(9)(E)(ii), and THSC, §382.085(b), by failing to prevent unauthorized emissions; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: Treasure Island Municipal Utility District; DOCKET NUMBER: 2022-1664-PWS-E; IDENTIFIER: RN101450252; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the Executive Director within 90 days after being notified of the analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes (TTHM) and haloacetic acids for Stage 2 Disinfection Byproducts at Site 1 and Site 2 during the second quarter of 2022; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant levels of 0.080 milligrams per liter for TTHM, based on the locational running annual average; PENALTY: $4,210; ENFORCEMENT COORDINATOR: Epi Villarreal, (361) 881-6991; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: YES Companies EXP2, LLC; DOCKET NUMBER: 2022-1488-UTL-E; IDENTIFIER: RN101439578; LOCATION: Aledo, Parker County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $500; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202301476
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 25, 2023

♦ ♦ ♦

Enforcement Orders

An agreed order was adopted regarding BARKSDALE WATER SUPPLY CORPORATION, Docket No. 2020-0247-PWS-E on April 25, 2023, assessing $5,850 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Ganado, Docket No. 2020-1153-MWD-E on April 25, 2023, assessing $4,875 in administrative penalties with $975 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CENTURY TC LLC dba Angels 2, Docket No. 2021-1275-PST-E on April 25, 2023, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Zachary W. Clements, Docket No. 2021-1445-OSI-E on April 25, 2023, assessing $505 in administrative penalties with $101 deferred. Information concerning any aspect

of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Superior Stone Inc., Docket No. 2021-1453-WQ-E on April 25, 2023, assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Laura Draper, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding V3 HOLDINGS, INC. dba V MART, Docket No. 2021-1626-PST-E on April 25, 2023, assessing $5,348 in administrative penalties with $1,069 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WOODLAND HILLS WATER, LLC, Docket No. 2022-0057-PWS-E on April 25, 2023, assessing $7,000 in administrative penalties with $1,400 deferred. Information concerning any aspect of this order may be obtained by contacting Ecko Beggs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MOUNTAIN BREEZE, L.L.C., Docket No. 2022-0480-PWS-E on April 25, 2023, assessing $2,747 in administrative penalties with $549 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Junction, Docket No. 2022-0505-PWS-E on April 25, 2023, assessing $7,065 in administrative penalties with $1,413 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AREPET SAND VENTURES, INC., Docket No. 2022-0597-AIR-E on April 25, 2023, assessing $6,250 in administrative penalties with $1,250 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MIDWAY WATER UTILITIES, INC., Docket No. 2022-0927-PWS-E on April 25, 2023, assessing $1,575 in administrative penalties with $315 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Baird, Docket No. 2022-0979-PWS-E on April 25, 2023, assessing $629 in administrative penalties with $125 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Yanira Enterprises LLC dba Yanira Mart, Docket No. 2022-1070-PST-E on April 25, 2023, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Anderson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rain Water Supply Corporation, Docket No. 2022-1211-UTL-E on April 25, 2023, assessing $500 in administrative penalties with $100 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KEETYO Enterprises, Inc., Docket No. 2022-1355-AIR-E on April 25, 2023, assessing $2,625 in administrative penalties with $525 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Susan E. Cole dba Blue Ridge Water System and Donald R. Cole dba Blue Ridge Water System, Docket No. 2022-1437-UTL-E on April 25, 2023, assessing $600 in administrative penalties with $120 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding UMBARGER COMMUNITY WATER SUPPLY CORPORATION, Docket No. 2022-1498-UTL-E on April 25, 2023, assessing $665 in administrative penalties with $133 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Carrington Associates, Inc., Docket No. 2022-1499-UTL-E on April 25, 2023, assessing $530 in administrative penalties with $106 deferred. Information concerning any aspect of this order may be obtained by contacting Corinna Willis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bell County Water Control & Improvement District 5, Docket No. 2022-1509-UTL-E on April 25, 2023, assessing $735 in administrative penalties with $147 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bogata, Docket No. 2022-1523-UTL-E on April 25, 2023, assessing $510 in administrative penalties with $102 deferred. Information concerning any aspect of this order may be obtained by contacting Corinna Willis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202301501
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 26, 2023

♦ ♦ ♦

Enforcement Orders

An agreed order was adopted regarding City of La Joya, Docket No. 2019-0545-MWD-E on April 26, 2023 assessing $218,812 in adminis-

trative penalties with $218,812 deferred. Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Jacksonville, Docket No. 2019-1569-MWD-E on April 26, 2023 assessing $56,575 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aquatic Co., Docket No. 2021-0373-AIR-E on April 26, 2023 assessing $42,000 in administrative penalties with $8,400 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Stolthaven Houston, Inc., Docket No. 2021-0821-AIR-E on April 26, 2023 assessing $45,000 in administrative penalties with $9,000 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TotalEnergies Petrochemicals & Refining USA, Inc., Docket No. 2021-0972-AIR-E on April 26, 2023 assessing $148,163 in administrative penalties with $7,882 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding James Mangrum, Docket No. 2021-1103-MSW-E on April 26, 2023 assessing $7,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan L. Grace, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Concho Valley Crushing, LLC, Docket No. 2021-1172-MLM-E on April 26, 2023 assessing $26,475 in administrative penalties with $5,295 deferred. Information concerning any aspect of this order may be obtained by contacting Cecilio Banuelos, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CSWR-Texas Utility Operating Company, LLC, Docket No. 2021-1483-PWS-E on April 26, 2023 assessing $19,316 in administrative penalties with $3,862 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EASTMAN CHEMICAL COMPANY, Docket No. 2022-0523-AIR-E on April 26, 2023 assessing $8,550 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Desmond Martin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PORT ALTO HOMEOWNERS' ASSOCIATION DISTRICT #1, INC., Docket No. 2022-0603-PWS-E on April 26, 2023 assessing $1,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HUBERT-WATSON SUBDIVISION WATER SUPPLY, INC., Docket No. 2022-0713-PWS-E on April 26, 2023 assessing $1,437 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Devin Mendoza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 7-ELEVEN, INC. dba 7-Eleven Store 40928, Docket No. 2022-0810-PST-E on April 26, 2023 assessing $20,052 in administrative penalties with $4,010 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Military Highway Water Supply Corporation, Docket No. 2022-0816-PWS-E on April 26, 2023 assessing $4,625 in administrative penalties with $4,625 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202301502
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 26, 2023

Notice of District Petition

Notice issued April 26, 2023

TCEQ Internal Control No. D-03142023-023; Treyman Partners, LP, a Texas limited partnership, Woods Road Industrial, LLC, a Delaware limited liability company, J.D. Woods, Jr., Family Trust, John H. Baker, III, Jason Swanson Baker, as trustee of the Jason Swanson Baker 2009 Trust, Cara Leigh Berkman, as Trustee of the Cara Leigh Berkman 2009 Trust, Jacob Fulbright Baker, as Trustee of the Jacob Fulbright Baker 2009 Trust, Joshua Hendrix Baker, as Trustee of the Joshua Hendrix Baker 2009 Trust, (Petitioners) filed a petition for creation of Waller County Municipal Utility District No. 24 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 143.3 acres located within Waller County, Texas; and (4) the land within the proposed District is within the extraterritorial jurisdiction of the City of Houston and within the extraterritorial jurisdiction of the City of Katy. By Ordinance No. 2021-848, passed and adopted on September 29, 2021, the City of Houston, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. By Ordinance No. 3006, passed and approved on October 11, 2021, the City of Katy, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer sys-

tem for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $31,640,000 ($24,270,000 for water, wastewater, and drainage and $7,370,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202301499
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 26, 2023

♦ ♦ ♦

Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 6, 2023**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 6, 2023**. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Sixto Delafuente and Martiza Delafuente; DOCKET NUMBER: 2021-0939-OSS-E; TCEQ ID NUMBER: RN111271391; LOCATION: 127 Cotton Street, Freeport, Brazoria County; TYPE OF FACILITY: unauthorized On-Site Sewage Facility (OSSF); RULES VIOLATED: TWC, §26.121(a)(1), Texas Health and Safety Code, §336.017(b), and 30 TAC §285.70(a), by failing to properly maintain an OSSF, resulting in an unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: $1,312; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202301479
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 25, 2023

♦ ♦ ♦

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 6, 2023.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may

withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 6, 2023.** The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: GALAXY FOOD MART, INC. dba Fiesta II Food Mart; DOCKET NUMBER: 2020-1204-PST-E; TCEQ ID NUMBER: RN102055365; LOCATION: 2033 Bandera Road, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $4,000; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-5918; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Gina Lee Fraser a/k/a Gina Lee Fraser-Strain; DOCKET NUMBER: 2021-0694-PST-E; TCEQ ID NUMBER: RN102251709; LOCATION: 302 Loop 544, Roscoe, Nolan County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system and a former fleet refueling facility; RULES VIOLATED: 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, B, and C; and TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C) and §334.54(b)(3), by failing to inspect and test the corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; PENALTY: $5,448; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-202301478
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 25, 2023

♦ ♦ ♦

Notice of Proposed New General Permit TXG310000 Authorizing the Discharge of Wastes Into Surface Waters in the State

The Texas Commission on Environmental Quality (TCEQ or commission) is proposing to issue new Texas Pollutant Discharge Elimination System (TPDES) General Permit TXG310000. This new TPDES general permit proposes to authorize the discharge of, as well as prohibit the discharge of, a variety of waste streams from oil and gas extraction activities defined in the draft general permit as onshore stripper well facilities, coastal facilities, and territorial seas facilities. The purpose of this new TPDES general permit is to replace two existing U.S. Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) general permits TXG260000 (applicable to territorial seas facilities) and TXG330000 (applicable to onshore stripper well facilities and coastal facilities), and replace the need for onshore stripper well facilities, coastal facilities, and territorial seas facilities to obtain individual Texas Railroad Commission permits. The draft general permit applies to specific geographic locations in the state of Texas as established in the draft general permit. General permits are authorized by Texas Water Code, §26.040.

DRAFT GENERAL PERMIT. The executive director has prepared a new draft general permit that proposes to authorize the discharge of, as well as prohibit the discharge of, a variety of waste streams from oil and gas extraction activities defined in the draft general permit as onshore stripper well facilities, coastal facilities, and territorial seas facilities. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The executive director proposes to require all dischargers to submit a Notice of Intent to obtain authorization to discharge.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to General Land Office regulations and has determined that the action is consistent with applicable CMP goals and policies.

On the date that this notice is published, a copy of the draft general permit and fact sheet will be available for a minimum of 30 days for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ Austin office, at 12100 Park 35 Circle, Building F. These documents will also be available at the TCEQ's 16 regional offices and on the TCEQ website at *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.*

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this draft general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the draft general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the draft general permit or if requested by a state legislator. A public meeting is not a contested case hearing.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, PO Box 13087, Austin, Texas 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/* within 30 days from the date this notice is published.

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comment in making its decision and will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin office. A notice of the commissioners' action on the draft general permit and a copy of its response to comments will be mailed to each person who submitted a comment. Also, a notice of the commission's action on the draft general permit and the text of its response to comments will be published in the *Texas Register.*

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the TCEQ Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our website at: *https://www.tceq.texas.gov.*

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least one week prior to the meeting.

Further information may also be obtained by calling Chris Linendoll, E.I.T., TCEQ Water Quality Division, at 254-761-3025.

Si desea información en español, puede llamar 1-800-687-4040.

TRD-202301506
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 26, 2023

♦ ♦ ♦

Notice of Proposed New General Permit WQG280000 Authorizing the Discharge of Wastes Into Surface Waters in the State

The Texas Commission on Environmental Quality (TCEQ or commission) is proposing to issue new TCEQ General Permit WQG280000. This new TCEQ general permit proposes to authorize the discharge of, as well as prohibit the discharge of, a variety of waste streams from oil and gas extraction activities defined in the draft general permit as Outer Continental Shelf facilities. The purpose of this new TCEQ general permit is to replace the need for Outer Continental Shelf facilities to obtain individual Texas Railroad Commission permits. The draft general permit applies to offshore oil and gas extraction operations located in the Gulf of Mexico between 3.0 and 10.2 statute miles from the Texas coastline as established in the draft general permit. This is a state-only general permit, and Outer Continental Shelf facilities are required to obtain separate authorization to discharge from the U.S. Environmental Protection Agency under the National Pollutant Discharge Elimination System in addition to obtaining TCEQ authorization to discharge. In addition to any other comments desired to be submitted on the terms and conditions of the draft general permit, TCEQ is specifically seeking public comment on the potential to reduce permitted produced wastewater flows from 7000 barrels per day (0.294 million gallons per day) to 6000 barrels per day (0.252 million gallons per day) which may result in the increase in or removal of certain water quality-based effluent limitations but overall reducing the mass loading of pollutants from produced wastewater discharges as well as establishing compliance schedules for whole effluent toxicity (WET) limitations. General permits are authorized by Texas Water Code, §26.040.

DRAFT GENERAL PERMIT. The executive director has prepared a new draft general permit that proposes to authorize the discharge of, as well as prohibit the discharge of, a variety of waste streams from oil and gas extraction activities defined in the draft general permit as Outer Continental Shelf facilities. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The executive director proposes to require all dischargers to submit a Notice of Intent to obtain authorization to discharge.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to General Land Office regulations and has determined that the action is consistent with applicable CMP goals and policies.

On the date that this notice is published, a copy of the draft general permit and fact sheet will be available for a minimum of 30 days for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ Austin office, at 12100 Park 35 Circle, Building F. These documents will also be available at the TCEQ's 16 regional offices and on the TCEQ website at *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.*

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this draft general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the draft general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the draft general permit or if requested by a state legislator. A public meeting is not a contested case hearing. Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, PO Box 13087, Austin, Texas 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/* within 30 days from the date this notice is published.

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comment in making its decision and will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin office. A notice of the commissioners' action on the draft general permit and a copy of its response to comments will be mailed to each person who submitted a comment. Also, a notice of the commission's action on the draft general permit and the text of its response to comments will be published in the *Texas Register.*

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the TCEQ Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our website at: *https://www.tceq.texas.gov.*

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least one week prior to the meeting.

Further information may also be obtained by calling Chris Linendoll, E.I.T., TCEQ Water Quality Division, at (254) 761-3025.

Si desea información en español, puede llamar 1-800-687-4040.

TRD-202301507
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 26, 2023

♦ ♦ ♦

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of TriStar Convenience Stores, Inc. Dba Handi Stop 74 SOAH Docket No. 582-23-17095 TCEQ Docket No. 2021-0406-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - May 25, 2023

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed August 6, 2021 concerning assessing administrative penalties against and requiring certain actions of TriStar Convenience Stores, Inc. dba Handi Stop 74, for violations in Harris County, Texas, of: Tex. Water Code § 26.3475(c)(1) and 30 Texas Administrative Code §334.50(b)(1)(A).

The hearing will allow TriStar Convenience Stores, Inc. dba Handi Stop 74, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford TriStar Convenience Stores, Inc. dba Handi Stop 74, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of TriStar Convenience Stores, Inc. dba Handi Stop 74 to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** TriStar Convenience Stores, Inc. dba Handi Stop 74, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054 and chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Barrett Hollingsworth, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Staff Attorney, Office of Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: April 21, 2023

TRD-202301498
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 26, 2023

♦ ♦ ♦

Update to the Water Quality Management Plan (WQMP)

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft April 2023 Update to the WQMP for the State of Texas.

Download the draft April 2023 WQMP Update at *https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html* or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas. Please periodically check the following website for updates, in the event the TCEQ Library is closed due to COVID-19 restrictions: *https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_comment.html.*

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m. on June 6, 2023.**

How to Submit Comments

Comments must be submitted in writing to:

Maria Benitez

Texas Commission on Environmental Quality

Water Quality Division, MC 148

P.O. Box 13087

Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420 ***or*** emailed to Maria Benitez at *Maria.Benitez@tceq.texas.gov*, but must be followed up with written comments by mail within five working days of the fax or email date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Benitez at (512) 239-6705 or by email at *Maria.Benitez@tceq.texas.gov.*

TRD-202301477
Guy Henry
Acting Deputy Director, Environmental Law
Texas Commission on Environmental Quality
Filed: April 25, 2023

♦ ♦ ♦

Texas Health and Human Services Commission

Updated Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment will be effective beginning on the date that the modernized Medicaid Management Information System (MMIS) becomes operational.

The purpose of the amendment is to update the reimbursement methodology for the outpatient hospital services to an outpatient prospective payment system (OPPS) in the current state plan by updating a number of items to comply with Texas Government Code Section 536.005. The OPPS that HHSC is proposing to implement is the EAPG grouper methodology. EAPGs are a visit-based classification system intended to reflect the utilization and type of resources of outpatient encounters for patients with similar clinical characteristics. EAPGs are used in OPPS for a variety of outpatient settings, including but not limited to: hospital emergency rooms, outpatient clinics, renal dialysis facilities, and same day surgery. EAPGs are proprietary to 3M™ Health Information Systems and 3M™ initially developed Ambulatory Patient Groups (APGs) prior to 2000. In 2007, 3M™ made significant changes to its earlier variant of the grouper to reflect current clinical practice including coding and billing practices and to describe a broader, non-Medicare population which resulted in what we now call EAPGs. EAPGs group procedures and medical visits that share similar clinical characteristics, resource utilization patterns and cost so that payment is based on the relative intensity of the entire visit. The EAPG grouping system is designed to recognize clinical and resource variations in severity, which results in higher payments for higher intensity services and lower payments for less intensive services. While each claim may receive multiple EAPGs, each procedure is assigned to only one EAPG.

The annual aggregate expenditures are expected to remain fiscally neutral with this update.

Public Hearings.

A public hearing will be conducted via webinar in the summer of 2023. Information about the proposed rate changes and hearings will be published in the *Texas Register.* Additional information and the notice of hearings can be found at https://www.sos.state.tx.us/texreg/index.shtml. Archived recordings of the hearings can be found at https://www.hhs.texas.gov/about/meetings-events.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Shaneqwea James, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

pfd_hospitals@hhsc.state.tx.us

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202301485
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 25, 2023

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for The Ohio National Life Insurance Company, a foreign life, accident and/or health company, to change its name to Augustar Life Insurance Company. The home office is in Cincinnati, Ohio.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register*

publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202301495
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: April 26, 2023

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2488 "HIT $100,000"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2488 is "HIT $100,000". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2488 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2488.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, HIT SYMBOL, 10X SYMBOL, $5.00, $10.00, $20.00, $50.00, $100, $250, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2488 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
HIT SYMBOL	WIN$
10X SYMBOL	WINX10
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$250	TOFF
$500	FVHN
$1,000	ONTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2488), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2488-0000001-001.

H. Pack - A Pack of the "HIT $100,000" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "HIT $100,000" Scratch Ticket Game No. 2488.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "HIT $100,000" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-five (55) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "HIT" Play Symbol, the player wins the prize instantly. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-five (55) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-five (55) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-five (55) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-five (55) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty-five (25) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $100,000 will each appear at least once, except on Tickets winning twenty-five (25) times, with respect to other parameters, play action or prize structure.

E. No matching Non-Winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

G. Non-Winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

H. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., $5 and 05 and $20 and 20).

I. On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

J. On Non-Winning Tickets, the WINNING NUMBERS Play Symbols will never match a YOUR NUMBERS Play Symbol.

K. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

L. The "HIT" (WIN$) Play Symbol will never appear on the same Ticket as the "10X" (WINX10) Play Symbol.

M. The "HIT" (WIN$) Play Symbol will win the prize for that Play Symbol.

N. The "HIT" (WIN$) Play Symbol will never appear more than once on a Ticket.

O. The "HIT" (WIN$) Play Symbol will never appear on a Non-Winning Ticket.

P. The "HIT" (WIN$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Q. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

R. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

S. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

T. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "HIT $100,000" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HIT $100,000" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HIT $100,000" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "HIT $100,000" Scratch Ticket Game, the Texas Lottery shall deliver to an adult mem-

ber of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "HIT $100,000" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2488. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2488 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	752,000	9.57
$10.00	672,000	10.71
$20.00	208,000	34.62
$50.00	96,000	75.00
$100	27,000	266.67
$250	2,560	2,812.50
$500	2,100	3,428.57
$1,000	50	144,000.00
$100,000	6	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.09. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2488 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the

Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2488, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202301482
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 25, 2023

♦ ♦ ♦

Scratch Ticket Game Number 2517 "MILLIONAIRE MAKER"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2517 is "MILLIONAIRE MAKER". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2517 shall be $30.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2517.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, $30.00, $50.00, $75.00, $100, $200, $500, $1,000, $3,000, $25,000 and $1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2517 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH

34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
$30.00	TRTY$
$50.00	FFTY$
$75.00	SVFV$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$3,000	THTH
$25,000	25TH
$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2517), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2517-0000001-001.

H. Pack - A Pack of the "MILLIONAIRE MAKER" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 025 while the other fold will show the back of Ticket 001 and front of 025.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MILLIONAIRE MAKER" Scratch Ticket Game No. 2517.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MILLIONAIRE MAKER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-four (74) Play Symbols. BONUS PLAY INSTRUCTIONS: If a player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. MILLIONAIRE MAKER - KEY NUMBER MATCH PLAY INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly seventy-four (74) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly seventy-four (74) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the seventy-four (74) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-four (74) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. BONUS: A non-winning Prize Symbol in a BONUS play area will never match a winning Prize Symbol in the other BONUS play area.

D. BONUS: A Ticket will not have matching non-winning Prize Symbols across the two (2) BONUS play areas.

E. MILLIONAIRE MAKER - Key Number Match: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 30 and $30).

F. MILLIONAIRE MAKER - Key Number Match: There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

G. MILLIONAIRE MAKER - Key Number Match: There will be no matching WINNING NUMBERS Play Symbols on a Ticket.

H. MILLIONAIRE MAKER - Key Number Match: A non-winning Prize Symbol will never match a winning Prize Symbol.

I. MILLIONAIRE MAKER - Key Number Match: A Ticket may have up to five (5) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

J. MILLIONAIRE MAKER - Key Number Match: The "2X" (DBL) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

K. MILLIONAIRE MAKER - Key Number Match: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

L. MILLIONAIRE MAKER - Key Number Match: The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

M. MILLIONAIRE MAKER - Key Number Match: The "20X" (WINX20) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "MILLIONAIRE MAKER" Scratch Ticket Game prize of $30.00, $50.00, $75.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $75.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MILLIONAIRE MAKER" Scratch Ticket Game prize of $1,000, $3,000, $25,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MILLIONAIRE MAKER" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MILLIONAIRE MAKER" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MILLIONAIRE MAKER" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game

or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2517. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2517 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$30.00	912,000	10.00
$50.00	456,000	20.00
$75.00	273,600	33.33
$100	729,600	12.50
$200	190,000	48.00
$500	12,160	750.00
$1,000	1,600	5,700.00
$3,000	200	45,600.00
$25,000	20	456,000.00
$1,000,000	15	608,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.54. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2517 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2517, the State Lottery Act (Texas Government Code, Chap-

ter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202301480
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 25, 2023

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application to Relinquish Designation as an Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 20, 2023, to relinquish a designation as an eligible telecommunications provider (ETP) in certain wire centers under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.417.

Docket Title and Number: Application Of AMA TechTel Communications to Relinquish its Designation as an Eligible Telecommunications Provider in Certain Wire Centers, Docket Number 54911.

The Application: AMA TechTel Communications requests to relinquish its eligible telecommunications carrier (ETP) designation in the former Southwestern Bell Telephone Company dba AT&T Texas ILEC wire centers of Amarillo, Borger, Canadian, Canyon, Colorado City, Floydada, Hereford, Lefors, Lubbock, Pampa, Plainview, Roscoe, Shamrock, Skellytown, Snyder, Stinnett, and Sweetwater.

Persons who wish to file a motion to intervene or comments on the application should contact the commission no later than May 25, 2023, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 54911.

TRD-202301475
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: April 24, 2023

♦ ♦ ♦

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "48 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 48 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7 a.m. to 7 p.m., Central Time, Monday through Friday. Subscription cost is $502 annually for first-class mail delivery and $340 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

Phone: (800) 833-9844
Fax: (518) 487-3584
E-mail: customer.support@lexisnexis.com
Website: www.lexisnexis.com/printcdsc

LexisNexis