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

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

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

Background and Purpose

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

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

Explanation of Proposed Rules

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fiscal Note

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Submission of Comments

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

SUBCHAPTER A. GENERAL

1 TAC §155.5

Statutory Authority

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

Cross Reference to Statute

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

§155.5. Definitions.

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

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

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

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

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

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

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

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

(8) Confidential Information--confidential information includes:

(A) information made confidential by law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SUBCHAPTER B. DOCKETING--FILING A CONTESTED CASE

1 TAC §155.51, §155.53

Statutory Authority

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

Cross Reference to Statute

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

§155.51. Jurisdiction.

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

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

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

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

§155.53. Request to Docket Case.

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

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

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

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

(1) setting of a hearing;

(2) assignment of a judge; or

(3) an ADR process.

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

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

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

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

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

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

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Shane Linkous
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SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

1 TAC §§155.101, 155.103, 155.105

Statutory Authority

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

Cross Reference to Statute

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

§155.101. Filing Documents.

(a) Filing and service required.

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

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

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

(1) Electronic Filing Required.

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

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

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

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

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

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

(iii) not be locked;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Filings by unrepresented parties.

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

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

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

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

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

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

(B) All documents filed by unrepresented parties must:

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

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

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

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

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

(3) Filing Errors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Documents filed in confidential cases.

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

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

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

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

(D) Proceedings involving public retirement system benefits;

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

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

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

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

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

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

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

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

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

(c) Confidential information filed in public cases.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§155.105. Service of Documents on Parties.

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

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

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

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

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

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

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

(i) return the filing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SUBCHAPTER E. REPRESENTATION OF PARTIES

1 TAC §155.201, §155.203

Statutory Authority

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

Cross Reference to Statute

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

§155.201. Representation of Parties.

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

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

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

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

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

§155.203. Withdrawal of Counsel.

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

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

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

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

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

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

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

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

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SUBCHAPTER G. PLEADINGS AND MOTIONS

1 TAC §155.301

Statutory Authority

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

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

Cross Reference to Statute

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

§155.301. Required Form of Pleadings.

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

(1) the name of the party seeking action;

(2) the SOAH docket number;

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

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

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

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

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

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

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

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

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

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SUBCHAPTER H. MEDIATION

1 TAC §155.351

Statutory Authority

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

Cross Reference to Statute

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

§155.351. Mediation.

(a) Requesting mediation.

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

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

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

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

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

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

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

(b) Evaluation for Mediation.

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

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

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

(c) Referral to mediation.

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

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

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

(d) Assignment of SOAH mediators.

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

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

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

(e) Use of non-SOAH mediators.

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

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

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

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

(f) Confidentiality of mediation.

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

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

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

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

(g) Agreements reached in mediation.

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

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

(h) Limits on mediator's authority.

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

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

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

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

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SUBCHAPTER J. DISPOSITION OF CASE

1 TAC §155.501, §155.503

Statutory Authority

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

Cross Reference to Statute

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

§155.501. Failure to Attend Hearing and Default Proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Default proposals for decision.

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

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

(g) Default decisions.

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

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

(h) Motions to Set Aside Default.

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

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

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

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

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

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

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

(a) Voluntary dismissal or non-suit.

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

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

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

(b) Agreed dismissal; settlement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) mootness of the case;

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

(E) unnecessary duplication of proceedings; or

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

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

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

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

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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

SUBCHAPTER A. REGISTRATION

7 TAC §79.1, §79.2

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

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

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

SUMMARY OF CHANGES

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

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

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

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

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

PUBLIC BENEFITS

The director has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand.

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

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

ONE-FOR-ONE RULE ANALYSIS

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

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

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

§79.1. Definitions.

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

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

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

(3) (No change.)

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

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

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

§79.2. Required Disclosure.

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

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

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

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

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 82. ADMINISTRATION

7 TAC §82.1, §82.2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§82.1. Custody of Criminal History Record Information.

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

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

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

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

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

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

(1) the commissioner;

(2) any assistant commissioner;

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

(4) employees of the licensing section;

(5) the director of consumer protection;

(6) the public information officer;

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

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

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

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

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

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

§82.2. Public Information Requests; Charges.

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

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

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

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

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

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

(b) Receipt of public information request.

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

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

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

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

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

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

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

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

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

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

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

(A) $0.10 copy charge per page if paper copies are requested;

(B) $15 per hour of labor or personnel time spent to locate (including pulling documentation from archives), compile, manipulate (including redacting mandated confidential information), reproduce, and prepare the information for delivery or inspection;

(C) 20% overhead charge, calculated by multiplying the total personnel cost under subparagraph (B) by 0.20.

(3) Certification. If certification of copies as true and accurate from the OCCC's records, or a certified statement verifying information on record with the OCCC is requested, an additional charge of $5 per certification will be added to the charges described by this subsection [~~computed fee~~]. The certification will include the signature of the commissioner, or a designated custodian of records for the information being certified, and the OCCC seal.

(4) Nonstandard copies. The charge [~~cost~~] for nonstandard copies will be determined by reference to any recommended standards promulgated by the Office of the Attorney General, 1 TAC [~~Title 1, Part 3,~~] Chapter 70 (relating to Cost of Copies of Public Information).

(5) Cost estimates.

(A) Over $40. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed $40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(B) Over $100. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed $100, the agency will send a cost estimate as provided in subparagraph (A) of this paragraph. In addition, the agency may require cash prepayment or bond equal to the total anticipated charges prior to providing copies of the requested information, as per Texas Government Code, §552.263.

(d) Delivery charges.

(1) U.S. mail. When public information is required to be mailed, the cost of postage will be added to the charges described by subsection (c) of this section [~~computed fee~~].

(2) Expedited delivery. When a requestor asks and the agency agrees to provide public information by overnight delivery service or other expedited delivery, the cost of the service will be added to the charges described by subsection (c) of this section, [~~computed fee~~] unless the requestor arranges to pay the delivery charges directly. The agency is not required to provide expedited delivery without payment for the service.

(e) Inspection of records.

(1) Generally. Records access for purposes of inspection will be by appointment only and will only be available during regular business hours of the agency. If the safety of any public record or the protection of confidential information is at issue, or when a request for inspection would be unduly disruptive to the ongoing business of the office, physical access may be denied and the option of receiving copies at the usual charges [~~fees~~] will be provided.

(2) Redaction of confidential information from paper records. If confidential information must be redacted prior to a requestor's inspection of paper records, $0.10 per page may be charged to prepare the inspection copies containing the remaining public information.

(3) Labor charges. The agency may assess charges for labor or personnel time, as described by subsection (c)(2) of this section, [~~Inspection of electronic information. Labor charges may be assessed~~] if production of the information requires programming or manipulation of data (including redaction). The agency will not charge overhead for an inspection where the requestor does not receive copies of documents. [~~Overhead is not charged.~~]

(4) Over $40. If a request for inspection would result in charges under Texas Government Code, §552.271 that exceed $40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(5) Over $100. If a request for inspection would result in charges of over $100, the agency may require a 50% cash prepayment or a bond equal to the total anticipated charges prior to providing access to the requested information, as per Texas Government Code, §552.263 and 1 TAC §70.7 (relating to Estimates and Waivers of Public Information Charges).

(f) Agency officer for public information. The commissioner or the commissioner's designee is the agency's officer for public information.

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

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

TRD-202003442
Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 936-7659

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PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 151. HOME EQUITY LENDING PROCEDURES

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §151.1 (relating to Application for Interpretation); and propose the repeal of §151.2 (relating to Review of Request), §151.3 (relating to Initiation of Interpretation Procedure), §151.4 (relating to Notice of Proposed Interpretation), §151.5 (relating to Public Comment), §151.6 (relating to Action on Proposed Interpretation), and §151.7 (relating to Adoption of Interpretation) in 7 TAC, Chapter 151, concerning Home Equity Lending Procedures.

The rules in 7 TAC Chapter 151 govern the procedures for requesting, proposing, and adopting interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purpose of the proposed rule changes to 7 TAC Chapter 151 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the *Texas Register* on May 1, 2020 (45 TexReg 2897). The commissions received no comments in response to that notice.

The rules in 7 TAC Chapter 151 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received three informal precomments on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

Proposed amendments to §151.1 would amend current procedures for stakeholders to request interpretations of Section 50 from the commissions. Proposed amendments to §151.1 would also specify that the commissions will propose and adopt interpretations in accordance with Texas Government Code, Chapter 2001.

Currently, §151.1, §151.2, and §151.3 describe a procedure for an interested person to request an interpretation. Under this procedure, a person submits a request to the general counsel of the Office of Consumer Credit Commissioner, and the request must include legal and factual information supporting the request. The request is evaluated, and the requestor is notified if the commissions initiate an interpretation.

Currently, §151.4, §151.5, §151.6, and §151.7 describe the procedure for the commissions to propose and adopt interpretations. These provisions explain that notice of the proposed interpretation will be published in the *Texas Register* including an explanation that there will be an opportunity for public comment, that the commissions may adopt or decline to adopt the interpretations at a public meeting, and that an adopted interpretation will include a reasoned justification, restatement of affected provisions, and certification of legal authority.

There are three issues with the current procedures in §151.1 through §151.7. First, the procedure for requesting interpretations in current §151.1 through §151.3 has not been commonly used by stakeholders. Instead, most feedback about interpretations has come from informal comments resulting from constitutional amendments, litigation, or rule review. Second, the commissions already have separate rules on petitions for rulemaking, in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001 ("APA"). The Finance Commission's rule on petitions for rulemaking is codified at 7 TAC §9.82 (relating to Petitions to Initiate Rulemaking Proceedings), while the Credit Union Commission's rule is codified at 7 TAC §97.500 (relating to Petitions to Initiate Rulemaking Proceedings). The request procedure in §151.1 through §151.3 contains some, but not all, of the requirements for a formal petition for rulemaking, so it is unclear whether these requests must meet the requirements for a petition for rulemaking. Third, §151.4 through §151.7 describe some, but not all, of the APA's requirements for proposing and adopting rules.

The proposed amendments to §151.1 are intended to address these issues and provide clear guidelines on how interpretations are requested, proposed, and adopted. A proposed amendment to §151.1(a) would explain that the commissions will propose and adopt interpretations in accordance with the rulemaking requirements of the APA. Proposed new subsection (b) would explain that the agencies may recommend proposed interpretations to the commissions, and may seek informal input from stakeholders. Proposed new subsection (c) would explain that a person may submit an informal request to the agencies, and would describe items the request should include. Proposed new subsection (d) would explain that an interested person may file a petition to initiate rulemaking, and would include citations to the commissions' other rules that govern these petitions. The proposal would remove current subsection (b), which would be unnecessary because of the new guidelines described in proposed subsections (b) through (d). The title of §151.1 would be amended to state "Interpretation Procedures," to properly identify the scope of the rule.

The proposal would repeal §151.2 and §151.3. As discussed earlier, these sections currently describe the process used when a stakeholder requests an interpretation, and would be unnecessary because of the new guidelines described in the proposed amendments to §151.1. The commissions believe that these proposed amendments will provide a balanced approach, enabling stakeholders to use informal requests, while also preserving the important statutory right for an interested person to file a petition for rulemaking under the APA.

The proposal would repeal §151.4, §151.5, §151.6, and §151.7. As discussed earlier, these sections currently describe some, but not all, of the requirements for proposing and adopting rules under the APA. These sections would be unnecessary because of the updated language in the proposed amendments to §151.1(a). The commissions believe that these changes would simplify Chapter 151 to refer to the APA in a more straightforward manner, and would ensure that it is not necessary to update Chapter 151 each time the Texas Legislature amends the APA's rulemaking requirements.

Kurt Purdom (Deputy Commissioner, Texas Department of Banking), Antonia Antov (Director of Administration and Finance, Department of Savings and Mortgage Lending), Mirand Diamond (Director of Licensing and Registration, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for the first five-year period the proposed rule changes are in effect,

there will be no fiscal implications for state or local government as a result of administering the rule changes.

Kurt Purdom (Deputy Commissioner, Texas Department of Banking), Tony Florence (Director of Mortgage Examination, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will provide clearer methods for stakeholders to request interpretations.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would not create a new regulation. The proposal would expand current §151.1 to describe methods for submitting an informal or formal request for an interpretation, and would limit §151.1 by removing current language about requests. The proposal would repeal current §151.2, §151.3, §151.4, §151.5, §151.6, and §151.7. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

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

7 TAC §151.1

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional and statutory provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50, and Texas Finance Code, Chapters 11 and 15.

§151.1. [~~Application for~~] Interpretation Procedures.

(a) Issuing interpretations. The Finance Commission and Credit Union Commission may on their own motion issue interpretations of Section 50(a)(5) - (7), (e) - (p), and (t), Article XVI of the Texas Constitution. The commissions will propose and adopt interpretations in accordance with the rulemaking requirements of Texas Government Code, Chapter 2001, Subchapter B.

(b) Agency recommendations. The Office of Consumer Credit Commissioner, Department of Banking, or Department of Savings and Mortgage Lending may recommend proposed interpretations to the Finance Commission. The Credit Union Department may recommend proposed interpretations to the Credit Union Commission. The four agencies may seek informal input from stakeholders and the other agencies before recommending a proposed interpretation to the commissions.

(c) Informal request for interpretation. A person may submit an informal request for an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution. An informal request may be submitted to the Office of Consumer Credit Commissioner, Department of Banking, Department of Savings and Mortgage Lending, or Credit Union Department. A request should:

(1) cite the specific provision of the Texas Constitution to be interpreted;

(2) explain the factual and legal context for the request; and

(3) explain the requestor's opinion of how the request should be resolved.

(d) Petition for rulemaking. An interested person may formally request an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution by submitting a petition to initiate rulemaking.

(1) Any petition for the Finance Commission to issue an interpretation must be submitted to the Office of Consumer Credit Commissioner, and must include the information required by §9.82 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

(2) Any petition for the Credit Union Commission to issue an interpretation must be submitted to the Credit Union Department, and must include the information required by §97.500 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

[~~(b) An interested person may submit a request for an interpretation of Section 50(a)(5) - (7), (e) - (p), and (t), Article XVI of the Texas Constitution. All requests must:~~]

[~~(1) be directed to the general counsel for the Office of Consumer Credit Commissioner who will promptly distribute it to the general counsels for the Department of Banking, the Department of Savings and Mortgage Lending, and the Credit Union Department;~~]

[~~(2) contain an explicit statement that an interpretation approved by the Finance Commission and Credit Union Commission is desired;~~]

[~~(3) contain the reference to the specific applicable section, subsection and paragraph of the Texas Constitution of which the interpretation is requested;~~]

[~~(4) state with sufficient particularity the factual and legal context to which the application of the provision is vague or ambiguous; and~~]

[~~(5) indicate the requestor's opinion of how the legal issue should be resolved, the basis for that opinion, an analysis of any relevant court decisions, and all prior interpretations to which the request relates.~~]

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

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Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 936-7660

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7 TAC §§151.2 - 151.7

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional and statutory provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50, and Texas Finance Code, Chapters 11 and 15.

§151.2. Review of Request.

§151.3. Initiation of Interpretation Procedure.

§151.4. Notice of Proposed Interpretation.

§151.5. Public Comment.

§151.6. Action on Proposed Interpretation.

§151.7. Adoption of Interpretation.

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

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Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies
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CHAPTER 153. HOME EQUITY LENDING

7 TAC §§153.8, 153.11, 153.14, 153.15, 153.22, 153.26, 153.41

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §153.8 (relating to Security of the Equity Loan: Section 50(a)(6)(H)), §153.11 (relating to Repayment Schedule: Section 50(a)(6)(L)(i)), §153.14 (relating to One Year Prohibition: Section 50(a)(6)(M)(iii)), §153.15 (relating to Location of Closing: Section 50(a)(6)(N)), §153.22 (relating to Copies of Documents: Section 50(a)(6)(Q)(v)), and §153.41 (relating to Refinance of a Debt Secured by a Homestead: Section 50(e)); and propose new §153.26 (relating to Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)) in 7 TAC, Chapter 153, concerning Home Equity Lending.

7 TAC Chapter 153 contains the commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purpose of the proposed rule changes to 7 TAC Chapter 153 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the *Texas Register* on May 1, 2020 (45 TexReg 2897). The commissions received no comments in response to that notice.

The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received three informal precomments on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

A proposed amendment to §153.8(1)(C) would remove the word "or" to correct a list that unnecessarily includes the word "or" twice.

Proposed amendments to §153.11 would explain that the repayment schedule requirements in Section 50(a)(6)(L)(i) of the Texas Constitution apply at closing. Proposed new paragraph (1) would explain that this constitutional provision does not prohibit a lender from agreeing with the borrower to certain modifications, and would explain that a modification may include a deferment of the original obligation. A proposed amendment at §153.11(2) would explain that the modification does not affect the two-month time period described by Section 50(a)(6)(L)(i).

These amendments to §153.11 are based on the Texas Supreme Court's decision in *Sims v. Carrington Mortg. Servs., LLC,* 440 S.W.3d 10 (Tex. 2014). In *Sims,* the Texas Supreme Court analyzed a modification of a home equity loan where the borrower and lender agreed to capitalize past-due interest, fees, property taxes, and insurance premiums into the principal, and where the modification did not involve the satisfaction or replacement of the original note, an advancement of new funds, or an increase in the obligations created by the original note. The court held that because the modification was not a new extension of credit, it did not trigger reapplication of the constitutional requirements of Section 50. *Sims,* 440 S.W.3d at 18.

In an informal precomment, one precommenter recommended adding the following two sentences to §153.11 regarding which modifications are permissible: "Any deferment may include no payments or monthly payments in an amount that is less than the amount of accrued interest during the deferment period." and "No more than six (6) months of payments may be deferred in any twelve (12) month period." The commissions have not included this text in the current proposal, because the text appears to go beyond interpreting Section 50 of the Texas Constitution, and could be misunderstood to allow actions that are prohibited by other law. For example, for high-cost home loans, Texas Finance Code, §343.203 generally prohibits negative amortization (i.e., a payment schedule that causes the principal balance to increase).

Another precommenter suggested amending §153.11(1) to state that the two-month time period described by Section 50(a)(6)(L)(i) begins "on the day the loan is funded." Section 50(a)(6)(L)(i) provides that the payments must begin "no later than two months from the date the extension of credit is made." Currently, §153.11(1) explains that the two-month period begins "on the date of closing." The commissions believe that the

current text appropriately interprets the word "made" in the context of Section 50(a)(6)(L)(i), and have not included this suggested change in the proposal. *Cf.* Black's Law Dictionary, "make" (11th ed. 2019) (defining "make" to include "caus[ing] (something) to exist" and "legally perform[ing], as by executing, signing, or delivering (a document)").

Proposed amendments to §153.14 would describe states of emergency. Section 50(a)(6)(M)(iii) of the Texas Constitution generally prohibits a home equity loan from being closed within one year after another home equity loan on the same property, but includes an exception for a state of emergency declared by the president of the United States or the governor of Texas. Proposed amendments to §153.14 would describe this exception and explain that a state of emergency includes a national emergency declared by the president of the United States under the National Emergencies Act, 50 U.S.C. §§1601-1651, and a state of disaster declared by the governor of Texas under Texas Government Code, Chapter 418. The commissions believe that these federal and state statutes describe states of emergency within the meaning of Section 50(a)(6)(M)(iii).

Proposed amendments to §153.15 would describe permissible closing locations. Section 50(a)(6)(N) of the Texas Constitution provides that a home equity loan must be closed only at the office of a lender, an attorney at law, or a title company. Because of the pandemic resulting from the coronavirus and the disease COVID-19, lenders have expressed interest in closing loans in places where they can maintain social distancing, such as an office parking lot. A proposed amendment to §153.15(1) would explain that the closing may occur in any area located at the permanent physical address of the lender, attorney, or title company. Proposed amendments to paragraphs (2) and (3) would add references to the permanent physical address. The commissions believe that these amendments are consistent with the closing location requirement of Section 50(a)(6)(N), and clarify that lenders have this option to maintain social distancing while closing loans at their offices.

A proposed amendment to §153.22 describes requirements for electronic copies of loan documents. Section 50(a)(6)(Q)(v) of the Texas Constitution requires the lender to provide the owner with a copy of the loan application and all documents signed by the owner at closing. Proposed new §153.22(3) would explain that the lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, and would include references to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006.

Proposed new §153.26 would describe the acknowledgment of fair market value. Under Section 50(a)(6)(Q)(ix) of the Texas Constitution, the owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made. Proposed new §153.26(1) would explain that the lender may sign the written acknowledgment before or at closing. Proposed new §153.26(2) would explain that an authorized agent may sign the written acknowledgment on behalf of the lender.

In an informal precomment, one precommenter recommended including a statement in §153.26(1) that the lender may sign the written acknowledgment "before, at or after closing." The commissions agree that the acknowledgment may be signed before or at closing. However, the commissions are uncertain about the legal and practical effects where the lender signs the acknowledgment after closing. Under Section 50(a)(6)(Q)(ix) of the Texas Constitution, the home equity loan must be "made on the condition that . . . the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made." The commissions invite official comments on whether the lender can sign the acknowledgment after closing, including the legal and practical effects on the home equity loan if the lender delays or fails to sign the acknowledgment.

A proposed amendment to §153.41 would remove the phrase "or (a)(7)" in the introductory paragraph. Section 50(e) of the Texas Constitution generally provides that if a refinance of debt against the homestead includes additional funds, the refinance must be described by Section 50(a)(6) (i.e., must be a home equity loan). Section 50(e) does not refer to Section 50(a)(7). The phrase "or (a)(7)" in the introductory paragraph of §153.41 appears to be a typographical error. For this reason, the proposed amendment removes this phrase.

Kurt Purdom (Deputy Commissioner, Texas Department of Banking), Antonia Antov (Director of Administration and Finance, Department of Savings and Mortgage Lending), Mirand Diamond (Director of Licensing and Registration, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Kurt Purdom (Deputy Commissioner, Texas Department of Banking), Tony Florence (Director of Mortgage Examination, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will provide clearer guidance to ensure that lenders comply with Section 50.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would create a new regulation at §153.26 to provide guidance relating to the acknowledgment of fair market value. The proposal would expand current §153.11, §153.14, §153.15, and §153.22 to provide additional guidance to lenders. The proposal would limit §153.41 by removing an incorrect citation. The proposal would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

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

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50. No statute is affected by this proposal.

§153.8. Security of the Equity Loan: Section 50(a)(6)(H).

An equity loan must not be secured by any additional real or personal property other than the homestead. The definition of "homestead" is located at Section 51 of Article XVI, Texas Constitution, and Chapter 41 of the Texas Property Code.

(1) A lender and an owner or an owner's spouse may enter into an agreement whereby a lender may acquire an interest in items incidental to the homestead. An equity loan secured by the following items is not considered to be secured by additional real or personal property:

(A) escrow reserves for the payment of taxes and insurance;

(B) an undivided interest in a condominium unit, a planned unit development, or the right to the use and enjoyment of certain property owned by an association;

(C) insurance proceeds related to the homestead; [~~or~~]

(D) condemnation proceeds;

(E) fixtures; or

(F) easements necessary or beneficial to the use of the homestead, including access easements for ingress and egress.

(2) A guaranty or surety of an equity loan is not permitted. A guaranty or surety is considered additional property for purposes of Section 50(a)(6)(H). Prohibiting a guaranty or surety is consistent with the prohibition against personal liability in Section 50(a)(6)(C). An equity loan with a guaranty or surety would create indirect liability against the owner. The constitutional home equity lending provisions clearly provide that the homestead is the only allowable collateral for an equity loan. The constitutional home equity provisions prohibit the lender from contracting for recourse of any kind against the owner or owner's spouse, except for provisions providing for recourse against the owner or spouse when the extension of credit is obtained by actual fraud.

(3) A contractual right of offset in an equity loan agreement is prohibited.

(4) A contractual cross-collateralization clause in an equity loan agreement is prohibited.

(5) Any equity loan on an urban homestead that is secured by more than ten acres is secured by additional real property in violation of Section 50(a)(6)(H).

§153.11. Repayment Schedule: Section 50(a)(6)(L)(i).

Unless an equity loan is a home equity line of credit under Section 50(t), the loan must be scheduled at closing to be repaid in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment.

(1) Section 50(a)(6)(L)(i) does not prohibit a lender from agreeing with a borrower to modify an equity loan if the modification does not satisfy and replace the original equity loan and does not create a new extension of credit. The modification may include a deferment of the borrower's original obligation, and may include amounts that are past due under the equity loan (e.g., accrued but unpaid interest, taxes and insurance).

(2) [~~(1)~~] The two month time period contained in Section 50(a)(6)(L)(i) begins on the date of closing. A modification described by paragraph (1) of this subsection does not affect the two month time period.

(3) [~~(2)~~] For purposes of Section 50(a)(6)(L)(i), a month is the period from a date in a month to the corresponding date in the succeeding month. For example, if a home equity loan closes on March 1, the first installment must be due no later than May 1. If the succeeding month does not have a corresponding date, the period ends on the last day of the succeeding month. For example, if a home equity loan closes on July 31, the first installment must be due no later than September 30.

(4) [~~(3)~~] For a closed-end equity loan to have substantially equal successive periodic installments, some amount of principal must be reduced with each installment. This requirement prohibits balloon payments.

(5) [~~(4)~~] Section 50(a)(6)(L)(i) does not preclude a lender's recovery of payments as necessary for other amounts such as taxes, adverse liens, insurance premiums, collection costs, and similar items.

§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii).

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property, unless the owner on oath requests an earlier closing due to a state of emergency that has been declared by the president of the United States or the governor as provided by law, and applies to the area where the homestead is located.

(1) Section 50(a)(6)(M)(iii) prohibits an owner who has obtained an equity loan from:

(A) refinancing the equity loan before one year has elapsed since the loan's closing date; or

(B) obtaining a new equity loan on the same homestead property before one year has elapsed since the previous equity loan's closing date, regardless of whether the previous equity loan has been paid in full.

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home equity loan occurs when one or more terms of an existing equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

(A) A modification of an equity loan must be agreed to in writing by the borrower and lender, unless otherwise required by law.

An example of a modification that is not required to be in writing is the modification required under the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501-597b.

(B) The advance of additional funds to a borrower is not permitted by modification of an equity loan.

(C) A modification of an equity loan may not provide for new terms that would not have been permitted by applicable law at the date of closing of the extension of credit.

(D) The two percent limitation required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction.

(3) For purposes of Section 50(a)(6)(M)(iii), a state of emergency includes:

(A) a national emergency declared by the president of the United States under the National Emergencies Act, 50 U.S.C. §§1601-1651; and

(B) a state of disaster declared by the governor of Texas under Texas Government Code, Chapter 418.

§153.15. Location of Closing: Section 50(a)(6)(N).

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) An equity loan must be closed at the permanent physical address of the office or branch office of the lender, attorney, or title company. The closing office must be a permanent physical address so that the closing occurs at an authorized physical location other than the homestead. The closing may occur in any area located at the permanent physical address of the lender, attorney, or title company (e.g., indoor office, parking lot).

(2) Any power of attorney allowing an attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at the permanent physical address of an office of the lender, an attorney at law, or a title company. A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph. For example, this system may include one or more of the following:

(A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed;

(B) an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed; or

(C) a certificate of acknowledgement signed by a notary public under Chapter 121, Civil Practice and Remedies Code, acknowledging the date and place at which the power of attorney was executed.

(3) The consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at the permanent physical address of an office of the lender, an attorney at law, or a title company.

§153.22. Copies of Documents: Section 50(a)(6)(Q)(v).

At closing, the lender must provide the owner with a copy of the final loan application and all executed documents that are signed by the owner at closing in connection with the equity loan.

(1) One copy of these documents may be provided to married owners.

(2) This requirement does not obligate the lender to give the owner copies of documents that were signed by the owner prior to or after closing.

(3) A lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic signatures and delivery.

§153.26. Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix).

The owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made.

(1) A lender may sign the written acknowledgment before or at closing.

(2) An authorized agent may sign the written acknowledgment on behalf of the lender.

§153.41. Refinance of a Debt Secured by a Homestead: Section 50(e).

A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) of Section 50 of the Texas Constitution that includes the advance of additional funds may not be secured by a valid lien against the homestead unless: (1) the refinance of the debt is an extension of credit described by Subsection (a)(6) [~~or (a)(7)~~] of Section 50 of the Texas Constitution; or (2) the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of Section 50 of the Texas Constitution.

(1) Reasonableness and necessity of costs relate to the type and amount of the costs.

(2) In a secondary mortgage loan, reasonable costs are those costs which are lawful in light of the governing or applicable law that authorizes the assessment of particular costs. In the context of other mortgage loans, reasonable costs are those costs which are lawful in light of other governing or applicable law.

(3) Reasonable and necessary costs to refinance may include reserves or impounds (escrow trust accounts) for taxes and insurance, if the reserves comply with applicable law.

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

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

TRD-202003450
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 936-7660

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §§4.56, 4.57, 4.62

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to the Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter C, §§4.56, 4.57, and 4.62, concerning the Texas Success Initiative. Specifically, these amendments will provide college readiness benchmarks for the revised assessment approved by the Board under this title and provide the final phase for implementation of corequisite models supporting underprepared students.

The amendment to §4.56 replaces the TSI Assessment, which expires in January 2021, with the TSI Assessment, Version 2.0 (TSIA2), as the Board-approved assessment instrument under this title. The amendment to §4.57 adds the college readiness benchmarks, based on faculty-driven, psychometric standard setting processes, for the TSIA2 and clarifies that results from both assessment instruments remain valid for the purposes of this title for five (5) years from date of testing. With regard to §4.62(8)(A)(iv), statewide developmental education (DE) outcomes data continue to demonstrate that underprepared students enrolled in corequisite models consistently and significantly outperform students in traditional stand-alone DE with regard to meeting college readiness and first college-level course completions. The amendment to §4.62 provides the final phase of corequisite implementation for 2021 and thereafter, ensuring eligible underprepared students are afforded the best opportunity in building momentum towards important milestones leading to certificate/degree completions and transfers.

R. Jerel Booker, J.D., Assistant Commissioner for College Readiness and Success, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Booker has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improved outcomes for underprepared students entering public institutions of higher education. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Government Growth Impact Statement

(1) The rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Jerel Booker, Assistant Commissioner for College Readiness and Success, P.O. Box 12788, Austin, Texas, 78711, cri@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Section 51.344, which provides the Coordinating Board with the authority to adopt rules to implement the provisions of Texas Education Code, Chapter 51, Subchapter F-1 concerning the Texas Success Initiative.

The proposed amendments affect Texas Education Code, Chapter 51, Subchapter F-1 concerning the Texas Success Initiative.

§4.56. Assessment Instrument.

Effective fall 2013, the Texas Success Initiative Assessment (TSIA) is the only Board-approved assessment instrument used under this title. The TSIA, Version 2.0 (TSIA2) will replace the TSIA on January 11, 2021, at which time the TSIA2 will be the only Board-approved assessment instrument offered under this title. [~~Beginning with the institution's first class day of Academic Year (fall) 2013, an institution of higher education shall use the TSI Assessment offered by the College Board as the only Board-approved assessment instrument under this title. Any previously-employed assessments (ACCUPLACER, Compass, THEA, Asset, Compass ESL, ACCUPLACER ESL) can no longer be used under this title for entering students who initially enroll in any course on or after the institution's first class day in fall 2013 or for any students retesting for TSI purposes.~~] Test administrators of the TSI Assessment must follow the requirements and processes for test administration as set forth by the THECB and the test vendor.

§4.57. College Ready Standards.

(a) Effective the institution's first class day of fall 2017, the following minimum college readiness [~~passing~~] standards (also known as "cut scores") for reading, mathematics, and writing on the TSI Assessment (TSIA) shall be used by an institution to determine a student's readiness to enroll in entry-level freshman coursework:

(1) Reading 351;

(2) Mathematics 350; and

(3) Writing:

(A) a placement score of at least 340, and an essay score of at least 4; or

(B) a placement score of less than 340 and an ABE Diagnostic level of at least 4 and an essay score of at least 5.

(b) Effective January 11, 2021, the following minimum college readiness standards (also known as "cut scores") for English Language Arts Reading (ELAR) and mathematics on the TSI Assessment, Version 2.0 (TSIA2) shall be used by an institution to determine a student's readiness to enroll in entry-level freshman coursework:

(1) Mathematics (for college-level coursework with mathematics-intensive designation by the offering institution):

(A) a College Readiness Classification (CRC) score of at least 950; or

(B) a CRC score below 950 and a Diagnostic level of 6.

(2) ELAR (for college-level coursework with reading, writing, or reading and writing-intensive designation by the offering institution):

(A) a College Readiness Classification (CRC) score of at least 945 and an essay score of at least 5; or

(B) a CRC score below 945 and a Diagnostic level of 5 or 6 and an essay score of at least 5.

(c) [~~(b)~~] Institutions must use the TSI Assessment (TSIA or TSIA2) diagnostic results, along with other holistic factors, in their consideration of courses and/or interventions addressing the educational and training needs of undergraduate students not meeting the college readiness standards as defined in subsection (a) or (b) of this section.

(d) [~~(c)~~] An institution shall not require higher or lower college readiness standards on any or all portions of the TSI Assessment (TSIA or TSIA2) to determine a student's readiness to enroll in entry-level freshman coursework.

(e) [~~(d)~~] For a student with an existing plan for academic success as required in §4.58 of this title (relating to Advisement and Plan for Academic Success), the institution must revise the plan as needed to align with the college readiness standards as defined in subsections (a) or (b), as applicable, of this section.

(f) [~~(e)~~] Both TSI Assessment (TSIA and TSIA2) results are valid for the purposes of this title for five (5) years from date of testing.

§4.62. Required Components of Developmental Education Programs.

(a) An institution of higher education must base developmental coursework on research-based best practices that include all of the following components:

(1) assessment;

(2) differentiated placement and instruction;

(3) faculty development;

(4) support services;

(5) program evaluation;

(6) integration of technology with an emphasis on instructional support programs;

(7) non-course-based developmental education interventions; and

(8) Each institution of higher education shall develop and implement corequisite model(s) as defined in §4.53(7) of this title (relating to Definitions) for developmental mathematics and integrated reading/writing (IRW) courses and interventions, and each institution must ensure that a minimum percentage of its undergraduate students other than those exempt as outlined in subparagraph (B) of this paragraph must be enrolled in such corequisite model(s).

(A) Each public institution of higher education must ensure that the institution's developmental courses and interventions comply with the requirements of this section according to the following schedule:

(i) for the 2018-2019 academic year, at least 25 percent of the institution's non-exempt students enrolled by subject area in developmental education must be enrolled in corequisite model(s);

(ii) for the 2019-2020 academic year, at least 50 percent of the institution's non-exempt students enrolled by subject area in developmental education must be enrolled in corequisite model(s);

(iii) for the 2020-2021 academic year, at least 75 percent of the institution's non-exempt students enrolled by subject area in developmental education must be enrolled in corequisite model(s);

(iv) for the 2021-2022 academic year and thereafter, 100 percent of the institution's non-exempt students enrolled by subject area in developmental education must be enrolled in corequisite model(s).

(B) The following students are exempt by subject area(s) from this requirement:

(i) students assessed at ABE Diagnostic levels 1-4 on the TSI Assessment;

(ii) students who are college ready;

(iii) students enrolled in adult education;

(iv) students enrolled in degree plans not requiring a freshman-level academic mathematics course;

(v) students who meet one or more of the exemptions as outlined in §4.54 (relating to Exemptions, Exceptions, and Waivers);

(C) Institutions of higher education must adhere to developmental education funding limitations per TAC §13.107 (relating to Limitation on Formula Funding for Remedial and Developmental Courses and Interventions).

(b) As part of subsection (a)(2) of this section, institutions shall offer Integrated Reading and Writing (IRW) course/intervention at the highest level (just below college-readiness as determined by the institution) by spring 2015.

(c) As part of subsection (a)(7) of this section, institutions shall offer at least one section of non-course competency-based intervention (NCBO) per developmental education subject area by spring 2015.

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

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

TRD-202003490
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 427-6247

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.11

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.11, Examinations.

The proposed amendments reduce the number of hours of additional education required when an applicant fails an examination three times and clarifies the type of education.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;

- require an increase or decrease in future legislative appropriations to the agency;

- require an increase or decrease in fees paid to the agency;

- create a new regulation;

- expand, limit or repeal an existing regulation; or

- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.11. Examinations.

(a) Administration of Licensing Examinations.

(1) An examination required for any license issued by the Board will be conducted by the testing service with which the Board has contracted for the administration of examinations.

(A) The testing service shall schedule and conduct the examinations in the manner required by the contract between the Board and the testing service.

(B) Examinations shall be administered at locations designated by the exam administrator.

(C) The testing service administering the examinations is required to provide reasonable accommodations for any applicant with a verifiable disability. Applicants must contact the testing service to arrange an accommodation. The testing service shall determine the method of examination, whether oral or written, based on the particular circumstances of each case.

(2) Each examination shall be consistent with the examination criteria and examination content outline of the AQB for the category of license sought. To become licensed, an applicant must achieve a passing score acceptable to the AQB on the examination.

(3) Successful completion of the examination is valid for a period of 24 months.

(4) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the Board that the applicant has completed 15 [~~30~~] additional hours of qualifying [~~core~~] education after the date the applicant failed the examination for the third time.

(b) - (d) (No change.)

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

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

TRD-202003483
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 936-3652

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22 TAC §153.18

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.18, Appraiser Continuing Education.

The proposed amendments reorganize the rule and outline requirements for acceptance of courses taken by a Texas license holder outside of Texas for continuing education credit.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed

amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;

- require an increase or decrease in future legislative appropriations to the agency;

- require an increase or decrease in fees paid to the agency;

- create a new regulation;

- expand, limit or repeal an existing regulation; and

- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.18. Appraiser Continuing Education (ACE).

(a) The purpose of ACE is to ensure that license holders participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(b) To renew a license, a license holder must successfully complete the equivalent of at least 28 classroom hours of ACE courses approved by the Board, including the 7-hour National USPAP Update course during the license holder's continuing education cycle. An ACE course may not be repeated during the license holder's continuing education cycle [~~The courses must comply with the requirements set out in subsection (d) of this section~~].

(c) Awarding ACE credit. The Board will award credit to a license holder for an ACE course approved by the Board upon receipt of a course completion roster from an approved ACE provider as required under §153.40 of this title (relating to Approval of Continuing Education Providers and Courses).

(d) Continuing education credit for qualifying courses. License holders may receive continuing education credit for qualifying courses that have been approved by the Board, the AQB or another state appraiser regulatory agency.

(e) Continuing education credit for courses taken outside of Texas. An ACE course taken by a Texas license holder outside of Texas may be accepted on an individual basis for continuing education credit in Texas upon the Board's determination that:

(1) the ACE course was approved for continuing education credit by the AQB or another state appraiser regulatory agency at the time the course was taken;

(2) the Texas license holder's successful completion of the course has been evidenced by:

(A) a course completion certificate;

(B) a letter from the provider; or

(C) such other proof as is satisfactory to the Board; and

(3) the Texas license holder has filed an Out of State Course Credit Request form with the Board.

[~~(c) Until August 31, 2019, the Board will base its review and approval of ACE courses upon the appraiser qualifications criteria of the AQB.~~]

[~~(d) The following types of courses may be accepted for ACE:~~]

[~~(1) A course that meets the requirements for licensing also may be accepted for ACE if:~~]

[~~(A) The course is devoted to one or more of the appraisal related topics of the appraiser qualifications criteria of the AQB for continuing education;~~]

[~~(B) the course was not repeated within the license holder's continuing education cycle; and~~]

[~~(C) the course is at least two hours in length.~~]

[~~(2) The Board will accept as ACE any continuing education course that has been approved by the AQB course approval process or by another state appraiser licensing and certification board.~~]

[~~(A) Until August 31, 2019, course providers may obtain prior approval of ACE courses by filing forms approved by the Board and submitting a letter indicating that the course has been approved by the AQB under its course approval process or by another state appraiser licensing and certification board.~~]

[~~(B) Until August 31, 2019, approval of a course based on AQB approval expires on the date the AQB approval expires and is automatically revoked upon revocation of the AQB approval.~~]

[~~(C) Until August 31, 2019, approval of a course based on another state licensing and certification board shall expire on the earlier of the expiration date in the other state, if applicable, or two years from Board approval and is automatically revoked upon revocation of the other state board's approval.~~]

[~~(3) Until August 31, 2019, distance education courses may be accepted as ACE if:~~]

[~~(A) The course is:~~]

~~(i)~~ ~~Approved by the Board;~~]

~~(ii)~~ ~~Presented by an accredited college or university that offers distance education programs in other disciplines; or~~]

~~(iii)~~ ~~Approved by the AQB under its course approval process; and~~]

[~~(B) The student successfully completes a written examination proctored by an official approved by the presenting college, university, or sponsoring organization consistent with the requirements of the course accreditation; and~~]

[(C) A minimum number of hours equal to the hours of course credit have elapsed between the time of course enrollment and completion.]

[(e) Until August 31, 2019, to satisfy the USPAP ACE requirement, a course must:]

[(1) be the 7-hour National USPAP Update Course or its equivalent, as determined by the AQB;]

[(2) use the current edition of the USPAP;]

[(3) ensure each student has access to his or her own paper or electronic copy of the current USPAP; and]

[(4) be taught by at least one instructor who is an AQB-certified USPAP instructor and also licensed as a certified general or certified residential appraiser.]

[(f) Until August 31, 2019, providers of USPAP ACE courses may include up to one additional hour of supplemental Texas specific information. This may include topics such as the Act, Board Rules, processes and procedures, enforcement issues, or other topics deemed appropriate by the Board.]

(f) [(g)]Up to one half of a license holder's ACE requirements may be satisfied through participation other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching an ACE course, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the Board to be equivalent to obtaining ACE.

(g) [(h)] The following types of courses or activities may not be counted toward ACE requirements:

(1) Teaching the same ACE course more than once per license renewal cycle;

(2) "In house" education or training; or

(3) Appraisal experience.

(h) [(i)] ACE credit for attending a Board meeting.

(1) The Board may award a minimum of two hours and up to a maximum of 4 hours of ACE credit to a current license holder for attending the Board meeting held in February of an even numbered year.

(2) The hours of ACE credit to be awarded will depend on the actual length of the Board meeting.

(3) ACE credit will only be awarded in whole hour increments. For example, if the Board meeting is 2 and one half hours long, only 2 hours of ACE credit will be awarded.

(4) To be eligible for ACE credit for attending a Board meeting, a license holder must:

(A) Attend the meeting in person;

(B) Attend the entire meeting, excluding breaks;

(C) Provide photo identification; and

(D) Sign in and out on the class attendance roster for the meeting.

(5) No ACE credit will be awarded to a license holder for partial attendance.

(i) [(j)]ACE credit for attending presentations by current Board members or staff. As authorized by law, current members of the Board and Board staff may teach or guest lecture as part of an approved ACE course. To obtain ACE credit for attending a presentation by a current Board member or Board staff, the course provider must submit the applicable form and satisfy the requirements for ACE course approval in this section.

[(k) Until August 31, 2019, if the Board determines that an ACE course no longer complies with the requirements for approval, it may suspend or revoke the approval. Proceedings to suspend or revoke approval of a course shall be conducted in accordance with the Board's disciplinary provisions for licenses.]

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

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

TRD-202003484
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 936-3652

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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.25

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes an amendment to 25 Texas Administrative Code §703.25(e), relating to approval of budget requests by grant recipients.

Background and Justification

The proposed amendment to §703.25(e) requires that a grant recipient receive approval from the Institute for all budget changes or transfers. Currently, Institute approval is not required for budget changes or transfers that are ten percent (10%) or less of the project year budget and meet other criteria. The proposed amendment will provide consistent treatment for all budget requests and enable CPRIT program staff to ensure any budget change corresponds with the project's approved goals and objectives.

Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be ensuring that grant budget changes comply with the project's goals and objectives.

Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro-businesses, or rural communities.

Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule change will be in effect:

(1) the proposed rule change will not create or eliminate a government program;

(2) implementation of the proposed rule change will not affect the number of employee positions;

(3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;

(4) the proposed rule change will not affect fees paid to the agency;

(5) the proposed rule change will not create new rule;

(6) the proposed rule change will not expand existing rule;

(7) the proposed rule change will not change the number of individuals subject to the rule; and

(8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than October 5, 2020. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cprit.texas.gov. Comments may be submitted by facsimile transmission to (512) 475-2563.

Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

§703.25. Grant Award Budget.

(a) The Grant Contract shall include an Approved Budget that reflects the amount of the Grant Award funds to be spent for each Project Year.

(b) All expenses charged to a Grant Award must be budgeted and reported in the appropriate budget category.

(c) Actual expenditures under each category should not exceed budgeted amounts authorized by the Grant Contract as reflected on the Approved Budget for each Grant Award.

(d) Recipients may make transfers between or among lines within budget categories listed on the Approved Budget so long as the transfer fits within the scope of the Grant Contract and the total Approved Budget; is beneficial to the achievement of project objectives; and is an efficient, effective use of Grant Award funds.

(e) All [~~Except as provided herein, all~~] budget changes or transfers require Institute approval.

[~~(1) The Grant Recipient may make budget changes or transfers without prior approval from the Institute for expenses not specified in the equipment category if:~~]

[~~(A) The total dollar amount of all changes of any single line item (individually and in the aggregate) within budget categories other than equipment is 10% or less of the total budget for the applicant grant year;~~]

[~~(B) The transfer will not increase or decrease the total grant budget; and~~]

[~~(C) The transfer will not materially change the nature, performance level, or scope of the project.~~]

[~~(2) The Institute may reverse one or more budget changes or transfers under subsection (1) if the Institute determines that the Grant Recipient made multiple individual budget changes or transfers within the same category that, if considered together, would require Institute approval.~~]

(f) A Grant Recipient awarded a Grant Award for a multiyear project that fails to expend the total Project Year budget may carry forward the unexpended budget balance to the next Project Year.

(1) If the amount of the unexpended balance for a budget line item in a Project Year exceeds twenty-five percent (25%) or more of the total budget line item amount for that year, Institute approval is required before the Grant Recipient may carry forward the unexpended balance to the next Project Year.

(2) For a budget carry forward requiring Institute approval, the Grant Recipient must provide justification for why the total Grant Award amount should not be reduced by the unexpended balance.

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

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

TRD-202003441
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 305-8487

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.36

The General Land Office (GLO) proposes amendments to 31 Texas Administrative Code (TAC) §15.36, relating to Certification Status of the City of Galveston Dune Protection and Beach

Access Plan (Plan). The City of Galveston (City) has proposed amendments to the Plan that include increasing the beach user fee (BUF) amount at Seawall Beach Urban Park (the Seawall), replacing Exhibit B with updated maps of the current shoreline conditions, adding a requirement for notification of adjacent property owners where dune mitigation is required, adopting a prohibition on pools outside the footprint of a habitable structure in eroding areas and a variance for certain in-ground pools, incorporating changes previously adopted in Ordinance No. 18-005, and making changes necessary to incorporate Erosion Response Plan (ERP) provisions into the Plan, including a prohibition of ground-level enclosures below the base flood elevation within the Dune Conservation Area.

The GLO proposes to add new subsection 15.36(d) to conditionally certify the amendments to the Plan as consistent with state law. Since the City is not currently in compliance with certain beach access requirements under its existing Plan, it submitted a compliance plan, dated July 17, 2020 (Compliance Plan) to the GLO. The GLO is conditionally certifying the amended Plan as consistent with state law so long as the City meets the compliance milestones and implementation deadlines in the Compliance Plan and makes future amendments to its Plan as necessary to reflect any substantive changes needed to achieve compliance with state law. If the City does not comply with its Compliance Plan, the GLO may withdraw certification of a portion of the Plan or the entire Plan in accordance with 31 TAC §§15.10 and 15.21. If the GLO withdraws certification of a portion of or of the entire Plan, the City may lose the ability to collect the increased amount of the BUF as currently proposed in this amendment, may completely lose the ability to collect a BUF, may lose the authority to issue permits or certificates authorizing construction, or the certification of some other portion of its Plan may be withdrawn. The City agrees to report its progress with meeting the milestones and deadlines in the Compliance Plan to the GLO every 180 days for publishing in the *Texas Register* and to amend the Plan as necessary every 180 days. The City has set a deadline to achieve full compliance with the Compliance Plan by December 31, 2022.

Copies of the City's proposed Plan and the Compliance Plan can be obtained by contacting the GLO or the City of Galveston.

BACKGROUND OF THE PROPOSED AMENDMENTS

Pursuant to the Open Beaches Act (OBA), Texas Natural Resources Code (TNRC), Chapter 61; the Dune Protection Act, TNRC Chapter 63; 33 TNRC Section 607, and 31 Texas Administrative Code (TAC) §§15.3, 15.7, 15.8, and 15.17, a local government with jurisdiction over Gulf coast beaches must submit its Plan, ERP, and any proposed amendments to the Plan, ERP, or BUF Plan to the GLO for certification. If appropriate, the GLO will certify that the Plan, ERP, or BUF as consistent with state law by amendment of a rule, as authorized in TNRC §§61.011(d)(5), 61.015(b), and 63.121. The certification by rule reflects the state's certification of the Plan; however, the text of the Plan is not adopted by the GLO, as provided in 31 TAC §15.3(o)(4).

On January 25, 2018, the City Council adopted Ordinance No. 18-005, which added a requirement for notification of adjacent property owners where dune mitigation is required, adopted a prohibition on pools outside the footprint of a habitable structure in eroding areas and a variance for certain in-ground pools, and made changes necessary to incorporate Erosion Response Plan (ERP) provisions into the Plan. The GLO certified the ERP as consistent with state law on December 2, 2012 in 31 TAC §15.36(b). The City is now incorporating ERP provisions into the body of the Plan.

On January 24, 2019, the City Council adopted Ordinance No. 19-012, which incorporated Ordinance No. 18-005, to amend Chapter 29 of its Code of Ordinances. The proposed amendments to the Plan include increasing the beach user fee (BUF) amount at Seawall Beach Urban Park (the Seawall), replacing Exhibit B with updated maps of the current shoreline conditions, and prohibiting ground-level enclosures below the base flood elevation within the Dune Conservation Area. The Plan was submitted to the GLO with a request for certification of the amendments to the Plan as consistent with state law, and in accordance with 31 TAC §§15.3, 15.7, and 15.8 and TNRC Chapters 61 and 63.

The City is a coastal community in Galveston County, located on Galveston Island and bordering West Bay, Galveston Bay and the Gulf of Mexico. The City's Dune Protection and Beach Access Plan was first adopted on August 12, 1993 and most recently amended to adopt a BUF increase at Stewart Beach, R.A. Apffel Park, Dellanera Park, and Pocket Park Nos. 1-3, which was certified by the GLO as consistent with state law on June 23, 2016.

ANALYSIS OF PLAN AMENDMENTS AND GLO'S PROPOSED AMENDMENT TO 31 TAC 15.36.

As provided in 31 TAC §15.8, local governments may request authorization to increase the BUF provided that the local government demonstrates that the increased BUF corresponds to increased costs of the local government for providing public services and facilities directly related to the public beach. Pursuant to 31 TAC §§15.3 and 15.8, the City adopted a BUF on the Seawall and submitted a BUF Plan to the GLO with a request for certification that the BUF Plan is consistent with state law.

The proposed amendments to the BUF Plan increase the BUF for parking on the Seawall from $1 per hour to up to $2 per hour with a minimum purchase of two hours required, a maximum charge of $16 per vehicle per day, and an increase in annual passes from $25 to up to $45 per vehicle per year.. The City intends to charge the BUF for parking along the north and south sides of Seawall Boulevard, daily between the hours of 10:00 a.m. and 6:00 p.m.

The City has designated a minimum of ten percent of the number of required parking spaces in Seawall Beach Urban Park as free, as required by the City's existing Plan and 31 TAC §15.7. A total of 218 free parking spaces have been evenly distributed along the north and south sides of Seawall Boulevard, including 49 spaces between 12th and 19th Streets, 59 spaces between 33rd and 39th Streets, and 51 spaces between 53rd and 61st Streets, and 59 spaces between 85th Street and the 9200 block of the Seawall. Additional spaces have been located on streets adjacent to the Seawall, including 6 spaces on 11th Street, 15 spaces on 12th Street, 13 spaces on M 1/2 between 11th and 12th Streets, 11 spaces on 14th Street, 9 spaces on 15th Street, 19 spaces on 17th Street, and 12 parking spaces on 18th Street. At least 12 of these spaces must be free.

According to the City, the BUF increase is necessary due to the continuous rise of expenses for beach-related services, such as litter abatement and maintaining sanitary restrooms, and to support the cost of planned public beach access improvements on the Seawall. In the short term, the funds from the increase in the BUF will be used to construct a median refuge island on Seawall Boulevard to increase pedestrian safety and to provide better

access to the beach from parking located on the north side of Seawall Boulevard. The total estimated cost of the short-term project is $1.5 million, and implementation is expected to begin in 2021.

In the long term, the increase in the BUF will be used to implement improvements at Seawall Beach Urban Park that include constructing an additional five visitor stations with permanent restroom facilities and outdoor showers, pedestrian bollard lighting along the sidewalk on the south side of Seawall Boulevard, additional ADA ramps to the beach, bicycle racks, and other amenities. The total estimated cost of these activities is $3.6 million. The City estimates that it will have accumulated enough funds from the BUF increase to begin implementation of the long-term plans in the 2030s.

Another proposed long-term project is to construct an additional public beach access parking lot adjacent to Stewart Beach Park. The GLO has requested prioritization of this project. The City agreed in its Compliance Plan to determine whether it is feasible to construct a parking lot in this location by November 30, 2020. The minimum 85 required parking spaces, including 12 free spaces, that are proposed to be in this lot are currently located on streets adjacent to the Seawall. If the City determines it is not feasible to use the property as a parking lot, the parking will be located at another lot in the Stewart Beach vicinity and will be completed by May 30, 2021.

The City is also authorized to use the increase in BUF on the Seawall to fund repairs to and enhancements of public beach access on the West end of Galveston Island. Enhancing these access points may include improving public access points, increasing signage, and providing handicap access and may include projects to reduce erosion or enhance drainage efficiency.

Based on the information provided by the City, the GLO has determined that the BUF increase is reasonable. The BUF does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services, including enhanced amenities, does not unfairly limit public use of and access to and from public beaches in any manner, and is consistent with 31 TAC §15.8 of the Beach/Dune Rules as well as the OBA.

Proposed amendments to the Plan also include a replacement of the maps in Exhibit B, Dune Conservation Area and Enhanced Construction Zone, with updated maps showing conditions of the shoreline. These updated maps include the approximate location of the north toe of the dune, mean high water, mean low water, the line of vegetation, as well as the boundaries of the Dune Conservation Area and Enhanced Construction Zone, based on surveys conducted in 2016 and 2017.

In addition, the City proposes to amend the building requirements section of the Plan to include a prohibition of ground-level enclosures below the base flood elevation within the Dune Conservation Area. The proposed amendment is consistent with 31 TAC §15.17.

The proposed amendments also reconcile inconsistencies between the Plan and the City's Erosion Response Plan. Current Section 29-90 of the Plan is being amended with provisions, terminology, and corresponding definitions from the Erosion Response Plan. The amendments consolidate all the permitting requirements for Beachfront Construction and Dune Protection Permits into one section of the Plan. The changes to the Plan reflect current permitting practices under the ERP and incorporate the ERP language that has previously been certified as consistent with state law by the GLO.

Another proposed Plan amendment is to prohibit in-ground swimming pools in eroding areas in the area seaward of 1,000 feet from mean high tide, with the exception of in-ground pools that may be constructed under the footprint of a habitable structure. The text of the ordinance inadvertently omitted the exception of swimming pools under the footprint of the habitable structure, but the City corrected the text in a July 21, 2020 letter to the GLO. The City also proposed a variance from 31 TAC §15.6(f) that would allow in-ground swimming pools in eroding areas that are located landward of large-scale, concrete, multi-family condominiums that had an existing in-ground swimming pool and concrete parking lot prior to the date beach dune rules came into effect. Under this variance, the permit applicant must demonstrate that the total amount of existing impervious cover on the site will not be increased by the construction of a pool that meets the above conditions. This variance is justified because it is appropriately limited in scope and ensures that there will not be an increase of existing impervious cover on a lot. Because the swimming pool is required to be sited landward of a large-scale multi-family condominium, the potential for the swimming pool becoming debris on the public beach requiring removal and public expenditures following a storm is thought to be small. This City has demonstrated that this variance will not adversely impact adjacent structures, increase storm damage losses, or exacerbate erosion rates, and it provides for sound management of coastal resources and compatible development while allowing multiple uses of the coastal zone. The Plan amendments also include administrative changes related to updating non-substantive Plan language to reflect language in 31 TAC Chapter 15 and updating relevant names of City departments that oversee coastal issues, among others.

Over the last several years, the GLO has been working with the City on compliance with the beach access provisions in the Plan, which are required to preserve beach access in areas where vehicles are prohibited from the public beach. More recently, the GLO was unable to certify any amendments to the City's Plan until the City could demonstrate compliance with its current Plan's requirements for beach access. During the last year, the City has made significant progress in resolving these issues. Understanding that some of the issues require time and capital to resolve, the GLO requested a compliance plan from the City that defines the remaining compliance issues and establishes timelines for resolution. Because the City has achieved partial compliance and provided an adequate compliance plan, the GLO has agreed to conditionally certify the current Plan amendments. The conditional certification of the amendments to the City's Plan as consistent with state law will remain in effect until the City has demonstrated full compliance with the Compliance Plan, the beach access requirements in the City's Plan, 31 TAC Chapter 15, and the OBA, and has amended its Plan as necessary. GLO expects full resolution of the remaining compliance issues no later than December 31, 2022.

The City has already made steady progress towards resolving beach access noncompliance by bringing multiple beach access points and parking areas into compliance with its Plan. The City has resolved the noncompliance issues at the following public beach access points (AP): AP 1 - Apffel Park, AP 1A - Beachtown, AP 1B - Palisade Palms, AP 1C - East Beach Drive, AP 4 - End of Seawall, AP 6 - Pocket Park #1, AP 7 - Sunny Beach Subdivision, AP 11 - Spanish Grant Subdivision, AP 22 - Holiday Inn Club Vacations Galveston Seaside Resort (formerly Silverleaf Resort), AP 30 - Gulf Boulevard/Isla Del Sol Subdivision, AP

33 - 2nd Street/Bay Harbor Subdivision, AP 34 - Miramar Subdivision, AP 36 - Salt Cedar Avenue, and AP 41 - Pointe San Luis.

The July 17, 2020 Compliance Plan describes the steps the City will take to resolve each outstanding instance of noncompliance and an estimated timeline with required progress milestones by which resolution of each instance of noncompliance will be completed. The City has divided the outstanding instances of beach noncompliance into four main categories: conspicuous signage, Seawall Beach Urban Park parking, west end parking shortfalls, and west end pedestrian access. The timeline and milestones associated with each category differ as some are more complicated and may include significant capital outlay.

The City's Plan requires 2,259 public beach access parking spaces for the Seawall Beach Urban Park to be in compliance with the requirements of 31 TAC §15.7. There are currently 1,933 parking spaces in Seawall Beach Urban Park, which is 266 spaces short of that requirement. To immediately accommodate for the parking shortfall, the City designated 85 public beach parking spaces on streets located adjacent to Seawall Boulevard, of which at least 12 must be free parking. In the long term, the City intends to relocate these 85 public beach parking spaces to a City lot adjacent to Stewart Beach Park if feasible. The City will determine the feasibility of using this lot for parking by November 30, 2020. If it is not feasible for the City to relocate the 85 spaces to this lot, the parking will be located to another lot in the Stewart Beach vicinity by May 31, 2021. Under the Compliance Plan, the City is required to locate the remaining 181 required parking spaces within a free parking area in Stewart Beach Park, as originally required during the certification of the 2004 amendment to the City's Plan, by October 9, 2020. A future Plan amendment will be required to incorporate the final parking plan.

The following access points have a lack of conspicuous signage identifying parking areas and access points and explaining the nature of vehicular controls as required by 31 TAC § 15.7(h): AP 8 - Beachside Village, AP 15A - Pirates Beach Subdivision, AP 15B - Palm Beach Subdivision, AP 15C - Pirates Beach West Subdivision, AP 19 - Karankawa Beach Subdivision, AP 21 - Kahala Beach Estates, AP 29 - Isla Del Sol Subdivision, AP 37 - Playa San Luis Subdivision, AP 38 - Pointe San Luis 1, AP 39 - Pointe San Luis 2, and AP 40 - Pointe San Luis 3. The City has agreed to install conspicuous signage at AP 8, AP 19, AP 21, AP 29, AP 37, AP 38, AP 39, and AP 40 by September 15, 2020 and at AP 15A, AP 15B, and AP 15C by October 15, 2020.

The following access points have a lack of conspicuous signage identifying parking areas and access points and do not have the adequate amount of public beach access parking to accommodate for the prohibition of vehicles from the beach as required by the City's existing Plan and 31 TAC §15.7. The following access points are short parking spaces: AP 12 - Bermuda Beach, AP 20 - Indian Beach, AP 23 - The Dunes of West Beach, AP 24 - Sandhill Shores, AP 27 - Sea Isle Parking Area, and AP 28 - Sea Isle Subdivision and Terramar Beach Subdivision. The subdivisions were notified about the noncompliance in writing by the City on May 20, 2020. The City has met with all of these subdivisions except Indian Beach. By September 1, 2020, the City is providing the GLO with a plan with enforceable timelines for each access point that will bring the access point into compliance. The plan must also have a timeline by which the parking solution and the installation of conspicuous signage will be implemented. If this information is not provided to the GLO by this deadline, the City has committed to restoring vehicular access to the beach at each access point for which a plan was not provided by November 1, 2020. If parking issues are not resolved at an access point by the timelines established by the City or, in no case later than September 2022, vehicular access must be restored at that access point. If the September 2022 deadlines are not met, the City will restore vehicular access to the beach. The vehicular access will be restored by November 1, 2022. The beach will then remain open to vehicular traffic until the Subdivision comes into compliance with the parking shortfall.

The plans for parking and signage solutions must contain milestones. The City has committed to fully implementing them by September 2022. Shorter deadlines will be required where practicable. If the access points are not compliant with parking and signage requirements by September 2022, the City will restore vehicular access at those access points by November 1, 2022.

The following access points have a lack of adequate pedestrian pathways to the beach as required by the City's existing Plan and state law: AP 20 - Indian Beach, AP 23 - The Dunes of West Beach, and AP 24 - Sandhill Shores. The City held at least two meetings with the subdivisions adjacent to each access point by July 15, 2020, except for Indian Beach. The City is meeting with Indian Beach as soon as possible. By September 1, 2020, the City is providing the GLO with a plan for each access point to restore pedestrian access to the beach. If this information is not provided to the GLO by this deadline, the City has committed to restoring vehicular access to the beach at each access point for which a plan was not provided by November 1, 2020. The plans for pedestrian pathways for the beach must contain milestones. The City has committed to be fully implementing them by September 2022. Shorter deadlines will be required where practicable. If the access points are not compliant with pedestrian pathways for the beach requirements by September 2022, the City will restore vehicular access at those access points by November 1, 2022. The beach will then remain open to vehicular access until the subdivision comes into compliance with the pedestrian access requirements.

Numerous dune walkovers at AP 12 - Bermuda Beach are encroaching on the public beach and impairing public use of the beach, which is inconsistent with the requirements of the City's existing Plan, 31 TAC §15, and the OBA. The City has already removed a dune walkover that was encroaching on the public beach easement. The remaining six dune walkovers must either be shortened to the most landward point of the public beach easement or be removed entirely. The City held at two meetings with the subdivision adjacent to the access point. By September 1, 2020, the City will provide a plan to the GLO to resolve each instance of encroachment on the public beach that includes a deadline of September 2022 by which the resolution will be completed. If this information is not provided to the GLO by this deadline, the City will restore vehicular access to the beach at this access point by November 1, 2020.

In addition, the following beach parks do not have the adequate amount of off-beach parking or pedestrian pathways to the beach as required by the City's existing Plan and 31 TAC §15.7: AP 9 - Pocket Park No. 2, AP 13 - Pocket Park No. 3, and AP 32 - Pocket Park No. 4. The construction of the required off-beach parking lot and dune walkover at Pocket Park No. 2 is fully funded and is anticipated to begin by September 1, 2020. Within 6 months of this conditional certification, the City will determine the cost of compliance for Pocket Park Nos. 3 and 4. The City has applied for CMP Cycle 26 grant funding to bring Pocket Park No. 3 into compliance and will apply for CMP Cycle 27

grant funding to bring Pocket Park No. 4 into compliance. If awarded the funding, construction of the off-beach parking areas and pedestrian pathways to the beach is anticipated to be complete by December 31, 2021 for Pocket Park No. 3 and by December 31, 2022 for Pocket Park No. 4. In the interim, the City has relocated the bollards at Access Point 33 - Bay Harbor farther east to expand the size of the on-beach parking area to accommodate for the lack of the required off-beach parking and pedestrian pathway to the beach at Pocket Park No. 3. The City will relocate the bollards at Access Point 33 farther east to also accommodate for the lack of off-beach parking at Pocket Park No. 4 by November 20, 2020.

FISCAL AND EMPLOYMENT IMPACTS

Ms. Melissa Porter, Deputy Director for the GLO's Coastal Resources Division, has determined that for each year of the first five years the amended rule as proposed is in effect, there will be minimal, if any, fiscal implications to the state government as a result of enforcing or administering the amended rule.

Ms. Porter has determined that the proposed amendment will not affect the costs of compliance for small businesses as the proposed changes relate to individual permits for parking on the beach and are not related to the permitting or restriction of business activities. The impact of the fee increase is mitigated by the existence of intermittently spaced no-fee areas throughout Seawall Beach Urban Park and the morning and evening hours when no fee is charged. The other Plan amendments will primarily affect private residences and will have minimal impact on small businesses. Ms. Porter has also determined that for each year of the first five years the proposed amendments are in effect, there will be no impacts to the local economy.

GLO has determined that the proposed rulemaking will have no adverse local employment and that no impact statement is required pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that the public will be affected by the increase of the BUF. Individuals will be required to pay larger hourly, daily, and annual fees. However, the Plan includes no-fee areas of public beach parking as required by 31 TAC §15.8(h), mitigating the impact of the BUF increase on individuals. The City Plan designates a minimum of ten percent of the number of required parking spaces in Seawall Beach Urban Park as free. A total of 218 free parking spaces are evenly distributed along the north and south sides of Seawall Boulevard, and at least 12 additional free parking spaces will be located on streets adjacent to Seawall Boulevard until they can be moved to a lot adjacent to the beach. In addition, there is no BUF charged at any access area on the west end of Galveston.

Ms. Porter has determined that the BUF benefits the public and beachgoers because the increased fees are necessary for the City to continue to fund and provide adequate and improved beach-related services to the public. The BUF specifically benefits the public and beachgoers by funding beach-related services such as safer pedestrian access to the beach, trash collection, improvements to beach access and parking signage, and providing beachgoers with enhanced amenities such as permanent restrooms, outdoor showers, and pedestrian bollard lighting.

Ms. Porter has determined that the public will benefit from the adoption of updated maps in Exhibit B that more accurately reflect shoreline conditions. The amendment of language that makes the Plan and the ERP consistent with each other benefits the public because clarity and guidance regarding permit conditions and construction requirements will be more easily available before property is purchased for development. Specifically, incorporating the ERP provisions into the Plan will provide more clarity on the prohibitions and exceptions that are applicable to construction activities that may be proposed within 50 feet of the north toe of the dune. Clarity on these requirements will also help reduce proposals and authorizations that may increase public expenditures associated storm damage.

Ms. Porter has determined that the public will benefit from the adoption of the prohibition on enclosures below base flood elevation within the Dune Conservation Area because of reduced public expenditures associated with damage to or loss of structures and public infrastructure due to storm damage and erosion.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments are proposed under Texas Natural Resources Code §§61.011, 61.015(b), 61.022 (b) & (c), 61.070, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to use and access public beaches, imposition or increase of beach user fees, and certification of local government beach access and use plans as consistent with state law. The proposed amendments do not exceed federal or state requirements.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. The GLO has also determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to property or use of that property. The BUF increase applies to public property owned by either the City of Galveston or Galveston County, not private real property. The updated maps are meant to be guidance and are not detailed enough to determine the location of the north toe of the dune, which is determined by an official survey of property. Therefore, the maps do not affect real property owners in a way that would require them to be compensated.

The City of Galveston's Erosion Response Plan establishes and implements a building set-back line and includes guidelines providing exemptions for property for which the owner has demon-

strated that no practicable alternatives to construction seaward of the building set-back line exist. The definition of the term "practicable" in 31 TAC §15.2(55) allows a local government to consider the cost of implementing a technique such as the set-back provisions in determining whether it is "practicable" in a particular application for development. In applying its regulation, the City of Galveston will determine on a case-by-case basis whether to permit construction of habitable structures in the area seaward of the building set-back line and landward of the line of vegetation if it would cause severe and unavoidable economic impacts and thus avoid an unconstitutional taking. In addition, a building set-back line adopted by local governments under that section would not constitute a statutory taking under the Private Real Property Rights Preservation Act inasmuch as Texas Natural Resources Code §33.607(h) as added by HB 2819 provides that Chapter 2007, Government Code, does not apply to a rule or local government order or ordinance authorized by §33.607. GLO has therefore determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for this proposed rulemaking. Since the proposed rule simply certifies the amendments to City of Galveston's Dune Protection and Beach Access Plan (Plan), it will not affect the operations of the General Land Office. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriations to the agency, will not require the creation of new employee positions nor eliminate current employee positions at the agency, nor will it require an increase or decrease in fees paid to the General Land Office. The proposed rule amendments do not create, limit, or repeal existing agency regulations, but rather certify the amendments to the Plan as consistent with state law. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve environmental protection and safety and to reduce public expenditures associated with loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program as provided for in Texas Natural Resources Code §33.2053 and 31 TAC §§505.11(a)(1)(J) and 505.11(c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determinate that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System).

The proposed amendments are consistent with the CMP goals outlined in 31 TAC §501.12(5). These goals seek to balance the benefits of economic development and multiple human uses, the benefits of protecting, preserving, restoring, and enhancing coastal natural resource areas (CNRAs), and the benefits from public access to and enjoyment of the coastal zone. The proposed amendments are consistent with 31 TAC §501.12(5) as they provide the City with the ability to enhance public access and enjoyment of the coastal zone, protect and preserve and enhance the CNRA, and balance other uses of the coastal zone.

The proposed rules are also consistent with CMP policies in 31 TAC §501.26(a)(4) because they enhance and preserve the ability of the public, individually and collectively, to exercise rights of use of and access to and from public beaches.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 61.070, 63.091, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches, imposition or increase of beach user fees, the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property, and certification of local government beach access and use plans as consistent with state law.

Texas Natural Resources Code §§33.602, 33.607, 61.011, 61.015 61.022, 61.070, and 63.121 are affected by the proposed amendments.

§15.36. Certification Status of City of Galveston Dune Protection and Beach Access Plan.

(a) - (c) (No change.)

(d) The General Land Office conditionally certifies as consistent with state law amendments to the City of Galveston's Dune Protection and Beach Access Plan as amended on January 24, 2019 by Ordinance No. 19-012. The amendments include an increase in the Beach User Fee on the Seawall, the adoption of updated maps in Exhibit B, and a variance for certain in-ground pools. The amendments were adopted by City Council in Ordinance No. 19-012 on January 24, 2019, which incorporated previously adopted Ordinance No. 18-005.

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

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

TRD-202003462
Mark Havens
Deputy Land Commissioner and Chief Clerk
General Land Office
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4011

The Comptroller of Public Accounts proposes amendments to §9.4011, concerning appraisal of timberlands. These amendments are to reflect updates and revisions to the manual for the appraisal of timberland. The proposed amended manual may be viewed at https://comptroller.texas.gov/taxes/property-tax/rules/index.php.

The comptroller amends the Manual for the Appraisal of Timberland, adopted by reference, to update and revise the manual for the appraisal of timberland that has been in effect since May 2004. The manual sets forth the methods to apply and the procedures to use in qualifying and appraising land used for timber production under Tax Code, Chapter 23, Subchapters E and H. The updates and revisions to the manual generally reflect statutory changes; changes dictated by case law; changes to examples to reference more current prices, expenses and values; changes to organization names and information available from different sources; and the addition of footnotes for citations to Tax Code sections and case law referenced. The proposed amendments also provide that appraisal districts are required by law to use this manual in qualifying and appraising timberland. Pursuant to Tax Code, §23.73(b), these rules have been approved by the Comptroller with the review and counsel of the Texas A&M Forest Service.

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

Mr. Currah also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendments would benefit the public by improving the administration of local property valuation and taxation. There would be no anticipated significant economic cost to the public. The proposed amendments would have no significant fiscal impact on small businesses or rural communities.

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

The comptroller proposes these amendments under Tax Code, §§5.05 (Appraisal Manuals and Other Materials), 23.73 (Appraisal of Timber Land), and 23.9803 (Appraisal of Restricted-use Timber Land), which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying methods to apply and the procedures to use in appraising qualified timberland and restricted-use timberland for ad valorem tax purposes.

These amendments implement Tax Code §23.73 (Appraisal of Timber Land) and §23.9803 (Appraisal of Restricted-use Timber Land).

§9.4011. Appraisal of Timberlands.

Adoption of the Manual for the Appraisal of Timberland. This manual sets out both the eligibility requirements for timberland to qualify for productivity appraisal and the methodology for appraising qualified timberland and restricted use timberland. Appraisal districts are required by law to follow the procedures and methodology set out in this manual. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Timberland. Copies of this manual can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528 or from the Property Tax Assistance Division website. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621. This manual and those that have been superseded are available from the Comptroller's office as well as the State Archives.

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

Filed with the Office of the Secretary of State on August 19, 2020.

TRD-202003417
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 475-2220

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

DIVISION 1. GENERAL

40 TAC §700.1334

The Department of Family and Protective Services (DFPS) proposes new rule §700.1334 in Chapter 700, concerning Child Protective Services.

BACKGROUND AND PURPOSE

The purpose of the rule change is to comply with House Bill (HB) 781, which was enacted into law by the 86th Texas Legislature September 1, 2019. HB 781, among other things, requires DFPS by rule to establish DFPS's strategy to develop trauma-informed protocols for reducing the number of incidents in which a child in the conservatorship of DFPS runs away from a residential treatment center; and balance measures aimed at protecting child safety with federal and state requirements related to normalcy and decision making under the reasonable and pru-

dent parent standard prescribed by 42 U.S.C. §675 and Family Code §§264.001 and 264.125. Recognizing the importance of having a runaway prevention strategy that encompasses all children and youth in DFPS conservatorship, the rule includes all contracted and non-contracted placements, in addition to residential treatment centers.

SECTION-BY-SECTION SUMMARY

New rule §700.1334 provides that DFPS has established policy and protocols that guide caseworkers in providing support and information to kinship and non-contracted caregivers of children in DFPS conservatorship to prevent and reduce the occurrence of runway incidents. The rule also provides that all DFPS contracts with residential child care providers for children in DFPS conservatorship include a provision requiring the providers to maintain such policies and protocols. These protocols address child safety while promoting normalcy; include guidelines for identifying children that might be at risk of running away from their placement; require caregivers to use the reasonable and prudent parent standard when making decisions regarding the child; and be trauma-informed. The rule also provides definitions for terms used in the rule, including for "normalcy", "reasonable and prudent parent standard", "runaway incident", "unauthorized absence", and "trauma-informed".

FISCAL NOTE

David Kinsey, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the rule will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rule as proposed. Any cost of implementation will be absorbed into current caseworker workload utilizing existing resources.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the proposed rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation will not affect the number of employee positions;

(3) implementation will not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule will not affect fees paid to the agency;

(5) the proposed rule will create a new regulation only to the extent that DFPS is adopting a new rule as mandated by SB 781, 86th Legislature, R.S. (2019);

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

(7) the proposed rule will not increase the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Mr. Kinsey has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code, §2001.0045, the statute does not apply to a rule that is adopted by DFPS.

PUBLIC BENEFIT

Deneen Dryden, Associate Commissioner for Child Protective Services, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule is that it will further efforts to prevent youth in DFPS conservatorship from running away from their placement, thereby promoting child safety and well-being.

REGULATORY ANALYSIS

DFPS has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register*. Electronic comments and questions may be submitted to RULES@dfps.state.tx.us. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services 20R03, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

STATUTORY AUTHORITY

The proposed rule implements Human Resources Code §40.043, enacted pursuant to HB 781, 86th Legislature, R.S. (2019).

The rule is proposed under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

No other statutes, articles, or codes are affected by the proposed rules.

§700.1334. What strategies does DFPS implement to reduce the number of incidents in which a child in its conservatorship runs away?

(a) DFPS has established policy and protocols that guide caseworkers in providing support and information to kinship and other non-contracted caregivers of children in DFPS conservatorship to prevent and reduce the occurrence of runaway incidents. The protocols:

(1) address child safety while promoting normalcy;

(2) include guidelines for identifying children that might be at risk of running away from their placement;

(3) require caregivers to use the reasonable and prudent parent standard when making decisions regarding the child; and

(4) are trauma-informed.

(b) DFPS contracts with residential child care providers include a provision that requires the providers to maintain policy and

protocols to prevent and reduce the occurrence of runaway incidents by children in DFPS conservatorship that are placed in their operations and/or foster homes. The contracts require that the protocols:

(1) address child safety while promoting normalcy;

(2) include guidelines for identifying children who might be at risk of running away from their placement;

(3) require caregivers to use the reasonable and prudent parent standard when making decisions regarding the child; and

(4) be trauma-informed.

(c) In this section, the following terms have the following meaning:

(1) "Normalcy" has the same definition as specified in §748.701 of title 26 (relating to What is "normalcy"?) and §749.2601 of title 26 (relating to What is "normalcy"?). For purposes of this DFPS section, "age-appropriate normalcy activity" means an activity or experience as defined in Texas Family Code §264.001(1).

(2) "Reasonable and prudent parent standard" has the same definition as specified in §748.705 of title 26 (relating to What is the "reasonable and prudent parent standard"?) and §749.2605 of title 26 (relating to What is the "reasonable and prudent parent standard"?).

(3) "Runaway" incident is defined as a type of unauthorized absence where a child who has left the child's placement on the child's own accord and without permission from the caregiver, does not appear to have the intent to return and is unable to be located. An unauthorized absence in which the child has temporarily left the placement without permission from the caregiver but intends to return, is not considered a runaway incident for purposes of this DFPS section. For the definition of an unauthorized absence, see §748.301(3) of title 26 (relating to What do certain terms mean in this subchapter?) and §749.501(3) of title 26 (relating to What do certain terms mean in this subchapter?) for the definition of an unauthorized absence.

(4) "Trauma-informed" has the same definition as specified in §748.43(70) of title 26 (relating to What do certain words and terms mean in this chapter?) and §749.43(72) of title 26 (relating to What do certain words and terms mean in this chapter?).

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

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

TRD-202003437
Tiffany Roper
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: October 4, 2020
For further information, please call: (512) 438-3397

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