State Office of Administrative Hearings

Chapter 155 Rules of Procedure

Subchapter A General

§ 155.1 Purpose

(a) This chapter governs the procedures of the State Office of Administrative Hearings (SOAH). These rules apply in all matters referred to SOAH, including contested cases under the Administrative Procedure Act (APA), Tex. Gov't Code Chapter 2001. These rules do not apply to matters otherwise addressed by statute or to matters that are otherwise limited by the provisions of this chapter.

(b) Administrative License Suspension cases initiated by the Texas Department of Public Safety are governed by Chapter 159 of this title.

(c) Arbitration procedures for certain enforcement actions of the Texas Department of Aging and Disability Services regarding assisted living facilities and nursing homes are governed by Chapters 156 and 163 of this title.

(d) Appeals of appraisal review board decisions are governed by Chapter 165 of this title.

(e) Dispute resolution procedures for certain consumer health benefit disputes under Insurance Code, Chapter 1467, are governed by Chapter 167 of this title.

(f) The procedural rules of the Public Utility Commission of Texas (PUC) that are adopted by reference are those enacted in Title 16, Chapter 22 of the Texas Administrative Code. The procedural rules of the Texas Commission on Environmental Quality (TCEQ) are adopted by reference are those enacted in Title 30, Chapter 80 of the Texas Administrative Code. This adoption does not include any PUC or TCEQ rules addressing the use of Alternative Dispute Resolution (ADR) processes at SOAH. Those ADR processes are governed by the Governmental Dispute Resolution Act, Tex. Gov't Code Chapter 2009; SOAH rule provisions pertaining to ADR; and interagency contracts, memoranda of understanding, or other written agreements with referring entities.

(g) The procedural rules of the Comptroller of Public Accounts (CPA) that address the hearing process in matters referred by that agency pertaining to protesting preliminary findings of a property value study are those enacted in Title 34,

Chapter 9, Subchapter L of the Texas Administrative Code.

(h) Under Tex. Gov't Code §815.102, the procedural rules of the Employees Retirement System of Texas (ERS) govern the formal contested case process in matters it refers to SOAH.

(i) Proceedings under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400, *et seq.* , are governed by that statute, federal regulations at 34 C.F.R. Part 300, the rules of the Texas Education Agency at 19 TAC Chapter 89, and the procedures set forth in §§155.51, 155.53, 155.101(a)-(b), 155.103, 155.105, 155.301, 155.305, and 155.429(b) of this chapter.

§ 155.3 Application and Construction of this Chapter

(a) SOAH proceedings shall be conducted in accordance with the APA, when applicable, and with this chapter. The judge may modify and supplement the requirements of this chapter to promote the fair and efficient handling of the case and to facilitate resolution of issues, if doing so will not unduly prejudice the rights of any person or contravene applicable statutes.

(b) If there is a conflict between an agency's rules or prior decisions and statutory provisions applicable to the case, and the rules or decisions cannot be harmonized with the statute, the statute controls.

(c) The procedural rules of a state agency govern SOAH proceedings only to the extent that SOAH's rules adopt the agency's procedural rules by reference, unless otherwise required by law.

(d) If there is a conflict between SOAH's rules and the procedural rules of the TCEQ adopted in §155.1 of this chapter, the TCEQ rules will control.

(e) If there is a conflict between SOAH's rules and the procedural rules of the PUC adopted in §155.1 of this chapter, the PUC rules will control.

(f) If there is a conflict between SOAH's rules and the procedural rules of ERS referenced in §155.1 of this chapter, the ERS rules will control.

(g) This chapter shall be construed to ensure the just and expeditious determination of every matter referred to SOAH. Not all contested procedural issues will be susceptible to resolution by reference to the APA and other applicable statutes, this chapter, and case law. When they are not, the presiding judge will consider applicable policy of the referring agency documented in the record in accordance with §155.419 of this chapter, the Texas Rules of Civil Procedure (TRCP) as interpreted and construed by Texas case law, and persuasive authority established in other forums.

(h) Unless otherwise expressly provided, the past, present, and future tense shall each include the others; the masculine, feminine, and neuter gender shall each include the others; and the singular and plural number shall each include the other.

(i) Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical

or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly. The principles of statutory construction and of the Code Construction Act, Tex. Gov't Code Chapter 311, apply.

§ 155.5 Definitions

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

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

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

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

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

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

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

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

(8) Confidential Information--confidential information includes:

(A) information made confidential by law;

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

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

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

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

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

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

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

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

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

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

(14) Ex Parte Communication--Direct or indirect communication between a state agency, person, or representative of those entities and the presiding judge or other SOAH hearings personnel in connection with an issue of law or fact in

a contested case or arbitration under SOAH's jurisdiction where the other known parties to the proceeding do not have notice of the communication and an opportunity to participate. Ex parte communication does not include:

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

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

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

(D) consultation between the presiding judge and another disinterested expert on the law applicable to a proceeding before the judge, if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;

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

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

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

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

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

(18) IDEA--The Individuals with Disabilities Education Act.

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

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

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

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

(23) Personal Identifying Information--Information that alone or in conjunction with other information identifies a specific individual, and that, is protected from unlawful use, possession, or disclosure. Personal identifying information includes an individual's:

(A) Social Security number, taxpayer identification number, driver's license number, passport number, or similar government-issued personal identification number;

(B) bank account number, credit card number, or other financial account number;

(C) telecommunication access device as defined by Section 32.51, Penal Code;

(D) date of birth;

(E) mother's maiden name;

(F) full name, if the person is a minor;

(G) unique biometric data, including the individual's fingerprint, voice print, and retina or iris image; and

(H) information that identifies the individual and relates to:

(i) the physical or mental health or condition of the individual;

(ii) the provision of health care to the individual; or

(iii) payment for the provision of health care to the individual.

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

(25) PUC--The Public Utility Commission of Texas.

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

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

(28) SOAH--The State Office of Administrative Hearings.

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

(30) TAC--The Texas Administrative Code.

(31) TCEQ--The Texas Commission on Environmental Quality.

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

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

§ 155.7 Computation of Time

(a) Application of rule. This rule applies unless another method is required by statute, another rule in this chapter, or order.

(b) Computing time periods. When computing periods of time prescribed or allowed in this chapter:

(1) the day of the act, event, or default from which the designated time period begins to run is not counted; and

(2) the last day of the time period is counted, unless it is a day on which SOAH's offices are closed, in which case the time period will end on the next day SOAH's offices are open.

(c) Calendar days. Time limits shall be computed using calendar days rather than business days except as provided by subsection (d) of this section.

(d) Five days or less. If the time limit is five days or less, the intervening Saturdays, Sundays, and legal holidays are not counted.

(e) Requests to extend a time limit are governed by §155.307 of this chapter.

§ 155.9 Seal

SOAH may maintain a seal to authenticate its official acts, including certifying copies of the administrative records of any matters heard by SOAH. The seal shall have a star with five points and the words "State Office of Administrative Hearings" engraved upon it.

Subchapter B Docketing-Filing a Contested Case

§ 155.51 Jurisdiction

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

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

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

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

§ 155.53 Request to Docket Case

(a) Request to Docket Case form. A referring agency shall file with SOAH a completed Request to Docket Case form for each matter referred to SOAH.

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

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

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

(1) setting of a hearing;

(2) assignment of a judge; or

(3) an ADR process.

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

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

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

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

Subchapter C Filing and Service of Documents

§ 155.101 Filing Documents

(a) Filing and service required.

(1) All pleadings and other documents shall be filed using one of the methods described in this rule.

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

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

(1) Electronic Filing Required.

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

(B) The electronic version of a document that has been electronically filed at SOAH shall be given the same legal status as the original document.

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

(D) Formatting and submission. A document filed electronically must:

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

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

(iii) not be locked;

(iv) include the email address of a party, attorney, or representative who electronically files the document;

(v) be accompanied by the entry in the electronic filing manager of complete and accurate service contact information known to the parties at the time of filing, including the designation of lead counsel if the party is represented by counsel;

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

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

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

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

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

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

(F) Time of filing. Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight central time on the filing deadline. Once a document has

been accepted for filing by SOAH, an electronically filed document is deemed filed on the date when transmitted to the filing party's electronic filing service provider, except:

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

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

(iii) If the deadline required for filing a document in an IDEA special education due process proceeding falls on a Saturday, Sunday, or legal holiday, then clause (i) of this subparagraph does not apply and the document is deemed filed on the date when transmitted to the filing party's electronic filing service provider.

(G) Documents offered at a hearing.

(i) Any documents, including written testimony and exhibits, offered at a hearing that were not otherwise filed as part of the record shall be filed electronically.

(ii) If the judge sustained an evidentiary objection to a document offered at a hearing that resulted in exclusion of the document, then the excluded document shall be filed in accordance with this section only if there was an offer of proof.

(iii) Documents required to be filed by this section shall be filed electronically by not later than the next business day after the conclusion of the hearing at which they were offered, unless otherwise ordered by the judge.

(2) Filings by unrepresented parties.

(A) Parties who are not represented by an attorney may file documents using any of the following methods:

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

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

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

(iv) by fax to the appropriate SOAH office location; or

(v) at the SOAH field office where the case is assigned, using the field office address available at SOAH's website.

(B) All documents filed by unrepresented parties must:

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

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

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

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

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

(3) Filing Errors.

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

(B) Non-conforming documents. SOAH's docketing department may not refuse to file a document that fails to conform with this rule. When a filed document fails to conform to this rule, the presiding judge or SOAH's

docketing department may identify the errors to be corrected and state a deadline for the person, attorney, or agency to resubmit the document in conforming format.

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

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

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

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

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

(2) The party filing a document with the PUC (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with electronic or hard copies of the document upon request or order of the judge.

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

(d) Method of filing in cases referred by the TCEQ.

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

(2) The time and date of filing of these materials shall be determined by the file

stamp affixed by the chief clerk, or as evidenced by the file stamp affixed to the document or envelope by the TCEQ mail room, whichever is earlier.

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

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

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

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

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

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

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

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

(E) The mediator's report, which shall include only the information as described in §155.351(f)(3) of this chapter;

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

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

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

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

§ 155.103 Confidential Information

(a) Records filed as part of a contested case proceeding at SOAH are presumed to be open to the public unless designated as confidential in accordance with this rule. A party filing or offering documents that contain confidential information and/or personal identifying information, as those terms are defined in §155.5 of this chapter, shall comply with this rule to prevent inadvertent public disclosure of such documents.

(b) Documents filed in confidential cases.

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

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

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

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

(D) Proceedings involving public retirement system benefits;

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

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

(G) IDEA special education due process proceedings referred by the Texas Education Agency.

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

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

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

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

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

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

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

(c) Confidential information filed in public cases.

(1) Redaction required. A person who files documents at SOAH in proceedings designated as open to the public, including exhibits, shall redact from the documents all confidential information and personal identifying information that is unnecessary for resolution of the case. Unless otherwise ordered by the judge, a party may not file an unredacted document containing confidential information or personal identifying information in a proceeding that is open to the public except as provided in subsection (c)(2) of this section.

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

(A) the entire document or exhibit contains confidential information or includes personal identifying information;

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

(C) no less restrictive means other than withholding the information from public disclosure will adequately or effectively protect the specific confidentiality interest asserted.

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

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

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

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

(3) Filing confidential documents. In addition to the requirements of §155.101 of this chapter, a party filing confidential documents in a proceeding accessible to the public shall submit documents for filing as follows:

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

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

(C) Attorneys, state agencies, and other governmental entities required to electronically file documents in the manner specified by §155.101 of this

chapter shall designate all such documents as "confidential" within the party's electronic filing service provider.

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

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

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

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

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

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

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

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

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

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

(g) Sanctions. The judge may issue an order imposing sanctions in the manner described in §155.157 of this chapter for the actions of a party in improperly filing or offering documents that contain confidential information or personal identifying information, or for actions that result in the public disclosure of information that is confidential by law.

§ 155.105 Service of Documents on Parties

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

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

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

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

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

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

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

(i) return the filing;

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

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

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

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

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

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

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

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

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

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

Subchapter D Judges

§ 155.151 Assignment of Judges to Cases

(a) Discretion of Chief Judge. Assignment of judges to cases is at the discretion of the Chief Judge and the Chief Judge's designees and is not subject to request except as provided by §155.152 of this subchapter.

(b) Judge's inability to continue presiding. If a judge is unable to continue presiding or to issue a decision or proposal for decision after the conclusion of the hearing, the Chief Judge or the Chief Judge's designee may reassign the case to another judge. That judge shall review the existing record and need not repeat previous proceedings but may conduct further proceedings as necessary.

(c) Assignment of more than one judge. More than one judge may be assigned to a case.

(1) If more than one judge is assigned to a case, the judges may divide their areas of responsibility.

(2) Evidentiary and procedural questions will be resolved by the judge presiding at the time the issues arise or may be referred to another judge assigned to the case.

(d) Temporary assignments. Cases may be temporarily assigned to a judge or panel of judges to decide regularly occurring threshold issues.

§ 155.152 Disqualification or Recusal of Judges

(a) A judge is subject to recusal or disqualification on the same grounds and under the same circumstances as specified in TRCP Rule 18b.

(1) Motion. A motion to recuse or disqualify a judge assigned to a case should:

(A) be made at the earliest practicable time;

(B) be verified, if the motion is in writing;

(C) state with particularity the grounds for the motion; and

(D) be based on personal knowledge and include such facts as would be admissible in evidence, except that facts may be stated on information and belief if the basis for such belief is specifically stated.

(2) Response to motion. Any other party may file or make a statement opposing or concurring with a motion to recuse or disqualify.

(b) If the presiding judge who is the subject of the motion disqualifies or recuses him- or herself based on the motion, the Chief Judge or a designee of the Chief Judge shall assign a different presiding judge to the case.

(c) If the presiding judge who is the subject of the motion does not disqualify or recuse him- or herself from the case, the Chief Judge or a designee of the Chief Judge shall assign another judge to consider and rule on the motion. At the discretion of the assigned judge, a hearing may be held on the motion. If the assigned judge finds that the presiding judge is disqualified or should be recused, the Chief Judge or a designee of the Chief Judge shall assign a different presiding judge to the case.

§ 155.153 Powers and Duties

(a) Judge's authority and duties. The judge shall have the authority and duty to:

(1) conduct a full, fair, and efficient hearing;

(2) take action to avoid unnecessary delay in the disposition of the proceeding; and

(3) maintain order.

(b) Judge's powers. The judge shall have the power to regulate prehearing matters, the hearing, posthearing matters, and the conduct of the parties and authorized representatives, including the power to:

(1) administer oaths;

(2) take testimony, including the power to question witnesses and to request the presence of a witness from a state agency;

(3) rule on questions of evidence;

(4) rule on discovery issues;

(5) issue orders relating to hearing and prehearing matters, including orders imposing sanctions;

(6) admit or deny party status;

(7) designate the party with the burden of proof pursuant to §155.427 of this chapter;

(8) exclude irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations of evidence or argument;

(9) order parties to submit legal memoranda and proposed findings of fact and conclusions of law;

(10) reopen the record when justice requires, if the judge has not issued a dismissal, proposal for decision, or final decision;

(11) issue proposals for decision pursuant to Tex. Gov't Code §2001.062 and, when authorized, final decisions;

(12) rule on motions for rehearing, when authorized;

(13) reopen the record after a proposal for decision has been issued when a case is remanded by a referring agency for further proceedings; and

(14) reopen the record after a final decision has been issued by SOAH if the judge grants a motion for rehearing, or when a case is remanded by a court to SOAH for further proceedings.

§ 155.155 Orders

(a) Judge's authority. The judge has authority to:

(1) issue orders to control the conduct and scope of the proceeding;

(2) rule on motions;

(3) establish deadlines;

(4) schedule and conduct prehearing or posthearing conferences;

(5) require the prefiling of exhibits and testimony;

(6) set out requirements for participation in the case; and

(7) take other steps conducive to a fair and efficient contested case process.

(b) Record of rulings. Rulings not made orally at a recorded prehearing conference or hearing shall be in writing and issued to all parties of record.

(c) Consolidation or joinder for hearing. The judge may order that cases be consolidated or joined for hearing if:

(1) there are common issues of law or fact; and

(2) consolidation or joint hearing will promote the fair and efficient handling of the matters.

(d) Severance of issues. The judge may order severance of issues if separate hearings on the issues will promote the fair and efficient handling of the matters.

(e) Referral to mediation. The judge may order referral of a case to mediation or other appropriate alternative dispute resolution procedure as provided by the Governmental Dispute Resolution Act, Tex. Gov't Code Chapter 2009, and the statute creating SOAH, Tex. Gov't Code Chapter 2003.

§ 155.157 Sanctioning Authority

(a) Authority to impose sanctions. For contested cases referred by an agency other than the PUC or the TCEQ, the judge has the authority to impose appropriate sanctions against a party or its representative for:

(1) filing a motion or pleading that is deemed by the judge to be groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abuse of the discovery process in seeking, making, or resisting discovery; or

(3) failure to obey an order of the judge or a SOAH or referring agency rule.

(b) Sanctions that may be imposed. The judge may issue an order imposing sanctions when justified by party or representative behavior described in subsection (a) of this section and after notice and opportunity for hearing. Sanctions may include:

(1) disallowing or limiting further discovery by the offending party;

(2) charging all or part of the expenses of discovery against the offending party or its representatives;

(3) deeming designated facts be admitted for purposes of the proceeding;

(4) refusing to allow the offending party to support or oppose a claim or defense or prohibiting the party from introducing designated matters into the record;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; or

(6) striking pleadings or testimony in whole or in part.

Subchapter E Representation of Parties

§ 155.201 Representation of Parties

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

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

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

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

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

§ 155.203 Withdrawal of Counsel

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

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

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

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

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

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

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

Subchapter F Discovery

§ 155.251 General Provisions

(a) Commencement of discovery. Discovery may begin when SOAH acquires jurisdiction under §155.51 of this chapter.

(b) Discovery period. The discovery period ends ten days before the hearing on the merits begins, unless otherwise ordered by the judge or agreed by the parties.

(c) Discovery rights. Parties have the discovery rights provided in this section, the APA, and the TRCP, other than the provisions relating to discovery control plans and except as modified by this chapter. Discovery rights may be modified or changed by the judge. For cases not adjudicated under the APA, the judge will determine what discovery, if any, will be permitted.

(d) Discovery requests, responses, and documents produced in discovery shall not be filed with SOAH, except as provided in §155.259 of this chapter.

§ 155.253 Depositions

(a) The APA governs the taking and use of depositions unless otherwise provided by law.

(b) Except with permission of the judge upon a showing of good cause or upon agreement by all parties, the following apply:

(1) All parties must receive at least seven days' notice of a deposition. The parties should make reasonable efforts to confer on the date, time, and location of the deposition.

(2) No party or side may examine or cross-examine an individual witness for more than six hours.

(3) Brief breaks taken during the deposition do not count in the calculation of the period for a deposition.

§ 155.255 Written Discovery

(a) Forms of written discovery. Unless otherwise provided by this section or ordered by the judge, parties may use the forms of written discovery provided by the TRCP, with the following modifications:

(1) Requests for production. Each party may serve no more than 25 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

(2) Interrogatories. Each party may serve no more than 25 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

(3) Requests for admissions. Each party may serve no more than 25 requests for admissions. Requests for admissions may be used only to address jurisdictional facts or the genuineness of any documents served with the request.

(4) Requests for disclosure.

(A) The discovery rules of the TRCP requiring initial disclosures without awaiting a discovery request do not apply to a contested case under SOAH's jurisdiction, except as may be ordered or allowed by the judge.

(B) A party may request disclosure of documents or information that the opposing party has in its possession, custody, or control, including, but not limited to, the following:

(i) the correct names of the parties to the contested case; the name, address, and telephone number of any potential parties;

(ii) a general description of the legal theories and the factual bases of the responding party's claims or defenses, if not already set forth in a pleading or document filed in the record of the proceeding at SOAH;

(iii) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

(iv) the statement of any person with knowledge of relevant facts (witness statement) regardless of when the statement was made; and

(v) a copy, or description by category and location, of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody or control and may use to support its claims or defenses, unless the use would be solely for impeachment. A request for disclosure made pursuant to this subsection is not considered a request for production.

(5) Expert Disclosures and Reports. Upon request of the opposing party, or as otherwise ordered or allowed by the judge, a party must timely provide the following disclosures for any testifying expert in advance of a scheduled hearing on the merits:

(A) the expert's name, address, and telephone number;

(B) the subject matter on which the expert will testify;

(C) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

(D) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(i) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony;

(ii) the expert's current resume and bibliography;

(iii) the expert's qualifications, including a list of all publications authored in the previous 10 years;

(iv) a list of all other cases in which, during the previous four years, the expert testified as an expert at trial or by deposition; and

(v) a statement of the compensation to be paid for the expert's study and testimony in the case.

(E) If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert have not been recorded and reduced to tangible form, the judge may order these matters reduced to tangible form and produced, in addition to the deposition of the expert.

(b) Written discovery requests shall be served at least 30 days before the end of the discovery period, unless otherwise specified by this section or ordered by the judge.

(c) Response. Unless otherwise ordered by the judge or agreed by the parties, responses to written discovery requests shall be made within 30 days after receipt.

(1) Responses and documents produced in discovery shall be served upon the requesting party, and notice of service shall be given to all parties.

(2) A party producing documents in response to a discovery request must retain the original documents or exact duplicates of the original documents.

§ 155.257 Subpoenas and Commissions

(a) Except in TCEQ and PUC cases, requests for issuance of subpoenas or commissions shall be directed to the referring agency. Any such requests shall comply with the APA and the applicable agency procedure, if any, regarding issuance of subpoenas or commissions.

(b) In TCEQ and PUC cases, requests for issuance of subpoenas or commissions shall be submitted in accordance with those agencies' rules.

(c) Disputes over whether a request complies with applicable law should be presented to the judge in a motion filed pursuant to §155.259 of this chapter.

§ 155.259 Discovery Motions

(a) Certificate of conference. The parties and their authorized representatives shall cooperate in discovery and shall endeavor to make any agreements reasonably necessary for the efficient disposition of the case. All discovery motions shall include a certificate of conference complying with §155.305(b)(2) of this chapter.

(b) Motions for protection. A person from whom discovery is sought may file a motion within the time permitted for a response to request an order protecting that person from the discovery sought. A motion for protection shall include the relevant portion of the discovery request at issue. A person must comply with a discovery request to the extent protection is not sought unless it is unreasonable under the circumstances to do so before obtaining a ruling on the motion.

(c) Motions to compel. A person alleging failure to comply with discovery shall file a motion to compel as soon as practicable. A motion to compel shall include the relevant portion of the discovery response at issue. A motion to compel shall not be filed less than 10 days before the first day of the hearing on the merits, unless good cause is shown. A judge may deny or limit relief sought in a motion to compel if the judge determines that the discovery requests at issue are improper or unduly burdensome.

(d) *In camera* inspections. If a party's assertion of a privilege or an exemption under the TRCP is made the subject of a motion for protection or a motion to compel, the party resisting discovery must request an *in camera* inspection (inspection by the judge) and provide the documents for review under seal. The request shall state the factual and legal basis that support the claimed privilege or exemption and shall comply with the provisions of §155.103 of this chapter.

(e) Responses to discovery motion. Responses to discovery motions shall be filed in accordance with §155.305(c).

(f) Discovery materials. Motions and responses in a discovery dispute shall include only the relevant portions of the discovery materials at issue.

(g) Confidentiality. Confidential information contained in or attached to a discovery motion or response must be filed in compliance with §155.103 of this chapter.

Subchapter G Pleadings and Motions

§ 155.301 Required Form of Pleadings

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

(1) the name of the party seeking action;

(2) the SOAH docket number;

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

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

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

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

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

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

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

(2) As to all other matters in a pleading, an amendment or supplementation that includes information material to the substance of the hearing, requests for relief, changes to the scope of the hearing, or other matters that unfairly surprise other

parties may not be filed later than seven days before the date of the hearing, except by agreement of all parties or by permission of the judge.

§ 155.303 Effect of Signing Pleadings

The signatures of parties or authorized representatives constitute certification that they have read the pleading and that, to the best of their knowledge, information, and belief formed after reasonable inquiry, the pleading is neither groundless nor brought in bad faith.

§ 155.305 Motions, Generally

(a) Purpose and effect of motions. To make a request, including a request to change a setting or obtain a ruling, order, or any other procedural relief from the judge, a party shall file a written motion. The motion shall describe specifically the action requested and the basis for the requested action. Unless otherwise specified in this chapter, a motion is not granted until it has been ruled on by the judge, even if the motion is uncontested or agreed.

(b) General requirements for motions. Except as provided in this chapter, or unless otherwise ordered by the judge, all motions shall:

(1) be filed in writing no later than seven days before the date of the hearing; except, for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at a hearing;

(2) include a certificate of conference that complies substantially with one of the following examples:

(A) Example one: "Certificate of Conference: I certify that I conferred with {name of other party or other party's authorized representative} on {date} about this motion. {Succinct statement of other party's position on the action sought and/or a statement that the parties negotiated in good faith but were unable to resolve their dispute before submitting it to the judge for resolution.} Signature."

(B) Example two: "Certificate of Conference: I certify that I made reasonable but unsuccessful attempts to confer with {name of other party or other party's authorized representative} on {date or dates} about this motion. {Succinctly describe these attempts.} Signature."; and

(3) include a reference in the motion's title to a request for a hearing on the motion if the moving party seeks a hearing.

(c) Responses to motions.

(1) Except as otherwise provided in this chapter or as ordered or allowed by the judge, responses to motions shall be in writing and filed on the earlier of:

(A) five days after the motion is filed; or

(B) the date and time of the hearing; however, if the judge finds a good reason has been shown, responses to written motions may be presented orally at hearing.

(2) If no response is filed within the time period prescribed by this section or chapter, the judge may consider the motion unopposed.

(d) Motions to intervene or for party status. Motions for party status shall be filed no later than 20 days prior to the date the case is set for hearing. Responses to such motions shall be filed no later than seven days after the motion is filed.

(e) Other motions. In addition, other types of motions are addressed in other sections of this chapter. If there is a conflict between this section and a requirement found in another section relating to a specific type of motion, the more specific provision applies.

§ 155.307 Motions for Continuance and to Extend Time

(a) Contents of a motion for continuance. A request to postpone or delay a hearing or prehearing conference shall include:

(1) a statement of the number of motions for continuance previously filed in the case by each party;

(2) the specific reason for the continuance;

(3) at least three proposed dates for the rescheduled proceeding or a deadline by which the movant will confer with the non-moving parties to submit three agreed proposed dates; and

(4) a certificate of conference that complies substantially with one of the examples set out in §155.305(b)(2) of this subchapter.

(b) Contents of a motion to extend time. A request for more time to file a document or respond to discovery shall include:

(1) a statement of the number of extension requests previously sought in the case by the movant;

(2) the specific reason for the request;

(3) a proposed date for the deadline the movant seeks to extend; and

(4) a certificate of conference that complies substantially with one of the examples set out in §155.305(b)(2) of this subchapter.

(c) Date of filing. Motions for continuance or to extend time shall be filed no later than five days before the date of the proceeding or deadline at issue or shall state good cause for presenting the motion after that time. If the judge finds good cause has been demonstrated, the judge may consider a motion filed after that time or presented orally at the proceeding.

(d) Date of service. Motions for continuance or extension shall be served in accordance with §155.105 of this chapter. However, a motion for continuance that is filed five days or less before the date of the proceeding shall be served:

(1) by hand-delivery, fax, or email on the same day it is filed with SOAH, if feasible; or

(2) if same-day service is not feasible, by overnight delivery on the next business day.

(e) Responses to motions for continuance. Responses to motions for continuance shall be in writing, except a response to a motion for continuance made on the date of the proceeding may be presented orally at the proceeding. Unless otherwise ordered or allowed by the judge, responses to motions for continuance shall be made by the earlier of:

(1) three days after receipt of the motion; or

(2) the date and time of the proceeding.

(f) Responses to motions to extend time. Unless otherwise ordered by the judge, responses to motions for extension of a deadline are due three days after receipt of the motion.

(g) A motion for continuance or extension of time is not granted until it has been ruled on by the judge, even if the motion is uncontested or agreed. A case is subject to default or dismissal for a party's failure to appear at a scheduled hearing in which a motion for continuance has not been ruled on by the judge, even when the motion is agreed or unopposed.

Subchapter H Mediation

§ 155.351 Mediation

(a) Requesting mediation.

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

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

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

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

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

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

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

(b) Evaluation for Mediation.

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

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

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

(c) Referral to mediation.

(1) If a request for mediation is granted, the presiding judge will refer the case to the SOAH ADR Team Leader for assignment of a mediator, unless the parties

have notified the judge that they have agreed upon a non-SOAH mediator qualified in accordance with Tex. Civ. Prac. & Rem. Code Chapter 154 and that they will be responsible for any costs and expenses of the non-SOAH mediator.

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

(d) Assignment of SOAH mediators.

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

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

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

(e) Use of non-SOAH mediators.

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

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

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

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

(f) Confidentiality of mediation.

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

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

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

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

(g) Agreements reached in mediation.

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

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

(h) Limits on mediator's authority.

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

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

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

Subchapter I Hearings and Prehearings

§ 155.401 Notice of Hearing

(a) Notice of hearing. A referring agency shall provide notice of hearing to all parties in accordance with Tex. Gov't Code §§2001.051 and 2001.052 and shall include a specific citation to Chapter 155 of this title unless applicable law provides otherwise. The notice of hearing shall include the following language in 12-point, bold-face type: "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

(b) Judge's orders. A judge may issue orders regarding the date, time, and place for hearing, and orders affecting the scope of the proceeding.

(c) Sufficiency of initial notice of hearing. A notice of rescheduling of a hearing will not affect the sufficiency of an initial notice of hearing provided by an agency under subsection (a) of this section.

§ 155.403 Venue

(a) Neutral hearing site. SOAH will designate a neutral hearing site in accordance with applicable law.

(b) Factors judge may consider. In designating a hearing site not in Austin, the judge may consider the following factors:

(1) the amount in controversy;

(2) the number of persons in the geographical region affected by the outcome of the hearing;

(3) the estimated length of the hearing;

(4) the availability of hearing facilities;

(5) the costs to and preferences of the parties;

(6) the location of witnesses;

(7) the availability and feasibility of videoconference technology as a means to reduce costs to SOAH and the parties;

(8) legislative restrictions on travel; and

(9) any applicable law or other factor relevant to the fair and expeditious resolution of the case.

§ 155.405 Participation by Telephone or Videoconference

(a) Request to appear by telephone. A party may request to appear or present testimony by telephone or to present the testimony of a witness by telephone.

(1) To appear or present testimony by telephone, a party must file a motion no later than ten days before the proceeding unless a different time period is allowed by the judge.

(2) A motion shall include at least the following:

(A) the reason for the request;

(B) the name of the party or witness who will appear by phone;

(C) the telephone number at which the party or witness may be reached at the time of the proceeding;

(D) a statement that the party or witness will be the same person who will appear by telephone at the proceeding; and

(E) a certificate of conference complying with §155.305(b)(2) of this chapter.

(3) A timely, unopposed motion will be deemed granted without the necessity of an order, unless denied by order.

(b) Request to appear by videoconference. A party may request to appear or present the testimony of a witness by videoconference.

(1) To appear or present testimony by videoconference, a party must file a motion no later than ten days before the proceeding.

(2) A motion shall include a statement of the reason for the request, the name of the party or witness who will appear by videoconference, and the city in which the party or witness will be located at the time of the proceeding.

(c) Hearings and prehearing conferences by telephone or videoconference. The judge may conduct hearings and prehearing conferences by telephone or videoconference upon notice to the parties, even in the absence of a motion.

(d) Substantive and procedural rights. All substantive and procedural rights apply to telephone and videoconference proceedings, subject only to the limitations of the physical arrangement.

(e) Documentary evidence. Prior to the hearing, the parties must exchange, and provide to witnesses appearing telephonically or by videoconference, all documents necessary for effective participation in the hearing.

(f) Failure to appear at telephone or videoconference proceeding. For a telephone or videoconference proceeding, the following may be considered a failure to appear and grounds for default, dismissal for want of prosecution, or other adverse action if the conditions exist for more than ten minutes after the scheduled time for the proceeding:

(1) failure to answer the telephone or videoconference line;

(2) failure to free the line for the proceeding; or

(3) failure to be ready to proceed.

§ 155.407 Interpreters

(a) A party or witness who needs an interpreter or translator in order to participate in a proceeding shall file a written request at least seven days before the setting. A timely, unopposed request will be deemed granted without the necessity of an order, unless denied by order.

(b) SOAH shall provide and pay for the following:

(1) an interpreter for hearing-impaired parties and witnesses, in accordance with Tex. Gov't Code §2001.055;

(2) reader services or other communication services for visually-impaired parties and witnesses; and

(3) a certified language interpreter.

§ 155.409 Public Attendance and Comment

(a) Proceedings open to public. Unless prohibited by law, all SOAH proceedings are open to the public.

(b) Removal of persons from proceeding. The judge retains the authority to remove persons whose conduct impedes the orderly progress of the proceeding and to take necessary steps to limit attendance due to any physical limitations of the hearing facility.

(c) Public comment. When authorized by statute, members of the public shall be allowed to make public comment addressing matters pertinent to the issues in the case. Unless provided by law, public comment is not part of the evidentiary record of the case.

§ 155.411 Media Coverage and Use of Recording Devices

(a) When coverage is permitted. Proceedings that are open to the public may be photographed or recorded, whether for broadcast or personal use, in a manner that does not interfere with the orderly conduct of the proceeding, unduly distract participants, or impair the dignity of the proceedings. A person desiring to photograph or record a SOAH proceeding must notify the judge before doing so. Photographing or recording in a covert manner is prohibited.

(b) Recording or photographing any of the following is prohibited:

(1) proceedings that are closed to the public;

(2) conferences between an attorney and client, witness, or aide, or between attorneys;

(3) bench conferences or other deliberations of the judge(s); or

(4) other privileged or confidential communications.

(c) Authority of presiding judge.

(1) The judge may deny, limit, or terminate any recording or photographing that does not comply with this section.

(2) No proceeding will be delayed or continued for the sole purpose of facilitating recording or photographing the proceeding.

(d) Equipment and personnel. The judge may specify the placement of media personnel and equipment to permit reasonable coverage or recording without disruption to the proceeding. Unless the judge orders otherwise, the following standards apply to the placement and operation of media equipment:

(1) If media coverage is sought by more than one person or entity, the judge may require a pool system to be used. It will be the responsibility of the media to resolve any disputes among themselves as to which personnel will operate equipment in the hearing room.

(2) Equipment shall not produce distracting sound or light. Moving lights, flash attachments, or sudden lighting changes are prohibited.

(3) Operators shall not move equipment while the hearing is in session or otherwise cause a distraction. All equipment shall be in place in advance of the commencement of the proceeding.

(4) Media personnel operating outside the hearing room shall not create a distraction and shall withdraw whenever necessary to avoid restricting movement of persons passing through the hearing room door.

§ 155.415 Party Agreements

Unless otherwise provided in this chapter, no agreement between attorneys or parties regarding a contested case pending before SOAH will be enforced unless it is in writing, signed, and filed with SOAH or entered on the record at the hearing or prehearing conference.

§ 155.417 Stipulations

(a) Generally. Subject to the judge's approval, the parties may stipulate to any factual, legal, or procedural matters.

(b) Record of stipulations. A stipulation must be filed in writing or stated on the record.

§ 155.419 Consideration of Policy not Incorporated in Referring Agency's Rules

(a) Agency policy. A party relying on a specific, written agency policy not incorporated in a rule has the burden of authenticating the policy and showing it to be applicable to a factual or legal issue in the case.

(b) Judge's consideration of agency policy. In resolving contested issues, the judge shall consider any applicable agency policy not incorporated in the agency's rules that is written and supported by the evidence. The judge's decision or recommendation on whether to apply an agency's policy will depend upon the nature and context of the policy, any request to apply it, and other factors such as:

(1) the extent to which the parties were given notice of the policy, including whether:

(A) the policy was made available through a generally accessible internet site as provided in Tex. Gov't Code §2001.007(a);

(B) the parties had adequate opportunity to address it in the presentation of their cases and arguments; and

(C) a party opposes application of the policy in the case;

(2) the specificity of the policy statement and the relative certainty of its applicability to the case;

(3) the stability and duration of the policy, as illustrated by the type of process that led to its adoption (including whether it was published in the *Texas Register),* the frequency and consistency with which it has been previously applied, and the level of formality of the process required for the agency to amend it;

(4) the highest level within the agency at which the policy has been adopted or ratified;

(5) whether the policy is a substantive principle coming within the agency's subject matter expertise and jurisdiction or pertains more to contested case procedure and practice; and

(6) whether application of the policy would violate applicable constitutional or statutory provisions or would be inconsistent with the agency's rules or applicable decisions by Texas courts.

§ 155.421 Certification of Issues

In cases referred by the PUC and the TCEQ, a party may move to certify an issue to the respective commission. A judge may also certify an issue without a motion. Certified issues are governed by the rules of the PUC and the TCEQ.

§ 155.423 Making a Record of the Proceeding

(a) Record of proceedings. A record will be made of all contested case proceedings and prehearing conferences.

(b) Court reporters. Unless otherwise ordered by the judge, the referring agency shall provide a court reporter for a proceeding set to last longer than one day.

(c) SOAH's responsibility. For a proceeding in a docket set to last no longer than one day, SOAH is responsible for making an audio recording of the proceeding unless otherwise ordered by the judge. If SOAH has recorded the proceeding, a party may request a copy of the recording from SOAH.

(d) Transcripts. If a court reporter is provided for a proceeding, the court reporter shall make a stenographic record of the proceeding but shall prepare a transcript only on the request of a party or the judge. If a proceeding lasts longer than one day, the judge may order that a transcript be prepared.

(1) The original transcript shall be filed with SOAH, and SOAH may assess the cost of the transcript to one or more of the parties.

(2) The cost of a copy of a transcript ordered by a party shall be paid by that party, unless otherwise ordered by the judge.

(3) The transcript prepared according to these procedures becomes part of the official record of the proceedings for purposes of all actions within SOAH's jurisdiction.

(4) Proposed written corrections of purported transcript errors must be filed with SOAH and served on the parties and the court reporter before issuance of the proposal for decision or final decision. The judge may establish deadlines for the filing of proposed corrections and responses. The transcript will be corrected only upon order of the judge.

(e) Official record. The recording made by SOAH under subsection (c) of this section or the transcript prepared under subsection (d) of this section constitutes part of the official record of the proceeding for purposes of all actions within SOAH's jurisdiction. The judge may order a different means of making a record and may designate that record as the official record of the proceeding.

(f) Maintenance of exhibits and official record. The judge shall maintain all exhibits admitted during the proceeding and the official record of the proceeding.

(1) The judge may allow the court reporter to retain the exhibits and the recording of the proceeding, if applicable, while a transcript is being prepared.

(2) The judge may retain the exhibits and transcript or recording to prepare for presentation of the proposal for decision to the referring agency. SOAH will send the exhibits and transcript or recording to the referring agency no later than after:

(A) the judge has issued the final decision; or

(B) the judge has issued the proposal for decision and the deadline for filing exceptions and replies has passed.

(g) Sealing records. The judge may order all or part of the record sealed in accordance with applicable law or rule or upon a showing of the following:

(1) a specific, serious, and substantial interest that clearly outweighs the presumption of openness that applies to SOAH's records and any probable adverse effect that sealing will have upon the public health or safety; and

(2) no less restrictive means than sealing the records will adequately and effectively protect the specific interest asserted.

§ 155.425 Procedure at Hearing

(a) Control of the hearing. The judge shall exercise reasonable control over the mode and order of presenting preliminary matters, pending motions, opening statements, witness testimony and other evidence, oral or written closing argument, and other processes in the hearing.

(b) Designation of order of parties' presentations. The judge will designate the order in which the parties will present evidence and argument. Generally, the party with the burden of proof will present evidence first and will open and conclude oral argument. The judge shall designate the party with the burden of proof in accordance with §155.427 of this chapter.

(c) Waiver of allegations. An allegation contained in the notice of hearing, complaint, or other pleading that is not addressed during the proceeding may be deemed waived.

(d) Closing arguments. Closing arguments may be made orally or, when ordered by the judge, in writing.

(e) Closing the evidentiary record. Unless otherwise ordered by the judge, the record will close at the later of:

(1) the end of the hearing; or

(2) the date the final brief is due, when closing arguments are made in writing.

§ 155.427 Burden of Proof

In determining which party bears the burden of proof, the judge shall first consider the applicable statute, the referring agency's rules, and the referring agency's policy in accordance with §155.419 of this chapter. After considering those sources, the judge may consider additional factors, including:

(1) the status of the parties;

(2) the parties' relative access to and control over information pertinent to the merits of the case;

(3) the party seeking affirmative relief;

(4) the party seeking to change the status quo; and

(5) whether a party would be required to prove a negative.

§ 155.429 Evidence

(a) Rules of evidence.

(1) The Texas Rules of Evidence as applied in a nonjury civil case in district court govern contested case hearings conducted by SOAH.

(2) Evidence may be admitted if it meets the standards set out in Tex. Gov't Code §2001.081.

(b) Physical evidence: Exhibits.

(1) Paper size. Documents shall not be submitted on paper other than 8-1/2 x 11 inches unless good cause is shown that the documents cannot be reduced without loss of information, or if allowed by the judge.

(2) Numbering of pages. A multipage document shall be paginated.

(3) Physical limits.

(A) Exhibits offered as evidence must not unduly encumber the records of SOAH by their size or other qualities.

(B) Physical evidence that is bulky, dangerous, perishable, or otherwise not suitable for inclusion in agency records shall not be offered into the record.

(C) A party seeking to admit an exhibit contrary to this section must make reasonable efforts to use photographs, recordings, or other mechanical or electronic means to substitute for physical evidence that would encumber SOAH's records.

(D) Maps, drawings, blueprints, and other documents not reasonably susceptible to reduction shall be rolled or folded to avoid physically encumbering the record.

(4) Numbering of exhibits.

(A) Each exhibit to be offered shall first be numbered by the offering party or court reporter.

(B) Copies of the original exhibit shall be furnished by the party offering the exhibit to the presiding judge and to each party present at the hearing unless otherwise ordered by the judge.

(5) Excluded exhibits. An exhibit excluded from evidence will be considered withdrawn by the offering party and will be returned to the party, unless the party makes an offer of proof in accordance with the TRE.

(6) Exhibits deemed withdrawn. Prefiled exhibits that are not offered and admitted at the hearing will be deemed withdrawn.

(7) Non-conforming exhibits. The judge may exclude exhibits not conforming to this section.

(c) Prefiled evidence.

(1) Prefiled testimony.

(A) The judge may require that direct testimony of witnesses to be called at the hearing, and any exhibits to be presented through those witnesses, be filed in writing prior to hearing and served on other parties. The written testimony of a witness may be prepared in narrative or question-and-answer form.

(B) Prefiled testimony and related exhibits shall be subject to evidentiary objections. The judge may require that objections to prefiled testimony of witnesses and related exhibits be submitted in writing, filed prior to hearing, and served on other parties.

(C) After a witness has been sworn and has identified his or her written testimony as a true record of what the testimony would have been if given orally, the written testimony may be admitted into evidence at the hearing as if read or presented orally.

(D) When written testimony is offered into evidence, the witness must attend the hearing for cross-examination, unless cross-examination is waived by the other parties.

(E) A party may object to the prefiling of exhibits, testimony, and objections if the hearing will not be expedited and the interests of the parties will be substantially prejudiced by the entry of an order under this section.

(2) Prefiled exhibits. The judge may require parties to prefile some or all exhibits and provide those exhibits to the other parties. The judge may also require that objections to prefiled exhibits be submitted in writing, filed prior to the hearing, and provided to other parties.

(d) Exclusion of witnesses.

(1) At the request of either party or by the judge's own action, the judge may:

(A) order witnesses excluded from the hearing room so that they may not hear the proceedings;

(B) instruct the witnesses not to converse about the case with each other or any person other than the attorneys in the proceeding except by permission of the judge; and

(C) instruct the witnesses not to read any report of, or comment upon, the testimony in the case while under order of this section.

(2) This section does not authorize the exclusion of:

(A) a party who is a natural person or the spouse of such natural person;

(B) an officer or employee of a party that is not a natural person and who is designated by the party as its representative;

(C) a person whose presence is shown by a party to be essential to the presentation of the party's case.

§ 155.431 Conduct and Decorum

(a) Standards of conduct. Parties, representatives, and other participants shall conduct themselves with dignity, show courtesy and respect for one another and for the judge, follow any additional guidelines of decorum prescribed by the judge, and adhere to the time schedule. Attorneys shall adhere to the standards of conduct in the Texas Lawyers' Creed promulgated by the Texas Supreme Court.

(b) Judge's authority. To maintain and enforce proper conduct and decorum, the judge may take appropriate action, including:

(1) issuing a warning;

(2) sanctioning a party pursuant to §155.157 of this chapter;

(3) excluding persons from the proceeding; and

(4) recessing the proceeding.

Subchapter J Disposition of Case

§ 155.501 Failure to Attend Hearing and Default Proceedings

(a) If a party fails to appear for the hearing, the opposing party may move to proceed in that party's absence on a default basis.

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

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

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

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

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

(B) properly served to the defaulting party or their attorney.

(c) In the absence of a motion for default or adequate proof to support a default, the judge shall continue the case and direct the party responsible to provide adequate notice of hearing. If the responsible party persists in failing to provide adequate notice, the judge may dismiss the case from the SOAH docket for want of prosecution.

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

(1) Default dismissal. In default proceedings where SOAH is not authorized by law to render a final decision in the proceeding, upon motion for default dismissal, the judge may issue an order finding adequate notice, granting a default dismissal based on facts deemed to be admitted.

(2) Default proposal for decision. In default proceedings where SOAH is not authorized by law to render a final decision in the proceeding, upon motion for a

default proposal for decision, the judge may deem admitted the factual matters asserted in the notice of hearing or the non-defaulting party's pleadings and issue a proposal for decision.

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

(e) Default dismissals.

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

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

(A) grant the motion, set aside the default, and reopen the hearing for good cause shown; or

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

(3) In the absence of a timely motion to set aside a default, the case will be remanded to the referring agency for informal disposition on a default basis in accordance with Tex. Gov't Code §2001.056 after the expiration of 15 days from the date of the order of default dismissal.

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

(f) Default proposals for decision. A default proposal for decision issued under subsection (d)(2) of this section is subject to §155.507 of this chapter.

(g) Default decisions.

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

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

(h) Motions to Set Aside Default.

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

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

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

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

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

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

§ 155.503 Dismissal

(a) Voluntary dismissal or non-suit.

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

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

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

(b) Agreed dismissal; settlement.

(1) At any time before the date set by the judge for close of the record, the parties may jointly move to dismiss a case in accordance with the agreement of the parties. Such motion shall be signed by the parties or their attorneys and filed with SOAH or entered on the record at the hearing or prehearing conference in accordance with §155.415 of this chapter.

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

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

(c) Failure to prosecute.

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

(A) explain the party's failure to prosecute;

(B) inform the party of an opportunity to seek reinstatement of the case; and

(C) inform the party that the case is dismissed and will be remanded to the referring agency unless:

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

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

(2) The judge may grant a motion to reinstate the case if the moving party shows good cause for the failure to prosecute.

(3) Unless the judge grants a motion to reinstate the case:

(A) in a dismissal proceeding where SOAH is not authorized by law to issue a final decision, the case will be remanded to the referring agency after the expiration of 15 days from the date of the order.

(B) in a dismissal proceeding where SOAH is authorized by law to render a final decision, the judge will conclude SOAH's involvement in the matter and surrender jurisdiction after the expiration of 15 days from the date of the order.

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

(d) Other Dismissal Actions.

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

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

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

(C) mootness of the case;

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

(E) unnecessary duplication of proceedings; or

(F) abatement of the case for a period longer than 120 days. Dismissal under this subsection removes the case from the SOAH docket without prejudice to refiling.

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

§ 155.505 Summary Disposition

(a) Final decision or proposal for decision on summary disposition. Summary disposition shall be granted on all or part of a contested case if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion. Summary disposition is not permitted based on the ground that there is no evidence of one or more essential elements of a claim or defense on which the opposing party would have the burden of proof at hearing.

(b) Deadlines. Unless otherwise ordered by the judge:

(1) A party may file a motion for summary disposition at any time after SOAH acquires jurisdiction over a case, but the motion must be filed at least 30 days before a scheduled hearing on the merits.

(2) The response and opposing summary disposition evidence shall be filed no later than 15 days after the filing of the motion.

(c) Contents of Motion. A motion for summary disposition shall include the contents listed below. A motion may be denied for failure to comply with these requirements.

(1) The motion shall state the specific issues upon which summary disposition is sought and the specific grounds justifying summary disposition.

(2) The motion shall also separately state all material facts upon which the motion is based. Each material fact stated shall be followed by a clear and specific reference to the supporting summary disposition evidence.

(3) The first page of the motion shall contain the following statement in at least 12- point, bold-face type: "Notice to parties: This motion requests the judge to decide some or all of the issues in this case without holding an evidentiary hearing on the merits. You have 15 days after the filing of the motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the merits. See SOAH's rules at 1 Texas Administrative Code §155.505. These rules are available on SOAH's public website."

(d) Responses to motions.

(1) A party may file a response and summary disposition evidence to oppose a motion for summary disposition.

(2) The response shall include all arguments against the motion for summary disposition, any objections to the form of the motion, and any objections to the summary disposition evidence offered in support of the motion.

(e) Summary disposition evidence.

(1) Summary disposition evidence may include deposition transcripts; interrogatory answers and other discovery responses; pleadings; admissions; affidavits; materials obtained by discovery; matters officially noticed; stipulations; authenticated or certified public, business, or medical records; and other admissible evidence. No oral testimony shall be received at a hearing on a motion for summary disposition.

(2) Summary disposition may be based on uncontroverted written testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the judge must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(3) All summary disposition evidence offered in support of or in opposition to a motion for summary disposition shall be filed with the motion or response. Copies of relevant portions of materials obtained by discovery that are relied upon to support or oppose a motion for summary disposition shall be included in the summary disposition evidence.

(f) Proceedings on motions.

(1) A judge may hold a hearing on a motion for summary disposition or rule on the motion without a hearing.

(2) If summary disposition is granted on all contested issues in a case, the record shall close on the date ordered by the judge or on the later of the filing of the last summary disposition arguments or evidence, the date the summary disposition response was due, or the date a hearing was held on the motion. The judge shall prepare a final decision or proposal for decision as appropriate. The

final decision or proposal for decision shall include a statement of reasons, findings of fact, and conclusions of law in support of the summary disposition rendered.

(3) If summary disposition is granted on some but not all of the contested issues in a case, the judge shall not take evidence or hear further argument upon the issues for which summary disposition has been granted. The judge shall issue an order:

(A) specifying the facts about which there is no genuine issue;

(B) specifying the issues for which summary disposition has been granted; and

(C) directing further proceedings as necessary. If an evidentiary hearing is held on the remaining issues, the facts and issues resolved by summary disposition shall be deemed established, and the hearing shall be conducted accordingly. After the evidentiary hearing is concluded, the judge shall include in the final decision or proposal for decision a statement of reasons, findings of fact, and conclusions of law in support of the partial summary disposition rendered.

§ 155.507 Proposals for Decision; Exceptions and Replies

(a) Submission of the proposal for decision. For contested cases in which a proposal for decision is issued, the judge shall submit the proposal for decision to the referring agency and furnish a copy to each party.

(b) Exceptions and replies. The parties may submit to the judge and the referring agency exceptions to the proposal for decision and replies to exceptions to the proposal for decision.

(1) Unless the referring agency's rules apply by statute, exceptions shall be filed within 15 days after the date the proposal for decision is issued.

(2) A reply to the exceptions shall be filed within 15 days of the filing of the exceptions.

(3) A motion to change the time to file exceptions or replies to exceptions shall be filed no later than the applicable deadline. The judge may change the time to file exceptions or replies if:

(A) good cause is shown for the requested change; or

(B) all parties agree.

(c) Judge's review of exceptions and replies. The judge shall review all exceptions and replies and notify the referring agency and parties whether the judge recommends any changes to the proposal for decision.

(d) Judge's authority. The judge may:

(1) amend the proposal for decision in response to exceptions and replies to exceptions; and

(2) correct any clerical errors in the proposal for decision.

§ 155.509 Final Decisions; Motion for Rehearing

(a) Final decisions. For contested cases in which the judge issues a final decision, the judge shall furnish a copy of the decision to the referring agency and to each party.

(b) Motions for rehearing. Motions for rehearing shall be filed and handled in accordance with Tex. Gov't Code Chapter 2001, Subchapter F.

Chapter 156 Arbitration Procedures for Certain Enforcement Actions of the Department of Aging and Disability Services Regarding Assisted Living Facilities

Subchapter A General Information

§ 156.1 Definitions

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

(1) Administrative law judge or judge--An individual appointed by the chief administrative law judge of the State Office of Administrative Hearings (SOAH) under Government Code, §2003.041. The term shall also include any temporary administrative law judge appointed by the chief administrative law judge pursuant to Government Code, §2003.043.

(2) APA--Government Code, Chapter 2001.

(3) Authorized representative--An attorney authorized to practice law in the State of Texas or, where permitted by applicable law, a person designated by a party to represent the party.

(4) Chief judge--The chief administrative law judge or his or her designee for action under this chapter. Any designee shall be a person qualified to serve as an arbitrator.

(5) Code--Health and Safety Code, Chapter 247 as it may be amended from time to time.

(6) DADS--The Department of Aging and Disability Services.

(7) Facility--An assisted living facility as defined by the Code §247.002(1).

(8) Order--The award or final order issued by the arbitrator.

§ 156.3 Construction of this Chapter

Unless otherwise expressly provided, the past, present, or future tense shall each include the other; the masculine, feminine, or neuter genders shall each include the other; and the singular and plural number shall each include the other.

§ 156.5 Other SOAH Rules of Procedure

Unless specific applicable procedures are set out in this chapter, other SOAH rules of procedure found at Chapter 155 of this title (relating to Rules of Procedure), Chapter 157 of this title (relating to Temporary Administrative Law Judges), and Chapter 161 of this title (relating to Requests for Records) may apply in arbitration proceedings under this chapter. The rules that specifically apply include:

(1) 1 TAC 155, Subchapter A, §155.7 (relating to Computation of Time);

(2) 1 TAC 155, Subchapter C, §155.101 (relating to Filing Documents);

(3) 1 TAC 155, Subchapter C, §155.103 (relating to Service of Documents on Parties);

(4) 1 TAC 155, Subchapter D, §155.151 (relating to Assignment of Judges to Cases);

(5) 1 TAC 155, Subchapter D, §155.153 (relating to Powers and Duties);

(6) 1 TAC 155, Subchapter E, §155.201 (relating to Representation of Parties);

(7) 1 TAC 155, Subchapter I, §155.405 (relating to Participation by Telephone or Videoconference);

(8) 1 TAC 155, Subchapter I, §155.417 (relating to Stipulations);

(9) 1 TAC 155, Subchapter I, §155.425 (relating to Procedure at Hearing);

(10) 1 TAC 155, Subchapter I, §155.431 (relating to Conduct and Decorum);

(11) 1 TAC 155, Subchapter J, §155.503 (relating to Dismissal Proceedings);

(12) 1 TAC 157, §157.1 (relating to Temporary Administrative Law Judges); and

(13) 1 TAC 161, §161.1 (relating to Charges for Copies of Public Records).

Subchapter B Election and Initiation of Arbitration

§ 156.51 Opportunity to Elect Arbitration

(a) DADS or any affected facility may elect arbitration as an alternative to a contested case proceeding or to a judicial proceeding relating to any of the following disputes arising under the Code, Subchapter E:

(1) renewal of a license under §247.023;

(2) suspension, revocation, or denial of a license under §247.041;

(3) assessment of a civil penalty under §247.045; or

(4) assessment of an administrative penalty under §247.0451.

(b) Arbitration may not be elected if the facility has had an arbitration order levied against it in the previous five years.

(c) The election of arbitration is a representation that the party choosing arbitration is solvent and able to bear the costs of the proceeding. In cases where the facility is responsible for paying SOAH's costs and expenses, SOAH will require that an authorized representative of the facility provide:

(1) a deposit for the costs of the proceeding, based on SOAH's reasonable determination of the amounts expected to be incurred; and

(2) an affidavit acknowledging the facility's responsibility and duty to pay SOAH's costs and expenses.

(d) An election to engage in arbitration under this chapter is irrevocable and binding on the facility and DADS. However, an election does not preclude the parties from reaching an agreed resolution of a dispute that has been submitted for arbitration at any time during the arbitration process before the final order has been issued by the arbitrator.

§ 156.53 Notice of Election of Arbitration

(a) Pursuant to Code §247.082(b), in an enforcement lawsuit filed in court:

(1) An affected facility may elect arbitration by filing a notice of election to arbitrate with the court in which the lawsuit is pending and sending copies to the office of the attorney general and to DADS or its designee.

(A) The notice of election must be filed no later than the tenth day after the date on which the answer is due or the date on which the answer is filed with the court, whichever is earlier.

(B) If a civil penalty is requested by an amended or supplemental pleading in a lawsuit, the affected facility must file its notice of election of arbitration not later than the tenth day after the date on which the amended or supplemental pleading is served on the affected facility or the facility's counsel.

(C) If the election of arbitration is challenged, the parties shall seek a prompt ruling from the court on the challenge. If a court finds SOAH has jurisdiction to conduct an arbitration, the Health and Human Services Appeal Division shall immediately file the court's order and the notice of election of arbitration at SOAH and request the arbitration be processed in the usual manner.

(2) DADS may elect arbitration by filing the election with the court in which the lawsuit is pending and by notifying the facility of the election not later than the date on which the facility may elect arbitration under paragraph (1) of this subsection.

(b) In an administrative enforcement proceeding originally docketed at SOAH:

(1) An affected facility may elect arbitration by filing a notice of election to arbitrate with the docket clerk at SOAH no later than the tenth day after receiving notice of hearing that complies with the requirements of the Administrative Procedure Act. A copy of this election shall be sent to DADS's representative of record in the relevant action and to DADS or its designee.

(2) DADS may elect arbitration under this chapter by filing a notice of election with the docket clerk at SOAH no later than the date that the facility may elect arbitration under paragraph (1) of this subsection and sending a copy of the

notice of election to the facility's representative of record in the relevant action.

(c) The date of filing shall be the date affixed upon a notice of election by a date-stamp utilized by the docket clerk at the court for judicial proceedings, or by the docket clerk of SOAH for administrative proceedings.

(d) The notice of election shall include a written statement that contains:

(1) the nature of the action that is being submitted to arbitration, as listed in this subchapter, §156.51(a) (relating to Opportunity to Elect Arbitration);

(2) a brief description of the factual and/or legal controversy, including an estimate of the amount of any penalties sought;

(3) an estimate of the length of the arbitration hearing on the merits and the extensiveness of the record necessary to determine the matter;

(4) the remedy sought;

(5) a statement that the facility has not been the subject of an arbitration order within the previous five years;

(6) any special information that should be considered in selecting an arbitrator;

(7) if a hearing location other than Austin is requested, an explanation for requesting that location;

(8) the name, title, address, and telephone number of a designated contact person for the party who will be paying the costs of the arbitration; and

(9) a statement that arbitration is not otherwise prohibited by the Code.

§ 156.55 Initiation of Arbitration

(a) When a notice of election of arbitration is filed at SOAH, the notice shall be date stamped and the file given a SOAH docket number that identifies it as a case submitted for arbitration. Parties shall include this docket number on all subsequent correspondence and documents filed with SOAH relating to the arbitration.

(b) The party that did not initiate the arbitration may file an answering statement with SOAH within ten days after receipt of the notice of election from the electing party. That answering statement should include a response to the claim and any challenge to the election of arbitration. If the party that did not initiate the arbitration does not file an answering statement, SOAH will presume that party denies the claim and does not challenge the election of arbitration. Failure to file an answering statement shall not operate to delay the arbitration.

§ 156.57 Jurisdictional Challenges

(a) Parties who raise jurisdictional challenges to an election for arbitration in a judicial enforcement action are required to seek an expeditious ruling from the court in which the election was filed.

(b) Jurisdictional challenges brought to an election for arbitration in an administrative enforcement proceeding shall be decided by the presiding administrative law judge in the contested case.

§ 156.59 Changes of Claim

If either party desires to make any new or different claim, it shall be made in writing and filed with SOAH. The other party may, within ten days from the date of such filing, file an answer with SOAH. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

Subchapter C Filing and Service of Documents

§ 156.101 Filing and Service of Documents

(a) All documents a party files with SOAH shall be governed by the provisions of 1 TAC §155.101 (relating to Filing Documents).

(b) All documents a party files with SOAH shall be simultaneously served on the other parties. Service of documents on parties shall be governed by the provisions of 1 TAC §155.103 (relating to Service of Documents on Parties).

(c) Except as provided herein, any oral or written communication, other than a communication authorized under subsection (a) of this section, from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to SOAH, for transmittal to the arbitrator. After the arbitrator has been appointed in a case, materials may be filed directly with the arbitrator, if:

(1) the parties agree,

(2) the arbitrator agrees, and

(3) the service requirements of this section are met.

Subchapter D Selection of Arbitrator and Costs

§ 156.151 Selection of Arbitrator

(a) The parties may agree upon an arbitrator qualified under this chapter and submit that individual's name with their initial statements.

(b) Arbitrators designated by the parties.

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

(2) The notice must include the name, address, and telephone number of the arbitrator selected; a statement that the parties have entered into an agreement with the arbitrator regarding the arbitrator's rate and method of compensation; and an affirmation that the arbitrator is qualified to serve according to the provisions of this chapter.

(3) The chief judge shall issue an order specifying the date by which the arbitration must be completed.

(c) If the parties do not agree on a non-SOAH arbitrator who is willing and available to serve, SOAH will provide a list of potential SOAH arbitrators.

(d) Any objections for cause pertaining to any name on the list shall be made in writing directed to the chief judge at SOAH within three days of receiving the list of potential SOAH arbitrators, with a copy served on all other parties. Such objections will be reviewed by the chief judge.

(e) SOAH will notify the parties of the arbitrator appointed.

(f) Until an arbitrator has been appointed, the chief judge may rule on pending matters, including dispositive motions.

§ 156.153 Notice to and Acceptance of Appointment by Arbitrator who is not a SOAH Judge

(a) Notice of the appointment of the arbitrator shall be sent to the arbitrator by SOAH, together with a copy of this chapter and an acceptance form for the arbitrator to sign and return. The signed acceptance of the arbitrator shall be filed with SOAH prior to the first pre-hearing conference or other meeting of the parties to the arbitration.

(b) The acceptance of the arbitrator shall state that the arbitrator is qualified and willing to serve as arbitrator in accordance with this chapter, and with the current Code of Ethics for Arbitrators in Commercial Disputes issued by the American Bar Association and the American Arbitration Association. It shall also state that the arbitrator foresees no difficulty in completing the arbitration according to the schedule set out in this chapter.

(c) A potential arbitrator must not accept appointment in or continue handling any matter in which the arbitrator believes or perceives that participation as an arbitrator would be a conflict of interest or create the impression of a conflict. The duty to disclose is a continuing obligation throughout the arbitration process.

(d) Upon objection of a party to the continued service of an arbitrator, the chief judge shall provide the arbitrator and all parties an opportunity to respond. After consideration of these responses, the chief judge shall determine whether the arbitrator should be disqualified and shall inform the parties of his/her decision, which shall be conclusive.

§ 156.155 Vacancies

If for any reason an appointed arbitrator is unable to perform the duties of the office, the chief judge may, on proof satisfactory to the chief judge, declare the office vacant. The chief judge may fill a vacancy by appointing a SOAH arbitrator. Objections for cause to the appointed arbitrator shall be filed in accordance with this subchapter, §156.151(d) (relating to Selection of Arbitrator). During the period of a vacancy, the chief judge may rule on pending matters, including dispositive motions.

§ 156.157 Qualifications of Arbitrators

(a) The chief judge may appoint as an arbitrator any SOAH administrative law judge.

(b) A potential arbitrator who is not a SOAH administrative law judge shall be on an approved list of a nationally recognized association that performs arbitration services or meet the following minimum standards:

(1) Have at least five years of experience in health care and/or the legal profession and/or alternative dispute resolution with recognized expertise in his/her profession(s).

(2) Have the attributes necessary to be a successful arbitrator, including expertise, honesty, integrity, impartiality, and the ability to manage the arbitration process.

(3) May not represent any plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies, and he/she must affirm that he/she will not undertake any such representation during the pendency of the arbitration proceeding.

(c) The chief judge may remove an arbitrator if she/he determines that the arbitrator no longer meets the qualifications listed in this section. The determination of the chief judge in this matter is conclusive.

§ 156.159 Duties of the Arbitrator

The arbitrator shall:

(1) secure appropriate facilities for the hearing, giving preference to using state facilities;

(2) protect the interests of DADS and the facility;

(3) ensure that all relevant evidence has been disclosed to the arbitrator, DADS, and facility; and

(4) render an order consistent with applicable state and federal law, including the Code and this chapter.

§ 156.161 Cost of Arbitration

(a) An arbitrator's fees and expenses shall not exceed the statutory daily maximum for case preparation, pre-hearing conferences, hearings, preparation of the order, and any other required post-hearing work. Rates charged for less than one day must bear a reasonable relationship to the daily maximum.

(b) There may also be incidental expenses connected with an arbitration proceeding which may be charged in addition to the arbitrator's fees and expenses. If a party requests that an arbitration hearing be held outside of Austin, and the arbitrator agrees to hold the arbitration in that location, incidental expenses would include the cost of renting a room for the hearing and the arbitrator's travel expenses.

(c) SOAH charges fees for the services provided by SOAH arbitrators at the hourly rate approved in the General Appropriations Act, but the total amount charged for a SOAH arbitrator's services in an arbitration proceeding conducted under these rules shall not exceed the statutory daily maximum.

(d) The party electing arbitration must pay the cost of the arbitration.

Subchapter E Arbitration Proceedings

§ 156.201 Exchange and Filing of Information

(a) Unless the arbitrator orders otherwise, by the 30th day after the date SOAH mailed notice to the parties of the name of the appointed arbitrator, the parties shall have exchanged the following information:

(1) List of witnesses that a party expects to call with a short summary of their expected testimony;

(2) Any and all documents or other tangible things that contain information relevant to the subject matter, including any documents that will be testified about at the hearing or that witnesses have reviewed in preparing for their testimony.

(b) Not later than the seventh day before the first day of the arbitration hearing, sooner if so directed by the arbitrator, DADS and the facility shall exchange and file with the arbitrator:

(1) all documentary evidence not previously exchanged and filed that is relevant to the dispute, with the relevant portions clearly indicated; and

(2) information relating to a proposed resolution of the dispute.

(c) The parties are responsible for identifying any material that is confidential by law and for taking appropriate measures, for example, redacting resident identities, to ensure that all such material remains confidential.

(d) Each producing party's documents shall be labeled by name or initials of the party and Bates-stamped or otherwise consecutively numbered in the lower right hand corner of each page.

§ 156.203 Preliminary Conference

The arbitrator may set a preliminary conference and may require parties to file a statement of position prior to that conference. The statement of position shall include:

(1) stipulations of the parties to uncontested facts and applicable law;

(2) citation to the statutory and regulatory law, both state and federal, that controls the controversy;

(3) a list of the issues of fact and law that are in dispute between the parties, including a citation to legal authorities that each party relies on for its legal positions;

(4) proposals designed to expedite the arbitration proceedings, including minimizing preparation and decision time required of the arbitrator;

(5) a list of documents that the parties have exchanged and a schedule for the delivery of any additional relevant documents, indicating the approximate length of each document;

(6) the identification of witnesses expected to be called during the arbitration proceeding, with a short summary of their expected testimony; and

(7) other matters as specified by the arbitrator.

§ 156.205 Discovery

Discovery is not allowed in a proceeding under this chapter, except by agreement with the other party or by order of the arbitrator upon a showing of good cause. Any discovery will be completed no later than 14 days before the opening of the arbitration hearing on the merits, unless otherwise ordered by the arbitrator. Discovery should not be filed with SOAH or the arbitrator unless there is a related dispute which must be resolved by the arbitrator. No more than four hours of deposition testimony may be taken by either party, unless otherwise ordered by the arbitrator.

§ 156.207 Stenographic Record

An official stenographic record of the proceeding is not required, but DADS or the facility may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made. A copy of any transcript prepared at the request of a party shall be provided to the arbitrator.

§ 156.209 Electronic Record

DADS shall make an electronic recording of the proceeding. If there is no stenographic record of the proceeding, the original recording or a copy will be provided to the arbitrator at the close of the proceeding if the arbitrator so requests. At the arbitrator's request, DADS shall also record prehearing conferences.

§ 156.211 Interpreters

When an interpreter will be needed for all or part of a proceeding, a party shall file a written request at least seven days before the setting. SOAH shall provide and pay for:

(1) an interpreter for deaf or hearing impaired parties and subpoenaed witnesses in accordance with the APA, §2001.055;

(2) reader services or other communication services for blind and sight impaired parties and witnesses; and

(3) a certified language interpreter for parties and witnesses who need that service.

§ 156.213 Communication of Parties with Arbitrator

(a) DADS and the facility shall not communicate with the arbitrator other than at an oral hearing, or through properly filed documents, unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication from the parties, other than a communication authorized under subsection (a) of this section, shall be directed to SOAH for transmittal to the arbitrator.

§ 156.215 Date, Time, and Place of Hearing

(a) The arbitration hearing shall be scheduled to begin no later than the 90th day after the date that the arbitrator is selected.

(b) The arbitrator shall set the date, time, and place for each hearing. She/he shall send a notice of hearing to the parties at least 30 days in advance of the hearing date, unless otherwise agreed to by the parties. A copy of such notice shall be simultaneously filed with SOAH by the arbitrator.

(c) The arbitrator may grant a continuance of the arbitration at the request of DADS or the facility. The arbitrator may not unreasonably deny a request for a continuance.

(d) Arbitration hearings normally will be held at SOAH's hearings facility in Austin, Texas. If a party seeks to have the arbitration hearing held elsewhere, the party shall submit a written request to the arbitrator and make a showing of good cause. The arbitrator shall have sole discretion to determine whether to grant such a request. If the arbitrator grants the request, the arbitrator shall determine how the incidental expenses of holding the arbitration hearing outside of Austin will be apportioned between the parties. Incidental expenses include the cost of renting a room for the hearing and the arbitrator's travel expenses. Preference will be given to using state facilities. The arbitrator may require that the incidental expenses be paid in advance of the arbitration hearing.

§ 156.217 Representation

Any party may be represented by counsel or other authorized representative.

§ 156.219 Attendance Required

(a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a continuance.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before issuing an order.

§ 156.221 Public Hearings and Confidential Material

Hearings held under this chapter shall be open to the public. The parties are responsible for identifying any material that is confidential by law and for taking appropriate measures to ensure that such material remains confidential during the hearing. All exhibits shall be returned to DADS following the issuance of the order by the arbitrator, where they shall be maintained in accordance with DADS' rules.

§ 156.223 Order of Proceedings

(a) Opening statements. The arbitrator may ask each party to make an opening statement to clarify the issues involved.

(b) The complaining party shall then present evidence to support its claim. The defending party shall then present evidence to support its claim. Witnesses for each party shall answer questions propounded by the other party and the arbitrator.

(c) The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence within the time frames set by the arbitrator.

(d) Exhibits offered by either party may be received in evidence by the arbitrator.

(e) The parties may make closing statements as they desire, but the record may not remain open for written briefs unless ordered by the arbitrator. If the arbitrator requests briefs the arbitration hearing shall be deemed "closed" on the date that the last requested brief is filed.

§ 156.225 Control of Proceedings

The arbitrator shall exercise reasonable control over the proceedings, including but not limited to the manner and order of interrogating witnesses and presenting evidence so as to:

(1) make the interrogation and presentation effective for the determination of the truth;

(2) avoid needless consumption of time; and

(3) protect witnesses from harassment or undue embarrassment.

§ 156.227 Evidence

(a) The parties may offer evidence as they desire and shall produce additional evidence that the arbitrator considers necessary to understand and resolve the dispute. However, any documentary evidence not properly exchanged between the parties before the hearing will be excluded from consideration unless good cause is shown.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to the rules of judicial proceedings is not required. The Texas Rules of Evidence are not binding on the arbitrator but may be used as a guideline.

(c) Each party shall produce any witnesses under its control without the necessity of a subpoena. Individuals may be compelled by the arbitrator, as provided under the Texas General Arbitration Act, Texas Civil Practice and Remedies Code, §171.007, to attend and give testimony or to produce documents at the arbitration proceeding or at a deposition allowed under this subchapter, §156.205 (relating to Discovery).

§ 156.229 Witnesses

Witnesses shall testify under oath. Testimony may be presented in a narrative, without strict adherence to a "question and answer" format.

§ 156.231 Exclusion of Witnesses

Any party may request that the arbitrator exclude witnesses from the hearing except when they are testifying. If such a request is made, the arbitrator shall instruct the witnesses not to discuss the case outside the official hearing other than with the designated representatives or attorneys in the case. However, an individual who is a party or any other single party representative shall not be excluded under this rule. A witness or other person violating these instructions may be punished by the exclusion of evidence as the arbitrator deems appropriate.

§ 156.233 Evidence by Affidavit

The arbitrator may receive and consider evidence of witnesses by affidavit. Affidavit testimony must be filed with the arbitrator and served on the other party no later than 30 days before the hearing. The other party will have 15 days to file any objection to the admissibility of the affidavit or to file controverting affidavits. The arbitrator shall give such evidence only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

§ 156.235 Evidence Filed After the Hearing

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, all parties shall be afforded an opportunity to examine such documents or other evidence. Such materials shall be served as provided in Subchapter C of this chapter, §156.101 (relating to Filing and Service of Documents).

Subchapter F Arbitration Order

§ 156.251 Order

(a) The arbitrator may enter any order consistent with state and federal law applicable to a dispute described in Subchapter B of this chapter, §156.51 (relating to Opportunity to Elect Arbitration).

(b) The order shall be entered no later than the 60th day after the close of the arbitration hearing.

(c) The arbitrator shall base the order on the facts established in the arbitration proceeding, including stipulations of the parties; and on the state and federal statutes and formal rules and regulations, as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a list of stipulations on uncontested issues and a statement of the arbitrator's decisions on all contested issues. If requested by either of the parties, the decision shall contain findings of fact and conclusions of law on controverted issues.

(e) The arbitrator shall file a copy of the order with SOAH and DADS or its designee and send a copy to the parties.

§ 156.253 Effect of Order

An order of an arbitrator under this chapter is final and binding on all parties. A party's right to appeal is limited to the provisions of the Code.

§ 156.255 Clerical Error

For the purpose of correcting clerical errors, an arbitrator retains jurisdiction of the order for 20 days after the date of the order.

Chapter 157 Temporary Administrative Law Judges

§ 157.1 Temporary Administrative Law Judges

(a) If judges employed by the State Office of Administrative Hearings are not available to hear a case within a reasonable time, the chief judge may contract with qualified individuals to serve as temporary administrative law judges.

(b) To serve as a temporary administrative law judge, an individual must be licensed to practice law in the State of Texas and have five years experience in administrative law from conducting hearings under the Administrative Procedure Act and/or practicing administrative law.

(c) The chief judge will also consider:

(1) qualifications and experience; and

(2) expertise related to the subject matter of the hearing.

(d) To be considered for service as a temporary administrative law judge, an individual must comply with any applicable state bidding requirements.

Chapter 159 Rules of Procedure for Administrative License Suspension Hearings

Subchapter A General

§ 159.1 Scope and Construction of this Chapter

(a) This chapter applies to contested hearings before SOAH concerning administrative suspension, denial, or disqualification of drivers' licenses under the Administrative License Revocation (ALR) Program governed by Texas Transportation Code, Chapters 522, 524, and 724.

(b) These regulations shall be construed to ensure the fair and expeditious determination of every action.

(c) These rules shall supplement the procedures required by law. To the extent that any provisions of these rules that are necessary to expedite the hearings process conflict with Texas Government Code, Chapter 2001, the provisions of this chapter shall prevail.

(d) When procedural issues arising under Texas Transportation Code, Chapters 522, 524, and 724 cannot be resolved by reference to this chapter, the APA, and applicable case law, then the presiding judge will consider and apply SOAH's Rules of Procedure in Chapter 155 of this title, and/or the Texas Rules of Civil Procedure (TRCP) as interpreted and construed by Texas case law, and persuasive authority established in other forums.

(e) An ALR hearing under this chapter is a civil administrative proceeding that is separate and independent from any criminal court proceedings relating to the same arrest.

§ 159.3 Definitions

In this chapter, the following terms have the meaning indicated:

(1) Adult--An individual twenty-one years of age or older.

(2) ALR proceeding--A civil administrative proceeding under Texas Transportation Code, Chapters 522, 524 and/or 724 and this chapter relating to a driver's license disqualification, suspension, or denial resulting from an arrest for an offense relating to the operation of a motor vehicle or watercraft while intoxicated or under the influence of alcohol or controlled substances.

(3) Alcohol concentration--Defined in Texas Penal Code §49.01.

(4) Alcohol-related or drug-related enforcement contact--Defined in Texas Transportation Code §524.001.

(5) Certified breath test technical supervisor--A person who has been certified by DPS to maintain and direct the operation of a breath test instrument used to analyze breath specimens of persons suspected of driving while intoxicated.

(6) Contested case--A proceeding brought under Texas Transportation Code, Chapter 522, Subchapter I; Chapter 524, Subchapter D; or Chapter 724, Subchapter D.

(7) Defendant--One who holds a license as defined in Texas Transportation Code, Chapter 521, or an unlicensed driver, whose legal rights, duties, statutory entitlement, or privileges may be affected by the outcome of a contested case under this chapter.

(8) Defense counsel--An attorney who is authorized to participate in an ALR proceeding as a current, former, or prospective representative of a Defendant. Defense counsel does not include a non-attorney representative or an attorney who is not authorized to practice law in Texas and has not obtained permission to appear pursuant to 1 Texas Administrative Code §155.201(c).

(9) Denial--The non-issuance of a license or permit, and loss of the privilege to obtain a license or permit.

(10) DPS or the Department--The Texas Department of Public Safety.

(11) Driver--A person who drives or is in actual physical control of a motor vehicle.

(12) Efile Texas or eFile Texas--An electronic filing service provider approved by the Texas Supreme Court for use in electronically filing and serving documents in cases at SOAH and in judicial courts of record, available at http://www.efiletexas.gov. In these rules, the terms "eFile Texas," "electronic filing service provider," and "electronic filing manager" may be used interchangeably, although they may be assigned more specific meaning as appropriate in a given context.

(13) Electronic filing or filed electronically--The electronic transmission of documents filed in an ALR proceeding by uploading the documents to the case docket using eFile Texas or another electronic filing service provider approved by the Texas Supreme Court. In these rules, the term "electronic filing" may also include the submission of digital audio and video evidence in the manner specified on SOAH's website, but does not include the submission of filings by email, facsimile transmission, or unapproved file sharing platforms.

(14) Electronic Filing Service Provider or Electronic Filing Manager--An online web portal service offered by an independent third-party provider and approved by the Texas Supreme Court for use in electronically filing documents at SOAH and judicial courts of record, and that acts as the intermediary between the filer and eFileTexas.

(15) Electronic signature or signed electronically--An electronic version of a person's signature that is the legal equivalent of the person's handwritten signature. Electronic signature formats include:

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

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

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

(16) Electronic service or served electronically--The electronic transmission and delivery of documents to a party or a party's authorized representative by means of an electronic filing service provider.

(17) Filed--The receipt and acceptance for filing by the SOAH Chief Clerk's office.

(18) Final decision--The decision issued by a judge who hears the contested case or another judge who reviewed the record in its entirety and who is authorized under appropriate law to issue final decisions in an ALR case.

(19) Intoxicated--Defined in Texas Penal Code §49.01(2).

(20) Minor--An individual under twenty-one years of age.

(21) Operate--To drive or be in actual physical control of a motor vehicle.

(22) Peace officer--A person elected, employed, or appointed as a peace officer under Texas Criminal Procedure Code §2.12 or other law. A peace officer may also be referred to as an arresting officer.

(23) Public place--Defined in Texas Penal Code §1.07, Chapter 1, and Texas Transportation Code §524.001, Chapter 524.

(24) Research Texas or re:SearchTX--An online repository of court case records in Texas, including records filed in ALR proceedings at SOAH, available at http://research.txcourts.gov.

(25) Test--The taking of blood or breath specimens as set out in Texas Transportation Code, Chapters 522, 524 and 724.

(26) Videoconference--Technology that provides for a conference of individuals in different locations, connected by electronic means through audio and video signals transmitted over the Internet, where all participants have an opportunity to communicate and participate in the conference.

(27) The following terms are defined in 1 Texas Administrative Code §155.5 (relating to Definitions): Administrative Law Judge or judge; APA; authorized representative; business day; confidential information; Chief Judge; discovery; evidence; exhibits; ex parte communication; party; person; personal identifying information; TRCP; and SOAH.

§ 159.5 Computation of Time

Time shall be computed in the manner provided in 1 Texas Administrative Code §155.7.

§ 159.7 Other SOAH Rules of Procedure

Other SOAH rules of procedure found at Chapter 155 of this title (relating to Rules of Procedure), Chapter 157 of this title (relating to Temporary Administrative Law Judges) and Chapter 161 of this title (relating to Requests for Records) may apply in contested cases under this chapter unless there are specific applicable procedures set out in this chapter. The rules that specifically apply include:

(1) Subchapter C, §§155.101, 155.103, and 155.105 of this title (relating to Filing Documents, Confidential Information, and Service of Documents on Parties);

(2) Subchapter D, §§155.151 - 155.153, 155.155, 155.157 of this title (relating to Assignment of Judges to Cases, Disqualification or Recusal of Judges, Powers and Duties, Orders, and Sanctioning Authority);

(3) Subchapter E, §155.201 and §155.203 of this title (relating to Representation of Parties and Withdrawal of Counsel);

(4) Subchapter I, §155.417 of this title (relating to Stipulations);

(5) Subchapter I, §155.425 of this title (relating to Procedure at Hearing);

(6) Subchapter I, §155.431 of this title (relating to Conduct and Decorum);

(7) Section 157.1 of this title (relating to Temporary Administrative Law Judges); and

(8) Section 161.1 of this title (relating to Charges for Copies of Public Information).

Subchapter B Case Administration

§ 159.51 Jurisdiction

(a) Acquisition of jurisdiction. SOAH acquires jurisdiction over a case involving a particular hearing request on the date when sufficient information required by SOAH for the scheduling of an ALR proceeding is electronically transmitted by DPS to the SOAH Chief Clerk's Office.

(b) Effect of acquisition of jurisdiction by SOAH. Once SOAH acquires jurisdiction, SOAH shall promptly schedule the hearing in accordance with §159.201 of this title (relating to Scheduling and Notice of Hearing), and DPS and the defendant may initiate discovery or move for appropriate relief.

(c) Commencement of time periods. A period of time established by these rules shall not begin to run until the hearing is initially scheduled by SOAH.

(d) Cessation of Jurisdiction. SOAH jurisdiction over a case involving a particular hearing request ends upon the date the SOAH judge issues a final decision or order of dismissal, and if applicable, the deadline for any post-judgement motions has passed. Thereafter, jurisdiction may only be extended by order of the judge to:

(1) reinstate a case as provided by §159.203(c) of this title (relating to Involuntary Dismissal);

(2) vacate a default as provided by §159.213(f) of this title (relating to Failure to Attend Hearing and Default); or

(3) correct a decision as provided by §159.254 of this title (relating to Correction of Final Decision).

(e) After the cessation of jurisdiction, SOAH has concluded its involvement in the matter and has no continuing jurisdiction, including that SOAH has no authority to enforce or correct the Department's administration of a suspension, revocation, or reinstatement of a driver's license.

§ 159.53 Filing Documents

(a) All notices, pleadings, motions, exhibits, and other documents for ALR proceedings must be filed in the manner specified by this section and in compliance with 1 Texas Administrative Code §§155.101-.103.

(b) Methods of Filing.

(1) Electronic Filing. Defense counsel and the Department shall electronically file all notices, pleadings, motions, exhibits, and other documents for an ALR proceeding at SOAH by use of eFile Texas or another electronic filing service provider approved by the Texas Supreme Court. Parties not represented by an attorney are strongly encouraged to electronically file documents but may use alternative methods of filing described in paragraph (2) of this subsection.

(A) Party Information. As soon as practicable after the initial docketing of an ALR proceeding at SOAH, each party or attorney of record shall ensure that the electronic filing manager contains complete and accurate party contact information known to the parties at the time, including the entry and verification of the mailing address, phone number, and email address of each party.

(B) Designation of Lead Counsel. If the party will be represented by an attorney, the lead counsel who is primarily responsible for the representation shall ensure that the information entered into the electronic filing manager includes the designation of lead counsel and lead counsel's state bar identification number.

(C) Service Contact Information. Each party, or lead counsel if the party will be represented by an attorney, shall ensure that the electronic filing manager contains complete and accurate service contact information known to the parties at the time of filing, including the entry and verification of the email address of each party or attorney who is required to be served.

(i) The service contact information maintained in the electronic filing manager must be sufficient to allow SOAH and the parties to electronically serve documents through eFile Texas.

(ii) SOAH may rely on the service contact information on file in eFile Texas for electronic delivery of orders, decisions, and other case-related

communications from SOAH. SOAH is not required to deliver copies of orders, decisions, or other case related communications to persons who are not identified as a party, lead counsel, or service contact for the case within eFile Texas.

(iii) Failure to enter and verify service contact information within eFile Texas may result in a failure to comply with legal requirements for service of process.

(D) Document Titles and Use of Proper Filing Codes. All documents submitted for electronic filing must be properly titled or described in the electronic filing manager in a manner that permits SOAH and the parties to reasonably ascertain its contents, including through use of the correct filing code for the type of document.

(2) Filing by Self-represented Parties. Defendants without an attorney are strongly encouraged, but not required, to file electronically in the manner described in paragraph (1) of this subsection. Self-represented parties may use approved alternative methods of email, facsimile transmission, mail, or hand-delivery in the manner specified on SOAH's website.

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

(c) Requirements for All Filers.

(1) Address of Record Required. The defendant, the Department, and lead counsel for each party shall provide and maintain a current mailing address and email address on file with SOAH during the pendency of the proceeding. SOAH and the parties may maintain the parties' address information on file as part of the electronic record in eFile Texas.

(2) Pleadings and Motions. All pleadings, motions, or applications to the judge for an order, whether in the form of a motion, plea, or other form of request, must be filed with the SOAH Chief Clerk's Office in writing and signed by the party, unless presented orally during a hearing.

(3) Separate Submissions Required. Different document types cannot be combined into a single submission for filing. A party may not combine motions requesting different types of relief or action into a single filing but must submit

each motion separately. If the document submitted for filing is an exhibit, it must be properly identified as an exhibit and submitted separately from motions, pleadings, or other filings, unless the exhibit is attached as a necessary supporting document to a pleading.

(4) Confidential Filing Required. To avoid the public disclosure or redaction of confidential information or personal identifying information necessary for the resolution of an ALR proceeding, all documents submitted for filing shall be designated as "confidential" at the time of submission. Failure to correctly submit documents as "confidential" may result in the record being publicly-accessible through the re:SearchTX court records portal.

(5) Exhibit Submission.

(A) Prefiling Required. All exhibits shall be prefiled at least two days before the hearing to avoid unnecessary surprise or delay. The judge, in his or her discretion, may grant or deny the presentation and admission of exhibits that were not timely prefiled in accordance with this section.

(B) Organization of Exhibits. Exhibits should be numbered sequentially, and multipage documents shall be paginated or Bates stamped. If multiple exhibits are combined into a single document for submission, then the document must be bookmarked to allow the judge and parties to locate each exhibit within the record.

(C) DPS Notice of Hearing. The Department must file a copy of the notice of hearing and any amended or corrected notices of hearing.

(D) Audio and Video Evidence. Evidentiary exhibits in the form of audio or video recordings shall be filed electronically in the manner specified on SOAH's website. Audiovisual evidence may only be submitted in a common, non- proprietary file format (e.g., MP4, WMV, AVI, MPEG) that can be reviewed by the judge and presented at the hearing without the need for special equipment or software.

(E) Supplemental Exhibits. Any exhibits admitted at a hearing that were not prefiled as required by this section, shall be filed electronically by the party who offered the exhibit by no later than the next business day after the conclusion of the hearing. The parties may only supplement the record with

exhibits that were offered and admitted as evidence, or for which an offer of proof was presented at the hearing.

§ 159.55 Service of Documents on Parties

(a) Service Required. On the same date a document is filed at SOAH, a copy shall also be sent to each party or the party's lead counsel if the party is represented by an attorney. Documents shall be served in the manner specified by this section and in compliance with 1 Texas Administrative Code §155.105.

(b) Service Contact Information. It is the responsibility of DPS and defense counsel, if the defendant is represented by counsel, to ensure that complete and accurate service contact information is entered in the electronic filing manager for each party or attorney who is required to be served. SOAH or the Department may assist an unrepresented defendant with entering the defendant's service contact information into eFile Texas.

(c) Method of Service.

(1) Electronic Service. A document filed electronically at SOAH must be served electronically through the use of eFile Texas or another electronic filing service provider approved by the Texas Supreme Court if the email address of the party or attorney to be served is on file with the record of the case. If the email address of the party to be served is not on file with the electronic filing manager, the document may be served on that party or attorney under paragraph (2) of this subsection.

(2) Alternative Service. If the email address of the party to be served is on not file with the record of the case, then the document may be served in person, by mail, by commercial delivery service, by fax, or by such other manner as directed by the judge. Self-represented parties may use approved alternative methods of email, facsimile transmission, mail, or hand-delivery to serve documents to the Department.

(3) Service of Audio and Video Exhibits. The requirement to serve audio and video exhibits to the other party may be satisfied if the audio or video recordings are filed electronically at SOAH in the manner specified under §159.53 (relating to Filing Documents), and an electronic copy or online access to such exhibits is provided to the party or attorney to be served.

(d) Certificate of Service. A person filing a document shall include a certificate of service that certifies compliance with this section and 1 Texas Administrative Code §155.105. A certificate of service shall be sufficient if it substantially complies

with the following example: "Certificate of Service: I certify that on {date} , a true and correct copy of this {name of document} has been sent to {name of opposing party or authorized representative for the opposing party} by {specify method of delivery, e.g., electronic filing, regular mail, hand-delivery, fax, certified mail.} {Signature}"

(e) Proof of Service. Proof of service may be established by evidence that the document required to be served was electronically served to the party, or if party has legal representation, to party's counsel, at email address of record on file in the electronic filing manager. Alternatively, proof of service may be established by evidence that the document was served in accordance with subparagraph (c)(2) of this subsection to the last known address, as reflected on defendant's notice of suspension, request for hearing, driving record or similar documentation.

(f) Delivery of SOAH Orders. All orders issued by the SOAH judge are considered received by the party upon SOAH's electronic transmission of the order to eFile Texas, if the recipient's email address is on file as part of the electronic record in eFile Texas.

§ 159.57 Representation of the Parties

(a) Representation. A defendant may represent himself or herself, or may employ an attorney representative who is authorized to act as defense counsel. Defendants who are not represented by an attorney may obtain information about representing themselves in ALR proceedings on SOAH's public website at www.soah.texas.gov. SOAH cannot appoint an attorney or provide legal advice for a self-represented litigant.

(b) Appearance of Counsel. Defense counsel who has not otherwise entered an appearance as a matter of record in the proceeding at SOAH shall electronically file a notice of representation that contains the attorney's mailing address, email address, and telephone number. At the time of filing, defense counsel shall enter and verify their service contact information within eFile Texas, including the designation of lead counsel.

(c) Designation of Lead Counsel.

(1) Each party represented by counsel shall designate the lead counsel who is primarily responsible for the representation.

(2) When more than one attorney makes an appearance on behalf of a party, the attorney whose signature first appears on the initial pleading for a party shall be designated as lead counsel for that party unless another attorney is specifically designated in writing and/or within eFile Texas.

(3) If necessary to promote efficiency due to the large number of ALR cases, DPS may designate the lead attorney for the DPS region to which the case is assigned as lead counsel within eFile Texas, even if another DPS attorney appears on behalf of the Department at the hearing.

(4) All delivery of service of process and case-related communications shall be sent to the lead counsel as designated within eFile Texas.

§ 159.59 Withdrawal and Substitution of Counsel

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

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

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

(b) A motion to withdraw must be served on all parties and must include a certificate of conference.

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

(d) If the motion to withdraw is granted, the withdrawing attorney shall immediately forward the notice of hearing, all additional information about settings and deadlines, and any discovery obtained for the case to a self-represented defendant or, if the defendant is represented by counsel, to the substitute attorney.

(e) To ensure the delivery of service of process and future case-related communications upon the withdrawal or substitution of counsel, defense counsel shall verify and update the contact information in the electronic filing manager as follows:

(1) If the defendant has no substitute attorney, the withdrawing attorney shall verify and update the party contact information and service contact information for the defendant within eFile Texas.

(2) If the defendant will be represented by a substitute attorney, then the substitute attorney shall file a notice of appearance, and shall verify and update the service contact information and lead counsel designation for the record of the case within eFile Texas.

(f) The Department may substitute one attorney for another by entering an appearance at the hearing or by providing notice to the defendant, or defense counsel if defendant is represented by an attorney, without necessity for a motion or order. Upon such substitution, the Department shall verify and update the service contact information and designation of lead counsel for the record of the case within eFile Texas to ensure the delivery of service of process and future case-related communications to the Department.

§ 159.61 Electronic Case Records Access

(a) Electronic Document Repository. The case records for ALR proceedings at SOAH are available online through re:SearchTX, an electronic court records system approved by the Texas Supreme Court. This system serves as an official repository for SOAH case records.

(b) Accuracy and Completeness of Records. The electronic records available through re:SearchTX are automatically updated with the filing or issuance of any new documents in the ALR proceeding through eFile Texas. Case records available through re:SearchTX may be relied upon in the same manner as an original or certified copy. The repository includes file stamped copies of all current case records, but does not necessarily include:

(1) The electronic recording of the hearing;

(2) Evidentiary exhibits in the form of audio or video recordings; and

(3) The written transcript of the hearing, if any.

(c) Access to Records. Users of re:SearchTX must establish an eFile Texas account or a re:SearchTX account. Access to ALR case records is determined by the security role assigned to the individual within eFile Texas for the particular case. To access ALR case records at SOAH through re:SearchTX, users must be properly designated within the eFile Texas system as one of the following:

(1) A defendant who has used eFile Texas to file at least one document in the case and is listed as a party to the case;

(2) Lead counsel for the case, with a Texas state bar number that is electronically linked with the case in eFile Texas; or

(3) A member of lead counsel's eFile Texas firm profile, where lead counsel's Texas state bar number is electronically linked with the case in eFile Texas.

(d) Attorney use of re:SearchTX. Attorneys shall establish access to re:SearchTX, and are expected to obtain and maintain a sufficient level of technical competency to monitor case activity and obtain their own case records through the use of eFileTexas and re:SearchTX for the ALR cases in which they are authorized to appear.

Subchapter C Witnesses and Subpoenas

§ 159.101 Subpoenas Generally

(a) Scope.

(1) A subpoena may command a person to give testimony for an ALR hearing and/or produce designated documents or tangible things in the actual possession of that person.

(2) A subpoena must be issued on the form provided at www.soah.texas.gov.

(3) The party that causes a subpoena to be issued must take reasonable steps to avoid imposing undue burden or expense on the person served.

(4) A party or attorney that violates the requirements of this subchapter will be subject to sanctions as determined by the judge, including, but not limited to, the loss of authority to issue subpoenas for ALR hearings.

(5) If a party that requests or issues a subpoena fails to timely appear at the hearing, any subpoenaed witnesses will be released from the subpoena and the subpoena will have no continuing effect.

(b) Attorney-issued subpoenas. An attorney who is authorized to practice law in the State of Texas may issue up to two subpoenas for witnesses to appear at a hearing. One subpoena may be issued to compel the appearance of the peace officer who was primarily responsible for the defendant's stop or initial detention and the other may be issued to compel the appearance of the peace officer who was primarily responsible for finding probable cause to arrest the defendant. If the same officer was primarily responsible for both the defendant's stop and arrest, the attorney may issue only one subpoena.

(c) Subpoena request filed with judge.

(1) Not later than ten days prior to the hearing, a party may file a subpoena request with SOAH that demonstrates good cause to compel a witness's appearance in person or by telephone or video conference, when:

(A) a party intends to call more than two peace officers to testify as witnesses;

(B) a party seeks to compel the appearance of witnesses who are not peace officers;

(C) a party seeks to compel the appearance of the breath test operator or technical supervisor and, by affidavit based on personal knowledge, has established a genuine issue concerning the validity of the breath test that requires the appearance of the witness to resolve; or

(D) a defendant, who is not represented by an attorney, seeks to compel the appearance of witnesses.

(2) A request for subpoena that is not granted prior to the hearing may be re-urged at the hearing. If the judge grants the request for a subpoena at the hearing, the hearing shall reconvene at a later date for the appearance of the witness.

(d) Judge's discretion. The decision to issue a subpoena, as described in subsection (c) of this section, shall be in the sound discretion of the judge assigned to the case. The judge shall refuse to issue a subpoena if:

(1) the testimony or documentary evidence is immaterial, irrelevant, or would be unduly repetitious; or

(2) good cause has not been demonstrated.

§ 159.103 Issuance and Service of Subpoenas

(a) A party that issues or is granted a subpoena duces tecum shall be responsible for having the subpoena served, and may be required to advance the reasonable costs of reproducing any documents or tangible things requested.

(b) A subpoena must be served at least five days before the hearing, and must include a copy of the notice of hearing or other information that is sufficient to notify the witness of how to appear, including instructions and information for joining a videoconference or telephone conference call if applicable.

(c) Method of Service. A subpoena must be served by delivering a copy to the witness. The subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party to the case and is 18 years of age or older. A subpoena is served by:

(1) hand-delivering a copy of the subpoena to the witness in-person;

(2) electronically transmitting a copy of the subpoena to the last known electronic address of the witness, with acknowledgment of receipt; or

(3) mailing a copy of the subpoena by certified mail with return receipt requested, or delivering a copy of the subpoena by express delivery service with signature required, to the last known address of the witness unless:

(A) the applicant for the subpoena requests in writing that the subpoena not be served by certified mail or express delivery; or

(B) there is insufficient time to ensure delivery of the subpoena to the witness five days before the hearing for which the witness is being subpoenaed.

(4) If the witness is a party and is represented by an attorney of record in the proceeding, then the subpoena may be served to the witness's attorney by a method described in this section.

(5) If the witness is a peace officer, then the subpoena may be served by an accepted method of alternative service established by a peace officer's law enforcement agency.

(d) After a subpoena is served upon a witness, the subpoena and the return of service of the subpoena must be filed at SOAH at least three days prior to the hearing. The return must show:

(1) the date, time, and manner of service, if served by hand delivery;

(2) the acknowledgment of receipt, if served by email;

(3) the return receipt if served by certified mail;

(4) the signed proof of delivery, if served by express delivery service; or

(5) other confirmation as appropriate, if served to a party's attorney or a peace officer's law enforcement agency.

(e) A subpoenaed witness whose assigned work location or residence is more than 150 miles from the designated hearing location is entitled to appear by telephone or videoconference.

(f) A party seeking the admission of subpoenaed documents or audiovisual evidence at the hearing must prefile the exhibits in advance of the hearing in the manner specified by §159.53 of this chapter.

(g) Service upon opposing party.

(1) A party that issues a subpoena must serve the opposing party with a copy of the subpoena on the same date it is issued.

(2) A party that requests a subpoena from a SOAH judge must serve the opposing party with a copy of the request at the time it is filed with SOAH.

(3) When a subpoena has been served, and not less than three days prior to the hearing, a party that has served a subpoena must provide the opposing party with a copy of the return of service.

(4) If a party fails to serve a copy of a subpoena or a subpoena return on the opposing party, the subpoena may be rendered unenforceable by the judge.

(h) Continuing effect. A properly issued subpoena remains in effect until the judge releases the witness or grants a motion to quash or for protective order. If a hearing is rescheduled and a subpoena is extended, and unless the judge specifically directs otherwise, the party that requested the continuance shall promptly notify

any subpoenaed witnesses of the new hearing date and serve a copy of the notice on the opposing party.

§ 159.104 Witness Fees

(a) Witness Fees. Upon the subpoenaed witness's appearance at the hearing, the party that issued the subpoena shall tender a witness fee check or money order in the amount of $10 to the witness, unless the witness waives the fee.

(b) Travel Reimbursement. If the witness traveled more than 25 miles round-trip to the hearing from the witness's office or residence, mileage reimbursement must also be tendered at the same time. The amount of mileage reimbursement will be determined in accordance with the travel rates established by the Comptroller of Public Accounts at https://fmx.cpa.state.tx.us/fm/travel/travelrates.

(c) If the witness is a peace officer, then any amounts for the witness fee and/or travel reimbursement shall be sent to the peace officer's attention at the peace officer's employing law enforcement agency.

(d) If the hearing is conducted by videoconference or telephone conference call, then the party who issued the subpoena shall mail the witness fee check or money order to the witness within one business day of the conclusion of the hearing unless the witness fails to appear at the hearing. Also within one business day of the conclusion of the hearing, the party shall file with SOAH a certification that the witness fee or money order was mailed to the witness. A copy of the certification must be sent to the opposing party at the time it is filed at SOAH.

(e) If a party who served a subpoena on a witness fails to appear at a hearing, that party shall mail the witness fee check or money order to the witness within one day from receipt of a default decision or any other order issued by the judge ordering payment of the fee and mileage reimbursement. Also within one day from receipt of the judge's order, the party shall file with SOAH a certification that the witness fee or money order was mailed to the witness. A copy of the certification must be sent to the opposing party at the time it is filed at SOAH.

(f) Procedures relating to witness fees and mileage reimbursement if a subpoena request is denied or a subpoena is quashed are governed by §159.105 of this chapter.

§ 159.105 Motions to Quash or for Protective Order

(a) On behalf of a subpoenaed witness, a party may move to quash a subpoena or for a protective order. A party that moves to quash a subpoena must serve the motion on the other party at the time the motion is filed with SOAH.

(b) A party may seek an order from the judge at any time after the motion to quash or motion for protective order has been filed.

(c) In ruling on motions to quash or for protection, the judge must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The judge also may impose reasonable conditions on compliance with a subpoena.

(d) If a subpoena request is denied or if a subpoena is quashed, any witness fee or mileage reimbursement fee that has been tendered to a witness shall be returned to the party that tendered the fees except that, if a subpoena is quashed after a witness has already appeared for a hearing, the party that subpoenaed the witness must tender the witness fee check to the witness.

Subchapter D Discovery

§ 159.151 Prehearing Discovery

(a) A request for discovery may not be filed before SOAH acquires jurisdiction over a case involving a particular hearing request and the hearing is initially scheduled by SOAH.

(b) No party shall file copies of discovery requests with SOAH.

(c) Depositions, interrogatories, and requests for admission shall not be permitted in ALR proceedings, and the discovery rules of the Texas Rules of Civil Procedure requiring initial disclosures without awaiting a discovery request do not apply to an ALR proceeding.

(d) Both parties have the right to review, inspect, and obtain copies of any non-privileged documents or records in the other party's possession.

(e) A request for discovery must be on a separate document from other pleadings and notices and clearly labeled as a request for discovery.

(f) A defendant's request for discovery from DPS's ALR Division shall be served to the Department or the DPS attorney of record at the email address(es) reflected in eFile Texas. DPS's request shall be served on Defendant at the address of record.

(g) Except as provided in subsection (j) of this section, responses to discovery shall be sent to the requesting parties within five days after receipt of the request.

(h) If a party does not have any or all of the documents in its actual possession, it shall respond within five days of the request, stating that it does not have the documents in its actual possession. A party must supplement all its discovery responses within five days from the time the party receives the discoverable documents.

(i) If a document sought through discovery is received by the requesting party fewer than ten days before the scheduled hearing, the judge may grant a continuance on the request of either party.

(j) A defendant may request inspection, maintenance, and/or repair records for the instrument used to test the defendant's breath specimen for the period covering 30 days prior to the test date and 30 days following the test date. If the records are

not in the actual possession of DPS, then DPS shall inform the defendant of the proper person or other third party entity from whom the defendant can obtain discovery, if known. If the records are in the actual possession of DPS, then DPS shall supply the records to the defendant within ten days of receipt of the request. If DPS fails to provide properly requested records after the defendant has paid reasonable copying charges for them, evidence of the breath specimen shall not be admitted into evidence.

(k) A party who seeks relevant, probative records from a third party may request issuance of a subpoena duces tecum pursuant to Subchapter C (relating to Witnesses and Subpoenas) to have the evidence produced for the hearing. A person subpoenaed to produce records need not appear at the hearing unless the person is also commanded to attend and give testimony. If a person subpoenaed under this section does not appear or otherwise respond to the subpoena, the judge may grant a continuance to allow for enforcement of the subpoena.

Subchapter E Hearing and Prehearing

§ 159.201 Scheduling and Notice of Hearing

(a) On receipt of a timely request for hearing, DPS shall promptly refer the case to SOAH for a hearing to be conducted by a SOAH judge. After SOAH acquires jurisdiction over the matter in accordance with §159.51 of this title (relating to Jurisdiction), then SOAH has primary responsibility for the scheduling of a hearing.

(b) SOAH shall schedule hearings to be conducted at the earliest possible date, taking into consideration the availability and feasibility of videoconference technology as a means to promote the prompt, fair, and cost-effective resolution of ALR proceedings. To the extent possible, cases shall be scheduled by geographic region based on the defendant's county of arrest.

(c) Once the notice of hearing scheduling the hearing is issued, the hearing may be removed from that docket only upon timely request pursuant to §159.207 of this title (relating to Continuances), by order of the judge, or by agreement of the parties and with the ALJ's consent.

(d) It is a rebuttable presumption that the notice of the hearing was served to the defendant on the same date as the date listed in the notice.

(e) SOAH will provide timely access to ALR scheduling information on SOAH's website at www.soah.texas.gov.

§ 159.203 Waiver or Dismissal of Hearing

(a) Waiver of Request for Hearing. The defendant may waive the request for hearing at any time before the administrative order is final. If the defendant requests a waiver after the notice of hearing is issued, the judge will enter an order accepting the waiver.

(b) Rescission of Notice of Suspension. If, after issuing a notice of hearing, DPS rescinds a notice of suspension, it shall immediately inform SOAH and the defendant of the rescission by the filing of a notice of rescission. A judge shall issue an order dismissing the case from SOAH's docket once the notice of suspension has been rescinded.

(c) Involuntary Dismissal. A judge may dismiss a case on his or her own motion if the record shows no activity by the filing of pleadings or otherwise has occurred for a period of 120 days, or the case has not been brought to hearing with due diligence after multiple continuances to allow the parties to prepare for hearing.

(1) Notice of the judge's intention to dismiss must be sent to the parties at least 15 days prior to the effective date of dismissal. The judge may, but is not required to, conduct a hearing on the dismissal. The order of dismissal shall:

(A) state the reason for dismissal;

(B) inform the parties of an opportunity to seek reinstatement of the case; and

(C) inform the parties that the case is dismissed unless:

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

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

(2) The judge may grant a motion to reinstate the case if the moving party shows valid and compelling reasons for the delay or inaction, or the judge finds that extraordinary circumstances exist that require reinstatement of the case.

(3) In the event a timely motion for reinstatement is not decided by written order of the judge within 30 days after the dismissal order is signed, the motion shall be deemed overruled by operation of law.

(4) Dismissal under this section removes the case from the SOAH docket and rescinds the notice of suspension without a decision on the merits.

§ 159.205 General Request for Relief

After a hearing has been scheduled before SOAH, any party making a request that requires an interim order must file a motion that describes the relief requested. The motion must contain a certificate of service and a certificate of conference stating whether the opposing party has agreed to the request. Motions must be filed no later than five days before the hearing date, but for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at a hearing.

§ 159.207 Continuances

(a) A request for continuance will be considered in accordance with the provisions of Texas Transportation Code § 524.032(b) and (c) (relating to rescheduling a hearing upon a defendant's request), § 524.039 (relating to appearance of technicians), and Texas Transportation Code § 724.041(g).

(b) A judge may grant a continuance if the motion is supported by good cause, consent of the parties, or operation of law.

(c) With the exception of a hearing that is rescheduled in accordance with Texas Transportation Code § 524.032(b), the granting of continuances shall be in the sound discretion of the judge, provided, however, that the judge shall expedite the hearings whenever possible. A party requesting a continuance may file a written motion or present the motion orally at the hearing. The motion shall include:

(1) the specific reason for the continuance;

(2) a statement of the number of motions for continuance previously filed in the case by each party; and

(3) for written motions, a certificate of service and a certificate of conference as required by §159.205 of this title (relating to General Request for Relief). Failure to include a certificate of service and a certificate of conference when filing a motion for continuance may result in denial of the continuance request or subsequent continuance requests in the same case.

(d) With the exception of a hearing that is rescheduled in accordance with Texas Transportation Code § 524.032(b), no party is excused from appearing at a hearing until notified by SOAH that a motion for continuance has been granted.

(e) Responses to a motion for continuance, if any, should be promptly submitted in writing, except a response to a motion for continuance made on the date of the hearing may be presented orally at the hearing.

§ 159.209 Participation by Telephone or Videoconference

(a) Videoconference. Upon appropriate notice, SOAH may allow or require an ALR hearing to be conducted by videoconference.

(1) The notice for a videoconference hearing shall include log-in information for joining the videoconference and provide an option for participants to access the hearing audio by telephone.

(2) If a party files a written objection within a reasonable time after receiving notice of a videoconference hearing, and states good cause for the objection, the judge shall timely rule on the objection in a manner consistent with Rule 21d of the Texas Rules of Civil Procedure.

(3) The judge may require a witness to appear on camera as a condition of being allowed to testify in a videoconference hearing.

(b) Telephone Conference Call. After SOAH acquires jurisdiction, a party may file a consent motion or notice of agreement by the parties to conduct an ALR hearing by telephone conference call. The judge may grant the motion and schedule the hearing to be conducted by telephone conference call with proper notice to the parties.

(1) The notice shall include dial-in information or instructions for joining the telephone conference call and include instructions for submitting documents and evidence to be considered in the proceeding.

(2) Before a witness is allowed to give testimony by telephone, the judge will confirm that the witness is the person he or she has been represented to be, which may require the witness to provide reasonable verification of their identity under oath.

(c) Procedural Rights and Duties. All substantive and procedural rights and duties apply to telephone or videoconference hearings, subject only to the limitations of the physical arrangement. The parties shall contact their respective witnesses to assure their availability at the hearing.

§ 159.210 Hearing on Written Submission

(a) A party may file a motion or notice of agreement by the parties to convert an oral proceeding to a hearing on written submission at any time after SOAH acquires jurisdiction. The motion should acknowledge that the moving party or parties have filed and served or exchanged copies of all evidence necessary for resolution of the case.

(b) To expedite resolution of the case, the judge shall liberally grant requests to conduct hearings on written submission.

(c) For hearings conducted on written submission, the opportunity for the presentation of oral testimony and the examination of witnesses is waived by the parties. The factual matters asserted and evidence presented for the judge's consideration shall consist solely of the pleadings, motions, admitted exhibits, and orders filed in the administrative record.

(d) The judge shall issue a written decision for a hearing conducted on written submission in the same manner as provided by §159.253 of this title (relating to Decision of the Judge). The parties may appeal the decision as provided by §524.041 of the Texas Transportation Code.

§ 159.211 Hearings

(a) Procedures.

(1) Hearings shall be conducted in accordance with the APA, Texas Government Code, Chapter 2001, when applicable, and with this chapter, provided that if there is a conflict between the APA and this chapter, this chapter shall govern. If a conflict exists between this chapter and the Texas Transportation Code, Chapters 522, 524, or 724, and these rules cannot be harmonized with those chapters, the applicable Texas Transportation Code provision controls.

(2) Once the hearing has begun, the parties may be off the record only when the judge permits. If a discussion off the record is pertinent, the judge will summarize it for the record.

(3) ALR hearings shall be conducted in a fair and expeditious manner. In the interest of justice and efficiency, the judge may determine the order in which cases are heard, impose reasonable conditions on the length of time required for a hearing, question witnesses, and protect witnesses from abusive, repetitious, or unreasonably prolonged questioning.

(4) The judge shall exclude testimony or any evidence which is irrelevant, immaterial, or unduly repetitious.

(b) Evidence. Except as otherwise provided by Texas Government Code § 2001.081, the rules of evidence as applied in a non-jury civil case in a district court of this state shall apply in ALR proceedings.

(c) Witnesses and affidavits.

(1) All witnesses shall testify under oath.

(2) An officer's sworn report of relevant information shall be admissible as a public record. However, the defendant shall have the right to subpoena the officer in accordance with §159.103 of this title (relating to Subpoenas). If the defendant timely subpoenas an officer and the officer fails to appear without good cause, information obtained from that officer shall not be admissible. In the alternative, if the party who requested the subpoena wants to seek enforcement of the subpoena, the judge may grant the party a continuance.

(3) The judge, on his or her own motion or on request of a party, may allow the testimony of any witness to be taken by telephone or videoconference, provided that all parties have the opportunity to participate in and hear the proceeding. All substantive and procedural rights apply to the telephone or videoconference appearance of a witness, subject to the limitations of the physical arrangement as described in §159.209(c) of this title (relating to Participation by Telephone or Videoconference).

(4) If a witness, in preparation for or during testimony, reviews any document that has not been prefiled and the opposing party requests an opportunity to review the document, the judge may allow the witness to present or read the document to the opposing party.

(d) Record of hearing.

(1) The judge shall make an accurate and complete recording of the oral proceedings of the hearing.

(2) SOAH will maintain a case file that includes the recording, pleadings, evidence, and the judge's decision.

(3) SOAH will maintain case files in accordance with the terms of its records retention schedule.

(e) Interpreters. When an interpreter will be needed for all or part of a proceeding, a party shall file a written request at least seven days before the hearing. If the defendant fails to make a timely request, the judge may provide an interpreter or may continue the hearing to secure an interpreter. SOAH shall provide and pay for:

(1) an interpreter for deaf or hearing impaired parties and subpoenaed witnesses in accordance with § 2001.055 of the APA;

(2) reader services or other communication services for blind and sight-impaired parties and witnesses; and

(3) a certified language interpreter for parties and witnesses who need that service.

(f) Simultaneous ALR Appearances. If defense counsel is scheduled to appear in more than one ALR proceeding at the same time, the attorney may request the

judge to facilitate the attorney's appearance at both hearings by controlling the order in which cases are heard.

§ 159.213 Failure to Attend Hearing and Default

(a) If a party fails to appear for the hearing, the judge, on his or her own motion or on request of the opposing party, may proceed in that party's absence on a default basis.

(b) For a telephone or videoconference hearing, the following may be considered a failure to appear and grounds for default, if the conditions exist for more than fifteen minutes after the scheduled time for hearing:

(1) failure to attend the telephone conference call or videoconference at the scheduled time; or

(2) failure to exercise due diligence to address a technical difficulty with attending a videoconference by contacting the SOAH Chief Clerk's Office for assistance or by utilizing the option to access the hearing audio by telephone.

(c) A default under this section must be supported by adequate proof that the notice of hearing was properly filed and served in accordance with §159.53 of this title (relating to Filing Documents) and §159.55 of this title (relating to Service of Documents on Parties).

(1) A rebuttable presumption that proper notice was given to a defendant is established by evidence that the notice of hearing was electronically served to the defendant, or if defendant has legal representation, to defense counsel, at the email address provided under §159.53 and §159.55 of this title, or at the email address as reflected on defendant's request for hearing. Alternatively, the judge may consider evidence that the notice of hearing was timely provided to defendant or if defendant has legal representation, to defense counsel, at the mailing address reflected on defendant's notice of suspension, driving record, or similar documentation presented by DPS.

(2) A rebuttable presumption that proper notice was given to DPS is established by evidence that information regarding the date, time, and location or method of appearance was electronically transmitted to the Department by the SOAH Chief Clerk's Office or issued by the judge to the DPS attorney of record at the email address(es) reflected in eFile Texas. Alternatively, the judge may consider evidence that notice of the scheduled hearing was published on SOAH's website and/or available to DPS through re:SearchTX.

(d) Defendant's Failure to Appear. A Defendant who requests a hearing and fails to appear without good cause waives the right to a hearing on the merits, and the judge will issue a decision and order authorizing the Department to suspend the Defendant's driver's license.

(e) Department's Failure to Appear. If the Department fails to appear through its attorney without good cause, the judge will issue an order dismissing the case without suspension or disqualification. A case dismissed under this subsection is dismissed with prejudice and may not be refiled.

(f) Within ten business days after the issuance of a default decision and order, the defaulting party may file a written motion with SOAH requesting that the default order be vacated because the party had good cause for failing to appear. In the motion, the party must state the grounds for their failure to appear and whether the motion is opposed. Regardless of whether the motion is opposed, the judge may rule on the motion without setting a hearing or may set a hearing to consider the motion. A hearing on a motion to vacate a default order may be held by videoconference or telephone conference call. If the judge finds good cause for the party's failure to appear, the judge shall vacate the default order and reset the case for a hearing.

Subchapter F Disposition of Case

§ 159.251 Hearing Disposition

(a) If the judge finds that DPS proved the requisite facts as specified in Texas Transportation Code §§522.105, 524.035, or 724.042 by a preponderance of the evidence, the judge shall grant DPS's petition.

(b) If the judge finds that DPS did not prove all of the requisite facts by a preponderance of the evidence, the judge shall deny DPS's petition, and DPS shall not be authorized to suspend or deny the defendant's license or disqualify the defendant from receiving a license for the conduct at issue.

§ 159.253 Decision of the Judge

(a) Upon conclusion of the hearing, the judge shall issue a written decision that includes findings of fact and conclusions of law.

(b) The decision of the judge is final and appealable. Except as authorized by §159.254 of this title (relating to Correction of Final Decision) no party shall file a motion for rehearing or request to modify a decision with SOAH.

(c) The judge's decision does not determine the effective dates of any suspension that may be enforced by DPS.

(d) Any automated case data exchanged by SOAH with DPS regarding the disposition of ALR proceedings is provided for the sole purpose of administrative convenience and is not part of the administrative record. The outcome of a particular proceeding as reflected by the judge's final written decision or order takes precedence over any conflicting data reported to the DPS Enforcement and Compliance Service.

(e) DPS is solely responsible for ensuring that the Department administers the defendant's driving record and any suspension in a manner that is consistent with the judge's final disposition of the case.

§ 159.254 Correction of Final Decision

(a) SOAH has no continuing jurisdiction to modify an ALR decision after it has been signed, except that the judge, on his or her own motion or on request of a party, may amend an ALR decision to:

(1) correct a clerical error in the original written decision, including, but not limited to, the unintentional entry of a decision using the wrong form or template; or

(2) conform the decision to reflect the correct statutory period of suspension.

(b) A request for correction must be filed as soon as possible after the error is discovered, but not later than 10 business days after the issuance of the original decision, and must specify the clerical error or period of suspension that is proposed for correction.

(c) The filing of a motion to correct a decision does not extend the deadline for appeal under Texas Transportation Code § 524.041 or stay any action that has been previously authorized.

(d) A corrected decision may only be issued if the error is apparent on the face of the record and a correction is required to accurately reflect the judge's intent at the time the original decision was entered. A corrected decision cannot be based on a request for reconsideration or new evidence or arguments that were not presented at the hearing on the merits, and may not be used to correct judicial error.

(e) The judge is not required to act on a request for correction of a final decision. Any corrected decision must be issued by the judge not later than the 29th day after the date the original ALR decision was signed.

§ 159.255 Appeal of Judge's Decision

(a) Record on Appeal. Except as described by subsection (d) of this section, a person who appeals a SOAH decision is responsible for filing the record on appeal with the court. The record on appeal shall consist of the following:

(1) the file-marked or stamped copy of all parties' motions or other pleadings;

(2) all written orders or decisions issued by the judge and any evidence of transmittal to the parties;

(3) all exhibits admitted into evidence;

(4) all exhibits not admitted into evidence but made a part of the record by a party as an offer of proof or bill of exceptions; and

(5) a transcription of the proceedings electronically recorded by SOAH.

(b) Notice to SOAH Required. A person who appeals a decision shall file a copy of the petition of appeal with SOAH. The copy submitted for filing must be filed-stamped or certified by the clerk of the court in which the petition is filed. Filing under this section satisfies the requirements of Transportation Code, § 524.041(c) to provide SOAH with a copy of the petition.

(c) Appeal Transcript Requests. A person who intends to pursue the appeal a suspension may obtain a written transcript of the administrative hearing by filing a written request to SOAH, together with a filed-stamped or certified copy of the petition of appeal, within ten days of filing the appeal and paying the applicable fees. The fees shall not exceed the actual cost of preparing or copying the transcript, and upon receipt of the fees, SOAH shall promptly furnish both parties a certified copy of the record. SOAH is not required to prepare a written transcript for non-appealed cases, or to furnish a free transcript to a party who is unable to pay the applicable fee for preparation of the transcript.

(d) Essential Need or Occupational License Only. A person who appeals a suspension for the sole purpose of seeking an essential need or occupational driver's license may be excused from filing the record on appeal if the administrative record is not required by local rules of the court where the appeal is filed.

(e) Records Retention for Appealed Cases. For three years after notice of an appeal is filed, SOAH will maintain the file and original recording of proceedings. A copy of the file and recording will be available for review by the parties or a reviewing court, if needed.

(f) If a case is remanded for taking of additional evidence, the appellant must file with SOAH, within ten days of the signing of the reviewing court's remand order, a request for relief, including setting a hearing on remand. The request must include a copy of the remand order.

(g) A remand under this section does not stay the suspension of a driver's license.

§ 159.257 Disposition of Criminal Charges and Expunction of Records

(a) Except for acquittal of a criminal charge as provided by § 524.015(b) or § 724.048(c) of the Texas Transportation Code, the disposition or expunction of a criminal charge relating to an arrest that forms the basis of the ALR proceeding does not affect a driver's license suspension or bar any matter in issue in an ALR proceeding.

(b) The records of ALR proceedings at SOAH are subject to expunction only upon receipt by SOAH of a judicial court order of expunction that complies with the requirements of Texas Code of Criminal Procedure Article 55.06.

(c) A judicial court order of expunction based on the dismissal, and not the acquittal, of criminal charges does not require or authorize SOAH to expunge records relating to the ALR proceeding.

Chapter 160 General Administration

Subchapter A Vendor Protests of Procurements

§ 160.1 Applicability

(a) Purpose. The purpose of this chapter is to provide an internal protest procedure to be used by vendors to address protests of procurements by the State Office of Administrative Hearings.

(b) Definitions. The following words and terms, when used in this chapter, shall have the following meanings:

(1) SOAH--The State Office of Administrative Hearings.

(2) Interested party or parties--Vendors who submitted bids or proposals for the contract or solicitation involved in the protest.

(3) Vendor--An actual or prospective bidder, offeror, proposer, or contractor aggrieved by a procurement action by the State Office of Administrative Hearings.

(c) Bid Protest by Vendors Related to Solicitation or Contract Award. A vendor who submitted a written response, or who is eligible to submit a written response, to a solicitation issued by SOAH may file a protest with SOAH's Chief Operating Officer or designee for actions taken by the agency on the following:

(1) the solicitation documents or actions associated with the publication of solicitation documents;

(2) the evaluation or method of evaluation for a solicitation; or

(3) the award of a contract.

§ 160.2 Filing the Bid Protest

(a) The protest must be submitted in writing and must be mailed or hand-delivered to the office of SOAH's Chief Operating Officer or designee and received:

(1) by the end of the posted solicitation period, if the protest concerns the solicitation documents or actions associated with the publication of solicitation documents;

(2) on or before the proposed date of award of a contract as posted for the solicitation, if the protest concerns the evaluation or method of evaluation for a solicitation; or

(3) no later than 10 calendar days after the notice of award, if the protest concerns the award.

(b) The protest must contain the following:

(1) a specific identification of the rule, statute, or regulation that the protesting vendor alleges the solicitation, contract award or tentative award violated;

(2) a specific description of each action that the protesting vendor alleges is a violation of the statutory or regulatory provision(s) identified in the protest;

(3) a precise statement of the relevant facts;

(4) a statement of the argument and authorities in support of the protest;

(5) an explanation of the requested subsequent action sought by the protesting vendor; and

(6) a statement confirming copies of the protest have been mailed or delivered by the protesting party to any other identifiable interested parties. Upon request, SOAH will provide the vendor with a list of interested parties as reflected by the records of the agency.

§ 160.3 Action by the Chief Operating Officer or Designee

(a) The Chief Operating Officer or designee will review the formal protest. Upon receipt of a protest, the Chief Operating Officer or designee may:

(1) dismiss the protest, if it is not timely or does not meet the requirements of SOAH's bid protest procedures;

(2) solicit written responses to the protest from interested parties or other affected vendors; or

(3) attempt to settle and resolve the protest by mutual agreement.

(b) The Chief Operating Officer or designee may request that the protesting party and other interested parties provide additional information and reasonable access to documents to allow SOAH to evaluate the protest. The failure of a protesting party or another interested party to timely respond to SOAH's written request(s) for information relating to the protest may result in dismissal of the protest and/or disqualification of that party from contract award.

(c) Status of Procurement During Protest at SOAH. If a timely protest that meets the requirements of SOAH's bid protest procedures is filed under this section, the Chief Operating Officer or designee may delay the solicitation or award of the contract during the pendency of the protest unless it is determined that the contract must be awarded without delay to protect the best interests of the state.

(d) Written Determination. If a protest concerning a solicitation is not resolved by mutual agreement, the Chief Operating Officer or designee will issue a written determination that resolves the protest.

(1) If the Chief Operating Officer or designee determines that no violation of applicable rules or statutes has occurred, the Chief Operating Officer or designee shall inform the protesting party and all other interested parties of that determination by letter, which shall set forth the reasons for the determination.

(2) If the Chief Operating Officer or designee determines that a violation of applicable rules or statutes has occurred in a case where a contract has not been awarded, the Chief Operating Officer or designee shall so inform the protesting party and all other interested parties of that determination by letter. The letter

shall set forth the reasons for the determination and may set forth any appropriate remedial action.

(3) If the Chief Operating Officer or designee determines that a violation of applicable rules or statutes has occurred in a case where a contract has been awarded, the Chief Operating Officer or designee shall inform the protesting party and other interested parties of that determination by letter. The letter shall set forth the reasons for the determination and may set forth any appropriate remedial action, if required, which may include canceling or voiding the contract to the extent allowed by law.

§ 160.4 Appeal to the Chief Administrative Law Judge

(a) If a protest is based on a solicitation or contract award, the protesting party may appeal a determination of a protest to the Chief Administrative Law Judge. An appeal to the Chief Administrative Law Judge must be in writing and received by the Chief Administrative Law Judge's office not later than 10 calendar days after the date the Chief Operating Officer or designee sent written notice of their determination. The scope of the appeal is limited to review of the Chief Operating Officer's or designee's determination. The protesting party must mail or deliver to the other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(b) The Chief Administrative Law Judge may refer the matter to a designee for consideration or issuance of a written decision that resolves the protest.

(c) A protest or appeal that is not filed timely or that does not meet the requirements of SOAH's protest procedures will not be considered unless good cause for delay is shown or it is determined, in the sole discretion of the Chief Administrative Law Judge or designee, that a protest or appeal raises issues significant to the agency's procurement practices or procedures.

(d) A written decision issued by the Chief Administrative Law Judge or designee is the final administrative action of the agency regarding the protest and appeal.

§ 160.5 Bid Protest Related to Vendor Performance Review

(a) SOAH is required by §2155.089 and §2262.055 of the Texas Government Code to review a vendor's performance under a contract after the contract is completed or otherwise terminated. Vendor performance must be reported to the comptroller using the comptroller's tracking system to rate vendors on an A through F scale, with A being the highest grade.

(b) A vendor who receives a grade lower than a C in the vendor performance tracking system may file a protest regarding the lower grade assigned to the vendor in the system. For protests related to the rating or score for a vendor performance review, SOAH will comply with the applicable statutes, rules, and written policies and guidelines issued by the comptroller.

§ 160.6 Standards for Maintaining Documentation

(a) SOAH shall maintain sufficient records and reports to facilitate compliance with applicable law, including:

(1) each contract entered into SOAH;

(2) all contract solicitation documents related to the contract;

(3) all documents that reflect and identify the basis for decisions relating to a procurement, including actions taken that deviate from requirements or recommendations in the state procurement manual or contract management guide;

(4) all purchase orders, change orders, and invoices associated with the contract;

(5) all contract amendments, renewals, or extensions executed by the agency; and

(6) all other documents necessary to record the full execution and completion of each contract.

(b) SOAH may destroy the contract and documents in accordance with applicable records retention requirements.

Subchapter B General Provisions

§ 160.10 Employee Training and Education

(a) The agency may use state funds to provide education and training for its employees in accordance with the State Employees Training Act (Texas Government Code §§656.041 - 656.104).

(b) The education or training shall be related to the employee's current position or prospective job duties within the agency.

(c) The agency's education and training program benefits both the agency and the employees participating by:

(1) preparing for technological and legal developments;

(2) increasing work capabilities;

(3) increasing the number of qualified employees in areas for which the agency has difficulty in recruiting and retaining employees; and

(4) increasing the competence and professionalism of agency employees.

(d) Agency employees may be required to complete an education or training program related to the employee's duties or prospective duties as a condition of employment.

(e) Participation in an education or training program requires the appropriate approval prior to participation and is subject to the availability of funds within the agency's budget.

(f) As part of the agency's education and training program, employees may be eligible for reimbursement for a training, development, or education program offered by a state agency, an institution of higher education, or a private entity.

(g) Reimbursement of costs to an employee for completing a training, development, or education program offered by a state agency, an institution of higher education, or a private entity, requires the approval of the Chief Administrative Law Judge or the Chief Administrative Law Judge's designee. The agency shall only reimburse the expenses for a program course successfully completed by an employee.

(h) The employee education and training program for the agency may include:

(1) mandatory agency-sponsored training required for all employees;

(2) education relating to technical or professional certifications and licenses;

(3) education and training relating to the promotion of employee development;

(4) employee-funded external education;

(5) agency-funded external education, including continuing legal education, online courses, and courses not credited towards a degree; and

(6) other agency-sponsored education and training determined by the agency to fulfill the purposes of the State Employees Training Act.

(i) The Human Resources Manager for the State Office of Administrative Hearings is designated as the administrator of the agency's education and training program.

(j) The administrator, in conjunction with the agency executive management, shall develop policies for administering each of the components of the employee education and training program. These policies shall provide clear and objective guidelines and shall include, at a minimum, the following:

(1) eligibility requirements for participation;

(2) approval procedures for participation; and

(3) obligations of program participants.

(k) Approval to participate in any portion of the agency's education and training program shall not in any way affect an employee's at-will status or constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

(l) Permission to participate in any education and training program may be withdrawn if the agency determines, in its sole discretion, that participation would negatively impact the agency or the employee's job duties or performance.

§ 160.11 Sick Leave Pool

(a) A sick leave pool is established to alleviate hardship caused to an employee and the employee's immediate family if a catastrophic injury or illness forces the employee to exhaust all eligible leave time earned by that employee and to lose compensation time from the state.

(b) The Human Resources Manager for the State Office of Administrative Hearings is designated as the pool administrator.

(c) The pool administrator shall develop and maintain a policy, operating procedures, and forms, as necessary, for the administration of the sick leave pool subject to approval by the Chief Administrative Law Judge.

(d) Operation of the sick leave pool shall be consistent with Texas Government Code, Chapter 661.

§ 160.12 Family Leave Pool

(a) A family leave pool is established to provide eligible employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the employee's own serious illness, including pandemic-related illnesses or complications caused by a pandemic.

(b) All contributions by employees to the family leave pool are voluntary. There is no limitation on the amount or frequency of contributions. Employees who contribute accrued sick or vacation leave hours to the pool may not designate the contributed hours for use by a specific employee. An employee who contributes leave hours to the pool may not withdraw the contributed hours.

(c) An employee may only apply to withdraw time from the family leave pool if the employee has exhausted all eligible personal leave due to:

(1) the birth of a child;

(2) the placement of a foster child or adoption of a child under 18 years of age;

(3) the placement of any person 18 years of age or older requiring guardianship;

(4) a serious illness to an immediate family member of the employee, including pandemic-related illness;

(5) an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or

(6) a previous donation of time to the pool.

(d) The Human Resources Manager for the State Office of Administrative Hearings is designated as the pool administrator.

(e) The pool administrator shall develop and maintain a policy, operating procedures, and forms, as necessary, for the administration of the family leave pool subject to approval by the Chief Administrative Law Judge.

(f) Operation of the family leave pool shall be consistent with Texas Government Code, Chapter 661.

Chapter 161 Requests for Records

§ 161.1 Charges for Copies of Public Records

(a) The charge to any person requesting copies of any public information held by the State Office of Administrative Hearings will be the charges established by the Office of the Attorney General, codified at 1 TAC §§70.1 - 70.12 of this title (relating to Cost of Copies of Public Information).

(b) The State Office of Administrative Hearings may waive these charges if there is a public benefit. The Chief Administrative Law Judge is authorized to determine whether a public benefit exists on a case by case basis.

Chapter 163 Arbitration Procedures for Certain Enforcement Actions of the Texas Department of Aging and Disability Services Regarding Convalescent and Nursing Homes

Subchapter A General Information

§ 163.1 Definitions

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

(1) Administrative law judge or judge--An individual appointed by the chief administrative law judge of the State Office of Administrative Hearings (SOAH) under Government Code, §2003.041. The term shall also include any temporary administrative law judge appointed by the chief administrative law judge pursuant to Government Code, §2003.043.

(2) APA--Government Code, Chapter 2001.

(3) Authorized representative--An attorney authorized to practice law in the State of Texas or, where permitted by applicable law, a person designated by a party to represent the party.

(4) Chief judge--The chief administrative law judge or his or her designee for action under this chapter. Any designee shall be a person qualified to serve as an arbitrator.

(5) Code--Health and Safety Code, Chapter 242 as it may be amended from time to time.

(6) DADS--The Department of Aging and Disability Services.

(7) Facility--An institution as defined by the Code §242.002(10).

(8) Order--The award or final order issued by the arbitrator.

§ 163.3 Construction of This Chapter

Unless otherwise expressly provided, the past, present, or future tense shall each include the other; the masculine, feminine, or neuter genders shall each include the other; and the singular and plural number shall each include the other.

§ 163.5 Other SOAH Rules of Procedure

Unless specific applicable procedures are set out in this chapter, other SOAH rules of procedure found at Chapter 155 of this title (relating to Rules of Procedure), Chapter 157 of this title (relating to Temporary Administrative Law Judges), and Chapter 161 of this title (relating to Requests for Records) may apply in arbitration proceedings under this chapter. The rules that specifically apply include:

(1) 1 TAC 155, Subchapter A, §155.7 (relating to Computation of Time);

(2) 1 TAC 155, Subchapter C, §155.101 (relating to Filing Documents);

(3) 1 TAC 155, Subchapter C, §155.103 (relating to Service of Documents on Parties);

(4) 1 TAC 155, Subchapter D, §155.151 (relating to Assignment of Judges to Cases);

(5) 1 TAC 155, Subchapter D, §155.153 (relating to Powers and Duties);

(6) 1 TAC 155, Subchapter E, §155.201 (relating to Representation of Parties);

(7) 1 TAC 155, Subchapter I, §155.405 (relating to Participation by Telephone or Videoconference);

(8) 1 TAC 155, Subchapter I, §155.417 (relating to Stipulations);

(9) 1 TAC 155, Subchapter I, §155.425 (relating to Procedure at Hearing);

(10) 1 TAC 155, Subchapter I, §155.431 (relating to Conduct and Decorum);

(11) 1 TAC 155, Subchapter J, §155.503 (relating to Dismissal Proceedings);

(12) 1 TAC 157, §157.1 (relating to Temporary Administrative Law Judges); and

(13) 1 TAC 161, §161.1 (relating to Charges for Copies of Public Records).

Subchapter B Election and Invitation of Arbitration

§ 163.51 Opportunity to Elect Arbitration

(a) Except as otherwise prohibited by the Code, DADS or any affected facility may elect arbitration as an alternative to a contested case proceeding or to a judicial proceeding relating to any of the following disputes arising under the Code, Subchapter H-2:

(1) renewal of a license under §242.033;

(2) suspension, revocation, or denial of a license under §242.061;

(3) assessment of a civil penalty under §242.065; or

(4) assessment of a monetary penalty under §242.066; or

(5) assessment of a penalty as described in §32.021(n), Human Resources Code.

(b) Arbitration may not be elected if the facility has had an arbitration order levied against it in the previous five years.

(c) The election of arbitration is a representation that the party choosing arbitration is solvent and able to bear the costs of the proceeding. In cases where the facility is responsible for paying SOAH's costs and expenses, SOAH will require that an authorized representative of the facility provide:

(1) a deposit for the costs of the proceeding, based on SOAH's reasonable determination of the amounts expected to be incurred; and

(2) an affidavit acknowledging the facility's responsibility and duty to pay SOAH's costs and expenses.

(d) An election to engage in arbitration under this chapter is irrevocable and binding on the facility and DADS. However, an election does not preclude the parties from reaching an agreed resolution of a dispute that has been submitted for arbitration at any time during the arbitration process before the final order has been issued by the arbitrator.

§ 163.53 Notice of Election of Arbitration

(a) Pursuant to Code §242.252(b), in an enforcement lawsuit filed in court:

(1) An affected facility may elect arbitration by filing a notice of election to arbitrate with the court in which the lawsuit is pending and sending copies to the office of the attorney general and to DADS or its designee.

(A) The notice of election must be filed no later than the tenth day after the date on which the answer is due or the date on which the answer is filed with the court, whichever is earlier.

(B) If a civil penalty is requested by an amended or supplemental pleading in a lawsuit, the affected facility must file its notice of election of arbitration not later than the tenth day after the date on which the amended or supplemental pleading is served on the affected facility or the facility's counsel.

(C) If the election of arbitration is challenged, the parties shall seek a prompt ruling from the court on the challenge. If a court finds SOAH has jurisdiction to conduct an arbitration, the Health and Human Services Appeal Division shall immediately file the court's order and the notice of election of arbitration at SOAH and request the arbitration be processed in the usual manner.

(2) DADS may elect arbitration by filing the election with the court in which the lawsuit is pending and by notifying the facility of the election not later than the date on which the facility may elect arbitration under paragraph (1) of this subsection.

(b) In an administrative enforcement proceeding originally docketed at SOAH:

(1) An affected facility may elect arbitration by filing a notice of election to arbitrate with the docket clerk at SOAH no later than the tenth day after receiving notice of hearing that complies with the requirements of the Administrative Procedure Act. A copy of this election shall be sent to DADS's representative of record in the relevant action and to DADS or its designee.

(2) DADS may elect arbitration under this chapter by filing a notice of election with the docket clerk at SOAH no later than the date that the facility may elect arbitration under paragraph (1) of this subsection and sending a copy of the

notice of election to the facility's representative of record in the relevant action.

(c) The date of filing shall be the date affixed upon a notice of election by a date-stamp utilized by the docket clerk at the court for judicial proceedings, or by the docket clerk of SOAH for administrative proceedings.

(d) The notice of election shall include a written statement that contains:

(1) the nature of the action that is being submitted to arbitration, as listed in this Subchapter, §163.51(a);

(2) a brief description of the factual and/or legal controversy, including an estimate of the amount of any penalties sought;

(3) an estimate of the length of the arbitration hearing on the merits and the extensiveness of the record necessary to determine the matter;

(4) the remedy sought;

(5) a statement that the facility has not been the subject of an arbitration order within the previous five years;

(6) any special information that should be considered in selecting an arbitrator;

(7) if a hearing location other than Austin is requested, an explanation for requesting that location;

(8) the name, title, address, and telephone number of a designated contact person for the party who will be paying the costs of the arbitration; and

(9) a statement that arbitration is not otherwise prohibited by the Code.

§ 163.55 Initiation of Arbitration

(a) When a notice of election of arbitration is filed at SOAH, the notice shall be date stamped and the file given a SOAH docket number that identifies it as a case submitted for arbitration. Parties shall include this docket number on all subsequent correspondence and documents filed with SOAH relating to the arbitration.

(b) The party that did not initiate the arbitration may file an answering statement with SOAH within ten days after receipt of the notice of election from the electing party. That answering statement should include a response to the claim and any challenge to the election of arbitration. If the party that did not initiate the arbitration does not file an answering statement, SOAH will presume that party denies the claim and does not challenge the election of arbitration. Failure to file an answering statement shall not operate to delay the arbitration.

§ 163.57 Jurisdictional Challenges

(a) Parties who raise jurisdictional challenges to an election for arbitration in a judicial enforcement action are required to seek an expeditious ruling from the court in which the election was filed.

(b) Jurisdictional challenges brought to an election for arbitration in an administrative enforcement proceeding shall be decided by the presiding administrative law judge in the contested case.

§ 163.59 Changes of Claim

If either party desires to make any new or different claim, it shall be made in writing and filed with SOAH. The other party may, within ten days from the date of such filing, file an answer with SOAH. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

Subchapter C Filing and Service of Documents

§ 163.101 Filing and Service of Documents

(a) All documents a party files with SOAH shall be governed by the provisions of 1 TAC §155.101 (relating to Filing Documents).

(b) All documents a party files with SOAH shall be simultaneously served on the other parties. Service of documents on parties shall be governed by the provisions of 1 TAC §155.103 (relating to Service of Documents on Parties).

(c) Except as provided herein, any oral or written communication, other than a communication authorized under subsection (a) of this section, from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to SOAH, for transmittal to the arbitrator. After the arbitrator has been appointed in a case, materials may be filed directly with the arbitrator, if:

(1) the parties agree;

(2) the arbitrator agrees; and

(3) the service requirements of this section are met.

Subchapter D Selection of Arbitrator and Costs

§ 163.151 Selection of Arbitrator

(a) The parties may agree upon an arbitrator qualified under this chapter and submit that individual's name with their initial statements.

(b) Arbitrators designated by the parties.

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

(2) The notice must include the name, address, and telephone number of the arbitrator selected; a statement that the parties have entered into an agreement with the arbitrator regarding the arbitrator's rate and method of compensation; and an affirmation that the arbitrator is qualified to serve according to the provisions of this chapter.

(3) The chief judge shall issue an order specifying the date by which the arbitration must be completed.

(c) If the parties do not agree on a non-SOAH arbitrator who is willing and available to serve, SOAH will provide a list of potential SOAH arbitrators.

(d) Any objections for cause pertaining to any name on the list shall be made in writing directed to the chief judge at SOAH within three days of receiving the list of potential SOAH arbitrators, with a copy served on all other parties. Such objections will be reviewed by the chief judge.

(e) SOAH will notify the parties of the arbitrator appointed.

(f) Until an arbitrator has been appointed, the chief judge may rule on pending matters, including dispositive motions.

§ 163.153 Notice to and Acceptance of Appointment by Arbitrator who is not a SOAH Judge

(a) Notice of the appointment of the arbitrator shall be sent to the arbitrator by SOAH, together with a copy of this chapter and an acceptance form for the arbitrator to sign and return. The signed acceptance of the arbitrator shall be filed with SOAH prior to the first pre-hearing conference or other meeting of the parties to the arbitration.

(b) The acceptance of the arbitrator shall state that the arbitrator is qualified and willing to serve as arbitrator in accordance with this chapter, and with the current Code of Ethics for Arbitrators in Commercial Disputes issued by the American Bar Association and the American Arbitration Association. It shall also state that the arbitrator foresees no difficulty in completing the arbitration according to the schedule set out in this chapter.

(c) A potential arbitrator must not accept appointment in or continue handling any matter in which the arbitrator believes or perceives that participation as an arbitrator would be a conflict of interest or create the impression of a conflict. The duty to disclose is a continuing obligation throughout the arbitration process.

(d) Upon objection of a party to the continued service of an arbitrator, the chief judge shall provide the arbitrator and all parties an opportunity to respond. After consideration of these responses, the chief judge shall determine whether the arbitrator should be disqualified and shall inform the parties of his/her decision, which shall be conclusive.

§ 163.155 Vacancies

If for any reason an appointed arbitrator is unable to perform the duties of the office, the chief judge may, on proof satisfactory to the chief judge, declare the office vacant. The chief judge may fill a vacancy by appointing a SOAH arbitrator. Objections for cause to the appointed arbitrator shall be filed in accordance with this Subchapter, §163.151(d). During the period of a vacancy, the chief judge may rule on pending matters, including dispositive motions.

§ 163.157 Qualification of Arbitrators

(a) The chief judge may appoint as an arbitrator any SOAH administrative law judge.

(b) A potential arbitrator who is not a SOAH administrative law judge shall be on an approved list of a nationally recognized association that performs arbitration services or meet the following minimum standards:

(1) Have at least five years of experience in health care and/or the legal profession and/or alternative dispute resolution with recognized expertise in his/her profession(s).

(2) Have the attributes necessary to be a successful arbitrator, including expertise, honesty, integrity, impartiality, and the ability to manage the arbitration process.

(3) May not represent any plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies, and he/she must affirm that he/she will not undertake any such representation during the pendency of the arbitration proceeding.

(c) The chief judge may remove an arbitrator if she/he determines that the arbitrator no longer meets the qualifications listed in this section. The determination of the chief judge in this matter is conclusive.

§ 163.159 Duties of the Arbitrator

The arbitrator shall:

(1) secure appropriate facilities for the hearing, giving preference to using state facilities;

(2) protect the interests of DADS and the facility;

(3) ensure that all relevant evidence has been disclosed to the arbitrator, DADS, and facility; and

(4) render an order consistent with applicable state and federal law, including the Code and this chapter.

§ 163.161 Cost of Arbitration

(a) An arbitrator's fees and expenses shall not exceed the statutory daily maximum for case preparation, prehearing conferences, hearings, preparation of the order, and any other required post-hearing work. Rates charged for less than one day must bear a reasonable relationship to the daily maximum.

(b) There may also be incidental expenses connected with an arbitration proceeding which may be charged in addition to the arbitrator's fees and expenses. If a party requests that an arbitration hearing be held outside of Austin, and the arbitrator agrees to hold the arbitration in that location, incidental expenses would include the cost of renting a room for the hearing and the arbitrator's travel expenses.

(c) SOAH charges fees for the services provided by SOAH arbitrators at the hourly rate approved in the General Appropriations Act, but the total amount charged for a SOAH arbitrator's services in an arbitration proceeding conducted under these rules shall not exceed the statutory daily maximum.

(d) The party electing arbitration must pay the cost of the arbitration.

Subchapter E Arbitration Proceedings

§ 163.201 Exchange and Filing of Information

(a) Unless the arbitrator orders otherwise, by the 30th day after the date SOAH mailed notice to the parties of the name of the appointed arbitrator, the parties shall have exchanged the following information:

(1) List of witnesses that a party expects to call with a short summary of their expected testimony;

(2) Any and all documents or other tangible things that contain information relevant to the subject matter, including any documents that will be testified about at the hearing or that witnesses have reviewed in preparing for their testimony.

(b) Not later than the seventh day before the first day of the arbitration hearing, sooner if so directed by the arbitrator, DADS and the facility shall exchange and file with the arbitrator:

(1) all documentary evidence not previously exchanged and filed that is relevant to the dispute, with the relevant portions clearly indicated; and

(2) information relating to a proposed resolution of the dispute.

(c) The parties are responsible for identifying any material that is confidential by law and for taking appropriate measures, for example, redacting resident identities, to ensure that all such material remains confidential.

(d) Each producing party's documents shall be labeled by name or initials of the party and Bates-stamped or otherwise consecutively numbered in the lower right hand corner of each page.

§ 163.203 Preliminary Conference

The arbitrator may set a preliminary conference and may require parties to file a statement of position prior to that conference. The statement of position shall include:

(1) stipulations of the parties to uncontested facts and applicable law;

(2) citation to the statutory and regulatory law, both state and federal, that controls the controversy;

(3) a list of the issues of fact and law that are in dispute between the parties, including a citation to legal authorities that each party relies on for its legal positions;

(4) proposals designed to expedite the arbitration proceedings, including minimizing preparation and decision time required of the arbitrator;

(5) a list of documents that the parties have exchanged and a schedule for the delivery of any additional relevant documents, indicating the approximate length of each document;

(6) the identification of witnesses expected to be called during the arbitration proceeding, with a short summary of their expected testimony; and

(7) other matters as specified by the arbitrator.

§ 163.205 Discovery

Discovery is not allowed in a proceeding under this chapter, except by agreement with the other party or by order of the arbitrator upon a showing of good cause. Any discovery will be completed no later than 14 days before the opening of the arbitration hearing on the merits, unless otherwise ordered by the arbitrator. Discovery should not be filed with SOAH or the arbitrator unless there is a related dispute which must be resolved by the arbitrator. No more than four hours of deposition testimony may be taken by either party, unless otherwise ordered by the arbitrator.

§ 163.207 Stenographic Record

An official stenographic record of the proceeding is not required, but DADS or the facility may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made. A copy of any transcript prepared at the request of a party shall be provided to the arbitrator.

§ 163.209 Electronic Record

DADS shall make an electronic recording of the proceeding. If there is no stenographic record of the proceeding, the original recording or a copy will be provided to the arbitrator at the close of the proceeding if the arbitrator so requests. At the arbitrator's request, DADS shall also record prehearing conferences.

§ 163.211 Interpreters

When an interpreter will be needed for all or part of a proceeding, a party shall file a written request at least seven days before the setting. SOAH shall provide and pay for:

(1) an interpreter for deaf or hearing impaired parties and subpoenaed witnesses in accordance with the APA, §2001.055;

(2) reader services or other communication services for blind and sight impaired parties and witnesses; and

(3) a certified language interpreter for parties and witnesses who need that service.

§ 163.213 Communication of Parties with Arbitrator

(a) DADS and the facility shall not communicate with the arbitrator other than at an oral hearing, or through properly filed documents, unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication from the parties, other than a communication authorized under subsection (a) of this section, shall be directed to SOAH for transmittal to the arbitrator.

§ 163.215 Date, Time, and Place of Hearing

(a) The arbitration hearing shall be scheduled to begin no later than the 90th day after the date that the arbitrator is selected.

(b) The arbitrator shall set the date, time, and place for each hearing. She/he shall send a notice of hearing to the parties at least 30 days in advance of the hearing date, unless otherwise agreed to by the parties. A copy of such notice shall be simultaneously filed with SOAH by the arbitrator.

(c) The arbitrator may grant a continuance of the arbitration at the request of DADS or the facility. The arbitrator may not unreasonably deny a request for a continuance.

(d) Arbitration hearings normally will be held at SOAH's hearings facility in Austin, Texas. If a party seeks to have the arbitration hearing held elsewhere, the party shall submit a written request to the arbitrator and make a showing of good cause. The arbitrator shall have sole discretion to determine whether to grant such a request. If the arbitrator grants the request, the arbitrator shall determine how the incidental expenses of holding the arbitration hearing outside of Austin will be apportioned between the parties. Incidental expenses include the cost of renting a room for the hearing and the arbitrator's travel expenses. Preference will be given to using state facilities. The arbitrator may require that the incidental expenses be paid in advance of the arbitration hearing.

§ 163.217 Representation

Any party may be represented by counsel or other authorized representative.

§ 163.219 Attendance Required

(a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a continuance.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before issuing an order.

§ 163.221 Public Hearings and Confidential Material

Hearings held under this chapter shall be open to the public. The parties are responsible for identifying any material that is confidential by law and for taking appropriate measures to ensure that such material remains confidential during the hearing. All exhibits shall be returned to DADS following the issuance of the order by the arbitrator, where they shall be maintained in accordance with DADS' rules.

§ 163.223 Order of Proceedings

(a) Opening statements. The arbitrator may ask each party to make an opening statement to clarify the issues involved.

(b) The complaining party shall then present evidence to support its claim. The defending party shall then present evidence to support its claim. Witnesses for each party shall answer questions propounded by the other party and the arbitrator.

(c) The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence within the time frames set by the arbitrator.

(d) Exhibits offered by either party may be received in evidence by the arbitrator.

(e) The parties may make closing statements as they desire, but the record may not remain open for written briefs unless ordered by the arbitrator. If the arbitrator requests briefs the arbitration hearing shall be deemed "closed" on the date that the last requested brief is filed.

§ 163.225 Control of Proceedings

The arbitrator shall exercise reasonable control over the proceedings, including but not limited to the manner and order of interrogating witnesses and presenting evidence so as to:

(1) make the interrogation and presentation effective for the determination of the truth;

(2) avoid needless consumption of time; and

(3) protect witnesses from harassment or undue embarrassment.

§ 163.227 Evidence

(a) The parties may offer evidence as they desire and shall produce additional evidence that the arbitrator considers necessary to understand and resolve the dispute. However, any documentary evidence not properly exchanged between the parties before the hearing will be excluded from consideration unless good cause is shown.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to the rules of judicial proceedings is not required. The Texas Rules of Evidence are not binding on the arbitrator but may be used as a guideline.

(c) Each party shall produce any witnesses under its control without the necessity of a subpoena. Individuals may be compelled by the arbitrator, as provided under the Texas General Arbitration Act, Texas Civil Practice and Remedies Code, §171.007, to attend and give testimony or to produce documents at the arbitration proceeding or at a deposition allowed under this Subchapter, §163.205.

§ 163.229 Witnesses

Witnesses shall testify under oath. Testimony may be presented in a narrative, without strict adherence to a "question and answer" format.

§ 163.231 Exclusion of Witnesses

Any party may request that the arbitrator exclude witnesses from the hearing except when they are testifying. If such a request is made, the arbitrator shall instruct the witnesses not to discuss the case outside the official hearing other than with the designated representatives or attorneys in the case. However, an individual who is a party or any other single party representative shall not be excluded under this rule. A witness or other person violating these instructions may be punished by the exclusion of evidence as the arbitrator deems appropriate.

§ 163.233 Evidence by Affidavit

The arbitrator may receive and consider evidence of witnesses by affidavit. Affidavit testimony must be filed with the arbitrator and served on the other party no later than 30 days before the hearing. The other party will have 15 days to file any objection to the admissibility of the affidavit or to file controverting affidavits. The arbitrator shall give such evidence only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

§ 163.235 Evidence Filed After the Hearing

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, all parties shall be afforded an opportunity to examine such documents or other evidence. Such materials shall be served as provided in Subchapter C of this Chapter, §163.101.

Subchapter F Arbitration Order

§ 163.251 Order

(a) The arbitrator may enter any order consistent with state and federal law applicable to a dispute described in Subchapter B of this Chapter, §163.51.

(b) The order shall be entered no later than the 60th day after the close of the arbitration hearing.

(c) The arbitrator shall base the order on the facts established in the arbitration proceeding, including stipulations of the parties; and on the state and federal statutes and formal rules and regulations, as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a list of stipulations on uncontested issues and a statement of the arbitrator's decisions on all contested issues. If requested by either of the parties, the decision shall contain findings of fact and conclusions of law on controverted issues.

(e) The arbitrator shall file a copy of the order with SOAH and DADS or its designee and send a copy to the parties.

§ 163.253 Effect of Order

An order of an arbitrator under this chapter is final and binding on all parties. A party's right to appeal is limited to the provisions of the Code.

§ 163.255 Clerical Order

For the purpose of correcting clerical errors, an arbitrator retains jurisdiction of the order for 20 days after the date of the order.

Chapter 165 Rules of Procedure for Appraisal Review Board Appeals

§ 165.1 Purpose and Scope

(a) This chapter governs the procedures of the State Office of Administrative Hearings (SOAH) concerning appeals by property owners from orders of an appraisal review board.

(b) These rules shall be construed to ensure the fair and expeditious determination of every action.

§ 165.3 Definitions

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

(1) Administrative law judge or judge--An individual appointed to serve as a presiding officer by SOAH's chief administrative law judge under Texas Government Code, Chapter 2003.

(2) Appeal--An appeal brought under this chapter by a property owner from a board order determining a protest concerning appraisal or market value of property.

(3) Attorney's fees--An award of attorney's fees as provided for in Texas Tax Code, §42.29.

(4) Board--An appraisal review board.

(5) Board order--An order of a board determining a protest concerning the appraised or market value of property brought under Texas Tax Code, §41.41(a)(1) or (2), if the appraised or market value of the property that was the subject of the protest, as determined by the board order, is more than $1 million.

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

(7) Costs of Appeal--The costs to be paid by the appraisal district or the property owner under §165.25 of this title (relating to Determination). The costs of appeal include the time spent by a judge on a case referred under this chapter calculated at the rate of $100 per hour for services rendered, consistent with the rate approved by the Legislature in the General Appropriations Act. Costs also include travel expenses (including transportation, meals, and lodging expenses determined under state travel rules), postage, long distance telephone charges, court reporter charges and transcripts, and other similar expenses.

(8) Prevailing property owner--A property owner who achieves a reduction in the appraised or market value of the property that is the subject of the appeal.

(9) SOAH--The State Office of Administrative Hearings.

§165.5 Applicability of Other SOAH Rules.

(a) Other SOAH rules of procedure found at Chapters 155, 157, and 161 of this title (relating to Rules of Procedure; Temporary Administrative Law Judges; and Requests for Records) apply in appeals under this chapter unless specific applicable procedures are set out in this chapter. The rules in this chapter control to the extent there is a conflict with the rules in Chapters 155, 157, and 161 of this title. Except as inconsistent with this chapter, the rules from other chapters that specifically apply include:

(1) §155.7 of this title (relating to Computation of Time);

(2) §155.51 of this title (relating to Jurisdiction);

(3) §155.151 of this title (relating to Assignment of Judges to Cases);

(4) §155.153 of this title (relating to Powers and Duties);

(5) §155.155 of this title (relating to Orders);

(6) §155.157 of this title (relating to Sanctioning Authority);

(7) §155.423 of this title (relating to Making a Record of the Proceeding);

(8) §155.425 of this title (relating to Procedure at Hearing);

(9) §155.431 of this title (relating to Conduct and Decorum);

(10) §157.1 of this title (relating to Temporary Administrative Law Judges); and

(11) §161.1 of this title (relating to Charges for Copies of Public Information).

(b) The provisions of §155.351 of this title (relating to Mediation) do not apply to appeals under this chapter.

§ 165.7 Board Orders That May be Appealed

A property owner may appeal a board order determining a protest concerning the appraised or market value of property under Texas Tax Code, §41.41(a)(1) or of the unequal appraisal under Texas Tax Code, §41.41(a)(2) if the following prerequisites are met:

(1) The appraised or market value of the property that was the subject of the protest is more than $1 million, as determined by the board order; and

(2) The board order at issue in the appeal concerns a determination of the appraised or market value of real or personal property other than industrial property.

§ 165.9 Notice of Appeal by Property Owner

(a) To appeal a board order to SOAH, a property owner must:

(1) file with the chief appraiser of the appraisal district not later than the 30th day after the date the property owner received notice of the board order a completed notice of appeal as described in subsection (b) of this section; and

(2) file with the chief appraiser not later than the 90th day after the date the property owner received notice of the board order a deposit in the amount of $1,500 payable to SOAH.

(b) A completed notice of appeal by a property owner must be in the form prescribed by SOAH and include:

(1) a copy of the board order;

(2) a brief statement that explains the basis for the property owner's appeal of the order; and

(3) a statement of the property owner's opinion of the appraised or market value, as applicable, of the property that is the subject of the appeal.

(c) The form for the notice of appeal prescribed by SOAH may be found at www.soah.state.tx.us.

(d) At the hearing on the appeal, the property owner may be limited to 1-1/2 hours unless the property owner requests an extended hearing and specifies the additional time need.

(e) If the parties settle the dispute the deposit is refundable:

(1) less the filing fee if the property owner and the appraisal district settle before the hearing on the merits is convened; or

(2) less the filing fee and the costs of appeal if the property owner and the appraisal district settle after the hearing on the merits is convened.

(f) Three hundred dollars of the deposit represents the filing fee.

§ 165.10 Failure to Pay Deposit

(a) The date, time, and place of the hearing on appeal shall not be set by the judge designated to hear the appeal until the deposit has been filed by the property owner as required under §165.9(a)(2) of this title (relating to Notice of Appeal by Property Owner).

(b) If the property owner fails to pay the deposit as required under §165.9(a)(2) of this title:

(1) SOAH shall dismiss the property owner's appeal; and

(2) the property owner is not entitled to file an appeal with SOAH in any subsequent tax year.

(c) The judge may issue an order of dismissal with or without a motion filed by a party.

§ 165.11 Request to Docket Case

(a) As soon as practicable, but no more than 30 days after receiving a notice of appeal from a property owner, the chief appraiser for the appraisal district shall:

(1) file with SOAH a completed request to docket case form as prescribed by SOAH;

(2) submit to SOAH the notice of appeal, and the board order;

(3) indicate, where appropriate, those entries in the records that are subject to the appeal; and

(4) request the appointment of a qualified judge to hear the appeal.

(b) The chief appraiser shall file the deposit with SOAH, as soon as practicable, but not more than 15 days after receiving the deposit from the property owner.

(c) The hearing on the appeal will typically be limited to 1-1/2 hours for each party unless the property owner or the appraisal district requests an extended hearing and specifies the additional time needed in accordance with §165.21(g) of this title (relating to Hearing).

§ 165.15 Designation of Administrative Law Judge

As soon as practicable after receiving a notice of appeal and filing fee, SOAH shall designate a judge to hear the appeal.

§ 165.17 Prehearing Orders

(a) As soon as practicable after a judge is designated, the judge shall by order set the date, time, and place of the hearing on the appeal. The order shall be issued at least 30 days prior to the hearing date. The prehearing order shall not be issued until the property owner has filed the deposit as required in §165.9(a)(2) of this title (relating to Notice of Appeal by Property Owner).

(b) The order shall state the statutes and administrative rules under which the hearing is to be conducted.

§ 165.19 Venue

(a) The hearing shall be held in the following municipalities: Amarillo, Austin, Beaumont, Corpus Christi, El Paso, Fort Worth, Houston, Lubbock, Lufkin, McAllen, Midland, San Antonio, Tyler, and Wichita Falls.

(b) If all or part of the property that is the subject of the appeal is located in a municipality listed in subsection (a) of this section, the judge shall set the hearing in that municipality. If no part of the property that is the subject of the appeal is located in a municipality listed in subsection (a) of this section, the judge shall set the hearing in the listed municipality that is the nearest to the subject property.

(c) The hearing shall be held in a building owned or leased by SOAH. If SOAH does not have a building in the municipality where the hearing is required to be held, the hearing may be held in a public or privately-owned building in that municipality, preferably a building in which SOAH regularly conducts business. The hearing may not be held in a building or facility that is owned, leased, or under the control of an appraisal district.

§ 165.21 Hearing

(a) The hearing of an appeal is a trial de novo. The judge may not admit into evidence the fact of previous action by the board, except as otherwise provided by this chapter.

(b) Texas Government Code, Chapter 2001, and the Texas Rules of Evidence do not apply to a hearing under this chapter.

(c) Prehearing discovery is limited to the exchange of documents the parties will rely on during the hearing. Any expert witness testimony must be reduced to writing and included in the exchange of documents.

(d) Except as otherwise ordered by the judge, all documents relied on by either party must be filed with SOAH and the other party at least ten days before the scheduled hearing. Documents that are not timely filed may be excluded from the record.

(e) Any relevant evidence is admissible, subject to the imposition of time limits and the parties' compliance with procedural requirements imposed by the judge, including a schedule for the prehearing exchange of documents.

(f) A judge may consider factors such as the hearsay nature of testimony, the qualifications of witnesses, and other restrictions on the admissibility of evidence under the Texas Rules of Evidence in assessing the weight to be given to the evidence admitted.

(g) A hearing will be limited to three hours unless otherwise ordered by the judge. A property owner may request an extended hearing on the date the notice of appeal is filed. An appraisal district may request an extended hearing on the date a request to docket case is filed. Any request for extended hearings made after those dates will be granted only for good cause as determined by the judge.

§ 165.23 Representation of Parties

(a) A property owner may be represented at the hearing by:

(1) the property owner;

(2) an attorney who is licensed in Texas;

(3) a certified public accountant;

(4) a registered property tax consultant; or

(5) any other person who is not otherwise prohibited from appearing in a hearing held by SOAH.

(b) The appraisal district may be represented by the chief appraiser or a person designated by the chief appraiser.

(c) If more than one protest is filed relating to the same property, or if the property is owned in undivided or fractional interests, an authorized representative of a party may appear at the hearing as provided by Texas Tax Code, §41.45.

§ 165.25 Determination

(a) As soon as practicable, but no later than the 30th day after the date the hearing is concluded, the judge shall issue a determination and send a copy to the property owner and the chief appraiser.

(b) The judge's determination:

(1) must include a determination of the appraised or market value, as applicable, of the property that is the subject of the appeal;

(2) must contain a brief analysis of the judge's rationale for, and set out the key findings in support of, the determination, but is not required to contain a detailed discussion of the evidence admitted or the contentions of the parties;

(3) may include any remedy or relief a court may order under Texas Tax Code, Chapter 42, in an appeal relating to the appraised or market value of property, including an award of attorney's fees to a prevailing property owner under Texas Tax Code, §42.29; and

(4) shall specify whether the appraisal district or property owner is required to pay the costs of appeal and the amount of those costs.

(c) If the judge determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is nearer to the property owner's opinion of the appraised or market value, as applicable, of the property as stated in the notice of appeal submitted by the property owner than the value determine by the board:

(1) SOAH shall refund the property owner's deposit, including the filing fee;

(2) the appraisal district, on receipt of a copy of the decision, shall pay the costs of the appeal as specified in the decision; and

(3) the chief appraiser shall correct the appraised or market value, as applicable, of the property as shown in the appraisal roll to reflect the judge's determination.

(d) If the judge determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is not nearer to the property owner's

opinion of the appraised or market value, as applicable, of the property as stated in the property owner's notice of appeal, than the value determined by the board:

(1) SOAH shall apply the property owner's deposit, including the filing fee, to the costs of the appeal, and any amount in excess of the costs of the appeal shall be refunded to the property owner;

(2) The chief appraiser shall correct the appraised or market value, as applicable, of the property as shown in the appraisal roll to reflect the judge's determination if the value as determined by the judge is less than the value as determined by the board; and

(3) the property owner shall pay the difference between the costs of the appeal as specified in the determination and the property owner's deposit, including the filing fee.

§ 165.27 Objections to Determination

(a) A party may file written objections to any fact or conclusion in a determination. Objections must be filed within 15 days of the date of service of the determination. A party may file a reply to objections within 15 days of the filing of the objections.

(b) A judge may extend or shorten the time to file objections or replies.

(c) The judge shall review the objections and replies. The judge may issue an amended determination in response to the objections and replies, or correct any clerical errors in the determination. If the judge determines that no changes should be made to the determination, the judge shall so notify the parties in writing.

(d) If no objections are filed by the date objections are due, a determination or amended determination becomes final on the day that objections are due. If objections are timely filed, a determination or amended determination becomes final on the date that the judge notifies the parties in writing that no changes should be made to the determination or amended determination. If the judge does not notify the parties in writing, the determination becomes final by operation of law 45 days after the date of the last objection that was timely filed.

§ 165.29 Delinquent Taxes

A property owner may not file an appeal to SOAH if the taxes on the property subject to the appeal are delinquent. A judge who determines that the taxes on the property subject to an appeal are delinquent shall dismiss the pending appeal with prejudice. If an appeal is dismissed under this section, SOAH shall retain the property owner's filing fee.