# 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 1. ADMINISTRATION

## PART 1. OFFICE OF THE GOVERNOR

### CHAPTER 5. GENERAL ADMINISTRATION

### SUBCHAPTER B. ADMINISTRATIVE POLICIES

**1 TAC §5.101**

The Office of the Governor (OOG) adopts new 1 TAC §5.101, relating to identifying and escalating procurement contracts that require enhanced contract or performance monitoring. The rule is adopted without changes to the proposed text as published in the September 16, 2016, issue of the *Texas Register* (41 TexReg 7233), and will not be republished.

Reasoned Justification

The rule is adopted to implement changes made in the law regarding state contracting requirements by §2261.253(c), Texas Government Code.

Public Comments

No comments were received regarding the proposed adoption.

Statutory Authority

The new section is adopted in accordance with Government Code, §2261.253(c), which requires the OOG to establish a procedure to identify each procurement contract that requires enhanced contract or performance monitoring.

Cross Reference to Statute

No other code, article or statute is affected by this adoption.

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

Filed with the Office of the Secretary of State on October 21, 2016.

TRD-201605491
Diane Morris
Deputy General Counsel
Office of the Governor
Effective date: November 10, 2016
Proposal publication date: September 16, 2016
For further information, please call: (512) 463-1955

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## PART 2. TEXAS ETHICS COMMISSION

### CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

### SUBCHAPTER B. GENERAL REPORTING RULES

**1 TAC §20.60**

The Texas Ethics Commission (the commission) adopts new Texas Ethics Commission Rules §20.60 without changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6584). The amendment will not be republished. The section relates to the disclosure of multiple expenditures to a single payee for fees to process political contributions.

Section 254.031(a)(3) of the Election Code requires a campaign finance report to include the amount of political expenditures that in the aggregate exceed $100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. Expenditures made from personal funds must also be itemized if reimbursement from political contributions is sought. Some filers are required to itemize their expenditures to banks and other merchants to process political contributions, which can include numerous small expenditures to the same payee. The new rule simplifies the filing requirements without any substantive loss in disclosure by permitting a filer to disclose multiple expenditures for such processing fees made to the same payee within a reporting period as a single expenditure. The total amount of the expenditures must be disclosed along with the payee information and purpose, including the dates of the first and last expenditures.

One public comment was received on this rule from Ms. Kenna Giffin; the comment was generally in favor of the rule.

New rule §20.60 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

New rule §20.60 affects Election Code §254.031.

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 October 18, 2016.

TRD-201605426

Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Effective date: November 7, 2016
Proposal publication date: September 2, 2016
For further information, please call: (512) 463-5800

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# TITLE 7. BANKING AND SECURITIES

## PART 2. TEXAS DEPARTMENT OF BANKING

## CHAPTER 25. PREPAID FUNERAL CONTRACTS

## SUBCHAPTER A. CONTRACT FORMS

### 7 TAC §§25.1 - 25.6

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §§25.1 - 25.6, concerning prepaid funeral contracts. The amendments are adopted without changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6587). The amended rules will not be republished.

Current §§25.1 - 25.6 provide the requirements for a licensed seller of prepaid funeral benefits to use and deliver a contract when engaging with a purchaser of benefits, whether via a model or non-model contract. These sections prescribe the substance, form, and approval process for the use of a contract that differs from the model contract issued by the department. Additionally, §25.6 sets out how and when an executed copy of a contract must be delivered to a purchaser. Because §§25.1 - 25.6 were drafted before the prevalence of electronic documents, it is not currently clear that a licensed seller of prepaid funeral benefits may use an electronic contract or how to have an electronic contract approved by the department. Because of this uncertainty, sellers have approached the department individually for a determination whether the seller's electronic process is acceptable. The adopted amendments provide guidance to the sellers and understanding to the public.

Amended §25.1 states that a contract or a waiver in electronic form is a non-model contract. Being non-model requires an electronic contract to comply with the substance and form requirements within §25.3, the plain language requirements within §25.4, and the approval process within §25.5. As amended, §§25.3, 25.4, and 25.5 clarify their application to contracts in electronic form. However, amended §25.2 includes an exception to this general rule by providing that a PDF version of an approved non-model contract or model contract need not be approved by the department because these PDFs will accurately replicate the contract as previously approved in paper form.

The amendment adding §25.2(f) expressly allows the use of contracts in electronic form for the sale of prepaid funeral benefits if the purchaser has been provided the disclosures required by the federal E-SIGN Act and has consented to the use of electronic documents. Because the disclosures required under E-SIGN primarily address the issues of retention and accessibility of an electronic record, the amendments treat the transaction as not having been conducted electronically when the purchaser is contemporaneously given a completed paper copy of the contract.

The amendments to §25.3 explain the placement of contract provisions in electronic format. The amendment to §25.3(b)(8) requires the statement of guaranteed funeral goods and services selected to be on a single screen or consecutive screens, near the beginning or top of the contract, immediately following required consumer disclosures. The amendment to §25.3(c)(1)(G) requires the statement of non-guaranteed cash advance items in an electronic contract to appear on a single screen immediately following the statement of guaranteed funeral goods and services selected. The amendment to §25.3(c)(2) requires, when the seller has deleted the statement of no-guaranteed cash advance items, that the seller include Figure: 7 TAC §25.3(c)(2)(B) immediately following the statement of guaranteed funeral goods and services selected. The amendment to §25.3(j) requires the placement of required signatures and notices near the bottom of an electronic contract. The amendment to §25.3(k)(2) requires the consumer complaints and inquiries notice to appear immediately preceding the area where a purchaser signs an electronic contract. The amendment to §25.3(l)(1) eliminates the need for page numbers in an electronic contract that does not contain pages. The addition of §25.3(n) requires the consumer disclosures mandated by E-SIGN to be before any other provision and allows them to be on a separate screen.

The amendment to §25.4(a) clarifies that an electronic contract must be displayed in an easily readable font and type size. The amendment to §25.4(b) confirms that electronic documents should substantially comply with plain language writing principles. The amendment to §25.4(f)(2) clarifies that page size requirements do not apply to electronic documents.

The amendment to §25.5(b)(1)(A) requires inclusion of screen shots in an application to approve a non-model electronic contract. The amendment to §25.5(b)(1)(D)(ii) requires that the certification for electronic contracts verifies that it complies with Business and Commerce Code, Chapter 322 (the Texas Uniform Electronic Transactions Act) and E-SIGN. The amendment to §25.5(f) deletes transition language that applied when the rules were amended in 2010 and is no longer applicable.

The amendment to §25.6 adds two new subsections that specify that a paper copy must be given unless an electronic contract was used or if the purchaser requests a paper copy of an electronic copy. It also states that electronic contracts may be sent to the purchaser electronically if the purchaser has consented to that.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §154.051, which provides that the commission may adopt rules necessary and reasonable to matters relating to the enforcement and administration of this chapter, and §154.151, which prescribes requirements for the department and the commission relating to the form of contracts.

Finance Code, §§154.001, 154.131, 154.151 - 154.1511, 154.156, 154.2021, 154.401, 154.406 - 154.410, and 154.415 are affected by the proposed 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.

Filed with the Office of the Secretary of State on October 21, 2016.

TRD-201605477
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: November 10, 2016
Proposal publication date: September 2, 2016
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# PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

## CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS

## SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS

The Finance Commission of Texas (commission) adopts amendments, new rules, and repeals in 7 TAC, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

The commission adopts the amendments to §§85.102, 85.104, 85.202, 85.206, 85.208, 85.209, 85.211, 85.305, 85.306, 85.402, 85.405, 85.413, 85.420, 85.423, and 85.702; new §85.205; and the repeal of §§85.205, 85.601, and 85.602 without changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6593).

The commission adopts new §85.601 with changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6593). The changes are a result of a technical correction to a citation.

The commission received no written comments on the proposal.

In general, the purpose of the rule changes in 7 TAC, Chapter 85, Subchapter A is to update rules regarding the licensing of pawnshops and to make technical corrections. The adopted rule changes relate to the following issues: contact information, license transfers, criminal history review, disclosures, and recordkeeping. Additionally, certain sections are being repealed in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received three informal written precomments. Certain concepts recommended by stakeholders were incorporated into the proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the adopted changes to each section are provided in the following paragraphs.

In §85.102, the adoption adds a definition of "parent entity," specifying that this term refers to a direct owner of a licensee or applicant. This definition is intended to clarify the provisions on mergers and license transfers in §85.205 and §85.208, discussed later in this adoption, and is consistent with other OCCC licensing rules. An amendment to former §85.102(11) (adopted §85.102(12)) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. This amendment conforms to an amendment to the application requirements for sole proprietorships in §85.202(a)(1)(B)(i), discussed later in this adoption.

Adopted amendments to §85.104(b) and (c) clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by e-mail to the address on file with the OCCC (if the pawnshop has provided an e-mail address), or by mail to the address on file with the OCCC as a master file address (if the pawnshop has not provided an e-mail address).

An amendment to §85.202(a)(1)(B)(i) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §85.202(a)(1)(E)-(F).

Section 85.205 is being repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Section 85.205 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The adopted new rule largely maintains the requirements under the former rule, including the requirements for filing a license transfer application. In addition to the license transfer application allowed under the former rule, the new rule allows an alternative method for a transfer of ownership: a new license application on transfer of ownership. The new rule describes what the application must include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the section. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity.

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §371.070. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing pawnshop license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request

for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible.

In §85.206, concerning Processing of Application, conforming changes in this adoption cite the amended title of §85.205.

In §85.208, concerning Change in Form or Proportionate Ownership, conforming changes are adopted corresponding to proposed new §85.205. Throughout subsections (b) and (c), references have been added to the new license application on transfer of ownership. In addition, amendments in subsection (b) clarify situations where a merger is a transfer of ownership. The amendments specify that if a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection (b) are intended to clarify the current rule text and are consistent with the OCCC's current policy.

Adopted amendments to §85.209 clarify the circumstances in which a pawnshop applicant or licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. Adopted new §85.209(c) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. Adopted new §85.209(d) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information. Corresponding changes are adopted in §85.305 for pawnshop employee licensees.

An adopted amendment to §85.211(d) provides that a pawnshop license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program. A corresponding change is adopted in §85.306 for pawnshop employee licensees. An amendment to former §85.211(g) (adopted §85.211(h)) adds a tagline for clarity.

An adopted amendment to §85.402(g) relates to the requirement for sequential numbering of electronic pawn tickets. The amendment removes the requirement that the OCCC approve methods of numbering the pawn ticket other than sequential numbering by the form supplier. Instead, the amendment provides that the pawnshop may sequentially number each pawn ticket in accordance with written policies that ensure appropriate management and controls. The amendment is intended to provide pawnshops with flexibility in numbering pawn tickets, while also ensuring that pawnshops properly account for all transactions. Another adopted amendment to §85.402(g) specifies that each of the three parts of the pawn ticket must be numbered with the same sequential number.

Adopted new §85.402(h) requires pawnshops to maintain documentation and disclosures required under the Department of Defense's Military Lending Act (MLA) Rule, 32 C.F.R. pt. 232. The Department of Defense's recently adopted amendments to the MLA Rule have a required compliance date of October 3, 2016. Under the amended MLA Rule, creditors will generally be required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. The amended MLA Rule also specifies documentation that creditors can obtain in order to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5. Adopted new §85.402(h) specifies that licensees are required to maintain these documents and disclosures. These records must be maintained for two years from the date of the final entry, like the pawn ticket under current §85.402(b). The two-year requirement is based on Texas Finance Code, §371.152, which requires pawnshops to keep records of pawn transactions for two years from the date of the last recorded event. However, licensees may keep the documents for a longer period of time if they choose.

At the stakeholders meeting, one stakeholder asked whether §85.402(h) would require a particular form for records about whether a consumer is a covered military borrower. The Department of Defense has created a database that lenders can consult to determine whether a consumer is a covered military borrower. Although the MLA Rule provides a safe harbor for lenders who use the database, it provides that a lender may apply its own method to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5(a). To clarify, adopted §85.402(h) does not require a particular form for records about whether a consumer is a covered military borrower, but requires licensees to retain any records that they obtain to make that determination.

Several stakeholders raised other questions about how to comply with the MLA Rule. For example, stakeholders asked questions about how to calculate the military annual percentage rate for purposes of the MLA Rule's 36% maximum for loans made to covered military borrowers. Stakeholders also asked questions about obtaining a potential borrower's Social Security number in order to determine whether the borrower is a covered military borrower. These questions are generally outside the scope of the adopted rule amendments. However, on September 28, 2016, the agency published an advisory bulletin with guidance on complying with the MLA Rule.

An adopted amendment to §85.405(a)(2) allows licensees to modify the current rule's model pawn ticket, to add the mandatory disclosure to a covered borrower under the MLA Rule, 32 C.F.R. §232.6. One precommenter suggested adding language to the amendment to §85.405(a)(2), to specify that the required disclosure is not required to be on the pawn ticket. In response to this precomment, the amendment explains that a licensee may provide the disclosure on a separate form, as an alternative to including the disclosure on the pawn ticket.

Another precommenter suggested an additional permissible pawn ticket change related to the MLA Rule. The precommenter suggested adding the following sentence to §85.405(a)(2)(B): "A licensee also may modify the pawn ticket to add an inquiry as to whether or not the borrower is a covered borrower." The agency believes that this modification could create confusion. The inquiry might be misunderstood by borrowers and licensees, who could believe that the borrower's statement creates a safe harbor from penalties under the MLA Rule. However, if a licensee creates a specific modification of the pawn ticket, it may submit the non-standard ticket to the OCCC under former §85.405(a)(2)(B) (adopted §85.405(a)(2)(C)), and the OCCC will review the inquiry in the context of the amended pawn ticket.

An adopted amendment to §85.405(a)(6)(A) explains that a handgun license is an acceptable form of identification, as provided by Texas Business and Commerce Code, §506.001(a). Under Section 506.001(a), a person may not deny the holder of a handgun license issued by the Texas Department of Public Safety access to goods, services, or facilities, because the holder presents a handgun license rather than a driver's license or other acceptable form of personal identification. The Texas Legislature enacted this provision in H.B. 2739 (2015). In the same legislative session, the Legislature enacted an open-carry law, H.B. 910 (2015), which replaced statutory references to the phrase "concealed handgun license" with the phrase "handgun license." The amendment to §85.405(a)(6)(A) is intended to clarify that a Texas handgun license is permissible for a borrower in a pawn transaction, in addition to other forms of photographic identification listed in Texas Finance Code, §371.174(b). The amendment conforms to the OCCC's advisory bulletin no. B15-3 for pawnshops, "Handgun License as a Valid Form of ID." At the stakeholders meeting, one stakeholder asked whether this amendment refers only to Texas handgun licenses, or includes handgun licenses from other states. In response to this question, the adopted rule text states that a "Texas handgun license issued under Texas Government Code, Chapter 411" is an acceptable form of identification, in order to clarify that this provision refers only to Texas handgun licenses issued by the Texas Department of Public Safety.

Adopted amendments to §85.413 relate to disclosures for consumer complaints about lost or damaged goods. A new figure is being adopted to replace former figure 7 TAC §85.413(e)(6), which is a disclosure about the complaint process for lost or damaged goods. The new figure removes the former figure's statement that the pawnshop must provide a copy of the OCCC complaint form to the consumer, and replaces it with a statement explaining that the consumer may file a complaint through the OCCC's website. The new figure also includes updated contact information for the OCCC. Corresponding changes are adopted in §85.413(h). Previously, subsection (h) provided that the pawnshop must provide a copy of the OCCC complaint form upon request by a person attempting to redeem pledged goods, and figure 7 TAC §85.413(h) contained a copy of the OCCC's complaint form. The amendments to subsection (h) replace these provisions with a statement that a person attempting to redeem lost or damaged goods may file a written complaint with the OCCC, and a statement that the complaint form is available on the OCCC's website. These amendments are intended to ensure that consumers receive disclosures with up-to-date OCCC contact information, and that consumers are encouraged to file any complaints through the OCCC's website.

An adopted amendment to §85.420(b)(2) clarifies hold-period requirements for purchase transactions by pawnshops. Generally, pawnshops are required to hold purchased items for at least 20 days, under §85.420(b)(1)(A). However, there is an exception to this general requirement in former §85.420(b)(2), which provides that a pawnshop and a law enforcement agency may agree to a hold period of seven days or less if the following conditions are met: (1) information is exchanged electronically, (2) the agreement does not conflict with any local ordinance, and (3) the agreement is submitted to the OCCC in writing. The adopted amendment to §85.420(b)(2) replaces "seven days or less" with "less than 20 days," to clarify that the agreement with the law enforcement agency can be for a period between 7 and 20 days (e.g., a 10-day hold period).

Adopted amendments to §85.423 relate to a notice to consumers about filing complaints with the OCCC. Under §85.423, pawnshops are generally required to include this notice on the privacy notices that they provide to consumers, unless the pawnshop provides the privacy notice at the same time as the pawn ticket, and the pawn ticket includes a shorter OCCC notice with the agency's phone number. An adopted amendment to §85.423(b) amends the longer OCCC notice to include the OCCC's updated website and e-mail address. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. Other revisions have been made to the text of the OCCC notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints. Previously, this notice had been referenced in the rules as the "Complaints and inquiries notice." To continue the use of the agency's acronym and provide consistency with other rules, this consumer notice has been relabeled as the "OCCC Notice."

Adopted new §85.601 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a pawnshop or pawnshop employee license. This section replaces former §85.601 and §85.602, which are being repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of a pawnbroker or pawnshop employee. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a licensee, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the applicant is of good moral character, or if the applicant does not have the responsibility, character, and fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a) and §371.102(b). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

Since the proposal, a change has been made to §85.601(f)(2) to remove a reference to a provision in the Texas Code of Criminal Procedure that will be in effect through December 31, 2016. Because the effective date of this adoption is January 1, 2017, a citation to the 2016 version of the provision is unnecessary. As revised in new §85.601, subsection (f)(2) cites the relevant

provisions of the Texas Code of Criminal Procedure that will be effective in 2017.

At the stakeholders meeting, two stakeholders expressed concern about new §85.601's provisions regarding denial of a license application when the applicant provides incomplete or inaccurate information on the application. One stakeholder asked whether providing incomplete or inaccurate information would constitute the criminal offense of "filing a false government report" for purposes of §85.601(c)(1)(F). To clarify, the list of directly related offenses in adopted §85.601(c)(1) refers to criminal offenses for which the applicant has been convicted. Providing incomplete or inaccurate information to the OCCC would not constitute an offense under §85.601(c)(1) unless the applicant is actually convicted of an offense in connection with the application. However, providing incomplete or inaccurate information might be a separate basis for denying the application, as specified in §85.601(f)(4). Another stakeholder asked whether the OCCC would continue its policy of providing applicants an opportunity to respond when the OCCC finds that the license application contains incomplete information regarding criminal history. After an applicant files an application, if the OCCC finds criminal history that relates to the occupation or the applicant's moral character, the agency's policy is to send a letter to the applicant providing an opportunity to explain the criminal history. The OCCC intends to continue this policy. However, applicants still have a responsibility to ensure that applications are complete and accurate at the time of submission, so that the OCCC can review applications in a timely and efficient manner. Submitting an incomplete or inaccurate license application reflects negatively on the applicant's responsibility, character, and fitness to hold a license.

Adopted amendments to §85.702(b) include technical corrections relating to the administrative penalty for violating the acceptance of goods provisions in §85.418(a). One amendment replaces "items" with "item," to clarify that a licensee commits a violation by accepting an item in violation of the acceptance of goods provisions. Another adopted amendment replaces "and" with "or," to clarify that a licensee is subject to a penalty if the licensee violates §85.418(a)(1) or (3).

Regarding the effective date of these rule changes, Texas Finance Code, §371.006 requires notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for all rule changes included in this adoption will be January 1, 2017.

Additionally, the agency has delayed the implementation date for use of the revised forms in §85.413(e)(6) and §85.423, which will help minimize potential costs and allow use of current forms inventory. Licensees may continue use of the prior forms until February 28, 2017. On or after March 1, 2017, licensees must use the revised forms for §85.413(e)(6) and §85.423, as amended by this adoption.

## DIVISION 1. GENERAL PROVISIONS

### 7 TAC §85.102, §85.104

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act. The amendment to §85.420 is adopted under Texas Finance Code, §371.181(b), which provides that the commission shall adopt rules allowing a pawnshop to assist law enforcement agencies in locating and recovering stolen property. The amendments to §85.423 are adopted under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 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 October 21, 2016.

TRD-201605478
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 1, 2017
Proposal publication date: September 2, 2016
For further information, please call: (512) 936-7621

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## DIVISION 2. PAWNSHOP LICENSE

### 7 TAC §§85.202, 85.205, 85.206, 85.208, 85.209, 85.211

The new section and amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 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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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 1, 2017
Proposal publication date: September 2, 2016
For further information, please call: (512) 936-7621

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### 7 TAC §85.205

The repeal is adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the adopted repeal are contained in Texas Finance Code, Chapters 11 and 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 October 21, 2016.

TRD-201605484
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 1, 2017
Proposal publication date: September 2, 2016
For further information, please call: (512) 936-7621

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## DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

### 7 TAC §85.305, §85.306

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 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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Leslie L. Pettijohn
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For further information, please call: (512) 936-7621

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## DIVISION 4. OPERATION OF PAWNSHOPS

### 7 TAC §§85.402, 85.405, 85.413, 85.420, 85.423

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act. The amendment to §85.420 is adopted under Texas Finance Code, §371.181(b), which provides that the commission shall adopt rules allowing a pawnshop to assist law enforcement agencies in locating and recovering stolen property. The amendments to §85.423 are adopted under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 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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Leslie L. Pettijohn
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## DIVISION 6. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

### 7 TAC §85.601, §85.602

The repeals are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the adopted repeals are contained in Texas Finance Code, Chapters 11 and 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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Leslie L. Pettijohn
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Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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### 7 TAC §85.601

The new section is adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 371.

*§85.601. Denial, Suspension, or Revocation Based on Criminal History.*

(a) Criminal history record information. After an applicant for a pawnshop license or pawnshop employee license submits a complete license application, including all required fingerprints, and pays the fees required by §85.211 of this title (relating to Fees) or §85.306 of

this title (relating to Fees), the OCCC will investigate the applicant and any principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and any principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a pawnshop license or pawnshop employee license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 371, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Being a pawnbroker or pawnshop employee involves or may involve representations to borrowers and sellers, receiving money from borrowers, collecting due amounts in a legal manner, maintenance of accounts to make loans and replace lost or damaged goods, and compliance with reporting requirements to governmental agencies relating to certain transactions including firearms. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft (including receiving or concealing stolen property);

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

*(i)* prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

*(ii)* the sheriff or chief of police in the community where the person resides; and

*(iii)* other persons in contact with the convicted person.

(d) Crimes related to moral character and fitness.

(1) The OCCC may deny a pawnshop license application if the applicant is not of good moral character, if the applicant does not show that the business will be operated lawfully and fairly, or if the applicant does not show that the applicant or the applicant's owners have the financial responsibility, experience, character, and general fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a).

(2) The OCCC may deny a pawnshop employee license if the applicant is not of good moral character and good business repute, or if the applicant does not possess the character and general fitness necessary to warrant the belief that the individual will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.102(b).

(3) In conducting its review of moral character and fitness, the OCCC will consider the criminal history of the applicant and any principal parties. The OCCC considers the offenses described by subsections (c)(1) and (f)(2) of this section to be crimes involving moral character. If the applicant or a principal party has been convicted of

an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's moral character. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of moral character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3) - (4);

(3) a conviction of a pawnshop licensee or a principal party for an offense directly related to the licensed occupation, as provided by Texas Finance Code, §371.251(a)(6);

(4) errors or incomplete information in the license application;

(5) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §371.251(a)(3) and §371.255(2);

(6) a finding by the OCCC that the financial responsibility, experience, character, or general fitness of a pawnshop licensee or a principal party do not command the confidence of the public or warrant the belief that the business will be operated lawfully, fairly, and within the purposes of this chapter, as provided by Texas Finance Code, §371.251(a)(7); and

(7) a finding by the OCCC that the moral character, business repute, and general fitness of a pawnshop employee license holder do not warrant belief that the license holder will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.255(3).

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 October 21, 2016.

TRD-201605482
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 1, 2017
Proposal publication date: September 2, 2016
For further information, please call: (512) 936-7621

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## DIVISION 7. ENFORCEMENT; PENALTIES

### 7 TAC §85.702

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 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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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 1, 2017
Proposal publication date: September 2, 2016
For further information, please call: (512) 936-7621

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# TITLE 16. ECONOMIC REGULATION

## PART 8. TEXAS RACING COMMISSION

## CHAPTER 303. GENERAL PROVISIONS

## SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

## DIVISION 3. PROGRAMS FOR GREYHOUNDS

### 16 TAC §303.102

The Texas Racing Commission adopts an amendment to 16 TAC §303.102, Greyhound Rules, without changes to the proposed text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6317) and the amendment will not be republished. The section relates to the procedures governing the Accredited Texas-Bred program for greyhounds.

The adopted amendment addresses the change from year-round live racing to the new seasonal racing model. Under the previous system, Texas-bred funds were accumulated monthly and disbursed to the owners of Texas-bred greyhounds that won races in that month. Under the new model, Texas-bred funds will accumulate for most of the year before there is a

short greyhound meet during which to disburse the funds. The amendments ensure that the accumulated funds are distributed equitably by (1) modifying payouts of owner awards for Texas-bred greyhounds to provide for such awards for the first four Texas-bred greyhounds in each race, instead of only the winner, and (2) distributing Texas-bred funds that accumulate during the intervening months proportionately according to the number of performances proposed for each month of the live meet.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse racing and to adopt other rules to administer the Act, and §6.091, which requires the Commission to establish rules for the distribution of Texas-bred program funds.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

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 October 18, 2016.

TRD-201605436
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: November 7, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 833-6699

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# TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

## CHAPTER 61. SCHOOL DISTRICTS

## SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

### 19 TAC §61.1020

The Texas Education Agency (TEA) adopts new §61.1020, concerning excess funds for video surveillance of special education settings. The new section is adopted without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4577) and will not be republished. The adopted new rule is necessary to implement the Texas Education Code (TEC), §42.2528, as added by Senate Bill (SB) 507, 84th Texas Legislature, 2015.

REASONED JUSTIFICATION. SB 507, 84th Texas Legislature, 2015, added the TEC, §29.022, to require school districts and charter schools to provide video surveillance in certain special education settings on request by a parent, trustee, or staff member. SB 507 also added the TEC, §42.2528, to provide for a grant program to assist in covering the cost of video surveillance equipment for use in implementing the TEC, §29.022, if surplus Foundation School Program (FSP) funds are available.

Adopted new 19 TAC §61.1020 implements the TEC, §42.2528, by establishing provisions for a grant program that would be created should FSP funds become available. The new section describes general provisions, eligibility requirements, the application process, the finality of the award based on information available to the TEA as of the deadline for receipt of applications, data sources to be used for tax information and the count of students in weighted average daily attendance, definitions, deadlines, assignment of priority statuses for applicants, and how funds would be distributed.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began June 24, 2016, and ended July 25, 2016. Following is a summary of the public comment received and the corresponding agency response regarding proposed new 19 TAC Chapter 61, School Districts, Subchapter AA, Commissioner's Rules on School Finance, §61.1020, Excess Funds for Video Surveillance of Special Education Settings.

Comment. The Arc of Texas and Disability Rights Texas commented that it would be beneficial for students with disabilities and their parents if the rule included an additional subsection clearly requiring compliance with the commissioner's regulations under SB 507 irrespective of the availability of funds.

Agency Response. The agency disagrees and maintains language as proposed. The TEC, §29.022, is clear that school districts and open-enrollment charter schools shall provide video surveillance of special education settings on the request of a parent regardless of the reimbursement provisions of the TEC, §42.2528.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §42.2528, which requires the commissioner by rule to establish a grant program through which excess Foundation School Program funds are awarded as grants for the purchase of video surveillance equipment for compliance with the TEC, §29.022.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §42.2528.

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 October 17, 2016.

TRD-201605420
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: November 6, 2016
Proposal publication date: June 24, 2016
For further information, please call: (512) 475-1497

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# TITLE 25. HEALTH SERVICES

## PART 1. DEPARTMENT OF STATE HEALTH SERVICES

## CHAPTER 169. ZOONOSIS CONTROL

## SUBCHAPTER B. CARE OF ANIMALS BY CIRCUSES, CARNIVALS, AND ZOOS

### 25 TAC §§169.41 - 169.48

The Executive Commissioner of the Health and Human Services Commission, (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§169.41 - 169.48, concerning the care of animals by circuses, carnivals, and zoos without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4778) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Texas Occupations Code, Chapter 2152, "Regulation of Circuses, Carnivals, and Zoos," §§2152.051 - 2152.054, provided the Executive Commissioner of the Health and Human Services Commission with the authority to adopt standards for the operation of circuses, carnivals, and zoos, prescribe qualifications for its inspection agents, and prescribe the amount of each fee required by this chapter. Senate Bill (SB) 219, 84th Texas Legislature, Regular Session, 2015, repealed Texas Occupations Code, Chapter 2152. Therefore, §§169.41 - 169.48 are no longer required due to the repeal of the authorizing statute.

SECTION-BY-SECTION SUMMARY

The repeal of §§169.41 - 169.48 is necessary because SB 219 repealed Texas Occupations Code, Chapter 2152, which was the legal mandate for these rules.

COMMENTS

The department, on behalf of the commission, did not receive any public comments during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The repeals are authorized under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to make decisive actions on rules and policies necessary for the operation and provision of health and human services by the department and for the administration of 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 October 24, 2016.

TRD-201605522
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 13, 2016
Proposal publication date: July 1, 2016
For further information, please call: (512) 776-6972

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## SUBCHAPTER F. REPTILE-ASSOCIATED SALMONELLOSIS

### 25 TAC §169.121

The Executive Commissioner of the Health and Human Services Commission, (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §169.121, concerning reptile-associated salmonellosis with changes to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5325).

BACKGROUND AND PURPOSE

The amendment is necessary to comply with Health and Safety Code, Chapter 81, Subchapter I, "Animal-Borne Diseases," which requires retail pet stores to post signs and distribute warnings relating to reptile-associated salmonellosis to purchasers of reptiles. The signs and warnings are to be in accordance with the form and content designated by the Executive Commissioner.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 169.121 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is required by statute and provides guidance to retail pet stores.

SECTION-BY-SECTION SUMMARY

The amendment to §169.121 allows for consistency with the Centers for Disease Control and Prevention (CDC) recommendations for preventing transmission of *Salmonella* from reptiles to humans. The amendment clarifies the requirements for retailers to post warning signs and distribute written warnings to inform purchasers that reptiles may carry *Salmonella* bacteria in accordance with Health and Safety Code, Chapter 81. This amendment also allows improved readability and comprehension of required recommendations.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comment received regarding the proposed rule during the 30-day comment period, which the commission has reviewed and accepts. The commenter included the Pet Industry Joint Advisory Council (PIJAC). The commenter was not against the rule in its entirety; however, the commenter suggested recommendations for change as discussed in the summary of comments.

COMMENT: The PIJAC made a request to the department to pre-approve signs developed by the CDC's Zoonoses Education Coalition and a sign developed by the PIJAC in conjunction with the CDC titled *Healthy Herp Handling* as an alternative to the required sign content delineated in §169.121(b)(3)(A) - (E). The commenter recommended that the warning signs could have different language than the written warnings. The suggestion was made to reduce the verbiage on the written sign so it is more approachable by consumers at pet stores, is easier to read, and has a more visible font size; however, the written warning could contain more detailed information. Concern was also expressed to allow for the previously mentioned signs in order to meet the department's goal of amending the rule to allow for consistency with CDC recommendations.

RESPONSE: The commission partially agrees. It agrees that the written warning pet stores are required to give to purchasers of reptiles could contain more detailed information than the sign.

The commission does not agree that the proposed required verbiage is overwhelming in content, will prevent the sign from being approachable, or wouldn't be easy to read with visible font. It has a lower word count than the CDC's poster titled *After you touch amphibians or reptiles, wash your hands so you don't get sick.* Additionally, the proposed amendments were formulated based on educational materials prepared by the CDC. Plus, legislature tasked the department with providing form and content via rule for the sign and written warning. To determine if a pet store is in compliance with the overseeing statute's mandates, required language needs to be fairly prescriptive in the rule.

The origin of the Zoonoses Education Coalition's sign submitted by the commenter was not evident. Also, the commission does not agree that the PIJAC poster adequately meets the goal of the rule. The commission does agree, though, that signs or posters prepared specifically by the CDC would be appropriate for meeting the goal of being consistent with CDC's resource information pertaining to the prevention of reptile-associated salmonellosis. Therefore, the department has allowed latitude for pet-store retailers to use signs or posters prepared by and containing the approved logo of the CDC to meet the required warning sign that must be posted as long as the signage still meets the minimum size and prominent display requirements as prescribed by the department in the rule. The written warning must still contain the required verbiage in its entirety as described in the rule. Therefore, the department is addressing this commenter by adding the following verbiage to the rule:

Subsection (c) was amended to state "The written warnings, such as fliers or pamphlets, must contain the same information and statements as required in subsection (b)(3)(A) - (D) and (4) of this section" instead of "The written warnings, such as fliers or pamphlets, must contain the same information and statements as required for the signs."

A new subsection (d) was added as follows: "A sign or poster prepared by and containing the approved logo of the Centers for Disease Control and Prevention pertaining to disease prevention of reptile-associated salmonellosis when handling or housing reptiles may be used to meet the required content for the warning sign; however, the written warning must still contain the required content as described in subsection (b)(3)(A) - (D) and (4) of this section, plus the local health department statement as described in subsection (c) of this section. All signs and posters must meet the guidelines set forth in subsection (b)(1) and (2) of this section."

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §81.004, which provides the Executive Commissioner with the authority to adopt rules necessary for the effective administration and implementation of the Communicable Disease Prevention and Control Act; Health and Safety Code, §81.352, which requires the Executive Commissioner to adopt a rule governing the form and content of the sign and written warning relating to reptile-associated salmonellosis; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

*§169.121. Reptile-Associated Salmonellosis.*

(a) The Texas Health and Safety Code, §81.352, requires retail stores that sell reptiles to post warning signs and distribute written warnings regarding reptile-associated salmonellosis to purchasers in accordance with the form and content designated by the Executive Commissioner.

(b) The warning signs must meet the following guidelines.

(1) The sign must be a minimum of 8.5 x 11 inches with fonts that are clearly visible and readily draw attention to the notice.

(2) The signs must be prominently displayed at each location where reptiles are displayed, housed, or held.

(3) At a minimum, the contents of the sign must include the following recommendations for preventing transmission of *Salmonella* from reptiles to humans.

(A) Wash your hands thoroughly with soap and running water after feeding reptiles, handling reptiles or reptile cages, or contacting reptile feces or the water from reptile containers or aquariums. If soap and water are not immediately available, use a hand sanitizer and then wash your hands with soap and water as soon as possible. Wash your hands before you touch your mouth and before you prepare, serve, or consume food or drinks. Adults should supervise hand washing for young children.

(B) Avoid contact with reptiles and any items that have been in contact with reptiles if you are a person at increased risk for infection or serious complications of salmonellosis, which, for instance, includes children younger than 5 years of age, adults aged 65 or older, and persons whose immune systems have been weakened by pregnancy, disease (for example, cancer), or certain medical treatments or procedures (for example, chemotherapy or organ transplantations). Keep reptiles out of households or facilities that include such at-risk persons. Consider removing any reptile from your residence and relocating it to a new home before a newborn baby is added to the household.

(C) Do not allow reptiles to roam freely throughout the home or living area. Wash and disinfect surfaces that a reptile or its cage has contacted. Wash any clothing that a reptile has contacted.

(D) Keep reptiles out of kitchens and other areas where food or drink is stored, prepared, served, or consumed. Do not use kitchen sinks to bathe reptiles or to wash their dishes, cages, or aquariums. If bathtubs are used for these purposes, clean them thoroughly and disinfect them with bleach. It is preferable to bathe reptiles in a container (such as a small tub or bin) designated for this use and to clean bathing containers, dishes, cages, or aquariums outside the house in a manner that prevents contact of the discarded material with other people and pets. Wear disposable gloves when washing bathing containers, dishes, cages, or aquariums. Wash your hands after removing the gloves.

(4) The sign must also contain a statement that reptiles carry *Salmonella* bacteria, which can make people sick, but reptiles may not appear to be sick.

(c) The written warnings, such as fliers or pamphlets, must contain the same information and statements as required in subsection (b)(3)(A) - (D) and (4) of this section. The written warnings must also contain a statement that purchasers of reptiles can contact their local health department for questions pertaining to *Salmonella.*

(d) A sign or poster prepared by and containing the approved logo of the Centers for Disease Control and Prevention pertaining to disease prevention of reptile-associated salmonellosis when handling or housing reptiles may be used to meet the required content for the warning sign; however, the written warning must still contain the required content as described in subsection (b)(3)(A) - (D) and (4) of this section, plus the local health department statement as described in subsection (c) of this section. All signs and posters must meet the guidelines set forth in subsection (b)(1) and (2) of this section.

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

Filed with the Office of the Secretary of State on October 24, 2016.

TRD-201605523
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 13, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 776-6972

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# TITLE 30. ENVIRONMENTAL QUALITY

## PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## CHAPTER 7. MEMORANDA OF UNDERSTANDING

### 30 TAC §7.102

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amended §7.102.

The commission adopts amended §7.102 *without change* to the proposed text as published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4157), and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The Memorandum of Understanding (MOU) between the Texas State Soil and Water Conservation Board (TSSWCB) and TCEQ became effective on June 9, 1997. A Letter of Agreement (LOA) regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on animal feeding operations (AFOs) with a certified water quality management plan (WQMP) and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are necessary to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and to incorporate applicable conditions of the LOA into the MOU. To update the MOU, the TSSWCB initiated rulemaking for 31 TAC §523.5 (Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality) on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9099). During the TSSWCB comment period no comments were received. On January 21, 2016, the TSSWCB adopted the amendment to 31 TAC §523.5, specifically adopting the MOU and making the rule effective (February 19, 2016, issue of the *Texas Register* (41 TexReg 1253)). This rulemaking adopts the amendment of the current MOU in §7.102 and replaces it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5.

Section by Section Discussion

The adopted amendment to §7.102 changes the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality" and adopts by reference the MOU adopted by the TSSWCB in 31 TAC §523.5.

Final Regulatory Impact Determination

The commission reviewed the adopted rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to Texas Government Code, §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule with the specific intent 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 specific intent of the adopted rule is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The original MOU between the agencies became effective June 9, 1997. An LOA regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on AFOs with a certified WQMP and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are also necessary to incorporate applicable conditions of the LOA into the MOU. The adopted amendment would replace the LOA.

The adopted rule does not meet the definition of a major environmental rule because the adopted rule only explains existing agency responsibilities rather than creates substantive requirements to protect the environment. The intent of the rule is merely to clarify and explain jurisdiction of the respective agencies. Because the intent of the rule does not create or require actions for the purpose of protecting the environment or reducing risks to human health from environmental exposure, the adopted rule is not an environmental rule. Additionally, the adopted rule does not meet the definition of a major environmental rule because it is not anticipated that the adopted rule will 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 because the adopted rule merely explicates jurisdiction of the respective agencies and does not impose new requirements. Finally, the adopted rule action does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code,

§2001.0225(a). Therefore, the commission concludes that the adopted rule does not meet the definition of a major environmental rule.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The adopted rulemaking would substantially advance this stated purpose by providing one reference point interpreting the jurisdiction of the respective agencies. Promulgation and enforcement of the adopted rule would be neither a statutory nor a constitutional taking of public or private real property because the adopted rule does not affect real property. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. The adopted rule merely clarifies and explains jurisdiction of the respective agencies. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on consistency with the CMP.

Public Comment

The commission held a public hearing on July 12, 2016. The comment period closed on July 15, 2016. The commission did not receive any comments on this rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.104, concerning Memoranda of Understanding (MOU), which authorizes the commission to enter into MOUs and adopt them as rules with other state agencies. Additionally, the amendment is adopted under TWC, §5.103 concerning Rules and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The adopted amendment implements 31 TAC §523.5.

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 October 21, 2016.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: June 10, 2016
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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 10. TEXAS WATER DEVELOPMENT BOARD

### CHAPTER 354. MEMORANDA OF UNDERSTANDING

#### 31 TAC §354.2, §354.5

The Texas Water Development Board (TWDB) adopts the repeal of 31 Texas Administrative Code (TAC) §354.2 and §354.5, without changes to the text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6394).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEALS.

The TWDB adopts the repeal of §354.2, relating to financing and construction of an international wastewater treatment facility in Nuevo Laredo, Tamaulipas, Mexico, because the Memorandum of Understanding (MOU) between the TWDB and the International Boundary and Water Commission has expired by its own terms.

The TWDB also adopts the repeal of §354.5, relating to coordinated reviews between the TWDB and the Texas Commission on Environmental Quality (TCEQ), because the Letter of Agreement (LOA) has been superseded.

SECTION BY SECTION DISCUSSION OF THE ADOPTED REPEALS.

Section 354.2 is repealed due to fulfillment of the conditions of the MOU. By its terms, the MOU was to be in effect for five years after the last units of the wastewater treatment facility began operations. The Nuevo Laredo International Wastewater Treatment Plant began operations in 1996, and the final phase was completed in January 2000.

Since September 21, 1992, the TWDB and the TCEQ have coordinated the reviews related to the design criteria for public water systems and wastewater facility construction in a Letter of Agreement (LOA or Agreement). The existing Agreement in §354.5 has been superseded and the new Agreement reflecting the current interaction between the TWDB and the TCEQ during the coordinated review of water supply projects seeking financing from the TWDB is adopted elsewhere in this issue of the *Texas Register.*

REGULATORY IMPACT ANALYSIS.

The Board reviewed the adopted repeals in light of the regulatory analysis requirements of Texas Government Code §2001.0225,

and determined that the repeals are not subject to Texas Government Code §2001.0225, because they do not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of these repeals is to remove an MOU that has been fulfilled and an LOA that has been superseded.

Even if the adopted repeals were major environmental rules, Texas Government Code, §2001.0225 still would not apply to these repeals because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. These repeals do not meet any of these four applicability criteria because they: 1) do not exceed the Federal Water Pollution Control Act or any other federal law; 2) do not exceed an express requirement of state law; 3) do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) are not adopted solely under the general powers of the agency, but rather are also adopted under authority of Texas Water Code §§6.101 and 6.104. Therefore, these adopted repeals do not fall under any of the applicable criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT.

The Board evaluated these adopted repeals and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of these repeals is to remove an MOU that has been fulfilled and has expired by its own terms and an LOA that has been superseded.

The Board's analysis indicates that Texas Government Code Chapter 2007 does not apply to these adopted repeals because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). Nevertheless, the Board further evaluated the adopted repeals and performed an assessment of whether they constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these adopted repeals would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed repeals do not affect a landowner's rights in private real property because they do not burden or restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted repeals do not constitute a taking under Texas Government Code Chapter 2007.

PUBLIC COMMENT.

The proposed repeals were open for public comment, and the comment period ended on September 26, 2016. No comments were received, and no changes to the proposed repeals have been made.

STATUTORY AUTHORITY.

These repeals are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules, and Texas Water Code §6.104, which requires the board to adopt by rule any memorandum of understanding between the TWDB and any other state agency.

The adopted repeals affect Texas Water Code §6.104.

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 October 24, 2016.

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Les Trobman
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-7686

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## 31 TAC §§354.2, 354.5, 354.7 - 354.15

The Texas Water Development Board (TWDB) adopts new 31 Texas Administrative Code (TAC) §§354.2, 354.5, and 354.7 - 354.15, without changes as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6395). Existing 31 TAC §354.2 and §354.5 are repealed elsewhere in this issue of the *Texas Register.*

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE ADOPTED RULES.

Texas Water Code §6.104 requires the TWDB to adopt by rule any Memorandum of Understanding (MOU) between the Board and another state agency. These adopted rules incorporate existing MOUs and similar agreements between the TWDB and other state agencies.

SECTION BY SECTION DISCUSSION OF THE ADOPTED RULES.

*§354.2. Memorandum of Understanding Between the Office of the Governor and the Texas Water Development Board.*

The Office of the Governor (OOG) and the TWDB executed an MOU authorizing the TWDB to administer emergency appropriations under Texas Government Code Chapter 401, Subchapter D.

The provisions of the MOU require the TWDB to administer up to $6.8 million in the Disaster Contingency Account, General Revenue Account 0453, to enhance existing flood notification systems and make funds available to state and local entities for floodplain management. The adopted rule contains the MOU that went into effect on December 10, 2015 and will expire on August 31, 2017, or upon expenditure of all available funds.

*§354.5. Letter of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality.*

Since September 21, 1992, the TWDB and the Texas Commission on Environmental Quality (TCEQ) have coordinated

reviews related to the design criteria for public water systems and wastewater facility construction in a Letter of Agreement (LOA or Agreement). This Agreement, which was executed on July 1, 2015, replaces all prior and existing LOAs in effect with the TCEQ and its predecessor agencies and accurately reflects the current interaction between the TWDB and the TCEQ during coordinated review of water supply projects seeking financing from the TWDB. The existing §354.5 is published for repeal elsewhere in this issue of the *Texas Register.*

*§354.7. Letter of Agreement Between the Railroad Commission of Texas and the Texas Water Development Board.*

The Railroad Commission of Texas (RRC) and the TWDB executed an LOA regarding access to linen maps owned by the RRC that will be used by the TWDB to identify and designate regional brackish groundwater production zones as mandated by the 84th Legislature. The adopted rule contains the LOA that went into effect on February 25, 2016.

*§354.8. Memorandum of Understanding Between the Texas Water Development Board and the Texas Department of Information Resources.*

The TWDB and the Texas Department of Information Resources (DIR) executed an MOU for electronic and information resources accessibility web scanning services. The MOU provides that DIR, through a third-party service provider, will conduct no-cost monthly accessibility scans of pages on the TWDB website and provide scan reports to TWDB and DIR. The adopted rule contains the MOU that went into effect on March 30, 2015 and continues until terminated by either of the parties or on termination of the underlying agreement with the third-party service provider.

*§354.9. Memorandum of Understanding Between the Public Utility Commission of Texas and the Texas Water Development Board.*

The TWDB executed an MOU with the Public Utility Commission of Texas (PUCT) to maintain a public online map viewer. The MOU provides that the Texas Natural Resources Information System (TNRIS), a TWDB division, will maintain the existing public online map viewer with data collection and assistance from the PUCT. The adopted rule contains the MOU that went into effect on May 18, 2016 and will terminate on August 31, 2017 unless a two-year renewal option is exercised.

*§354.10. Memorandum of Agreement Between the Texas Water Development Board, the Texas Parks and Wildlife Department and the Texas Commission on Environmental Quality.*

The TWDB, the Texas Parks and Wildlife Department (TPWD) and the TCEQ executed an MOA to establish an Instream Flow Studies Coordinating Committee. The adopted rule contains the MOA that went into effect on October 17, 2002 and continues until terminated by 30-day written notice of intent to cancel by any of the participating agencies.

*§354.11. Memorandum of Agreement Between the Texas Water Development Board and the Texas General Land Office.*

The TWDB and the Texas General Land Office (GLO) executed an MOA to coordinate the installation and operation of the Texas Coastal Ocean Observation Network. The adopted rule contains the MOA that went into effect on September 22, 2003 and continues until terminated by either party on 30-day written notice.

*§354.12. Memorandum of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality.*

The TWDB and the TCEQ executed an MOA to coordinate program responsibilities related to groundwater conservation district management planning approval, review and oversight. The adopted rule contains the MOA that went into effect on September 17, 2007 and continues until terminated by either party on 30-day written notice.

*§354.13. Memorandum of Agreement Between the Texas Water Development Board and the Texas Board of Professional Geoscientists.*

The TWDB and the Texas Board of Professional Geoscientists (TBPG) executed an MOA to coordinate information regarding complaints under and potential violations of the Texas Geoscience Practice Act. The adopted rule contains the MOA that went into effect on June 13, 2014 and continues until rescinded by either agency.

*§354.14. Agreement Between the Texas Water Development Board and the Texas Department of Transportation.*

The TWDB and the Texas Department of Transportation (TxDOT) entered into an Agreement for Right of Entry and Temporary Use of Highway Right of Way effective March 31, 2005 and continuing until terminated by either party on 30-day written notice. The adopted rule contains the Agreement that allows TWDB access to property under the jurisdiction of TxDOT in order to monitor water wells and outlines the conditions of such access and advance notice required.

*§354.15. Agreement Between the Texas Water Development Board and the Texas Comptroller of Public Accounts.*

The TWDB and the Texas Comptroller of Public Accounts (Comptroller) entered into an Agreement in Furtherance of Transparency Initiative on April 4, 2014. The adopted rule contains the Agreement that provides for TWDB to share debt and financial liability information with the Comptroller and outlines the terms of use for the information.

REGULATORY IMPACT ANALYSIS.

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225 because none of the adopted rules meets the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the rulemaking is to adopt by rule the MOUs and similar agreements as required by Texas Water Code §6.104.

Even if the adopted rules were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not

meet any of these four applicability criteria because it: 1) does not exceed any standard set by a federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency, but rather is also adopted under authority of Texas Water Code §§6.101 and 6.104. Therefore, these adopted rules do not fall under any of the applicable criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT.

The board evaluated these adopted rules and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of these rules is to adopt by rule the MOUs and similar agreements between the TWDB and various state agencies.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to these adopted rules because this rulemaking is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). Nevertheless, the board further evaluated these adopted rules and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden or restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted rules do not constitute a taking under Texas Government Code Chapter 2007.

PUBLIC COMMENT.

The proposed rules were open for public comment, and the comment period ended on September 26, 2016. No comments were received, and no changes to the proposed rules have been made.

STATUTORY AUTHORITY.

These rules are adopted under Texas Water Code §6.101, which gives the TWDB authority to adopt rules, and §6.104, which requires the TWDB to adopt by rule any memorandum of understanding between the TWDB and any other state agency.

Cross reference to statute: Texas Water Code §6.101 and §6.104.

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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