ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.1, §40.3

The Texas Animal Health Commission (TAHC) adopts amendments to §40.1, concerning Definitions, and §40.3, concerning Herd Status Plans for Cervidae. The amendments are adopted without changes to the proposed text as published in the June 17, 2022 issue of the *Texas Register* (47 TexReg 3517). These rules will not be republished.

JUSTIFICATION FOR RULE ACTION

The commission adopts amendments to §40.1 and §40.3 to clarify, correct and update information regarding chronic wasting disease (CWD) management and the CWD Herd Certification Program (HCP).

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-antler material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions, and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

In May 2019, the United States Department of Agriculture (USDA) updated the CWD Program Standards ("federal standards"). The federal standards were revised to clarify and update acceptable methods for complying with the legal requirements in 9 Code of Federal Regulations Parts 55 and 81. As a participating Approved State CWD Herd Certification Program, the commission is amending the HCP rules to align with revised federal standards or regulations.

The HCP is a voluntary, cooperative surveillance and certification program between the commission, USDA, herd owners, and other affected parties. The purpose of the program is to promote a consistent, national approach in controlling CWD in farmed and captive cervids and preventing the interstate spread of CWD. Participating herds that meet program requirements and have no evidence of CWD advance in status each year for five years, then are certified as low risk for CWD. Certification status, in addition to compliance with the HCP performance-based regulations and herd status, permits interstate animal movement.

HOW THE RULES WILL FUNCTION

The adopted amendments are necessary to follow federal requirements and maintain Texas' Approved State Program Status. The adopted rules update or add terms used in Chapter 40, including "CWD-Exposed Herd," "CWD-Positive Animal," and "complete physical herd inventory." The amendments to §40.3: require immediate reporting upon discovery of all farmed or captive herds that escape or disappear; remove an exception for lowering a herd status; requires all identification to be visually verified on the animals during an initial inspection and physical herd inspection; and clarifies that one of the animal identifications must be an official form of animal identification approved by USDA. Non-substantive grammatical corrections were made in §40.3(f)(1)(A)(iii) and §40.3(h)(5).

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended July 17, 2022.

During this period, the commission received comments regarding the proposed rule(s) from 5 commenters, including the Texas Veterinary Medical Association, the National Deer Association, and three individuals. Additionally, prior to adoption, the commission received two written comments, including, one from the Deer Breeders Corporation and one from an individual, and two oral comments from the Deer Breeders Corporation and Texas Deer Association. To the extent the commission could determine, a summary of the comments and the commission's responses follow.

Comment: One commenter opposed the timeframe for the physical herd inspection and recommended the inspections should occur in late February or early March either prior to the third-year anniversary after the initial inspection or following the third-year anniversary after the initial inspection. The commenter provided specific animal husbandry reasons for the suggested timeframes and cited safety concerns for the deer and handlers.

Response: The TAHC disagrees with the commenter's opposition to the timeframe of the physical herd inspections not being specified by rule. The TAHC recognizes there are times of the year that may be safer for handling white-tailed deer. The TAHC also understands animal husbandry and handling practices vary per facility and may differ for white-tailed deer as well as other CWD susceptible species. The commission believes it is best not to limit inspections to February and March and allow inspections at any time of the year that meets a producer's schedule and maintains compliance with the Herd Certification Program. No changes were made as a result of this comment.

Comment: One commenter submitted two written comments that did not indicate support or opposition for the proposed rules. The commenter stated TAHC was proposing multiple amendments to §§40.1 & 40.3, so this is the correct opportunity to incorporate amendments to the applicability of the 8-foot fence requirement for herds enrolled in the Herd Certification Program. The commenter said the 8 feet high fence requirement should apply to all enrolled herds and not just those established since the effective date of the rule in October 2021. The commenter stated this is certainly no time to be negligent about state requirements on fencing that could control the spread of CWD given that 1) CWD has again been found at deer breeding facilities most recently as August 2021, and 2) anthrax has been found in another deer herd in Texas most recently as July 2021.

Response: Although the individual's comments are beyond the scope of the proposed amendments to Chapter 40, the commission will take the recommendations under advisement for future rulemaking. No changes are made as a result of this comment.

Comment: One commenter did not indicate support or opposition for the proposed rules but provided information and data regarding CWD and prion diseases.

Response: No changes were made as a result of the comment.

Comment: The Deer Breeders Corporation (DBC) opposed adoption and stated members who are enrolled in the TAHC's CWD HCP are very concerned with the new rule proposal concerning CWD inspections. DBC stated: the HCP has no benefit or value to the breeder; there is no reason to be in the program other than to move deer out of the state and most states will not take deer from a CWD infected state; and there will be no one left in the TAHC HCP if the proposal to require 100% visual verification of both the visible ear tag and microchip is adopted. DBC stated that 100% visual verification of both identifications is virtually impossible to achieve and expressed concern for the safety of animals and handlers when working bucks. DBC explained most breeder facilities do not allow bucks to be worked through the chute as it is dangerous to the handlers, highly stressful to the deer and can cause pedicle damage ruining the antler growth for life. DBC expressed concern that running bucks through a chute could also result in the animal's death and, tranquilization, which is an alternative to working deer through a chute, would cost thousands of dollars. DBC recommended TAHC consider performing inspections while the breeders are working their doe and fawns through the chute and help revise the HCP with common sense and consideration for deer health. During public comment, DBC stated 100% visual verification is doable if the agency conducts the inspections in phases, over a period of time or allows time for the industry to transition to the use of high-frequency ear tags. However, the commenter stated it would be the end of the program if full inspections were immediately implemented. DBC also recommended adding genetics into the equation to bring back the HCP's gold standard. The commenter asked that CWD-positive herds have an option to test the herd to remove the disease as opposed to depopulation.

Response: The TAHC understands and appreciates that some producers of herds voluntarily enrolled in the HCP may not be able or willing to meet the requirement to visually verify all identification on the animals during the initial inspection and subsequent physical herd inspections. Because of this and the costs associated with visual verification, the commission considered not changing the current requirements or imposing less stringent visual verification requirements. However, those options were rejected because the alternatives do not or would not meet USDA's minimum requirements of HCP as outlined in 9 C.F.R. §55.23. The commission is required to update rules to maintain Approved State Program Status by the USDA. Refusal to update rules and comply with HCP requirements would result in suspension of the program, which would prevent the movement of any Texas herds in interstate commerce. The TAHC will also, to the extent agency resources and staffing permit, allow physical herd inspections to be conducted at a time that aligns with industry practices for handling animals and meets the requirements of the HCP. This would include allowing a complete physical herd inventory to be completed in phases as long as all herd animals are visually verified within the same status year. Although outside the scope of the proposed rules, the TAHC will take DBC's recommendations regarding utilizing high-frequency identification, adding genetic resistance components, and offering test-out options for positive HCP herds under advisement for future rulemaking. No changes were made as a result of this comment.

Comment: The Texas Deer Association (TDA) opposed adoption and asked for reasonableness and effectiveness in regulation. The commenter stated the hands-on inspection and 100% visual verification is an example where regulation needs to be reasonable. As an alternative, TDA provided an example of visually verifying the external primary identification on all deer in a herd with binoculars and then taking a representative sample for a closer inspection with the expectation of 100% compliance. The commenter also stated the proposed rules were missing information on how to manage CWD-positive herds. TDA recommended requiring the producer of a CWD-positive herd to allow the TAHC access to the property for the sole purpose of live testing the entire herd to determine a prevalence rate and develop a herd plan related to that prevalence rate. The commenter stated we should never slaughter another animal for the purpose of finding out whether it has CWD or how much CWD is within the herd. We should know that before we develop our processes.

Response: Although TDA's alternative for 100% visual verification may be considered for future rulemaking, the TAHC disagrees with the recommendation because the alternative does not meet USDA's minimum HCP requirements as outlined in 9 C.F.R. §55.23. Refusal to update rules and comply with HCP requirements would result in suspension of the program, which would prevent the movement of any Texas herds in interstate commerce. Although outside the scope of the proposed rules, the TAHC will take TDA's recommendations regarding the management of CWD-positive herds under advisement for future rulemaking. No changes were made as a result of this comment.

STATUTORY AUTHORITY

The amendments to §40.01 and §40.03 within Chapter 40 of the Texas Administrative Code are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The commission is vested by statute, §161.041(a), titled "Disease Control", to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control", the commission must authorize a person, including a

veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.049, titled "Dealer Records", the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The commission by rule shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program", the commission by rule may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.056(a), titled "Animal Identification Program", the commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.060, titled "Authority to Set and Collect Fees", the commission may charge a fee for an inspection made by the commission as provided by commission rule.

Pursuant to §161.061, titled "Establishment", if the commission may establish a quarantine against all or the portion of a state, territory, or country in which a disease listed in rules adopted under Section 161.041. Section 161.061(b), a quarantine established may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. Section 161.061(c), the commission may establish a quarantine to prohibit or regulate the movement of infected animals and the movement of animals into an affected area. Section 161.061(d) allows the commission to delegate its authority to establish a quarantine to the Executive Commissioner.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine", the commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals", the commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the commission.

Pursuant to §161.081, titled "Importation of Animals", the commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The commission by rule may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.148, titled "Administrative Penalty", the commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed $5,000, effective September 1, 2021.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2022.

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Mary Luedeker
General Counsel
Texas Animal Health Commission
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For further information, please call: (512) 719-0718

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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.3

The Texas Animal Health Commission (TAHC) in a duly noticed meeting on July 26, 2022, adopted amendments to §51.3, concerning Exceptions. Section 51.3 is adopted with changes to the proposed text as published in the June 3, 2022, issue of the *Texas Register* (47 TexReg 3207). The change to §51.3(b)(1) makes a correction and replaces the word "Equidae" with "equine". This rule will be republished.

JUSTIFICATION FOR RULE ACTION

The amendment to §51.3 allows an exception to federal and state interstate cattle movement requirements. Cattle moved interstate must be accompanied by a certificate of veterinary inspection (CVI) in accordance with Texas Agriculture Code §161.054, 9 Code of Federal Regulations §86.5, and 4 Texas Administrative Code §51.2(b)(1). Federal regulations allow the movement of cattle without a CVI if the cattle are moved with documentation as agreed upon by animal health officials in the shipping and receiving states. The TAHC is adopting an amendment to §51.3 to waive the CVI requirement for dairy calves if all parties involved execute and comply with the terms and conditions of the modified movement restriction agreement for 1 to 10-day old dairy calves from a single premises of origin. Organizational changes to §51.3 were made to existing language for improved readability. The purpose of the change to §51.3(b)(1) is to correct taxonomic terminology and improve understanding by using the term "equine" consistently.

HOW THE RULES WILL FUNCTION

The amendment to §51.3, Exceptions, provides an exemption in §51.3(b)(2) to the CVI requirement for dairy calves 10 days of age or less if a modified movement restriction agreement is executed between the out-of-state premises of origin and the state of origin animal health official, the Texas premises of destination and the TAHC Executive Director and the Area Veterinarian in Charge (AVIC) of the state of origin and destination. All parties must agree and comply with the terms and conditions in the agreement. The existing CVI exception related to equine in §51.3(b) is reorganized into a paragraph structure and renumbered accordingly. The term equidae was corrected to equine. No substantive changes were made.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended July 3, 2022.

During this period, the TAHC received comments regarding the proposed rule from three commenters, including the Texas Veterinary Medical Association, and two individuals. Additionally, prior to adoption, the commission received one written comment from an individual. A summary of comments relating to the rule and TAHC's responses follow.

Comment: Two commenters, an individual and the Texas Veterinary Medical Association, are in support of the rule amendment.

Response: The TAHC thanks the commenters for the feedback. No changes were made as a result of these comments.

Comment: An individual submitted two written comments, one during and one after the 30-day comment period. The individual commented against allowing a CVI exception for dairy calves 1 to 10 days old to prevent the spread of disease. The commenter stated that TAHC does not need to agree to move cows without documentation as a shipping nor a receiving state. The commenter stated that this is certainly no time to eliminate state requirements to control the spread of disease and cited diseases of concern including SARS-CoV-2, highly pathogenic avian influenza, African swine fever, and anthrax.

Response: The TAHC respectfully disagrees with the commenter. Cattle may be moved between shipping and receiving states or tribes with documentation other than a CVI, as agreed upon by animal health officials in the shipping and receiving states or tribes, in accordance with 9 C.F.R. §86.5(c)(6). The rule amendment aligns with federal regulations that allow the movement of cattle without a CVI. Producers may request an exemption to the CVI requirement; however, all parties involved must execute and comply with the modified movement restriction agreement. Because the out-of-state premises of origin and the Texas premises of origin must execute a Modified Movement Agreement with the animal health officials from their respective states, the proposed rule will enhance the TAHC's awareness of animal movements into Texas and improve overall animal disease traceability. As required by the rule, the Modified Movement Agreement will include identification, recordkeeping, reporting, inspection, testing and other requirements as may be required by TAHC, USDA or the animal health officials of the shipping state. No changes were made as a result of this comment.

STATUTORY AUTHORITY

The amendment is authorized by Texas Agriculture Code, Chapter 161.

Pursuant to §161.041, titled "Disease Control", the commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the commission determines require control or eradication.

Pursuant to §161.043, titled "Regulation of Exhibitions", the commission may regulate the entry of livestock and may require certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.047, titled "Entry Power", a commissioner or veterinarian or inspector employed by the commission may enter public or private property for the exercise of an authority or performance of a duty under Chapter 161.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.049, titled "Dealer Records", the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The commission by rule shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception", the commission may by rule regulate the movement of animals, and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.056(a), titled "Animal Identification Program", the commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identifica-

tion program. Section 161.056(d) authorizes the commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, titled "Importation of Animals", the commission by rule may provide the method for inspecting and testing animals before and after entry into the state of Texas. The commission may create rules requiring health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

§51.3. Exceptions.

(a) Exceptions for a certificate of veterinary inspection and entry permit.

(1) Cattle 18 months of age and over delivered directly from the farm of origin to slaughter;

(2) Beef breed cattle 18 months of age and over entering from other than a farm-of-origin may be moved to slaughter, or to an approved feedyard when accompanied by a VS 1-27 Form on which each animal is individually identified. Brucellosis test data shall be written on the VS 1-27 Form which must include the test date and results;

(3) Beef breed cattle 18 months of age and over delivered directly to a USDA specifically approved livestock market by the owner or consigned there and accompanied by an owner-shipper statement;

(4) Beef breed steers, spayed heifers, beef breed cattle under 18 months of age, delivered to slaughter and accompanied by an owner-shipper statement or to a livestock market by the owner or consigned there and accompanied by an owner-shipper statement;

(5) Beef breed steers, spayed heifers and beef breed cattle under 18 months of age delivered to a feedlot for feeding for slaughter by the owner or consigned there and accompanied by an owner-shipper statement;

(6) Swine and poultry delivered to slaughter by the owner or consigned there and accompanied by an owner-shipper statement;

(7) Baby poultry which have not been fed or watered if from a national poultry improvement plan (NPIP) or equivalent hatchery, and accompanied by NPIP Form 9-3 or Animal and Plant Health Inspection Service (APHIS) Form 17-6, or have an approved "Commuter Poultry Flock Agreement" on file with the state of origin and the commission;

(8) Beef breed steers, spayed heifers, and beef breed cattle under 18 months of age originating in New Mexico which are accompanied by a New Mexico official certificate of livestock inspection;

(9) Feral Swine being shipped directly to slaughter. Feral swine shall be shipped in a sealed vehicle accompanied by a 1-27 permit with the seal number noted on the permit also providing the number of head on the permit;

(10) Equine when accompanied by a valid equine interstate passport or equine identification card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months; and

(11) Swine consigned from an out-of-state premise of origin and originate from a Validated and Qualified Herd to a Texas livestock market specifically approved under Title 9, Code of Federal Regulations §71.20.

(b) Exceptions for a certificate of veterinary inspection.

(1) Equine may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a permit number issued by the commission. Following release by the veterinarian, equine must be returned immediately to the state of origin by the most direct route. Equine entering Texas for sale at a livestock market, may first be consigned directly to a veterinary hospital or clinic for issuance of the certificate of veterinary inspection, when accompanied by a prior entry permit issued by the commission.

(2) Dairy cattle 10 days of age or less are exempt from the certificate of veterinary inspection requirement if the following are met:

(A) the out-of-state premises of origin and the Texas premises of destination execute a Modified Movement Agreement with the Executive Director and the out-of-state animal health official; and

(B) the cattle are moved directly from the out-of-state premises of origin to the Texas premises of destination in compliance with the Modified Movement Agreement. The Modified Movement Agreement includes identification, recordkeeping, reporting, inspection, testing and other requirements as epidemiologically determined by the Executive Director.

(c) Exceptions for an entry permit.

(1) Swine that originate from an approved Swine Commuter Herd or that originate from a Pseudorabies Stage IV or V state or area and Brucellosis free state or area and are not vaccinated for pseudorabies;

(2) Poultry that originate from an approved Poultry Commuter Flock;

(3) Cattle that originate from an approved Cattle Commuter Herd;

(4) Equine accompanied by a valid equine interstate passport or equine ID card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months;

(5) Sheep and goats consigned from out-of-state and originating from Consistent States (having an active scrapie surveillance and control program); and

(6) Exotic fowl from out of state, except ratites.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2022.

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Mary Luedeker
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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to certain rules in 7 TAC Chapter 3, governing Texas state-chartered banks (state banks) and other banks operating in Texas. The amended rules are adopted without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3849). The amended rules will not be republished.

In particular, the commission adopts amendments to §3.1, concerning private placement of securities by state banks; §3.3, concerning securities and other activities of subsidiaries of state banks; §3.4, concerning foreign banking; §3.21, concerning state bank call reports; §3.22, concerning sale or lease agreements with an officer, director, principal shareholder, or affiliate of a state bank; §3.24, concerning notice of cybersecurity incident; §3.37, concerning calculation of annual assessment for state banks; §3.44, concerning statements of registration, notices and filings related to foreign bank representative offices; §3.53, concerning asset deposit and pledge requirement applicable to foreign bank branch or agency with nonrelated deposit liabilities; §3.59, concerning foreign bank deposit agreement and conditions; §3.62, concerning foreign bank asset maintenance; §3.91, concerning loan production offices; §3.93, concerning deposit production offices; and §3.111, concerning confidential information.

The adopted amendments arise from rule review conducted pursuant to Texas Government Code, §2001.039, and provide clarity, improve consistency and workability, eliminate unneeded rules, correct or update citations and address certain clerical errors, and maintain consistent formatting within the chapter.

In February 2022, the department issued an advance notice of rule review, seeking informal feedback on the rule review. Notice of the review of 7 TAC Chapter 3 was published in the *Texas Register* on February 18, 2022 (47 TexReg 797). No comments were received in response to that notice. On April 22, 2022, the commission determined that the reasons for initially adopting these rules continue to exist, and readopted 7 TAC Chapter 3, in its entirety, but also stated that certain revisions and amendments may be appropriate, and that such amendments would be proposed at a later date (47 TexReg 2778). These amendments as adopted are discussed below.

The rules in 7 TAC Chapter 3, Subchapter A, govern securities activities and subsidiaries of state banks. A number of provisions in these rules are no longer needed.

Section 3.1 discusses private placements of securities by state banks. Adopted amendments to §3.1(a) correct a clerical error and improve formatting consistency.

Section 3.1(b) states that state banks may not acquire equity securities for which those banks have acted as agent or broker. Broader restrictions on investments in equity securities by state banks exist in Texas Finance Code (Finance Code), §34.101(b)(1). Adopted amendments eliminate §3.1(b) because this subsection is no longer needed.

Section 3.3 discusses securities activities, and other activities of subsidiaries of state banks. The adopted amendment to the title of §3.3 reflects that this section is not limited to securities activities.

Section 3.3(a) states that state banks may establish or acquire subsidiaries that engage in securities activities subject to certain federal banking regulations that have been repealed without replacement. Adopted amendments to §3.3(a) eliminate that reference because it is no longer applicable.

Section 3.3(b) imposes an investment ceiling on state bank securities subsidiaries. This is redundant of a similar ceiling in Finance Code, §34.103(b). Further, unlike §3.3(b), Finance Code, §34.103(b) provides that the ceiling can be waived by the Texas Banking Commissioner (commissioner). The adopted repeal of §3.3(b) is consistent with the Texas Banking Act's provisions on investment ceilings for state bank subsidiaries.

Section 3.3(d) limits the purchase and retention of equity securities by state banks and state bank subsidiaries. Section 3.3(d)(1) states that a state bank subsidiary must dispose of any equity security acquired for its own account within 90 days after the purchase. Although Texas law has other restrictions on the ownership of equity securities by state banks and state bank subsidiaries, such as Finance Code, §34.101 and §34.103, it does not have this strict divestment deadline. Neither does analogous federal banking law. This restriction should be repealed.

Section 3.3(d)(2) states that a state bank may not purchase, in its discretion as fiduciary or managing agent, any security underwritten, distributed, or issued by the bank's securities subsidiary or any security issued by an investment company advised by the subsidiary. Other applicable law limits a state bank's exercise of discretion as a fiduciary or managing agent where such potential conflicts of interest exist. Given these other limits, this provision is no longer needed. In recognition of this, federal regulations for national banks at 12 CFR §9.12(a) now permit such investment decisions to be made if authorized by applicable law. The adopted amendment to §3.3(d) provides state banks with the same authority.

Section 3.3(e) requires state banks filing notices with the Federal Deposit Insurance Corporation (FDIC) regarding subsidiaries to file copies of those notices with the commissioner. Federal regulations on notices to federal banking regulators relating to bank subsidiaries have changed. Notice to the commissioner prior to a state bank subsidiary being acquired or established or commencing new activities is required by Finance Code, §34.103(b). Adopted amendments to §3.3(e) update the rule to refer to currently applicable federal and Texas notice requirements and clarify requirements for state banks to provide the commissioner with copies of federal filings related to subsidiary activities if those subsidiary-related activities are also being reported to the commissioner under Texas law.

Section 3.4 relates to state banks conducting foreign activity. Adopted amendments to §3.4 change a citation format for consistency.

The rules in 7 TAC Chapter 3, Subchapter B, are general rules governing state banks.

Section 3.21 governs call reports. Adopted amendments to §3.21(a) change citation formats for consistency.

Federal regulations similar to §3.21(f) requiring call reports to be posted in bank lobbies have been repealed in recent years because federal regulators publish call reports of federally insured banks online. Adopted amendments to §3.21(f) follow this trend by eliminating the Texas requirement for a state bank to publicly

post its call reports in its lobby, as long as the bank is federally insured and its call reports are available online, unless the commissioner has specifically ordered the bank to post or otherwise publish its call reports.

Section 3.22 governs insider sales and leases. Finance Code, §33.109, requires prior approval by a disinterested majority of the board of directors of the bank or by the commissioner for sales or leases of bank assets to bank insiders. Section 3.22(c) requires the transaction to be approved by a majority of an ordinary quorum of the board, and requires this quorum to be composed entirely of disinterested directors. Such quorums often cannot be obtained, and this is not consistent with provisions of general Texas corporate law for approval of insider transactions by disinterested directors of Texas non-bank corporations. Adopted amendments to §3.22(c) clarify and improve this provision by applying the normal requirements for approval of insider transactions by disinterested directors of Texas non-bank corporations to state banks.

Adopted amendments to §3.22(d) also clarify the requirements for approval of an insider transaction by a disinterested majority of the board of a state bank in conformity with general Texas corporate law.

Additional adopted amendments to §3.22(d) update the reference to Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 842 from FASB ASC Topic 840 pursuant to recent changes to FASB ASC.

Section 3.24 requires state banks to provide the department with notice and certain information regarding certain computer-security incidents. This rule became effective in 2020. Analogous federal computer-security incident notification rules that apply to all state banks became effective in 2022. The department proposed following these new federal requirements for incident notifications by state banks to the department rather than continuing to impose state requirements that are different from these new federal requirements.

Section 3.37 discusses state bank annual assessment calculations. As §3.37(b) explains, every year the base assessment table included in §3.37(a) is adjusted by the department based on inflation statistics and published on the department website. The department recommends amendments to the base table in §3.37(a) to the commission at least every four years and if approved, the base table and the effective date are adjusted. For these reasons, the statement in §3.37(a) about the effective date for the unadjusted values in the base table is accurate even though this date has passed. However, to provide further clarification, the annual update of the table can be explained in the base table itself along with the expiration date for that table and information on where to find the current version of the table on the department's website. Adopted amendments to §3.37(a) remove the language about the effective date for the values in the base table from the rule and amend the base table itself to include this and other useful information.

The rules in 7 TAC Chapter 3, Subchapter C, govern foreign bank branches, agencies, and offices. Section 3.44 requires foreign bank representative offices to file statements, notices, and other filings with the commissioner. The adopted amendment to §3.44(b) corrects the reference to §3.44(c)(2) for rules on applications by foreign banks with Texas state branches or agencies to establish new representative offices in Texas.

The rules in 7 TAC Chapter 3, Subchapter D, govern the pledge and maintenance of assets by foreign banks with Texas state branches or agencies. Section 3.53(c) purports to override the ordinary provisions of the Uniform Commercial Code (UCC) for perfecting a security interest in the assets foreign banks must pledge to the commissioner. However, the commission may lack legal authority to override the UCC through rulemaking, so this provision may not be effective. The department therefore currently obtains a perfected, first-priority security interest in the pledged assets under the UCC and other applicable law. Adopted amendments to §3.53(c) reflect this policy.

Section 3.53(d) discusses the calculation and timing for the deposit of the assets that a foreign bank is pledging to the commissioner. A foreign bank branch or agency that does not carry deposit liabilities may not need to pledge assets, as §3.54 states. Adopted amendments to §3.53(d) clarify and confirm that the asset pledge only needs to be made before deposit liabilities are accepted by a foreign bank branch or agency, rather than being made upon the opening of a branch or agency that is not accepting deposit liabilities at opening but may later do so, and confirm that the deposit amount should continue to be calculated based on projections of total nonrelated liabilities at one year after commencement of such deposit-related operations.

Section 3.59 provides requirements for the deposit agreement between the foreign bank and the third-party depository holding the assets pledged to the commissioner by the foreign bank. Section 3.59(d) states that the commissioner is deemed to have a security interest in the pledged assets. However, this provision may not be effective. Adopted amendments to §3.59(d) therefore require foreign banks to ensure that the commissioner does have a perfected, first-priority security interest in the pledged assets.

Section 3.62 relates to asset maintenance requirements for foreign banks. Finance Code, §204.114, provides the commissioner with sole discretion in setting these requirements, and §3.62(b) then lists various factors that the commissioner may consider. Adopted amendments to §3.62(b) remove these discretionary factors because these do not need to be enumerated.

The rules in 7 TAC Chapter 3, Subchapter E, govern banking houses and other facilities, such as loan production offices (LPOs) and deposit production offices (DPOs).

Section 3.91 applies to LPOs. It states that LPOs may not engage the public in the business of banking, including making loans, receiving deposits, and paying withdrawals, drafts, or checks. Continuing, §3.91(a) states "deposit or withdrawal activity must be performed by the state bank customer in person at the home office or a branch, or by mail, electronic transfer, or similar transfer method." Adopted amendments clarify that deposits or withdrawals via mail, electronic transfer, or similar remote methods cannot be done with the LPO and instead must be done with the bank's home office or branch office.

Section 3.93 applies to DPOs. It states that DPOs may not engage the public in the business of banking, including making loans, receiving deposits, and paying withdrawals, drafts, or checks. Continuing, §3.93(a) states "deposit or withdrawal activity must be performed by the state bank customer in person at the home office or a branch, or by mail, electronic transfer, or similar transfer method." Adopted amendments clarify that deposits or withdrawals via mail, electronic transfer, or similar remote methods cannot be done with the DPO and instead must be done with the bank's home office or branch office.

The rules in 7 TAC Chapter 3, Subchapter F, govern access to information.

Finance Code, §31.301(a)(1), states that information obtained by the department in any manner, including application, may be confidential. Adopted amendments to §3.111(b)(2) clarify that information provided by an applicant or an applicant's service provider may be confidential, the same as information provided by a financial institution that is already chartered or licensed. Additional adopted amendments to §3.111(b)(2) correct a clerical error.

Pursuant to Finance Code, §31.301(a), the commission has enacted rules to permit the commissioner to waive confidentiality for information received from or relating to a failed financial institution. Adopted amendments to §3.111(e)(3)(B) clarify that such waiver is in the sole discretion of the commissioner and not subject to appeal or other challenge.

Finance Code, §36.224 and §186.224, state that records obtained from financial institutions that have been liquidated are not government records for any purposes, including requests for public information. Adopted amendments to §3.111(e)(3)(B) also confirm that records obtained from financial institutions that have failed are not government records for any purposes, regardless of whether the institution has been formally liquidated under Finance Code, Chapters 36 or 186.

Comments supporting the adopted amendments were received from Independent Bankers Association of Texas (IBAT). IBAT expressed support for the amendments generally, noting that they "appear to be a good 'clean-up' of existing rules and, as such, are very helpful." IBAT further commented:

With regard to 7 TAC §3.91 and §3.93, it is our understanding that the amendments do not prevent a state chartered bank from establishing an ATM (remote service unit) at the same location as a deposit production office (DPO) or a loan production office (LPO). ATMs are not themselves branches, and the fact that they offer both withdrawal of funds and remote deposit capture of deposits does not violate the limitations expressed in these rules. Permitting ATMs to be combined with DPOs and LPOs would also be consistent with the powers of national charters and thus clearly permitted under parity principles. The authority for such combination and the fact such a combination does not result in a branch is discussed in the OCC Branches and Relocations handbook at page 10.

The Department appreciates and agrees with IBAT's comments.

Notice of the adopted amendments was submitted to the Regulatory Compliance Division of the Office of the Governor (Division) as the rule amendments have the potential to affect market competition. The Division approved the amendments without further revision.

SUBCHAPTER A. SECURITIES ACTIVITIES AND SUBSIDIARIES

7 TAC §§3.1, 3.3, 3.4

The amendments are adopted under Finance Code, §31.003(a), which authorizes the commission to adopt rules to administer Subtitle A of Title 3 of the Finance Code. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

Chapters 33 and 34 of the Finance Code are affected by the adopted amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel
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SUBCHAPTER B. GENERAL

7 TAC §§3.21, 3.22, 3.24, 3.37

The amendments are adopted under Finance Code, § 31.003(a), which authorizes the commission to adopt rules to administer Subtitle A of Title 3 of the Finance Code. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

Chapters 31 and 33 of the Finance Code are affected by the adopted amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. FOREIGN BANK BRANCHES, AGENCIES AND REPRESENTATIVE OFFICES

7 TAC §3.44

The amendments are adopted under Finance Code, §201.003(a), which authorizes the commission to adopt rules to administer Subtitle G of Title 3 of the Finance Code. As required by Finance Code, §201.003(b), the commission considered the need to coordinate with applicable federal law, promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of Texas state banks with regard to other

depository institutions consistent with the safety and soundness of Texas state banks and the Texas state bank system, and allow for economic development in this state.

No statute, article, or code is affected by the adopted amended sections.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. PLEDGE AND MAINTENANCE OF ASSETS BY FOREIGN BANK LICENSED TO MAINTAIN TEXAS STATE BRANCH OR AGENCY

7 TAC §§3.53, 3.59, 3.62

The amendments are adopted under Finance Code, §201.003(a), which authorizes the commission to adopt rules to administer Subtitle G of Title 3 of the Finance Code. As required by Finance Code, §201.003(b), the commission considered the need to coordinate with applicable federal law, promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of Texas state banks with regard to other depository institutions consistent with the safety and soundness of Texas state banks and the Texas state bank system, and allow for economic development in this state.

Chapter 204 of the Finance Code is affected by the adopted amendments.

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SUBCHAPTER E. BANKING HOUSE AND OTHER FACILITIES

7 TAC §3.91, §3.93

The amendments are adopted under Finance Code, §31.003 and §201.003, which authorize the commission to adopt rules to administer Subtitles A and G of Title 3 of the Finance Code. As required by Finance Code, §31.003(b) and §201.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

No statute, article, or code is affected by the adopted amended sections.

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SUBCHAPTER F. ACCESS TO INFORMATION

7 TAC §3.111

The amendments are adopted under Finance Code, §31.003, §181.003, and §201.003, which authorize the commission to adopt rules to administer Subtitles A, F and G of Title 3 of the Finance Code. As required by Finance Code, §31.003(b), §181.00(b), and §201.003(b), the commission considered the need to promote a stable banking and trust services environment, provide the public with convenient, safe, and competitive banking and trust services, preserve and promote the competitive parity of state banks and trust companies consistent with the safety and soundness of state banks trust companies and the state banking and trust company system, and allow for economic development within this state.

No statute, article, or code is affected by the adopted amended sections.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 5. ADMINISTRATION OF FINANCE AGENCIES

7 TAC §5.107

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, Department of Savings and Mortgage Lending, and Office of Consumer Credit Commissioner (agencies), adopts new §5.107, concerning Employee Leave Pools. The new rule is adopted without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3856). The new rule will not be republished.

In accordance with §661.002 and §661.022, the new rule as adopted acknowledges, through formal rulemaking, the existence of the agencies' respective family leave pools and sick leave pools. The adopted new rule sets forth the purpose of each leave pool, designates the Commissioner of each finance agency as the pool administrator for their respective finance agency's leave pools, and requires the Commissioner to maintain operating procedures consistent with the requirements of the proposed new rule and relevant laws governing operation of the pools.

No comments were received regarding the new rule.

The new rule is adopted under the authority of Government Code, §661.002 and §661.022. Section 661.002 requires that the governing body of each state agency adopt rules and prescribe procedures relating to the operation of an agency's sick leave pool. Section 661.022 requires the governing bodies of state agencies to adopt rules to create and administer an employee family leave pool.

The adopted new rule affects Government Code, Chapter 661.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 17. TRUST COMPANY REGULATION

SUBCHAPTER A. GENERAL

7 TAC §17.3

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to certain rules in 7 TAC Chapter 17, governing Texas state-chartered trust companies (trust companies). The amended rules are adopted without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3857). The amended rules will not be republished.

In particular, the commission adopts amendments to §17.3, concerning sale or lease agreements with an officer, director, principal shareholder, or affiliate of a trust company.

Section 17.3 governs insider sales and leases. Texas Finance Code (Finance Code), §183.109, requires prior approval by a disinterested majority of the board of directors of the trust company or by the commissioner for sales or leases of trust company assets to trust company insiders. Section 17.3(c) requires the transaction to be approved by a majority of an ordinary quorum of the board, and requires this quorum to be composed entirely of disinterested directors. Such quorums often cannot be obtained, and this is not consistent with provisions of general Texas corporate law for approval of insider transactions by disinterested directors of Texas non-trust company corporations. The adopted amendments to §17.3(c) clarify and improve this provision by applying the normal requirements for approval of insider transactions by disinterested directors of Texas non-trust company corporations to trust companies.

The adopted amendments to §17.3(c) also make non-substantive modifications to the language of the rule to match the analogous rule for Texas state-chartered banks at §3.22.

The adopted amendments to §17.3(d) also clarify the requirements for approval of an insider transaction by a disinterested majority of the board of a trust company in conformity with general Texas corporate law.

Under 7 TAC §21.24(c)(3), certain family trust companies may be exempted from certain restrictions of Finance Code, §183.109(a), regarding transactions with management or affiliates. None of these existing exemptions for family trust companies will be negated or affected by the adopted amendments.

Additional adopted amendments to §17.3(d) update the reference to Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 842 from FASB ASC Topic 840 pursuant to recent changes to FASB ASC.

The department received no comments regarding the adopted amendments.

Notice of the adopted amendments was submitted to the Regulatory Compliance Division of the Office of the Governor (Division) as the rule amendments have the potential to affect market competition. The Division approved the amendments without further revision.

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules to administer Subtitles F of Title 3 of the Finance Code. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Catherine Reyer
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Texas Department of Banking
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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS

The Finance Commission of Texas (commission) adopts amendments to §85.202 (relating to Filing of New Application), §85.301 (relating to Filing of New Application), §85.420 (relating to Purchase Transactions), §85.421 (relating to Consumer Information), §85.422 (relating to Unclaimed Funds), and §85.601 (relating to Denial, Suspension, or Revocation Based on Criminal History), in 7 TAC Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

The commission adopts the amendments to §§85.202, 85.301, 85.420 - 85.422, and §85.601 without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3859). The rules will not be republished.

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 85, Subchapter A govern pawnshops. In general, the purpose of the rule changes to 7 TAC Chapter 85, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. In March 2022, the OCCC issued an advance notice of rule review, seeking informal feedback on the rule review. The OCCC received one informal comment on the advance notice. Notice of the review of 7 TAC Chapter 85, Subchapter A was published in the *Texas Register* on April 1, 2022 (47 TexReg 1701). The commission did not receive any official comments in response to the notice published in the *Texas Register.*

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

Amendments to §85.202 update requirements for filing a new pawnshop license application. Currently, §85.202(a)(1)(A)(ii) requires a pawnshop license application to identify a "responsible person" who is responsible for day-to-day operations at one or more locations, and must be an individual with an ownership interest, a licensed pawnshop employee, or an applicant for a pawnshop employee license. The commission and the OCCC believe that it is unnecessary to require pawnshops to identify an owner or licensed pawnshop employee as a responsible person. Pawnshops are required to separately identify owners and principal parties under §85.202(a)(1)(B), and licensing of pawnshop employees is now optional under Texas Finance Code, §371.101 (as amended by HB 1442 in 2019). The adoption replaces the "responsible person" requirement in §85.202(a)(1)(A)(ii) with a requirement to list a "compliance officer," who must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. The amendment will enable pawnshops to identify an individual who can be contacted on a company-wide basis. The amendment is intended to ensure that each pawnshop lists an individual who can be contacted about compliance issues. In addition, an amendment to §85.202(a)(2)(A)(v) removes language suggesting that pawnshop license applicants send fingerprints directly to the OCCC. Currently, license applicants submit fingerprints through a party approved by the Texas Department of Public Safety.

An amendment to §85.301 removes language in §85.301(2)(B) suggesting that pawnshop employee license applicants send fingerprints directly to the OCCC. This is similar to the change to §85.202(a)(2)(A)(v) described in the previous paragraph.

An amendment to §85.420 requires pawnshops to maintain copies of certain agreements with local law enforcement. Under Texas Finance Code, §371.182, the OCCC may designate a reasonable hold period during which a pawnshop may not sell goods acquired and offered for sale. Currently, §85.420(b) provides a general hold period of 20 days, but allows a reduced hold period if the pawnshop enters a written agreement with local law enforcement for a reduced period. An amendment to §85.420(b)(2) adds language specifying that if a pawnshop holds purchased items for less than 20 days under an agreement with local law enforcement, then the pawnshop must maintain a copy of the agreement that authorizes the reduced hold period. This amendment is intended to help ensure that OCCC can verify compliance with the requirements for holding purchased items.

Amendments to §85.421 update requirements for providing information to consumers. Under Texas Finance Code, §371.183, the commission may adopt rules requiring pawnshops to display materials provided by the OCCC that are designed to: (1) inform a consumer of the duties, rights, and responsibilities of parties to a pawn transaction; and (2) inform and assist a robbery, burglary, or theft victim. To implement this requirement, the OCCC has prepared a consumer brochure titled "Pawn Facts," which is available on the OCCC's website and may be ordered by pawnshops. Currently, §85.421(a) states that the OCCC will provide each pawnshop a display and printed materials that must be placed in a location clearly visible to the consumer, and requires the pawnshop to refill the display. An amendment to §85.421(a) removes language suggesting that the OCCC will provide each pawnshop with a display and printed materials at the time of initial licensing. The amended language will still provide that pawnshops may request copies from the OCCC, or may print copies from the OCCC's website. This amendment will maintain flexibility for pawnshops while reducing the cost for the OCCC to send printed materials and displays.

Amendments to §85.422 make technical changes relating to the escheat of unclaimed funds. Amended text in §85.422(3) reflects that unclaimed funds are submitted to the Unclaimed Property Division of the Texas Comptroller of Public Accounts. Another amendment adds a reference to Texas Property Code, §74.301, in order to provide a more complete statutory reference for the requirement to pay unclaimed funds to the state after three years.

Amendments to §85.601 relate to the OCCC's review of the criminal history of a pawnshop applicant or licensee. The OCCC is authorized to review criminal history of pawnshop applicants and licensees (as well as pawnshop employee applicants and li-

censees) under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.151; and Texas Government Code, §411.095. The amendments to §85.601 ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Amendments throughout subsections (c) and (f) of §85.601 implement these statutory changes from HB 1342. Other amendments to §85.601 include technical corrections, clarifying changes, and updates to citations.

Regarding the effective date of these amendments, Texas Finance Code, §371.006 contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for the changes included in this adoption will be October 1, 2022.

SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS

DIVISION 2. PAWNSHOP LICENSE

7 TAC §85.202

The rule amendments are adopted under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371 (the Texas Pawnshop Act). The amendments to §85.421 are adopted under Texas Finance Code, §371.183, which authorizes the commission to adopt rules requiring a pawnshop to display consumer materials. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
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DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

7 TAC §85.301

The rule amendments are adopted under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371 (the Texas Pawnshop Act). The amendments to §85.421 are adopted under Texas Finance Code, §371.183, which authorizes the commission to adopt rules requiring a pawnshop to display consumer materials. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

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DIVISION 4. OPERATION OF PAWNSHOPS

7 TAC §§85.420 - 85.422

The rule amendments are adopted under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371 (the Texas Pawnshop Act). The amendments to §85.421 are adopted under Texas Finance Code, §371.183, which authorizes the commission to adopt rules requiring a pawnshop to display consumer materials. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

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DIVISION 6. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

7 TAC §85.601

The rule amendments are adopted under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371 (the Texas Pawnshop Act). The amendments to §85.421 are adopted under Texas Finance Code, §371.183, which authorizes the commission to adopt rules requiring a pawnshop to display consumer materials. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2022.

TRD-202203131
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: October 1, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 936-7660

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

The Texas Education Agency (TEA) adopts an amendment to §100.1010, concerning performance frameworks for open-enrollment charter schools. The amendment is adopted without changes to the proposed text as published in the June 3, 2022 issue of the *Texas Register* (47 TexReg 3214) and will not be republished. The amendment adopts in rule the *2021 Charter School Performance Framework (CSPF) Manual,* which is updated to comply with statutory provisions and clarify the operation of the CSPF to rate the performance of open-enrollment charter schools in Texas.

REASONED JUSTIFICATION: Section 100.1010 was adopted effective September 18, 2014, and was last amended effective March 8, 2022. The rule is issued under Texas Education Code, §12.1181, which requires the commissioner to develop and adopt frameworks by which the performance of open-enrollment charter schools is measured. The performance frameworks (charter schools measured under standard accountability and charter schools measured under alternative education accountability) consist of several indices within academic, financial, and operational categories with data drawn from various sources, as reflected in the CSPF Manual adopted as a figure in the rule and updated every year.

The adopted amendment replaces the *2020 CSPF Manual* with the *2021 CSPF Manual.* The 2021 version of the manual presents no significant changes from 2020.

Throughout the manual, language is revised with clarifying edits such as updated dates, references to financial accountability indicators, and language describing the waiver of accountability requirements. In addition, indicator 3l, Appropriate Handling of Secure Assessment Materials, is updated to define "meets expectations" and "does not meet expectations." The indicator is not applicable for 2021.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 3, 2022, and ended July 5, 2022. Following is a summary of public comments received and agency responses.

Comment: The Texas Association of School Boards, Texas Association of School Administrators, and Texas School Alliance recommended the restoration of the Academic Standard and indicators from the Operational Standard previously removed due to the ongoing COVID-19 waiver. The recommendation included using available data points and renumbering the indicators.

Response: The agency disagrees and provides the following clarification. TEA received approval from the U.S. Department of Education on April 6, 2021, to waive statewide assessment and accountability requirements under the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, for the 2020-2021 school year. TEA administered a statewide assessment in school year 2020-2021, but TEA continued to suspend ratings for local education agencies (LEAs) and their campuses.

TEA acknowledged the importance of gathering data and making it available to the public and educators to understand learning loss and provide necessary supports. However, due to the disruptions of the pandemic, the use of the data as a tool to assess student growth was hindered. The CSPF is a tool intended to provide education stakeholders with a snapshot of performance. Just as the A-F ratings have become less useful in giving an indicator of LEA performance during the turmoil of the pandemic, the CSPF would provide a snapshot without context if the removed information were provided for 2021. The data related to these indicators has been gathered, as the public comment acknowledges, and made available to the public.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.1181, which directs the commissioner of education to develop and adopt open-enrollment charter school performance frameworks; and TEC, §29.259, which directs the commissioner of education to establish an adult high school diploma and industry certification charter school program, including adoption of frameworks to measure the performance of such a school.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.1181 and §29.259.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2022.

TRD-202203075

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 6, 2022
Proposal publication date: June 3, 2022
For further information, please call: (512) 475-1497

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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 §§153.1, 153.5, 153.8, 153.9, 153.11, 153.15, 153.17, 153.20 - 153.24, 153.26, 153.28, 153.40

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §§153.1, Definitions; 153.5, Fees; 153.8, Scope of Practice; 153.9, Applications; 153.11, Examinations; 153.15, Experience Required for Licensing; 153.17, License Renewal; 153.20, Guidelines for Revocation, Suspension, Denial of License; Probationary License; 153.21, Appraiser Trainees and Supervisory Appraisers; 153.22, Voluntary Appraiser Trainee Experience Reviews; 153.23, Inactive Status; 153.24, Complaint Processing; 153.26, Identity Theft; 153.28, Peer Investigative Committee Review; and 153.40, Approval of Continuing Education Providers and Courses. The amendments are adopted following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The amendments are adopted without changes to the proposed text as published in the May 20, 2022 issue of the *Texas Register* (47 TexReg 2991). These rules will not be republished.

The amendments to §153.1 move a definition from §153.40, align the language more closely with Appraisal Qualifications Board (AQB) definitions, and add a definition for the recently AQB adopted PAREA program. The amendments to §153.5 remove outdated fees, clarify the applicability of application fees to reinstatements, increase the fee for voluntary experience reviews, and clarify the applicability of online convenience fee required by the Department of Information Resources.

The amendment to §153.11 provides the examination provider additional discretion in determining the method of accommodation.

The amendments to §153.15 consolidate redundant requirements for new applicants and existing license holders seeking to upgrade their license, add references to the PAREA program and instruct how this experience may be submitted to TALCB, and outline contingent approval may be granted upon completion of additional education, experience, or mentorship.

The amendments to §153.17 remove sections now obsolete since the implementation of an online submission system.

The amendments to §153.20 clarify the guidelines apply to disciplinary action and are not limited to revocation and suspension, remove a redundant section, and reflect changes to TALCB division names.

The amendments to §153.21 alter the progress monitoring program required of supervisory appraisers with 4-5 trainees, in accordance with AQB Criteria. Trainees of supervisory appraisers that fall into this category no longer are required to submit their work product for review as specified in §153.22. TALCB will require the applicable supervisory appraisers to submit a progress monitoring plan for his or her trainees and keep progress monitoring reports subject to TALCB inspection for a specified period of time. The amendments also update references to distance education in accordance with updates to the AQB's Criteria.

The amendments to §153.22 clarify that an interested applicant, not just trainees, may apply for an appraiser experience review.

The amendment to §153.23 removes a reference to an outdated fee. The amendments to §153.24 reflect changes to TALCB division names, remove references to former processes, and provide for the Commissioner to designate to sign an agreed resolution on his or her behalf. The proposed amendments to §153.26 reflect renumbered sections in §153.20.

In §153.28, the amendments further reflect current investigative process.

The amendments to §153.40 remove redundant definitions, and those moved to §153.1 remove surplus fee information and references to outdated processes.

The Board received three comments, two from the same individual on behalf of himself and the other on behalf of his affiliated organization. All comments were in support of the proposed changes, and the two comments from the same individual offered alternative language addressing references to PAREA within the rule. The Education and Licensing Committee considered the comments offering alternative language and determined the proposed language offered greater flexibility to address potential changes from the Appraisal Qualifications Board related to the PAREA program. Thus, the committee recommended no changes to the language as proposed.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2022.

TRD-202203143
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: September 8, 2022
Proposal publication date: May 20, 2022
For further information, please call: (512) 936-3652

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 61. CHRONIC DISEASES
SUBCHAPTER F. DIABETES REGISTRY

25 TAC §61.91

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of §61.91, concerning Diabetes Mellitus Glycosylated Hemoglobin Registry. The repeal of §61.91 is adopted without changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3398). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal of §61.91 is necessary to implement Senate Bill (S.B.) 970, 87th Legislature, Regular Session, 2021, which repealed Texas Health and Safety Code, Chapter 95, Subchapter B, Diabetes Mellitus Registry. S.B. 970 removed the requirement for a diabetes registry.

The registry was established as a pilot program in accordance with House Bill (H.B.) 2132, 80th Legislature, Regular Session, 2007, and H.B. 1363, 81st Legislature, 2009. DSHS coordinated with the San Antonio Metropolitan Health District to establish the pilot registry.

S.B. 510, 82nd Legislature, Regular Session, 2011, amended Chapter 95 by adding Subchapter B, Diabetes Mellitus Registry, to make public health district participation in the diabetes mellitus registry voluntary and designated a public health district solely responsible for the cost of establishing and administering the registry program in their district. As a result, no data has been submitted since 2011.

COMMENTS

The 31-day comment period ended July 11, 2022.

During this period, DSHS did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and efficient enforcement of Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2022.

TRD-202203081

Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: September 7, 2022
Proposal publication date: June 10, 2022
For further information, please call:(512) 776-2834

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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 §15.32

The General Land Office (GLO) adopts an amendment to 31 Texas Administrative Code (TAC) §15.32 relating to Certification Status of the Cameron County Dune Protection and Beach Access Plan (Plan) and Erosion Response Plan (ERP). Cameron County is making minor amendments to its Plan and ERP to correct an error in the current versions of these documents. The GLO adopts new subsection 15.32(f) to certify the amended Plan and ERP as consistent with state law. The rule amendment was published in the July 22, 2022 *Texas Register* (47 TexReg 4262) and will not be republished.

BACKGROUND OF THE AMENDMENTS

On June 21, 2022, the Cameron County Commissioners Court approved minor amendments to Section IV.A.6 of its Plan and to Section 5.3.1.(2)(i) of its ERP. The amendments were submitted to the GLO on July 1, 2022. As provided in 31 TAC §15.3(o), the GLO must grant or deny certification of an ERP or amendments to local government dune protection and beach access plans. The GLO finds that these amendments are consistent with state law.

The sections of the Plan and the ERP Cameron County is amending were previously certified as a variance from 31 TAC §§15.5(b)(3) and 15.6(f)(3) to allow minimal impervious cover outside the footprint of a habitable structure in eroding areas, using concrete or another impervious surface for specific purposes so long as its area does not exceed 5% of the footprint of the habitable structure. This variance allowed the County to authorize the construction of concrete curbing that is utilized to create a border and to hold brick pavers in place. Since Cameron County is one of the windiest and driest areas along the Texas coast, increased sediment transport of sand means that stabilization of pervious materials as listed in the ERP may necessitate concrete curbs. The current version of the Plan and ERP specify that the curbs must be no wider than six inches and no more than ten inches high. However, it is now evident that curb manufacturing industry standards require a height limit of twelve inches, not ten inches. The current ten-inch limit was required by the County in its prior Plan amendment in error and should have been the industry standard of twelve inches. As a result, Cameron County is now making these amendments to correct the error, which appears in the Plan and the ERP. The GLO previously found that the dry environment coupled with the enhanced protective standards adopted in the ERP

ensure the variance is as protective as current rules since the allowances have appropriately limited the authorized uses, and the percentage of impervious surfaces allowed, and does not include allowances for any slabs. The increase in height limit by two inches does not change GLO's analysis or conclusion.

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 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 amendment will save money since curbs made to industry-standard size are less expensive than curbs made to a custom size. Ms. Porter has also determined that for each year of the first five years the amendments are in effect, there will be no impacts to the local economy.

Ms. Porter has determined that there will be no fiscal implications to the local government or additional costs of compliance for large and small businesses or individuals resulting from the amendment to the Plan and ERP. GLO has determined that the 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 benefit from the amendment since the use of industry-standard size curbs costs less than the use of custom-made curbs. The difference in size between the six by ten-inch curbs and the six by twelve-inch curbs is minimal, and the previous analysis of public benefit has not changed because of it.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the 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 amendment is 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 amendment is under Texas Natural Resources Code §§61.011, 61.015(b), 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 have access to public beaches, and certification of local government beach access and use plans as consistent with state law. The amendment does not exceed federal or state requirements.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the 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 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 determined that the rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. GLO has determined that the 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 rulemaking. Since the rule simply certifies the amendments to Cameron County's Dune Protection and Beach Access Plan (Plan), it will not affect the operations of the General Land Office. The 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 rule amendment does not create, limit, or repeal existing agency regulations, but rather certifies the amendments to the Plan and ERP as consistent with state law. The rule does not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the amendments would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The amendments are expected to improve environmental protection and safety and to reduce public expenditures.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The 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 action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determined that the 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).

PUBLIC COMMENT

No comments were received during the comment period for this rulemaking.

STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code §§61.011, 61.015(b), 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, 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 §§61.011, 61.015, and 63.121 are affected by the amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2022.

TRD-202203147
Mark A. Havens
Deputy Land Commissioner Chief Clerk
General Land Office
Effective date: September 11, 2022
Proposal publication date: July 22, 2022
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

34 TAC §3.16

The Comptroller of Public Accounts adopts new §3.16, concerning delinquent taxpayer financial records; information exchange, with changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3659). The rule will be republished. The new section implements House Bill 1258, 87th Legislature, 2021, which enacted Tax Code, §111.025 (Delinquent Taxpayer Financial Records).

Subsection (a) provides definitions. Paragraphs (1) and (2) define "account" and "account owner record" using the definitions given in Tax Code, §111.025.

Paragraph (3) defines "comptroller's agent." Tax Code, §111.025 uses the term but does not define it. The comptroller adopts this definition to make the section easier to read and to memorialize that the comptroller will contract with a third-party vendor to facilitate the exchange of information with financial institutions as provided in §111.025(h).

Paragraph (4) defines the term "data match." Tax Code, §111.025 uses the term but does not define it. The comptroller adopts this definition to explain the process during which the comptroller will use the information financial institutions provide about accounts owned by delinquent taxpayers. The comptroller amends the proposed definition to add the article "a" before the phrase "delinquent taxpayer's tax debt."

Paragraphs (5), (6), and (7) define the terms "delinquent taxpayer," "financial institution," and "inquiry file" using the definitions given in Tax Code, §111.025.

Subsection (b) describes the exchange of information between the comptroller and financial institutions. The subsection incorporates the limitation in Tax Code, §111.025(d) that the comptroller and its agent may only ask a financial institution to exchange information once each quarter.

Paragraphs (1) and (2) explain the two methods of exchanging information - the matched accounts method and the all accounts method - based upon the description of these two methods in Tax Code, §111.025(b).

Paragraph (3) implements the requirement in Tax Code, §111.025(c) that a request for information from the comptroller or its agent must be made in a manner that is compatible with the financial institution's data processing system.

Subsection (c) restates Tax Code, §111.025(e), which provides that a financial institution may not notify an account holder when it exchanges information with the comptroller or the comptroller's agent.

Subsection (d) addresses confidentiality, restating the limitation in Tax Code, §111.025(f) that the comptroller, its agent, and financial institutions may only use information obtained during an exchange of information for the purpose of performing a data match. Subsection (d) also memorializes the statement in Tax Code, §111.025(f) that the comptroller, its agent, and a financial institution must return, destroy, or erase information obtained during an exchange of information. For consistency, and to ensure compliance, subsection (d) provides a deadline by which the information must be returned, destroyed, or erased, which is the completion of the data match. Finally, subsection (d) expands on the statutory limitation on the use of account owner records, explaining that the comptroller will only use information obtained from a financial institution under this section to collect delinquent taxes and not for any other debt collection activities on behalf of the State.

Subsection (e) restates Tax Code, §111.025(g), which provides that a financial institution is not liable for any good faith actions it takes to comply with this section.

Subsection (f) provides that levies issued during a data match are made within the statutory framework established by Tax Code, Chapter 111.

Subsection (g) restates Tax Code, §111.025(i), which provides that a suit to enforce this statute must be brought by the Attorney General in the Travis County district courts.

The comptroller received comments regarding adoption of the amendment from Stephen Scurlock, Director, Government Relations, Independent Bankers Association of Texas (IBAT). IBAT believes that the proposed rule accurately tracks and appropriately implements Tax Code, §111.025.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), and Tax Code, §111.025(j), which gives the comptroller authority to adopt rules to implement the section.

This section implements Tax Code, §111.025 (Delinquent Taxpayer Financial Records).

§3.16. Delinquent Taxpayer Financial Records; Information Exchange.

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

(1) Account--A demand deposit account, checking or negotiable order of withdrawal account, savings account, time deposit account, or money market mutual fund account.

(2) Account owner record--A record a financial institution uses to report account owner information, including:

(A) an account holder's name, social security number, or federal employer identification number; and

(B) the account balance and account type.

(3) Comptroller's agent--A third-party vendor with whom the comptroller contracts to facilitate the exchange of information with a financial institution.

(4) Data match--The process by which the comptroller uses account holder information provided by a financial institution to secure payment of a delinquent taxpayer's tax debt. A data match begins when a delinquent taxpayer's case is created by the Enforcement Division, includes the levy of funds from a delinquent taxpayer's account, and ends 30 days after the delinquent taxpayer's case is closed by the Enforcement Division.

(5) Delinquent taxpayer--A person who at the time of a data match request under subsection (b) of this section is delinquent in a tax or fee administered by the comptroller.

(6) Financial institution--

(A) A depository institution, as defined by Federal Deposit Insurance Act (12 U.SC. §1813(c)), Section 3(c);

(B) a federal credit union or state credit union, as those terms are defined by Federal Credit Union Act (12 U.S.C. §1752), Section 101; or

(C) the agent of an entity described by subparagraph (A) or (B) of this paragraph.

(7) Inquiry file--An electronic file sent by the comptroller or the comptroller's agent to a financial institution that contains a record of delinquent taxpayers.

(b) Exchange of information. Each calendar quarter, a financial institution doing business in this state shall exchange information with the comptroller or the comptroller's agent as provided in this subsection. The comptroller and the comptroller's agent may not ask a financial institution to exchange information more than once each calendar quarter.

(1) Matched accounts method. No later than 45 days after the date the comptroller or the comptroller's agent provides the inquiry file to a financial institution, the financial institution must submit to the comptroller or the comptroller's agent an electronic file listing all of the account owner records of the accounts owned at the financial institution by each delinquent taxpayer identified in the inquiry file.

(2) Optional method of reporting: all accounts method. In lieu of exchanging information using the matched accounts method, a financial institution may submit to the comptroller or the comptroller's agent an electronic file listing all of the financial institution's account owner records for all open accounts. The comptroller or the comptroller's agent will create an electronic file listing all account owner records for the accounts owned at the financial institution by delinquent taxpayers.

(3) Compatibility. The exchange of information shall be performed in a manner that is compatible with the data processing system of the financial institution.

(c) Notification of account holders. A financial institution may not notify an account holder that the financial institution has exchanged account holder information with the comptroller or the comptroller's agent as provided in subsection (b) of this section.

(d) Confidentiality. Information provided by or to a financial institution, the comptroller, or the comptroller's agent for the purpose of performing a data match is confidential and may not be used for any purpose or disclosed to any person except as necessary to perform a data match. The financial institution, the comptroller, and the comptroller's agent shall return, destroy, or erase any information obtained after completion of the data match. Information collected from a financial institution pursuant to this section is available for the collection of delinquent taxes only and is not available for other debt collection activities undertaken by the state.

(e) Liability of financial institutions for disclosure of information. A financial institution is not liable to any person for disclosing information to the comptroller under this section or for any other action that the financial institution takes in good faith to comply with this section.

(f) Due process. A statutory levy executed during a data match is subject to the statutory procedures and due process protections of Tax Code, §111.021 (Notice to Holders of and Levy Upon Assets Belonging to Delinquent).

(g) Suit to enforce exchange of information. A suit to enforce this section must be brought by the attorney general in the name of the state. Venue for the suit is in Travis County.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2022.

TRD-202203101
Jennifer Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
Effective date: September 7, 2022
Proposal publication date: June 24, 2022
For further information, please call: (512) 475-2220

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS

SUBCHAPTER A. BOARD OF PARDONS AND PAROLES

37 TAC §141.3, §141.5

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 141, Subchapter A, §141.3 and §141.5 concerning general provisions. The rules are adopted without changes to the proposed text as published in the June 3, 2022 issue of the *Texas Register* (47 TexReg 3235). The rules will not be republished.

The amendments are adopted to provide edits for uniformity and consistency throughout the rules and to correct grammatical errors.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under §508.036, §508.0441, §508.045 and §508.047 Government Code. Section 508.036(b) requires the Board to adopt rules governing the decision-making processes of the Board and parole panels. Section 508.0441(b) requires the Board to develop and implement a policy, which clearly defines when a Board member or parole commissioner

should disqualify themselves from voting on a parole decision or the revocation of parole or mandatory supervision. Section 508.045(c) authorizes parole panels with the authority to grant, deny, or revoke parole, revoke mandatory supervision, and conduct parole revocation and mandatory supervision revocation hearings. Section 508.047 requires the members of the Board to meet at least once in each quarter of the calendar year at a site determined by the presiding officer.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2022.

TRD-202203124
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: September 8, 2022
Proposal publication date: June 3, 2022
For further information, please call: (512) 406-5478

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SUBCHAPTER B. RULEMAKING

37 TAC §141.57

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 141, Subchapter B, §141.57 concerning Petition for Adoption of Rule. The rule is adopted without changes to the proposed text as published in the June 3, 2022, issue of the *Texas Register* (47 TexReg 3236). The rule will not be republished.

The amendments are adopted to provide edits for uniformity and consistency throughout the rules.

No public comments were received regarding adoptions of these amendments.

The amended rule is adopted under §2001.021, Government Code. Section 2001.021 requires a state agency to provide for public participation in the rulemaking process.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2022.

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Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5478

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SUBCHAPTER C. SUBMISSION AND PRESENTATION OF INFORMATION AND REPRESENTATION OF OFFENDERS

37 TAC §141.61, §141.72

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 141, Subchapter C, §141.61 and §141.72, concerning submission and presentation of information and representation of offenders. The rules are adopted without changes to the proposed text as published in the June 3, 2022 issue of the *Texas Register* (47 TexReg 3237). The rules will not be republished.

The amendments are adopted to provide edits for uniformity and consistency throughout the rules.

No public comments were received regarding adoptions of these amendments.

The amended rules are adopted under §508.082 and §508.083, Government Code. Section 508.082 requires the Board to adopt rules relating to the submission and presentation of information and arguments to the Board, a parole panel, and the department for and in behalf of an inmate. Section 508.083 relates to the representation of an inmate in a matter before the Board or a parole panel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. REGISTRATION OF VISITORS AND FEES

37 TAC §141.81, §141.82

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 141, Subchapter D, §141.81 and §141.82 concerning registration of visitors and fee affidavits. The rules are adopted without changes to the proposed text as published in the June 3, 2022 issue of the *Texas Register* (47 TexReg 3238). The rules will not be republished.

The amendments are adopted to provide edits for uniformity and consistency throughout the rules.

No public comments were received regarding adoptions of these amendments.

The amended rules are adopted under §508.036, §508.0441, §508.045, §508.084, §508.313, and §2004.002, Government Code. Section 508.036 authorizes the Board to adopt rules relating to the decision-making processes used by the Board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.084 requires a person who represents an inmate to file a fee affidavit with the Texas Department of Criminal Justice. Section 508.313 pertains to confidential and privileged information. Section 2004.002 requires an individual, who appears before or contacts a state agency in person or

on behalf of another, to register with the state agency and requires the Board to provide for and maintain a record of such registrations.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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