

# PROPOSED RULES

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 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 81. ELECTIONS

##### SUBCHAPTER B. EARLY VOTING

The Office of the Secretary of State, Elections Division, proposes the repeal of §81.39, which concerns a temporary pilot program for emailing ballots to military voters who are overseas for the November 4, 2008 General Election only in accordance with §101.0071 of the Texas Election Code, and proposes new §81.39, concerning the emailing and tracking of balloting materials to military and overseas voters pursuant to the federal Military and Overseas Voter Empowerment Act ("MOVE"), 42 U.S.C. 1973ff.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the proposed repeal and new rule are in effect, the fiscal implications for state or local government as a result of enforcing or administering the proposal are likely to be de minimis, which, in any case, should be offset by federal funding.

Ms. McGeehan has determined that for each year of the first five-year period the proposed repeal and new rule are in effect, the public benefit will be to provide military voters, along with their spouses and dependents, and Texas voters temporarily residing overseas a greater ability to cast their votes in a timely manner and provide them with the greater ability to obtain information as to the status of when their ballots are received by the early voting clerk.

Ms. McGeehan also has determined that for the first five-year period the proposed repeal and new rule are in effect, there will be no effect on individuals, small businesses or micro-businesses.

#### Request for Comments.

Interested persons may submit written comments on the proposed repeal and new rule to the Office of the Secretary of State, Elections Division, P.O. Box 12060, Austin, Texas 78711-2060.

Comments may also be sent via email to: [elections@sos.state.tx.us](mailto:elections@sos.state.tx.us).

For comments submitted electronically, please include "Proposed Adoption of Rule §81.39" in the subject line. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed rule may be

directed to Office of the Secretary of State, Elections Division, at (512) 463-5650.

#### 1 TAC §81.39

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of the Secretary of State, Texas Register Division, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under the Texas Election Code, §31.002, which provides the Office of the Secretary of State with the authority to maintain uniformity in the application, operation, and interpretation of the Texas Election Code and of the election laws outside the Texas Election Code. MOVE is effective for the November 2, 2010 General Election. Accordingly, this proposal is necessary for compliance until the Texas Legislature can statutorily address implementation of MOVE.

Statutory Authority: Texas Election Code, §31.002.

Texas Election Code, Chapter 101 is affected by this proposal.

§81.39. Procedures for Pilot Program for Emailing Ballots to FPCA Voters.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2010.

TRD-201002919

John Sepehri

General Counsel

Office of the Secretary of State

Earliest possible date of adoption: July 4, 2010

For further information, please call: (512) 463-5650



#### 1 TAC §81.39

The new rule is proposed under the Texas Election Code, §31.002, which provides the Office of the Secretary of State with the authority to maintain uniformity in the application, operation, and interpretation of the Texas Election Code and of the election laws outside the Texas Election Code. MOVE is effective for the November 2, 2010 General Election. Accordingly, this rule is necessary for compliance until the Texas Legislature can statutorily address implementation of MOVE.

Statutory Authority: Texas Election Code, §31.002.

Texas Election Code, Chapter 101 is affected by this proposal.

§81.39. Emailing and Tracking Balloting Materials Required by the Federal Military and Overseas Voter Empowerment Act (MOVE).

(a) Authorization for emailing of ballots to absent uniformed services voters, including their spouse and dependents, absent from their county of residence and overseas voters in elections for Federal office.

(1) Pursuant to Section 578(a) of the MOVE Act, uniform services voters absent, including their spouse and dependents, temporarily residing outside their county of residence and United States citizens currently residing overseas ("overseas citizen") may request email transmission of blank balloting materials from the appropriate county early voting clerk for an election in which a federal office is on the ballot.

(2) If no preference for ballot transmittal is indicated, the early voting clerk shall send the balloting materials to the applicant via regular mail.

(3) E-mail addresses are not subject to public disclosure to the extent provided by §552.337 of the Texas Government Code. Early voting clerks shall ensure that the voter's email address is excluded from public disclosure.

(4) The email transmission of ballots shall be limited to federal elections only, and ballots for nonfederal elections shall be mailed to the applicant in the usual manner, unless the nonfederal election is part of a joint election ballot containing a federal office.

(b) Voters are eligible to request ballots via email if the following conditions in paragraphs (1) - (7) of this subsection are met:

(1) The voter meets the eligibility requirements of voting by mail pursuant to §101.001 of the Texas Election Code (hereinafter referred to as applicant);

(2) The voter has submitted a valid Federal Post Card Application ("FPCA");

(3) If the applicant is an overseas citizen, he/she must provide a current mailing address that is located outside of the United States, and the applicant must be voting from outside of the United States;

(4) If the applicant is an absent uniform services voter or their spouse or dependent, he/she must provide a mailing address that is located outside his or her county of residence, and he/she must be voting from outside the county of residence;

(5) The applicant must provide an email address that corresponds to the email address provided on his or her Federal Post Card Application ("FPCA"); however, if the applicant submits a request for balloting materials via an email address, which is not provided on his or her FPCA on file at the time of the request, the applicant must submit a new, signed FPCA which contains that email address;

(6) The voter submits the request that his or her ballot be emailed on or before the 7th day before election day; and

(7) A marked voted ballot for the requested election has not yet been received from the applicant by the early voting clerk.

(c) Balloting materials which must be transmitted via email include:

(1) the appropriate ballot;

(2) ballot instructions, including instructions that informs voters that their ballots must be returned by mail in order to be counted;

(3) information about how to print a ballot secrecy envelope from the Federal Voting Assistance Program (FVAP) website;

(4) information about how to print a carrier envelope from the FVAP website; and

(5) list of certified write-in candidates, if applicable.

(d) Approved methods of emailing the ballot and accompanying materials include the following:

(1) an attached .pdf copy of the ballot and accompanying materials;

(2) a scanned copy of the ballot and accompanying materials; or

(3) any other method of transmitting the ballot and accompanying materials approved in writing by the Secretary of State.

(4) Any ballot provided to the voter via email must have a unique identifying number printed on the face of the ballot.

(e) Permissible method of returning ballot sent to applicant via email.

(1) Applicants who receive balloting materials from the early voting clerk via email must return their marked ballots by regular mail, unless eligible to return the ballot by fax under Chapter 105, Texas Election Code, which is limited to military voters in war zones and/or receiving hostile fire pay.

(2) Marked ballots may not be returned via email. Any ballot returned via email must be treated as a ballot not timely returned and is not forwarded to the early voting ballot board for processing.

(f) Processing and qualifying ballots.

(1) Upon receipt of a voted ballot provided to the voter via email, the early voting clerk shall place the carrier envelope containing the marked ballot into a jacket envelope, in which the applicant's FPCA should already be included. If the voter's ballot was returned by facsimile under Chapter 105, Texas Election Code, the signature sheet shall also be included in the jacket envelope.

(2) The early voting clerk shall note on the early voting by mail roster any ballots emailed to absent uniformed services voters and overseas citizens under this rule.

(3) All jacket envelopes containing marked ballots voted in compliance with this rule must be delivered to the early voting ballot board.

(4) The board should make sure that each jacket envelope contains:

(A) a copy of the voter's FPCA;

(B) the envelope in which the voter returned their ballot; and

(C) the carrier envelope containing the marked ballot.

(5) The board must compare the voter's signature as it appears on the carrier envelope (or the signature sheet if the ballot was returned by fax under Chapter 105, Texas Election Code) with the voter's signature as it appears on the FPCA. If the board determines that the signatures could have been written by the same person, the ballot shall be accepted.

(6) The early voting clerk must allow all applicable deadlines to expire before sending either an original mail ballot or an emailed ballot to the early voting ballot board. If within the applicable deadlines, a voter returns both an original mail ballot and an emailed ballot, only the email ballot may be accepted and the original mail ballot is not forwarded to the early voting ballot board, but is retained for the elections retention period.

(7) If the voter returned only the mail ballot by the applicable deadline, then the mail ballot may be accepted.

(g) Counting ballots. The qualified, accepted ballot is handled in the following manner:

- (1) Open the carrier envelope and remove the ballot envelope.
- (2) Place the unopened ballot envelope in a ballot box.
- (3) Enter the voter's name on the poll list for early voters.
- (4) Place the copy of the voter's FPCA, the carrier envelope, the signature sheet, and any accompanying papers back in the jacket envelope.

(h) Duplicating emailed ballots. At the discretion of the central counting station manager, after acceptance by the early voting ballot board, an emailed ballot may be duplicated under procedures set out in §127.126, Texas Election Code.

(i) Rejecting ballots.

(1) If the voter's FPCA and carrier envelope do not meet all the requirements outlined in subsection (e) of this section, the ballot must be rejected and may not be counted.

(2) The rejected ballot should be processed by:

(A) Writing the word "Rejected" on the carrier envelope;

(B) Writing the word "Rejected" on the corresponding jacket envelope;

(C) Placing the unopened carrier envelope containing the rejected ballot in the large envelope or container marked "Rejected Early Ballots";

(D) Having the presiding judge sign and seal the "Rejected Early Ballot" envelope.

(3) The presiding judge must also write the date and nature of the election on the envelope.

(4) A record must be kept of the number of rejected ballots placed in the "Rejected Early Ballot" envelope.

(5) A notation must be made on the carrier envelope of any ballot which was rejected after the carrier envelope was opened, stating the reason the carrier envelope was opened and rejected.

(6) The voter's FPCA, signature sheet, and any other accompanying papers and affidavits must be placed in the jacket envelope.

(7) The presiding judge of the board must deliver notice of the reason for the rejection to the voter's listed residence address within ten days of the election.

(j) Tracking balloting materials. MOVE requires each state to develop a tracking system that FPCA voters may access to determine if their voted ballot has been received back by the early voting clerk. The Office of the Secretary of State will create a military and overseas voter ballot tracking website, and each county will be required to submit specific FPCA application and ballot status data, which will populate the FPCA tracking website.

(1) Submission of FPCA records. The early voting clerk must submit to the Office of the Secretary of State a voter record for each FPCA that is timely received for the November 2, 2010 general election. The three approved submission methods for submitting FPCA data are:

(A) Voter Import Method. The voter import is a prescribed, standard format issued and supported by the Office of the Sec-

retary of State in which data may be submitted in mass to update the Texas Election Administration Management System ("TEAM"). The early voting clerk may submit the voter import or may work in cooperation with the county voter registrar to submit the voter import.

(B) TEAM Data Entry Method. The early voting clerk may directly input FPCA voters into the TEAM application.

(C) Spreadsheet Submission Method. The early voting clerk may submit a spreadsheet which contains required data for all effective FPCA voters. The spreadsheet format will be prescribed by the Office of the Secretary of State and sent to all counties by the July 31, 2010, and will contain the following fields:

(i) County name;

(ii) Election name;

(iii) Voter last name;

(iv) Voter first name;

(v) Voter former name, if any;

(vi) Voter date of birth;

(vii) Voter residential zip code; and

(viii) FPCA status (military or spouse or dependent of military, U.S. citizen temporarily residing outside of U.S., or U.S. citizen indefinitely residing outside of U.S.).

(2) Deadline to submit FPCA voter record.

(A) Records for all FPCAs on file as of September 1, 2010 must be submitted to the Office of the Secretary of State no later than September 7, 2010.

(B) Records for FPCAs that are submitted to the early voting clerk after September 1, 2010, must be submitted to the Office of the Secretary of State within 2 working days of receipt by the early voting clerk.

(3) Submission of voted ballot status. The early voting clerk must submit to the Office of the Secretary of State the following information concerning the ballot status for each FPCA record:

(A) Date ballot mailed, emailed or both;

(B) Date ballot(s) received; if applicable;

(C) Date ballot Returned by the Post Office, if applicable;

(D) Whether the ballot(s) received was accepted or rejected.

(4) The early voting clerk may submit the ballot status data by one of the following three methods:

(A) Voting History Import to TEAM.

(B) Data Entry directly into TEAM.

(C) Updates to FPCA Spreadsheet.

(5) Deadline to submit ballot status data. The early voting clerk must submit the ballot status information required under paragraph (3) of this subsection within 2 business days of the status change.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2010.  
TRD-201002920



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. REIMBURSEMENT RATES

#### SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

##### 1 TAC §355.7101, §355.7103

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.7101, concerning Cost Determination Process, and §355.7103, concerning Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements, in Chapter 355, Reimbursement Rates.

##### Background and Justification

These rules establish the cost determination process and the reimbursement methodology for 24-Hour Residential Child-Care Reimbursements. HHSC, under its authority and responsibility to administer and implement rates, is proposing changes to these rules in order to update and standardize the Department of Family and Protective Services (DFPS) facility-type language references in HHSC rules to current DFPS usage. DFPS changed its facility-type references in 2007, but HHSC has continued to use the old designations. This inconsistency has caused confusion amongst some contracted providers. Further, the amendment to §355.7101 clarifies that child placing agencies (CPAs) with multiple licenses that operate as a single legal entity must submit only one cost report for the legal entity. In addition, certain language has been changed to the past tense in a paragraph that refers to a prior period. Finally, a reference to DFPS levels of service is necessary in two instances in order to increase the precision of the rule language.

##### Section-by-Section Summary

The proposed amendments to §355.7101 are as follows:

Revise the unnumbered introductory paragraph to replace a reference to "families" with a reference to "foster family homes."

Revise the unnumbered introductory paragraph to replace a reference to "facilities" with a reference to "general residential operations" and "residential treatment centers."

Revise the unnumbered introductory paragraph to replace a reference to "group homes" with a reference to "foster group homes."

Revise paragraph (1) to indicate that child placing agencies with multiple licenses that operate as one legal entity must submit one cost report for the entire legal entity.

The proposed amendments to §355.7103 are as follows:

Modify subsection (a)(1) to change the verb tense from the present tense to the past tense.

Modify subsection (m) to add a reference to Department of Family and Protective Services levels of service.

Modify subsection (m) to replace references to "foster families" with references to "foster homes."

Modify subsection (q) to add a reference to Department of Family and Protective Services levels of service.

Modify subsection (q) to replace references to "foster families" with references to "foster homes."

Modify subsection (q) to replace references to "Residential Care Facilities (RCFs)" with references to "General Residential Operations (GROs)" and "Residential Treatment Centers (RTCs)."

Modify subsection (q) to replace a reference to "Emergency Shelters" with a reference to "facilities providing emergency care services."

##### Fiscal Note

Cindy Brown, Chief Financial Officer for the Department of Family and Protective Services (DFPS), has determined that during the first five-year period the amended rules are in effect there will be no fiscal impact to state government. The proposed amendments will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the sections.

##### Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments. The implementation of the proposed amendments does not require changes in practice or additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with the amendments. The amendments will not affect local employment.

##### Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each year of the first five years the amendments are in effect, the expected public benefit is that compliance with the rules will be simplified because the rules will contain correct references to DFPS facility types and levels of service and will be modified to allow a single cost report for a CPA when the CPA has multiple licenses.

##### Takings Impact Assessment

HHSC has determined that this 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 Texas Government Code §2007.043.

##### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.