TEXAS REGISTER

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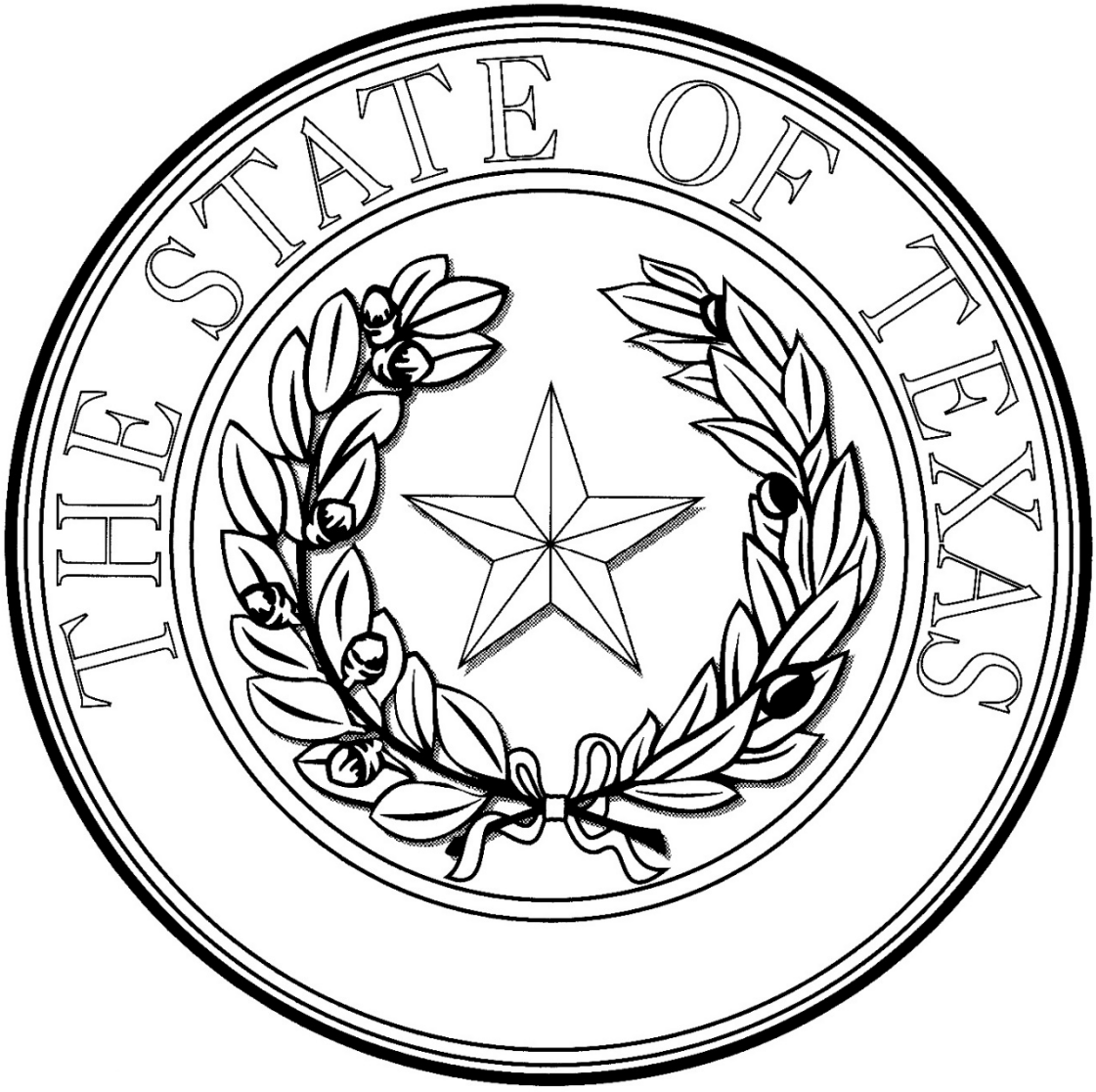

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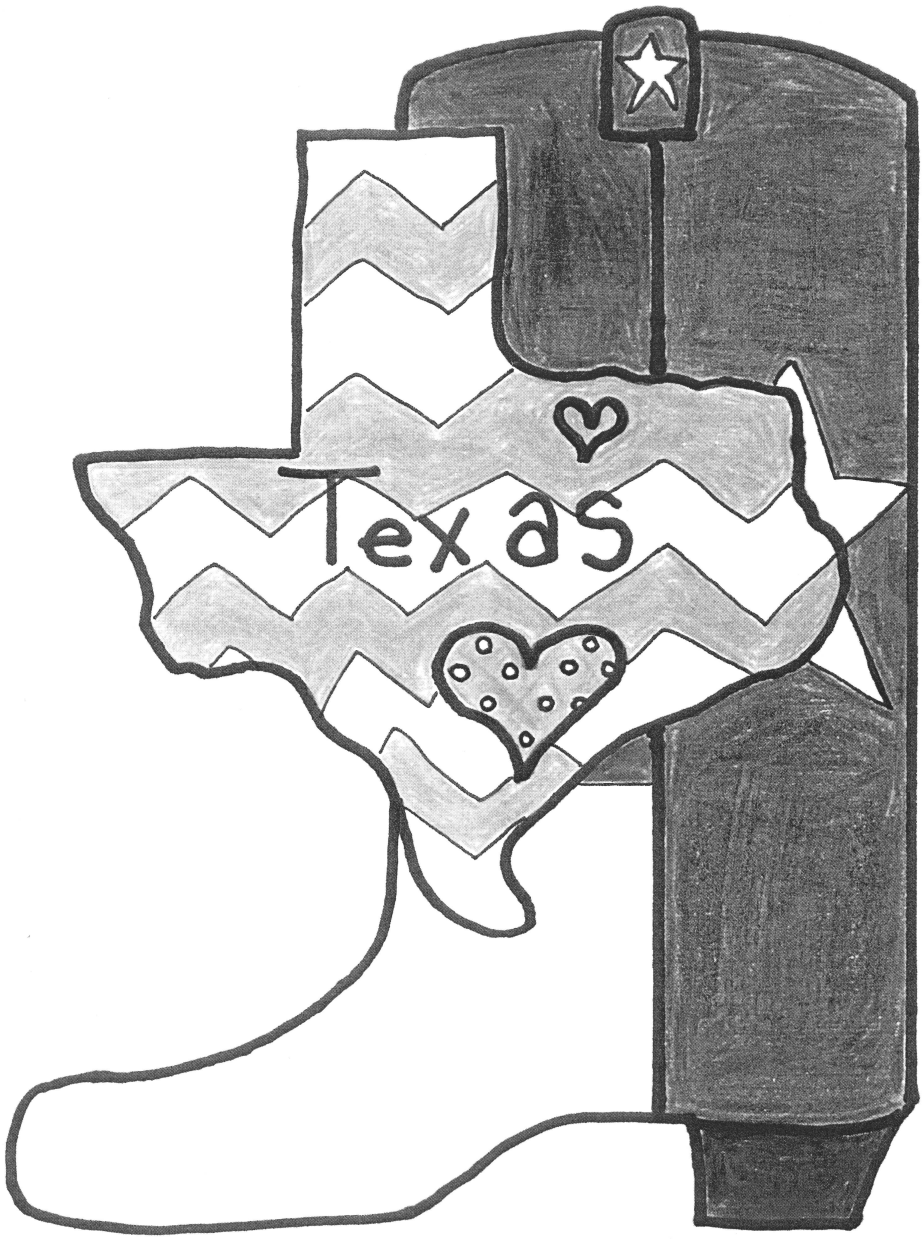
In This Issue

RULE REVIEW

IN ADDITION


Texas

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Executive Order GA-26

Relating to the expanded opening of Texas in response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating certain social-distancing restrictions for Texans in accordance with guidelines promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC); and

WHEREAS, I issued Executive Order GA-14 on March 31, 2020, expanding the social-distancing restrictions for Texans based on guidance from health experts and the President; and

WHEREAS, I subsequently issued Executive Orders GA-16, GA-18, GA-21, and GA-23 over the course of April and May 2020, aiming to achieve the least restrictive means of combatting the threat to public health by continuing certain social-distancing restrictions, while implementing a safe, strategic plan to Open Texas; and

WHEREAS, as normal business operations resume, everyone must act safely, and to that end, this executive order and prior executive orders provide that all persons should follow the health protocols recommended by DSHS, which whenever achieved will mean compliance with the minimum standards for safely reopening, but which should not be used to fault those who act in good faith but can only substantially comply with the standards in light of scarce resources and other extenuating COVID-19 circumstances; and

WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed $1,000, and may be subject to regulatory enforcement;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, and in accordance with guidance from DSHS Commissioner Dr. Hellerstedt and other medical advisors, the Governor's Strike Force to Open Texas, the White House, and the CDC, do hereby order the following on a statewide basis effective immediately:

Every business establishment in Texas shall operate at no more than 50 percent of the total listed occupancy of the establishment; provided, however, that:

1. There is no occupancy limit for the following:

a. any services listed by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) in its Guidance on the Essential Critical Infrastructure Workforce, Version 3.1 or any subsequent version;

b. religious services conducted in churches, congregations, and houses of worship;

c. local government operations, including county and municipal governmental operations relating to licensing (including marriage licenses), permitting, recordation, and document-filing services, as determined by the local government;

d. child-care services;

e. youth camps, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths; and

f. recreational sports programs for youths and adults;

2. Except as provided below by paragraph number 5, this 50 percent occupancy limit does not apply to outdoor areas, events, or establishments, except that the following outdoor areas or outdoor venues shall operate at no more than 50 percent of the normal operating limits as determined by the owner:

a. professional, collegiate, or similar sporting events;

b. swimming pools;

c. water parks;

d. museums and libraries;

e. zoos, aquariums, natural caverns, and similar facilities; and

f. rodeos and equestrian events;

3. This 50 percent occupancy limit does not apply to the following establishments that operate with at least six feet of social distancing between work stations:

a. cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade;

b. massage establishments and other facilities where licensed massage therapists or other persons licensed or otherwise authorized to practice under Chapter 455 of the Texas Occupations Code practice their trade; and

c. other personal-care and beauty services such as tanning salons, tattoo studios, piercing studios, hair removal services, and hair loss treatment and growth services;

4. Amusement parks and carnivals shall operate at no more than 50 percent of the normal operating limits as determined by the owner, except that in counties with more than 1,000 cumulative cases of COVID-19, amusement parks may not begin operating until 12:01 a.m. on June 19, 2020;

5. For any outdoor gathering estimated to be in excess of 500 people, other than those set forth above in paragraph numbers 1, 2, or 4, the county judge or mayor, as appropriate, in consultation with the local public health authority, may impose additional restrictions;

6. For dine-in services by restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages, the occupancy limit shall increase at 12:01 a.m. on June 12, 2020, to permit such restaurants to operate at up to 75 percent of the total listed occupancy of the restaurant;

7. For indoor bars and similar indoor establishments that are not restaurants as defined above and that hold a permit from the Texas Alcoholic Beverage Commission, only those customers who are seated may be served;

8. For any business establishment that is subject to a 50 percent "total listed occupancy" limit or "normal operating limit," and that is in a county that has filed with DSHS, and is in compliance with, the requisite attestation form promulgated by DSHS regarding minimal cases of COVID-19, the business establishment may operate at up to 75 percent of the total listed occupancy or normal operating limit of the establishment starting 12:01 a.m. on June 12, 2020;

9. For purposes of this executive order, facilities with retractable roofs are considered indoor facilities, whether the roof is opened or closed; and

10. Staff members are not included in determining operating levels, except for manufacturing services and office workers.

Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at www.dshs.texas.gov/coronavirus, people should not be in groups larger than ten and should maintain six feet of social distancing from those not in their group. People over the age of 65 are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation.

In providing or obtaining services, every person (including individuals, businesses, and other legal entities) should use good-faith efforts and available resources to follow the minimum standard health protocols recommended by DSHS. Nothing in this executive order or the DSHS minimum standards precludes requiring a customer to follow additional hygiene measures when obtaining services. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering.

People shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible. Notwithstanding anything herein to the contrary, the governor may by proclamation add to the list of establishments or venues that people shall avoid visiting.

For the remainder of the 2019-2020 school year, public schools may resume operations for the summer as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency (TEA). Private schools and institutions of higher education are encouraged to establish similar standards. Notwithstanding anything herein to the contrary, schools may conduct graduation ceremonies consistent with the minimum standard health protocols found in guidance issued by TEA.

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list or scope of services as set forth in this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

All existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes Executive Order GA-23, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, GA-20, GA-24, or GA-25. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.

Given under my hand this the 3rd day of June, 2020.

Greg Abbott, Governor

TRD-202002276

♦ ♦ ♦

Proclamation 41-3738

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, since May 29, 2020, there have been threats and incidents of violence in several cities across Texas that have endangered public safety; and

WHEREAS, these events have caused or imminently threatened widespread or severe damage, injury, and property loss, among other harms, at a time when the State of Texas is responding to the novel coronavirus (COVID-19) disaster; and

WHEREAS, while all Americans are entitled to exercise their First Amendment rights, it is imperative that order is maintained, all persons are kept safe and healthy, and property is protected; and

WHEREAS, peaceful protestors, many of whom are responding to the senseless taking of life by the reprehensible actions of a few, should themselves be protected from harm; and

WHEREAS, in response to the ongoing threats of violence and looting, I have activated the Texas National Guard and deployed numerous state resources, including Texas Department of Public Safety peace officers; and

WHEREAS, declaring a state of disaster will facilitate and expedite the use and deployment of resources to enhance preparedness and response to the ongoing threats, including by ensuring that federal law enforcement officers can fully assist with the efforts; and

WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster;"

NOW, THEREFORE, I, Greg Abbott, Governor of the State of Texas, do hereby certify that these threats and incidents of violence constitute and pose an imminent threat of disaster. In accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I hereby declare a state of disaster for all counties in Texas.

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016(a), I hereby suspend all relevant provisions within Chapter 1701 of the Texas Occupations Code, as well as Title 37, Chapters 211-229 of the Texas Administrative Code, to the extent necessary for the Texas Commission on Law Enforcement to allow federal law enforcement officers to perform peace officer duties in Texas. Additionally, pursuant to Section 418.016, any other regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 31st day of May, 2020.

Greg Abbott, Governor

TRD-202002262

♦ ♦ ♦

Proclamation 41-3739

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Hurricane Harvey devastated parts of Texas in 2017 and Tropical Storm Imelda seriously impacted portions of the state in 2019, and many affected jurisdictions are still recovering from the storms; and

WHEREAS, other hurricanes have produced significant damage and have caused or threatened loss of life in Texas and nearby states; and

WHEREAS, as these past storms demonstrated, hurricanes pose a serious threat to Texans, producing heavy winds, storm surges, torrential rains, inland flooding, and tornadoes; and

WHEREAS, all Texans, particularly Gulf Coast residents, must be aware of the dangers that hurricanes present and remain vigilant, especially between June 1 and November 30 when hurricanes are most likely to occur; and

WHEREAS, Section 418.128 of the Texas Government Code requires a gubernatorial proclamation to be issued each year about hurricane preparedness; and

WHEREAS, the 2020 hurricane season is underway;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the authority vested in me by the Constitution and laws of the State of Texas, do hereby proclaim the need for heightened hurricane preparedness during the 2020 hurricane season. I urge all Texans, including residential and commercial property owners, to ensure that their property and communities are prepared for the 2020 hurricane season. It is important to remain mindful of the dangers presented by hurricanes, to stay informed about current threats, and to take steps toward preparedness.

State agencies should review and update their hurricane preparedness plans. All Texas municipalities and counties, the Texas Division of Emergency Management, the Texas Education Agency, the Office of the Comptroller, the Texas Department of Insurance, and the Department of State Health Services should, to the extent practicable, conduct community outreach and education activities on hurricane preparedness to help Texas residents prepare for hurricane season.

Planning and preparation by all potentially affected residents can greatly reduce loss of life and property. Families should designate a safe place to meet in case of evacuation, develop an emergency plan for communicating with relatives and friends in other areas, and assemble a "readiness kit" of important supplies. Everyone should heed all warnings, information, and instructions provided by local officials as well as emergency management personnel.

Together, we can continue to make a difference.

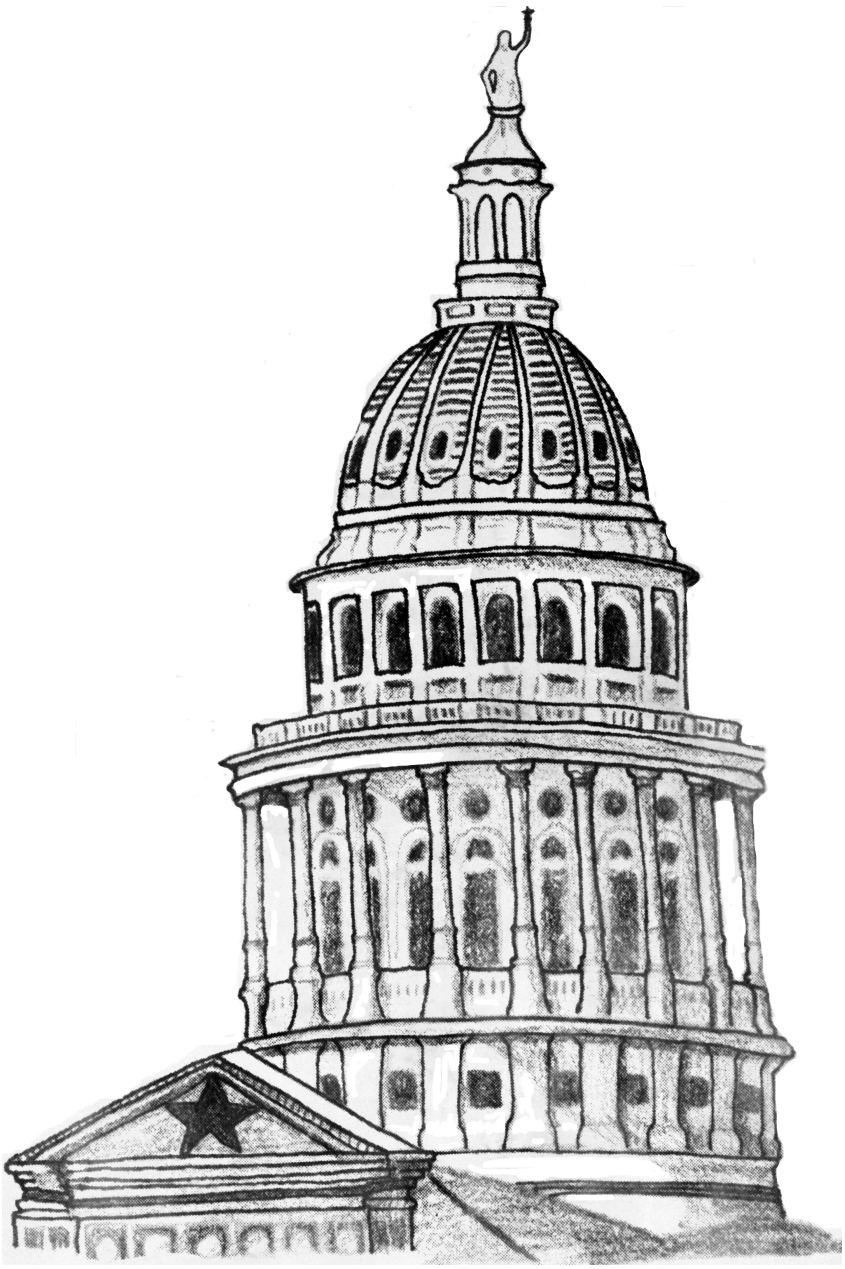
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 3rd day of June, 2020.

Greg Abbott, Governor

TRD-202002277

♦ ♦ ♦



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at https://www.texas.attorneygeneral.gov/attorney-general-opinions. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: https://www.texasattorneygeneral.gov/attorney-general-opinions.)

Requests for Opinions

RQ-0355-KP

Requestor:

Ms. Sara Oates

Chair, Texas Appraiser Licensing and Certification Board

Post Office Box 12188

Austin, Texas, 78711-2188

Re: Authority of the Appraiser Licensing and Certification Board to exempt licensed or certified appraisers from the statutory requirement to comply with the Uniform Standards of Professional Appraisal Practice when performing a property "evaluation" allowed under the federal Interagency Appraisal and Evaluation Guidelines (RQ-0355-KP)

Briefs requested by June 30, 2020

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202002255
Lesley French
General Counsel
Office of the Attorney General
Filed: June 2, 2020

♦ ♦ ♦

Opinions

Opinion No. KP-0310

The Honorable Briscoe Cain

Chair, House Select Committee on Driver's License Issuance & Renewal

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Application of the United States Supreme Court's *Janus* decision to public employee payroll deductions for employee organization membership fees and dues

(RQ-0330-KP)

S U M M A R Y

The United States Supreme Court held in *Janus v. American Federation of State, County, & Municipal Employees* that a public employer may not deduct a fee from an employee's wages to pay union fees or dues unless the employee affirmatively consents to pay, and the Court required that the consent be shown by clear and compelling evidence. Thus, at a minimum, public employers must ensure that employee consent to a payroll deduction for membership fees or dues in a union or employee organization is collected in a way that ensures voluntariness, such as requiring direct provision of authorization from an employee to an employer.

The Court in *Janus* did not provide specific language or a method by which a public employer must obtain consent from an employee. If a public employer used the language proposed, a court is unlikely to find any constitutional defect.

A one-time, perpetual consent to a payroll deduction for membership fees or dues is inconsistent with the Court's holding in *Janus.* A court would likely conclude that consent for one year from the time given is valid and is sufficiently contemporaneous to be constitutional.

Opinion No. KP-0311

The Honorable Lilli A. Hensley

Sterling County Attorney

Post Office Box 88

Sterling City, Texas 76951

Re: Whether a county may call a bond election to fund the construction, repair, improvement, and maintenance of city roads (RQ-0319-KP)

S U M M A R Y

A county may call a bond election under Texas Constitution article III, section 52(b) or (c) and expend bond funds for the construction, repair, improvement, and maintenance of city streets if the county has municipal consent and determines that the city streets are an integral part of or a connecting link to a county road or a state highway. Having satisfied those requirements, a county need not buy the roads and the city need not disincorporate in order for the county to expend bond proceeds on such city streets.

Opinion No. KP-0312

The Honorable Heather Stebbins

Kerr County Attorney

700 Main Street, Suite BA-103

Kerrville, Texas 78028

Re: Whether a hearing on an application for court-ordered mental health services conducted pursuant to section 574.031 of the Health and Safety Code must be recorded by an official court reporter (RQ-0321-KP)

S U M M A R Y

Subsection 574.031(g) of the Health and Safety Code requires that a hearing on an application for court-ordered mental health services be on the record. A court would likely conclude that subsection 574.031(g) imposes a duty on a county court or court at law holding such a hearing in Kerr County to use its official court reporter to make a record of the proceedings.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202002256
Lesley French
General Counsel
Office of the Attorney General
Filed: June 2, 2020

♦ ♦ ♦

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests/Questions

Whether a contribution from a federal political committee to a federal "Super PAC" is a political expenditure made "in connection with elections voted on in Texas." **(AOR-632)**

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-202002267
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: June 3, 2020

♦ ♦ ♦

Advisory Opinion Requests/Questions

Whether a judge may use political contributions to pay for equipment and services in connection with producing an educational podcast for practicing lawyers. **(AOR-633)**

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-202002268
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: June 3, 2020

♦ ♦ ♦

Advisory Opinion Requests/Questions

Whether a registered lobbyist can be "present" at an event via videoconference technology. **(AOR-635)**

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-202002269
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: June 3, 2020

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §810.4

The Council on Sex Offender Treatment (Council) adopts on an emergency basis an amendment to Title 22, Texas Administrative Code, §810.4, concerning License Issuance and/or Renewal, in order to provide licensed sex offender treatment providers with the flexibility to obtain all required continuing education hours online.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In response to the COVID-19 outbreak and national, state, and local community efforts to contain the spread of the virus, including social distancing, the Council amends §810.4 to remove the limit on the number of online continuing education hours a licensee may accrue toward renewal requirements.

As authorized by Texas Government Code, §2001.034, the Council may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code, §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

The Council finds that an imminent peril to the public health, safety, and welfare requires immediate adoption of this emergency rule. The amendment is necessary to provide licensed sex offender treatment providers with flexibility to obtain required continuing education hours online in order to renew their license.

SECTION-BY-SECTION SUMMARY

The amendment to §810.4 removes from paragraph (7) the six-hour limit on the number of online continuing education hours a licensee may accrue toward renewal requirements during a renewal period. However, a licensee must still obtain pre-approval from the Council for all online courses and courses taken at an institution of higher learning. There are no further changes to §810.4.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code, §2001.034, which authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice; under Texas Occupations Code, §110.158, which authorizes the Council to adopt rules necessary for the performance of its duties; and under Texas Occupations Code, §110.302, which requires the Council to adopt licensing requirements for sex offender treatment providers.

The emergency rule implements Texas Occupations Code, Chapter 110.

§810.4. License Issuance and/or Renewal.

All new initial licenses shall expire on the last day of the licensee's birth month. The initial licensing period shall be at least 13 months and no more than 24 months. Subsequent licensing periods will be 24 months. In order to maintain eligibility for the licensure as a sex offender treatment provider, the mental health or medical license of each renewal shall be current and active. All renewal applicants shall comply with the following:

(1) - (6) (No change.)

(7) Licensees shall request pre-approval from the council for all online courses and courses taken at an institution of higher learning. [~~All renewal applicants may count a maximum of 6 online hours per biennial renewal period not including ethic hours.~~]

(8) - (11) (No change.)

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

Filed with the Office of the Secretary of State on June 2, 2020.

TRD-202002263
Aaron Pierce, PhD, LPC, LSOTP-S
Chairman
Council on Sex Offender Treatment
Effective date: June 2, 2020
Expiration date: September 29, 2020
For further information, please call: (512) 834-4530

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 567. CERTIFICATE OF PUBLIC ADVANTAGE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 567 Certificate of Public Advantage, new §§567.1 - 567.6, 567.21 - 567.26, 567.31 - 567.33, 567.41, and 567.51 - 567.54, concerning emergency rules to permit qualifying hospitals in certain low-population counties to apply for a Certificate of Public Advantage (COPA), which grants merging hospitals immunity from federal and state antitrust laws and provides the opportunity for hospitals in rural counties to remain open to treat patients during the COVID-19 pandemic.

As authorized by Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of these emergency rules concerning Certificate of Public Advantage.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency rules to permit qualifying hospitals in certain low-population counties to apply for a COPA in order to remain open to treat patients during the COVID-19 pandemic, thereby preserving hospital capacity.

House Bill (H.B.) 3301, 86th Legislature, 2019, Regular Session, added Chapter 314A to the Texas Health and Safety Code (THSC). This chapter requires HHSC, as the agency designated by the governor under HSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A. This chapter permits qualifying hospitals in certain low-population counties to apply for a COPA, which grants merging hospitals immunity from federal and state antitrust laws. The Legislature has found that hospital mergers will benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and these benefits may outweigh any anticompetitive effects of joining together competitors to address unique challenges in providing health care services in rural areas.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §§567.1 - 567.6

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and THSC §314A.005. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. THSC §314A.005 requires HHSC, as the agency designated by the governor under THSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

These emergency rules implement Texas Government Code §531.0055 and THSC Chapter 314A.

§567.1. Purpose.

The purpose of this chapter is to implement Texas Health and Safety Code, Chapter 314A, which requires qualifying hospitals seeking to negotiate and enter into a merger agreement to be certified by the Texas Health and Human Services Commission through the issuance of a Certificate of Public Advantage.

§567.2. Definitions.

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

(1) Certificate of Public Advantage (COPA)--The written approval by the Texas Health and Human Services Commission that governs a cooperative agreement.

(2) Hospital--A nonpublic general hospital that is licensed under Texas Health and Safety Code Chapter 241 and is not maintained or operated by a political subdivision of this state.

(3) Merger Agreement--An agreement among two or more hospitals for the consolidation by merger, or other acquisition or transfer of assets, by which ownership or control over substantially all the stock, assets, or activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital, or hospitals, or another entity that controls the hospitals.

§567.3. Applicability.

This chapter only applies to a merger agreement among hospitals, each of which is located within a county that:

(1) contains two or more hospitals; and

(2) has a population of:

(A) less than 100,000 and is not adjacent to a county with a population of 250,000 or more; or

(B) more than 100,000 and less than 150,000 and is not adjacent to a county with a population of 100,000 or more.

§567.4. Certificate of Public Advantage Required.

A merger agreement between hospitals may not receive immunity under Texas Health and Safety Code Chapter 314A, without a Certificate of Public Advantage.

§567.5. Compliance.

(a) Each party to a merger agreement shall comply with Texas Health and Safety Code Chapter 314A (relating to Merger Agreements Among Certain Hospitals), this chapter, and all statutes and rules applicable under the hospital license.

(b) Each hospital operating under a Certificate of Public Advantage shall agree to any ongoing supervision the Texas Health and Human Services Commission may require.

§567.6. Scope.

(a) A Certificate of Public Advantage (COPA) is issued for a merger agreement identified in a COPA application.

(b) A COPA may not be altered.

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

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SUBCHAPTER B. APPLICATION OF PUBLIC ADVANTAGE

26 TAC §§567.21 - 567.26

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and THSC §314A.005. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. THSC §314A.005 requires HHSC, as the agency designated by the governor under THSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

These emergency rules implement Texas Government Code §531.0055 and THSC Chapter 314A.

§567.21. Changes That Could Affect the Certificate of Public Advantage.

A Certificate of Public Advantage (COPA) applicant shall notify the Texas Health and Human Services Commission of the following in writing as soon as practicable:

(1) termination of the merger agreement;

(2) cessation of operation of any hospital party to the agreement, and the certificate holder shall include in the written notice the location where the medical records will be stored and the identity and telephone number of the custodian of the medical records;

(3) change in CMS Certification Number of any hospital party to the agreement;

(4) change to the accrediting organization status of any hospital party to the agreement;

(5) change in hospital name, telephone number, or administrator of any hospital party to the agreement;

(6) pending sale of or change in ownership of any hospital party to the agreement;

(7) bankruptcy of any hospital party to the agreement; or

(8) federal antitrust action related to the COPA.

§567.22. Application.

(a) The acquiring party in a proposed merger agreement (the applicant) may apply to the Texas Health and Human Services Commission (HHSC) for a Certificate of Public Advantage (COPA) governing the merger agreement.

(b) An application is not complete unless it contains all the following information:

(1) an accurate and complete application form;

(2) a letter of intent from each party to the merger agreement;

(3) an executive summary;

(4) a written copy of the proposed merger agreement;

(5) a description of the nature and scope of the proposed merger;

(6) a copy of the most recent application for license renewal for each party to the merger agreement;

(7) a patient census for each hospital involved in the merger agreement;

(8) health outcomes for the geographic area of each county in which a hospital involved in the merger agreement is located;

(9) pricing data reported separately for all inpatient and outpatient services that occurred at each hospital party to the merger agreement for the previous five years and monthly aggregated data, computed separately for Medicaid, Medicare, commercial, and all other payors, including:

(A) number of patients, classified by type of inpatient or outpatient service;

(B) total billed charges of the hospital, stated separately to include and exclude any physician services;

(C) total amounts of the hospital's billed charges allowed under health plan contracts, stated separately to include and exclude any physician services; and

(D) total amounts of the hospital's billed charges actually paid by health plans and patients (combined), stated separately to include and exclude any physician services;

(10) any quality metrics that will be used to measure the quality improvements of the COPA such as observation status;

(11) information regarding the current state of competitive dynamics and projections of how the market will operate in the county where the proposed merger would occur;

(12) an analysis of the merger agreement that provides a detailed explanation as to:

(A) whether the proposed merger agreement would likely benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(B) whether the likely benefits resulting from the proposed merger agreement outweigh any disadvantages attributable to a reduction in competition that may result from the proposed merger;

(13) the application fee;

(14) any evidence of support from municipalities and counties served by each hospital party to the proposed merger; and

(15) any additional information HHSC deems necessary based on the circumstances specific to the application.

(c) If an applicant believes the application contains proprietary information that is required to remain confidential, the applicant may submit two applications:

(1) one application with complete information for HHSC's use with proprietary information clearly identified but not redacted, and

(2) one application, labeled as redacted and available for public release, with proprietary information redacted.

(d) An applicant shall submit a complete unredacted copy of the application and any related materials to the Attorney General at the same time it submits the application to HHSC.

(e) An application shall not be deemed filed until HHSC determines the application is complete. HHSC may request additional information necessary to make the application complete and to meet the requirements of Texas Health and Safety Code Chapter 314A and this chapter.

§567.23. Texas Health and Human Services Commission Review.

Upon reception of a complete application, the Texas Health and Human Services Commission will review the application in accordance with the standards prescribed by Texas Health and Safety Code §314A.056 and this chapter.

§567.24. Attorney General Review.

The Texas Health and Human Services Commission will consult with the Attorney General regarding each Certificate of Public Advantage application.

§567.25. Fees.

(a) All fees shall be paid to the Texas Health and Human Services Commission (HHSC) and are nonrefundable.

(b) The fee for a Certificate of Public Advantage (COPA) application is $75,000 and must be submitted with the application.

(c) The annual fee for supervision of a COPA is $200,000 for each hospital party to the merger agreement.

(1) The first supervision fee shall be paid no later than 30 calendar days after the date HHSC issued the COPA.

(2) Each subsequent supervision fee shall be paid no later than the anniversary of the date HHSC issued the COPA.

§567.26. Conditions for Issuing a Certificate of Public Advantage.

The Texas Health and Human Services Commission (HHSC) will issue a Certificate of Public Advantage if:

(1) it determines under the totality of the circumstances that:

(A) the proposed merger would likely benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(B) the likely benefits resulting from the proposed merger agreement outweigh any disadvantages attributable to a reduction in competition that may result from the proposed merger; and

(2) the application:

(A) provides specific evidence showing that the proposed merger would likely benefit the public;

(B) explains in detail how the likely benefits resulting from the proposed merger agreement outweigh any disadvantages attributable to a reduction in competition; and

(C) sufficiently addresses the following factors:

(i) the quality and price of hospital and health care services provided to citizens of this state;

(ii) the preservation of sufficient hospitals within a geographic area to ensure public access to acute care;

(iii) the cost efficiency of services, resources, and equipment provided or used by the hospitals that are a party to the merger agreement;

(iv) the ability of health care payors to negotiate payment and service arrangements with hospitals proposed to be merged under the agreement;

(v) the extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons providing goods or services to, or in competition with, hospitals; and

(vi) any other factor the applicant deems relevant to HHSC's determination under Texas Health and Safety Code §314A.056.

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

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §§567.31 - 567.33

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and THSC §314A.005. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. THSC §314A.005 requires HHSC, as the agency designated by the governor under THSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

These emergency rules implement Texas Government Code §531.0055 and THSC Chapter 314A.

§567.31. Terms.

The Texas Health and Human Services Commission may include terms or conditions of compliance in connection with a Certificate of Public Advantage issued if necessary to ensure that the proposed merger likely benefits the public as specified in this chapter.

§567.32. Annual Report.

On the anniversary of the date the Texas Health and Human Services Commission (HHSC) issued a Certificate of Public Advantage (COPA), each hospital operating under the COPA shall submit an annual report to HHSC. The report must include:

(1) information about the extent of the benefits attributable to the issuance of the COPA;

(2) if applicable, information about the hospital's actions taken:

(A) in furtherance of any commitments made by the parties to the merger; and

(B) to comply with terms imposed by HHSC as a condition for approval of the merger agreement;

(3) a description of the activities conducted by the hospital under the merger agreement;

(4) information relating to the price, cost, and quality of and access to health care for the population served by the hospital; and

(5) any other information required by HHSC to ensure compliance with Texas Health and Safety Code Chapter 314A and this chapter, including information relating to compliance with any terms or conditions for issuance of the COPA.

§567.33. Voluntary Termination.

A hospital operating under a Certificate of Public Advantage (COPA) approved under this chapter may voluntarily terminate its COPA by giving the Texas Health and Human Services Commission notice at least 30 days before the date of the termination.

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

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SUBCHAPTER D. RATE REVIEW

26 TAC §567.41

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and THSC §314A.005. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. THSC §314A.005 requires HHSC, as the agency designated by the governor under THSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

These emergency rules implement Texas Government Code §531.0055 and THSC Chapter 314A.

§567.41. Rate Reviews for Hospitals Operating Under a Certificate of Public Advantage.

(a) House Bill 3301, passed by the 86th Texas Legislature and signed by the Governor, requires the Texas Health and Human Services Commission (HHSC) to conduct rate reviews for certain hospitals operating under a Certificate of Public Advantage (COPA).

(b) A hospital operating under a COPA pursuant to Texas Health and Safety Code §314A.056 may not change rates for hospital services without prior approval from HHSC.

(c) At least 90 days before the implementation of any proposed change in rates for inpatient or outpatient hospital services and, if applicable, at least 60 days before the execution of a reimbursement agreement with a third-party payor, a hospital operating under a COPA must submit to HHSC:

(1) a completed application;

(2) any proposed change in rates for services that meet the definition in 25 TAC §133.2 of "inpatient services" or "outpatient services;"

(3) if applicable, any change in reimbursement rates under a reimbursement agreement with a third-party payor;

(4) for an agreement with a third-party payor, other than an agreement described by paragraph (5) of this subsection, or in which rates are set under the Medicare or Medicaid program, information showing:

(A) that the hospital and the third-party payor have agreed to the proposed rates;

(B) whether the proposed rates are less than the corresponding amounts in the producer price index published by the Bureau of Labor Statistics of the United States Department of Labor relating to the hospital services for which the rates are proposed, or a comparable price index chosen by HHSC if the producer price index described by this paragraph is abolished; and

(C) if the proposed rates are above the corresponding amounts in the producer price index, as described by subparagraph (B) of this paragraph, a justification for proposing rates above the corresponding amounts in the producer price index;

(5) to the extent allowed by federal law, for an agreement with a managed care organization that provides or arranges for the provision of health care services under the Medicare or Medicaid program, information showing:

(A) whether the proposed rates are different from rates under an agreement that was in effect before the date the applicable merger agreement took effect;

(B) whether the proposed rates are different from the rates most recently approved by HHSC for the applicable hospital, if HHSC has previously approved rates for the applicable hospital following the issuance of the COPA under this chapter that governs the hospital; and

(C) if the proposed rates exceed rates described by subparagraphs (A) or (B) of this paragraph, a justification for proposing rates in excess of those rates; and

(6) any information concerning costs, patient volume, acuity, payor mix, and other information requested by HHSC.

(d) Any information requested by HHSC, or its designee, shall be provided to HHSC or its designee no later than 10 business days after the request.

(e) HHSC in its sole discretion may designate an individual or entity contracted with HHSC to review the provided materials and make a recommendation to HHSC.

(f) HHSC shall approve the proposed rate change if HHSC determines that:

(1) the proposed rate change likely benefits the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(2) the proposed rate does not inappropriately exceed competitive rates for comparable services in the hospital's market area.

(g) HHSC shall deny or modify the proposed rate change to meet requirements outlined in subsection (f) of this section, if HHSC determines that the proposed rate change does not satisfy subsection (f) of this section.

(h) HHSC will notify the hospital in writing of HHSC's decision to approve, deny, or modify the proposed rate change not later than the 30th day before the implementation date of the proposed change.

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

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SUBCHAPTER E. ENFORCEMENT

26 TAC §§567.51 - 567.54

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and THSC §314A.005. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. THSC §314A.005 requires HHSC, as the agency designated by the governor under THSC §314A.004, to adopt rules for the administration and implementation of Chapter 314A.

These emergency rules implement Texas Government Code §531.0055 and THSC Chapter 314A.

§567.51. Supervision.

The Texas Health and Human Services Commission will supervise each hospital operating under a Certificate of Public Advantage to ensure that the immunized conduct of a merged entity furthers the purposes of this chapter.

§567.52. Annual Review.

(a) Upon receipt of the annual report required by §567.32 of this chapter (relating to Annual Report), the Texas Health and Human Services Commission (HHSC) will conduct an annual review of each approved Certificate of Public Advantage (COPA).

(b) Prior to any review, HHSC will ask the Attorney General whether the Attorney General intends to conduct any review of the COPA.

(c) HHSC will not complete an annual review until:

(1) the Attorney General informs HHSC whether that office intends to conduct any review of the COPA; and

(2) the Attorney General has had the opportunity to conduct the review, if needed.

§567.53. Investigation; Consequences.

To ensure that the activities of a hospital resulting from a merger agreement continue to benefit the public, the Texas Health and Human Services Commission (HHSC) may:

(1) investigate the hospital's activities; and

(2) require the hospital to perform a certain action or refrain from a certain action or revoke the hospital's certificate of public advantage, if HHSC determines that:

(A) the hospital is not complying with Texas Health and Safety Code Chapter 314A, this chapter, or a term or condition of compliance with the Certificate of Public Advantage (COPA) governing the hospital's immunized activities;

(B) HHSC's approval and issuance of the COPA was obtained as a result of material misrepresentation;

(C) the hospital has failed to pay any fee required under this chapter; or

(D) the benefits resulting from the approved merger no longer outweigh the disadvantages attributable to the reduction in competition resulting from the approved merger.

§567.54. Corrective Action Plan.

(a) If the Texas Health and Human Services Commission (HHSC) determines that an activity of a hospital operating under a Certificate of Public Advantage does not benefit the public as described by this chapter or no longer meets the standard prescribed by this chapter, HHSC will notify the hospital that it must adopt a plan to correct any deficiency in the hospital's activities.

(b) No later than 20 calendar days after notification by HHSC, the hospital shall return a written corrective action plan to HHSC responding to each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(c) If HHSC determines the corrective action plan does not sufficiently address each cited deficiency, HHSC will notify the hospital that it must submit a revised corrective action plan. A hospital shall submit a revised corrective action plan no later than 20 calendar days after notification by HHSC.

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

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TEXAS
Lone Star State

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

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

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 98. MOTORCYCLE OPERATOR TRAINING AND SAFETY

16 TAC §§98.1, 98.10, 98.20 - 98.23, 98.25 - 98.27, 98.30, 98.40, 98.50, 98.60, 98.65 - 98.70, 98.72, 98.74, 98.76, 98.80, 98.90, 98.92, 98.100, 98.102, 98.104, 98.106, 98.108, 98.110, 98.112, 98.114

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC), Chapter 98, §§98.1, 98.10, 98.20 - 98.23, 98.25 - 98.27, 98.30, 98.40, 98.50, 98.60, 98.65 - 98.70, 98.72, 98.74, 98.76, 98.80, 98.90, 98.92, 98.100, 98.102, 98.104, 98.106, 98.108, 98.110, 98.112, and 98.114, regarding the Motorcycle Operator Training and Safety Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules create new 16 TAC, Chapter 98, to implement Texas Transportation Code, Chapter 662, Motorcycle Operator Training and Safety. The proposed rules also implement Senate Bill (SB) 616, Article 8, 86th Legislature, Regular Session (2019), which transfers the Motorcycle Operator Training and Safety Program (Program) from the Texas Department of Public Safety (DPS) to the Texas Commission of Licensing and Regulation (Commission) and the Department, effective September 1, 2020. The proposed rules are necessary to enable the Commission and the Department to administer and regulate the Program. The proposed rules are separate from, and are not to be confused with, the DPS rules located at 37 TAC, Chapter 31, regarding the Program, which are still in effect and will be repealed.

SECTION-BY-SECTION SUMMARY

The proposed rules create new §98.1 to identify the statutory authority under which the proposed rules are promulgated.

The proposed rules create new §98.10 to establish the definitions to be used in the chapter.

The proposed rules create new §98.20 to identify the requirements, including possession of an instructor license, that allow an individual to offer or provide instruction in motorcycle operation to the public for consideration.

The proposed rules create new §98.21 to establish the prerequisites for an individual to be eligible for an instructor license.

The proposed rules create new §98.22 to identify the instructor preparation course that an individual must successfully complete to be eligible for an instructor license and the prerequisites for an individual to be eligible to enroll in the instructor preparation course.

The proposed rules create new §98.23 to establish the term and renewal requirements of an instructor license.

The proposed rules create new §98.25 to identify the requirements, including possession of a motorcycle school license, that allow an individual or entity to offer or conduct training in motorcycle operation for consideration.

The proposed rules create new §98.26 to establish the prerequisites for an individual or entity to be eligible for a motorcycle school license.

The proposed rules create new §98.27 to establish the term and renewal requirements of a motorcycle school license.

The proposed rules create new §98.30 to establish exemptions for certain courses that will not be regulated by the Department.

The proposed rules create new §98.40 to establish the required insurance coverage for a motorcycle school and for the motorcycles used for training at a motorcycle school.

The proposed rules create new §98.50 to establish the information that a motorcycle school must report to the Department and the required time and frequency of reporting the information.

The proposed rules create new §98.60 to establish the authority of the Department to conduct unannounced audits to ensure compliance with applicable statutes and rules.

The proposed rules create new §98.65 to establish the composition of the Motorcycle Safety Advisory Board (Advisory Board).

The proposed rules create new §98.66 to establish the duties of the Advisory Board.

The proposed rules create new §98.67 to establish the terms of the members of the Advisory Board, the process for filling vacancies, and the grounds for removal.

The proposed rules create new §98.68 to establish the process for designating the presiding officer of the Advisory Board and the duties of the presiding officer.

The proposed rules create new §98.69 to establish the procedures for meetings of the Advisory Board.

The proposed rules create new §98.70 to establish the responsibilities of an instructor.

The proposed rules create new §98.72 to establish the responsibilities of a motorcycle school.

The proposed rules create new §98.74 to establish the requirements of a motorcycle school prior to a relocation.

The proposed rules create new §98.76 to establish the requirements of a motorcycle school after a change of ownership.

The proposed rules create new §98.80 to establish the fees for the issuance and renewal of an instructor license and a motorcycle school license.

The proposed rules create new §98.90 to establish the authority of the Commission and the executive director of the Department to impose administrative penalties and sanctions against an individual or entity who violates a statute or rule applicable to the Program.

The proposed rules create new §98.92 to establish the authority of the Commission and the Department to enforce the statutes and rules applicable to the Program.

The proposed rules create new §98.100 to establish the training site requirements of a motorcycle school.

The proposed rules create new §98.102 to establish the requirements applicable to motorcycles used for training at a motorcycle school.

The proposed rules create new §98.104 to establish the prerequisites for an individual to enroll in a course in motorcycle operator training.

The proposed rules create new §98.106 to establish the requirements applicable to the issuance of course completion certificates.

The proposed rules create new §98.108 to establish the requirements applicable to motorcycle operator training courses.

The proposed rules create new §98.110 to establish the process for obtaining Department approval of a curriculum for a motorcycle operator training course.

The proposed rules create new §98.112 to establish the minimum standards for Department approval of an entry-level course in motorcycle operator training and adopts by reference the Model National Standards for Entry-Level Motorcycle Rider Training (August 2011) distributed by the U.S. Department of Transportation, National Highway Traffic Safety Administration.

The proposed rules create new §98.114 to establish the minimum standards for Department approval of a motorcycle operator training course that is not an entry-level course.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local governments as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to local governments as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will be an increase in revenue to the state in an estimated amount of $17,250 each year, resulting from the new license fee of $50 paid by the estimated 274 current instructors who renew their licenses and the new license fee of $100 paid by the estimated 71 current motorcycle schools who renew their licenses. This estimate does not include any new licenses that will be issued in the first five years, as the Department does not have sufficient information to estimate how many new instructor and school licenses will be issued.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that instructors and motorcycle schools will no longer need to be certified by the Motorcycle Safety Foundation prior to obtaining state licensure. This will result in more opportunity for market participation by other course providers, provide greater flexibility for instructors and motorcycle schools, and produce more options for consumers seeking training in motorcycle operation.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be additional costs to persons who are required to comply with the proposed rules.

Each applicant for a new instructor license must pay the new $50 license fee for the issuance of an instructor license, and each instructor licensee must pay the new $50 license fee every two years for the renewal of an instructor license. Currently, there are no instructor license fees. The addition of the new instructor license fees will result in total additional costs to the estimated 548 current instructors in the amount of $13,700 each year for the first five years the proposed rules are in effect.

Each applicant for a new motorcycle school license must pay the new $100 license fee for the issuance of a motorcycle school license, and each motorcycle school licensee must pay the new $100 license fee every two years for the renewal of a motorcycle school license. Currently there are no motorcycle school license fees. The addition of the new motorcycle school license fees will result in total additional costs to the estimated 71 current motorcycle schools in the amount of $3,550 each year for the first five years the proposed rules are in effect.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Although many motorcycle schools are micro-businesses or small businesses and will be subject to the new $100 license renewal fee every two years, this is a minimal cost, and the economic effect of that cost would not have an adverse effect on the businesses. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government; however, the proposed rules fall under the exception for rules that are necessary to implement legislation under §2001.0045(c)(9). Specifically, the rules are necessary to implement SB 616, Section 8.004, which creates new Transportation Code §662.0035, providing the Commission with authority to set fees, including license fees, in amounts reasonable and necessary to cover the costs of administering the Program. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do require an increase or decrease in fees paid to the agency. The proposed rules create new license and renewal fees of $50 for instructors and $100 for motorcycle schools, which are necessary to implement SB 616.

5. The proposed rules do create a new regulation. The proposed rules create new license and renewal fees of $50 for instructors and $100 for motorcycle schools, which are necessary to implement SB 616.

6. The proposed rules do expand, limit, or repeal an existing regulation. Instructors and motorcycle schools will no longer need to be certified by the Motorcycle Safety Foundation prior to obtaining state licensure. Applicants for instructor and motorcycle school licenses will no longer be subject to criminal history background checks. Motorcycle schools will no longer have to report the date, time, and location of each course conducted, although they will still be required to create and maintain records of the courses, which may be audited by the Department.

7. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at *https://ga.tdlr.texas.gov:1443/form/gcerules;* by facsimile to (512) 475-3032; or by mail to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Transportation Code, Chapter 662, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Code of Criminal Procedure, Article 45.0511; Texas Government Code, §103.021; Texas Occupations Code, Chapter 51; and Texas Transportation Code, Chapters 521, 522, 661, and 662. No other statutes, articles, or codes are affected by the proposed rules.

§98.1. Authority.

This chapter is promulgated under the authority of Texas Occupations Code, Chapter 51, and Texas Transportation Code, Chapter 662.

§98.10. Definitions.

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

(1) Advisory board--The Motorcycle Safety Advisory Board.

(2) Change of ownership--A change in the control of a motorcycle school. The control of a school is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school has been sold or transferred;

(B) in the case of ownership by a partnership or corporation, when more than 50% of the school, or of the owning partnership or corporation, has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

(3) Commission--Texas Commission of Licensing and Regulation.

(4) Controlling person--An individual who:

(A) is a sole proprietor;

(B) is a general partner of a partnership;

(C) is a controlling person of a business entity that is a general partner of a partnership;

(D) possesses direct or indirect control of at least 25 percent of the voting securities of a corporation;

(E) is the president, the secretary, or a director of a corporation; or

(F) possesses the authority to set policy or direct the management of a business entity.

(5) Department--Texas Department of Licensing and Regulation.

(6) Entry-level course--A course of instruction in motorcycle operation designed to meet the training requirement to obtain a Class M driver's license issued under Texas Transportation Code, Chapter 521.

(7) Incident-- Any instance where any part of a motorcycle, other than the tires or side stand, touches the ground or another object.

(8) Instructor--An individual licensed by the department to teach motorcycle operator training courses in Texas.

(9) Motorcycle school--An entity licensed by the department to provide motorcycle operator training courses in Texas.

(10) Offer--To do any of the following:

(A) make a written or oral proposal to perform;

(B) contract in writing or orally to perform; or

(C) advertise or imply, in any form through any medium, that a person is available to perform or contract to perform.

(11) Person--An individual or entity.

(12) Range--The area of a training site where on-cycle training is conducted.

(13) Training site--A physical location, consisting of a classroom and range, where motorcycle operator training is conducted.

§98.20. Instructor--License Required.

An individual may not offer or provide instruction in motorcycle operation to the public for consideration unless the individual:

(1) holds an instructor license issued by the department;

(2) provides the instruction in accordance with a curriculum approved by the department; and

(3) provides the instruction as an employee of, or under contract with, a motorcycle school.

§98.21. Instructor--License Eligibility.

To be eligible for an instructor license, an applicant must:

(1) be at least 18 years old;

(2) submit a completed application on a form prescribed by the department;

(3) have successfully completed an instructor preparation course in accordance with §98.22;

(4) have held, continuously for the two years preceding the date of submitting the application, a valid driver's license that entitles the applicant to operate a motorcycle on a public road;

(5) not have been convicted during the preceding three years of:

(A) three or more moving violations described by Texas Transportation Code §542.304, including violations that resulted in an accident; or

(B) two or more moving violations described by Texas Transportation Code §542.304, that resulted in an accident;

(6) be a high school graduate or have obtained a general education development (GED) certificate, certificate of high school equivalency, or other credentials equivalent to a public high school degree;

(7) possess current first aid and adult cardiopulmonary resuscitation (CPR) certification from a nationally recognized provider with training courses that require in-person attendance, provide hands-on skills practice, and meet or exceed the standards of the American Red Cross, the American Heart Association, or the National Highway Traffic Safety Administration; and

(8) submit the fee required by §98.80.

§98.22. Instructor--Preparation Course.

(a) The instructor preparation course required by §98.21(3) must be a commission-approved training program on motorcycle operator training and safety instruction administered by the Texas A&M Engineering Extension Service.

(b) To be eligible to enroll in an instructor preparation course, an individual must meet the requirements of §98.21(4), (5), and (6).

§98.23. Instructor--License Term; Renewal.

(a) An instructor license is valid for two years after the date of issuance.

(b) Each licensee is responsible for renewing the license before the expiration date. Lack of receipt of a license renewal notice from the department will not excuse failure to file for renewal or late renewal.

(c) To renew a license, an instructor must:

(1) submit a completed renewal application on a department-approved form;

(2) meet the requirements of §98.21(4), (5), and (7); and

(3) submit the fee required under §98.80.

§98.25. Motorcycle School--License Required.

A person may not offer or conduct training in motorcycle operation for consideration unless the person:

(1) holds a motorcycle school license issued by the department;

(2) conducts the training in accordance with a curriculum approved by the department; and

(3) employs, or contracts with, an instructor to teach the training.

§98.26. Motorcycle School--License Eligibility.

To be eligible for a motorcycle school license, an applicant must:

(1) submit a completed application on a form prescribed by the department;

(2) provide a list of all controlling persons of the applicant;

(3) obtain an insurance policy that meets the requirements of §98.40(a);

(4) provide a list of all real property that will be used to meet the training site requirements of §98.100 and proof that the applicant owns, or possesses written authorization by the owner to use, each property;

(5) provide a list of motorcycles, if any, that will be available for use by students, including for each motorcycle:

(A) the year, make, model, and Vehicle Identification Number (VIN); and

(B) proof of insurance coverage that meets the requirements of §98.40(b);

(6) provide a list of the department-approved courses the applicant intends to offer and proof of ownership of, or authority to offer, each course;

(7) provide a list of instructors employed by, or contracted with, the applicant; and

(8) submit the fee required by §98.80.

§98.27. Motorcycle School--License Term; Renewal.

(a) A motorcycle school license is valid for two years after the date of issuance.

(b) Each licensee is responsible for renewing the license before the expiration date. Lack of receipt of a license renewal notice from the department will not excuse failure to file for renewal or late renewal.

(c) To renew a license, a motorcycle school must:

(1) submit a completed renewal application on a department-approved form;

(2) meet the requirements of §98.26(2), (3), (4), (5), (6), and (7); and

(3) submit the fee required under §98.80.

§98.30. Exemptions.

A course in motorcycle operation is exempt from licensing and regulation under Texas Transportation Code, Chapter 662, and this chapter if the course:

(1) is taught by law enforcement agencies to law enforcement officers; or

(2) is not advertised or otherwise claimed to meet the training requirement for a Class M driver's license, or to enhance a participant's riding skills on public roadways, and:

(A) provides instruction only in off-road dirt bike training for use on trails, tracks, or other nonpublic roadways; or

(B) provides instruction only in motorcycle racing techniques on a racetrack for the purpose of motorcycle racing competition.

§98.40. Motorcycle School--Insurance Requirements.

(a) A motorcycle school must be covered by an insurance policy that provides at least $2 million in liability coverage and $10,000 in medical payments coverage.

(b) Each motorcycle used for motorcycle operator training at a motorcycle school must be covered by a motor vehicle liability insurance policy that meets the minimum coverage amounts in Texas Transportation Code §601.072.

§98.50. Motorcycle School--Reporting Requirements.

(a) A motorcycle school must report each incident to the department within 48 hours of the incident, in the form and manner prescribed by the department.

(b) By the fifth business day following the end of each course, a motorcycle school must accurately report to the department, in the form and manner prescribed by the department, information relating to each student enrolled in the course. The report must include:

(1) each student's full legal name as shown on the student's driver's license, or other form of identification acceptable to the department;

(2) whether each student successfully completed the course; and

(3) all instructors who provided instruction for the course.

(c) A motorcycle school must report quarterly to the department, in the form and manner prescribed by the department:

(1) the number and types of courses provided during the quarter;

(2) the number of persons who took each course during the quarter;

(3) the number of instructors available to provide training under the school's program during the quarter;

(4) information collected by surveying persons taking each course as to the length of any waiting period the person experienced before being able to enroll in the course; and

(5) the number of persons on a waiting list for a course at the end of the quarter.

§98.60. Audits.

The department may conduct unannounced audits, during reasonable business hours, to ensure a motorcycle school and its instructors comply with the requirements of this chapter and Texas Transportation Code, Chapter 662.

§98.65. Advisory Board Membership.

The Motorcycle Safety Advisory Board consists of nine members appointed by the presiding officer of the commission, on approval of the commission, as follows:

(1) three members:

(A) each of whom must be a licensed instructor or represent a licensed motorcycle school; and

(B) who must collectively represent the diversity in size and type of the motorcycle schools licensed under this chapter;

(2) one member who represents the motorcycle dealer retail industry;

(3) one representative of a law enforcement agency;

(4) one representative of the Texas A&M Transportation Institute;

(5) one representative of the Texas A&M Engineering Extension Service; and

(6) two public members who hold a valid Class M driver's license issued under Texas Transportation Code, Chapter 521.

§98.66. Advisory Board Duties.

The advisory board shall advise the department on matters related to the motorcycle operator training and safety program established under Texas Transportation Code, Chapter 662.

§98.67. Advisory Board Member Terms, Vacancies, and Removal.

(a) The advisory board members serve staggered six-year terms. The terms of three members expire September 1st of each odd-numbered year.

(b) If a vacancy occurs on the advisory board, the presiding officer of the commission, on approval of the commission, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209.

§98.68. Advisory Board Officers.

(a) The presiding officer of the commission, on approval of the commission, shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a one-year term.

(b) The presiding officer of the advisory board shall preside at all advisory board meetings at which he or she is in attendance. The presiding officer of the advisory board may vote on any matter before the advisory board.

§98.69. Advisory Board Meetings.

(a) The advisory board shall meet at the call of the executive director or the presiding officer of the commission.

(b) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551.

(c) A quorum of the advisory board is necessary to conduct official business. A quorum is five members.

(d) Advisory board actions require a majority vote of those members present and voting.

§98.70. Instructor--Responsibilities.

(a) An instructor must:

(1) notify the department of any change in the instructor's address, phone number, or email address within 15 days from the date of the change;

(2) maintain a valid driver's license that entitles the license holder to operate a motorcycle on a public road;

(3) maintain a driving record that meets the requirements of §98.21(5);

(4) maintain first aid and CPR certification that meets the requirements of §98.21(7);

(5) act immediately to appropriately address the medical needs of any person injured at the training site and summon emergency medical services if necessary;

(6) report each incident to the motorcycle school in a timely manner;

(7) cooperate with all department audits and investigations and provide all requested documents;

(8) before each course, inspect each motorcycle to be used on the range to ensure the motorcycle meets the requirements of §98.102;

(9) ensure that each motorcycle provided by a student meets the insurance requirements of §98.40(b) before the motorcycle is used on the range;

(10) provide instruction only in compliance with a curriculum approved by the department;

(11) be capable of instructing the entire course and providing technically correct riding demonstrations;

(12) comply with the student-to-instructor ratio requirements in §98.108;

(13) supervise all students and personnel on the range;

(14) wear, and ensure all students wear, the protective gear required by §98.108(f) whenever riding on the range; and

(15) deal honestly with members of the public and the department.

(b) An instructor must not:

(1) instruct a student if either the instructor or student exhibits signs of impairment from the use of an alcoholic beverage, controlled substance, drug, or dangerous drug, as defined in Texas Penal Code §1.07; or

(2) complete, issue, or validate a certificate of course completion to a person who has not successfully completed the course.

§98.72. Motorcycle School--Responsibilities.

(a) A motorcycle school must:

(1) notify the department of any change to the information provided for initial licensure under §98.26 or for license renewal under §98.27, within 15 days from the date of the change;

(2) maintain ownership of, or possession of written authorization by the owner to use:

(A) all real property used for a training site; and

(B) all motorcycles made available for use by students;

(3) maintain compliance with the insurance requirements of §98.40;

(4) maintain compliance with the reporting requirements of §98.50;

(5) cooperate with all department audits and investigations and provide all requested documents;

(6) comply with §98.74 prior to a relocation;

(7) notify the department within 30 days after a change of ownership and comply with the requirements of §98.76;

(8) maintain compliance with training site requirements of §98.100;

(9) ensure that all motorcycles made available for use by students meet the requirements of §98.102;

(10) allow course admission only to individuals who meet the requirements of §98.104;

(11) issue course completion certificates in accordance with §98.106 and implement effective protective measures to ensure that unissued course completion certificates are secured;

(12) conduct courses only in accordance with a department-approved curriculum and notify the department at least 15 days prior to any change to the list of courses that will be offered;

(13) employ or contract with instructors to teach all courses conducted by the motorcycle school;

(14) schedule instructors only in compliance with the student-to-instructor ratio requirements of §98.108;

(15) require all students and instructors to wear full protective gear whenever participating in the on-cycle portion of any course, as required by §98.108(f);

(16) maintain, for three calendar years, records of courses conducted and individuals who receive course completion certificates; and

(17) deal honestly with members of the public and the department.

(b) A motorcycle school must not:

(1) complete, issue, or validate a department-approved course completion certificate to a person who has not successfully completed the course;

(2) offer or conduct a course without authorization from the owner of the course; or

(3) allow an instructor employed by, or contracted with, the motorcycle school to violate any provision of this chapter or Transportation Code, Chapter 662.

(c) Each instructor employed by, or contracted with, a motorcycle school is an agent of the motorcycle school, and the motorcycle school is responsible for all acts performed by an instructor that are

within the scope of, and occur during the course of, motorcycle operator training conducted at the motorcycle school.

§98.74. Motorcycle School--Relocation.

(a) A motorcycle school must notify the department at least 15 days prior to a relocation by submitting a completed form prescribed by the department.

(b) A relocation includes a change to the list of real property used for a training site.

§98.76. Motorcycle School--Change of Ownership.

(a) A motorcycle school license is not transferable.

(b) If a motorcycle school has a change of ownership, the new owner must apply for a new motorcycle school license within 30 days after the change of ownership. The motorcycle school may continue to operate while the department is processing the application.

§98.80. Fees.

(a) The fee for the issuance of an instructor license is $50.

(b) The fee for the issuance of a motorcycle school license is $100.

(c) The fee for the renewal of an instructor license is $50.

(d) The fee for the renewal of a motorcycle school license is $100.

§98.90. Administrative Penalties and Sanctions.

If an individual or entity violates any provision of Texas Occupations Code, Chapter 51, Texas Transportation Code, Chapter 662, this chapter, or any rule or order of the commission or the executive director of the department, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both, in accordance with the provisions of Texas Occupations Code, Chapter 51, and Texas Transportation Code, Chapter 662, as applicable, and any associated rules.

§98.92. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapter 51, and Texas Transportation Code, Chapter 662, and any associated rules, may be used to enforce Texas Transportation Code, Chapter 662, and this chapter.

§98.100. Training Site Requirements.

A motorcycle school must have a training site that includes:

(1) a range that is:

(A) a paved surface, including asphalt, concrete, or another all-weather surface of suitable traction;

(B) large enough to safely accommodate all courses conducted by the motorcycle school;

(C) reasonably free of incline;

(D) secure from vehicular and pedestrian traffic; and

(E) free of surface hazards and obstacles;

(2) an appropriate first aid kit and at least one five-pound Class ABC fire extinguisher, or its equivalent, for the range;

(3) a classroom that:

(A) is not located in a private residence;

(B) is large enough to adequately seat all students and instructors;

(C) has an adequate seat and writing surface for each student; and

(D) has adequate audiovisual presentation equipment.

§98.102. Motorcycle Requirements.

(a) An instructor must reject a motorcycle for use in a course if the motorcycle fails to meet the requirements of this section or if, in the discretion of the instructor, the motorcycle is unsafe or inappropriate for the rider, an instructor, another student, or any other person permitted on the range.

(b) Student-provided motorcycles used in courses must:

(1) meet all the requirements for operation on public highways;

(2) be covered by a motor vehicle liability insurance policy that meets the requirements of §98.40(b), proof of which must be available for inspection by an instructor; and

(3) pass a safety inspection conducted by the instructor.

(c) All motorcycles used in a course must meet the curriculum requirements of the course.

§98.104. Student Admission Requirements.

(a) Entry-level courses are open to any individual who is at least 15 years old on the day the course begins and:

(1) has an unrestricted Class C, or higher, driver license;

(2) has a Class C learner license; or

(3) can present the proper driver education form verifying successful completion of the classroom portion phase of driver education.

(b) Non-entry-level courses are open to any individual who holds a Class M driver's license or an equivalent out-of-state license.

(c) To be eligible for student admission to any course, an individual younger than 18 years of age must provide the motorcycle school with written consent, signed by a parent or other person listed in Texas Family Code §32.001(a), for the individual to receive medical treatment for any injury that may occur at the motorcycle school.

§98.106. Verification of Course Completion.

(a) A motorcycle school must issue a department-approved course completion certificate to a student who has successfully completed an entry-level course. The certificate must be signed by an instructor who taught the course or an appointed representative of the school.

(b) A motorcycle school must issue a department-approved course completion certificate that is restricted to the operation of a three-wheeled motorcycle if the entry-level course successfully completed by a student is specific to the operation of a three-wheeled motorcycle.

(c) A motorcycle school may issue a duplicate course completion certificate to a student for a lost certificate for up to three calendar years from the date the course was completed. The duplicate certificate must bear the same certificate number and course completion date as the original certificate.

§98.108. Course Requirements.

(a) All courses must be conducted in accordance with a department-approved curriculum.

(b) The student-to-instructor ratio for classroom instruction of a course may not exceed 36 students per instructor.

(c) The student-to-instructor ratio for on-cycle instruction may not exceed six students per instructor until the instructor has taught

seven courses. Once the instructor has taught seven courses, the instructor may teach up to eight students alone.

(d) There must not be more than 12 students on a range during any phase of range instruction.

(e) A separate motorcycle must be available for each student during range instruction.

(f) All students and instructors must wear protective gear when participating in the range portion of the course. The minimum protective gear includes:

(1) a motorcycle helmet that meets the standards of the U.S. Department of Transportation;

(2) eye protection;

(3) over-the-ankle, sturdy footwear;

(4) a long-sleeved shirt or jacket;

(5) non-flare pants that cover the entire leg and are made from a material that is at least as sturdy as denim; and

(6) full-fingered gloves.

§98.110. Approval of Course Curriculum.

(a) To obtain department approval of a course curriculum, a person must submit to the department:

(1) a completed application on a form prescribed by the department; and

(2) the curriculum for the course and, if requested by the department, course materials to be used by students and instructors in the classroom and on the range.

(b) If the curriculum meets the minimum standards established by this chapter, the department will approve the course. Notification of approval or denial will be sent to the motorcycle school.

§98.112. Curriculum Standards--Entry-Level Course.

The minimum curriculum standards for an entry-level course are the Model National Standards for Entry-Level Motorcycle Rider Training (August 2011) distributed by the U.S. Department of Transportation, National Highway Traffic Safety Administration, which the department adopts by reference.

§98.114. Curriculum Standards--Non-Entry-Level Course.

The minimum curriculum standards for a course of instruction in motorcycle operation that is not an entry-level course are:

(1) the course must provide a benefit to public safety; and

(2) the course must be designed to provide training in a safe and prudent manner.

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002225
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 463-3671

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CHAPTER 99. OFF-HIGHWAY VEHICLE OPERATOR EDUCATION AND CERTIFICATION PROGRAM

16 TAC §§99.1, 99.10, 99.20, 99.22, 99.24, 99.26, 99.30, 99.90, 99.92, 99.100, 99.102

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC), Chapter 99, §§99.1, 99.10, 99.20, 99.22, 99.24, 99.26, 99.30, 99.90, 99.92, 99.100, and 99.102, regarding the Off-Highway Vehicle Operator Education and Certification Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules create new 16 TAC, Chapter 99, to implement Texas Transportation Code, Chapter 551A, Off-Highway Vehicles. The proposed rules also implement Senate Bill (SB) 616, Article 8, 86th Legislature, Regular Session (2019), which transfers the Off-Highway Vehicle Operator Education and Certification Program (Program) from the Texas Department of Public Safety (DPS) to the Texas Commission of Licensing and Regulation (Commission) and the Department, effective September 1, 2020. The proposed rules are necessary to enable the Commission and the Department to administer and regulate the Program. The proposed rules are separate from, and are not to be confused with, the DPS rules located at 37 TAC, Chapter 33, regarding the Program, which are still in effect and will be repealed.

SECTION-BY-SECTION SUMMARY

The proposed rules create new §99.1 to identify the statutory authority under which the proposed rules are promulgated.

The proposed rules create new §99.10 to establish the definitions to be used in the chapter.

The proposed rules create new §99.20 to establish the Department's authority to contract with an entity to serve as a program sponsor.

The proposed rules create new §99.22 to establish the requirements for approval as an instructor and to designate the approved instructor preparation course.

The proposed rules create new §99.24 to establish the requirements applicable to a safety training course and the program sponsor's authority to determine course locations and charge fees reasonably related to the cost of administering the course.

The proposed rules create new §99.26 to establish the process for certifying that an individual has successfully completed a safety training course.

The proposed rules create new §99.30 to provide an exemption to the certification requirement for individuals who reside in a county in which a safety training course is not available.

The proposed rules create new §99.90 to establish the authority of the Department and the Commission to impose administrative penalties and sanctions for violations of the applicable statutes and rules.

The proposed rules create new §99.92 to establish the enforcement authority of the Department for violations of the applicable statutes and rules.

The proposed rules create new §99.100 to establish the standards and specifications that apply to the flags required for operation of unregistered off-highway vehicles on highways when the transportation is in connection with agriculture, utility work, or emergency services.

The proposed rules create new §99.102 to provide notice of the requirement of an off-highway vehicle decal issued by the Texas Parks and Wildlife Department (TPWD) for operation of an off-highway vehicle on land designated by TPWD for off-highway vehicle use.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of the state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be implementation of SB 616.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules do not expand, limit, or repeal an existing regulation.

7. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at https://ga.tdlr.texas.gov:1443/form/gcerules; by facsimile to (512) 475-3032; or by mail to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Transportation Code, Chapter 551A, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51; Texas Parks and Wildlife Code, Chapter 29; and Texas Transportation Code, Chapter 551A. No other statutes, articles, or codes are affected by the proposed rules.

§99.1. Authority.

This chapter is promulgated under the authority of Texas Occupations Code, Chapter 51, and Texas Transportation Code, Chapter 551A.

§99.10. Definitions.

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

(1) All-terrain Vehicle Safety Institute (ASI)--A not-for-profit operating division of the Specialty Vehicle Institute of America (SVIA), formed to implement an expanded national program of all-terrain vehicle safety education and awareness.

(2) Commission--Texas Commission of Licensing and Regulation.

(3) Department--Texas Department of Licensing and Regulation.

(4) Off-highway vehicle--An all-terrain vehicle, a recreational off-highway vehicle, a sand rail, or a utility vehicle, as those terms are defined in Texas Transportation Code §551A.001.

(5) Program--The Off-Highway Vehicle Operator Education and Certification Program administered by the department to make available courses in basic training and safety skills relating to the operation of off-highway vehicles and to issue safety certificates to operators who successfully complete the courses.

(6) Program sponsor--An entity with which the department enters into an agreement to administer the program.

(7) Safety certificate--A certificate that allows a person to operate an off-highway vehicle on public off-highway vehicle land or a beach, in accordance with Transportation Code §551A.031.

(8) Safety training course--A course of instruction in off-highway vehicle operation that fulfills the training requirement for a person to obtain a safety certificate.

§99.20. Program Sponsor.

The department may enter into an agreement with a nonprofit safety organization, nonprofit educational organization, institution of higher education, or agency of local government to serve as a program sponsor.

§99.22. Instructor.

(a) A person must be a department-approved instructor to teach a safety training course.

(b) To be eligible to become an approved instructor, a person must:

(1) successfully complete a department-approved instructor preparation course;

(2) enter into an instructor license agreement with a program sponsor; and

(3) submit an application on a form prescribed by the department.

(c) The department adopts the most current version of ASI's Instructor Preparation Course as the approved instructor preparation course for the program.

(d) A person's approval as an instructor is valid for the period stated in the instructor license agreement with the program sponsor and may be extended or renewed as provided in the agreement.

§99.24. Safety Training Course.

(a) The curriculum for a safety training course shall consist of a department-approved course and the distribution of information about Texas laws which pertain to off-highway vehicles.

(b) The department adopts the most current version of ASI's ATV RiderCourse that includes hands-on training as the approved course for the program.

(c) Safety training courses attended by children under age 16 shall be modified according to the most current standards of ASI.

(d) All off-highway vehicles used for training in a safety training course shall be no greater than the recommended size for the person in accordance with the age/size recommendations of the manufacturer.

(e) A program sponsor may not allow a child under the age of 18 to participate as a student in a safety training course unless the program sponsor has obtained:

(1) the signed, written consent of the child's parent or guardian on a form that includes the appropriate age recommendations listed in the most current ASI Instructor Guide; and

(2) written consent, signed by a parent or other person listed in Texas Family Code §32.001(a), for the individual to receive medical treatment for any injury that may occur during the course.

(f) A program sponsor may charge a fee for a safety training course that is reasonably related to the cost of administering the course.

(g) A program sponsor shall determine appropriate locations for safety training courses based on the quantity of training requests and the availability of training facilities and instructors.

§99.26. Operator Certification.

(a) An instructor shall issue a safety certificate to a student immediately following the student's successful completion of a safety training course.

(b) A program sponsor shall provide to the department, in a manner prescribed by the department, the names of all persons who successfully complete a safety training course, no later than 45 days after the date of course completion.

(c) A program sponsor may issue a duplicate safety certificate to a person whose safety certificate is lost, mutilated, or destroyed.

§99.30. Exemptions.

A person who resides in a county in which a safety training course is not being offered is exempted from the requirement to hold a safety certificate for operation of an off-highway vehicle on public land or a beach in that county until such time as a safety training course is available in that county.

§99.90. Administrative Penalties and Sanctions.

If a person violates any provision of Texas Occupations Code, Chapter 51, Texas Transportation Code, Chapter 551A, this chapter, or any rule or order of the commission or the executive director of the department, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both, in accordance with the provisions of Texas Occupations Code, Chapter 51, and Texas Transportation Code, Chapter 551A, as applicable, and any associated rules.

§99.92. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapter 51, and Texas Transportation Code, Chapter 551A, and any associated rules, may be used to enforce Texas Transportation Code, Chapter 551A, and this chapter.

§99.100. Off-Highway Vehicle Warning Flag.

A person who operates an off-highway vehicle on a public highway pursuant to Texas Transportation Code §551A.057 or §551A.058 must have a warning flag mounted on the rear of the vehicle that meets the following standards:

(1) the warning flag must be comprised of a fluorescent-orange-colored, triangular-shaped flag, a staff or pole, and a mounting apparatus;

(2) the flag must measure not less than 7.5 inches nor more than 10 inches across the base and not less than 16 inches nor more than 24 inches from the base to the point of the triangle and must be constructed of a coated fabric or other material sufficient to render it resistant to deterioration by the elements;

(3) the staff or pole must measure not less than 8 feet nor more than 9 feet from the mounting surface to the tip, must be not less than 1/4 inch nor more than 1/2 inch in diameter, and must be

constructed of a material or in such a manner as to allow it to flex or bend as much as 45 degrees without breaking and return to a vertical position; and

(4) the mounting apparatus must be sufficient to attach it securely at the base to the rear area of the vehicle and in an upright position.

§99.102. Operation on Land Designated for Off-Highway Vehicle Use by Texas Parks and Wildlife Department.

No person shall operate an off-highway vehicle on land designated by the Texas Parks and Wildlife Department for off-highway vehicle use unless an off-highway decal has been affixed to the off-highway vehicle in compliance with Texas Parks and Wildlife Code §29.003.

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002226
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 463-3671

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1003

The Texas Education Agency (TEA) proposes an amendment to §97.1003, concerning local accountability systems. The proposed amendment would address the enforceable aspects of the local accountability system and remove the local accountability system manual from rule.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §39.0544, establishes the local accountability system to allow school districts and open-enrollment charter schools to develop local accountability plans for their campuses. Similar to the ratings from the state accountability rating system, a school district's local accountability plan provides stakeholders with detailed information about school performance and progress over time. Local accountability plans may vary by school type (such as elementary school, middle school, high school, or Kindergarten-Grade 12) and by school group but must apply equally to all campuses as applicable by school type and group. Through the creation and publication of a local accountability plan based on campus needs and goals, a school district communicates priorities and demonstrates a commitment to achieving the components in the plan. The dissemination of local accountability plan ratings by TEA and the school district signifies the importance of the local goals and documents progress at the campus level.

Currently, §97.1003 contains guidance to school districts through the local accountability system manual adopted in rule as a figure. The proposed amendment would remove the figure from rule and instead provide specific information for each statutory requirement to address elements that will be enforced.

Subsection (a) would be amended to remove language referencing the local accountability system manual and establish that the system may be used by school districts and open-enrollment charter schools.

Proposed new subsection (b)(1) would be added to clarify statutory language that describes locally developed domains or sets of accountability measures. In addition, the proposed new paragraph would establish that components within a local accountability plan must be assigned to domains and weighted.

Proposed new subsections (b)(2) and (b)(3) would describe determination of campus eligibility to receive local accountability ratings and when local and state ratings may be combined. Subsection (b)(3) would also specify eligibility to combine state and local accountability ratings for campuses that do not receive a state rating other than as a paired campus.

Proposed new subsection (b)(4) would establish that school districts must create local accountability plans based on school type and group.

Proposed new subsection (c) would clarify the range of weighting that may be applied to individual components in a local accountability plan.

Proposed new subsection (d) would specify that school districts must create a campus rating scale that provides differentiation based on current achievement levels. The new language would provide additional guidance for school districts in how to select components for inclusion in a local accountability plan that allow room for growth. Proposed new subsection (d)(2) would specify that a plan may include up to one component where current baseline levels are not used to set the campus rating scale. This change from the current system would address input from school districts.

Proposed new subsection (e) would define reliability and validity in terms of components included in a local accountability plan. The proposed new language would be added in response to school district input and requests for clarification.

Proposed new subsection (f) would require that calculations for each plan component and overall performance ratings must be capable of being audited by a third party. The new subsection would provide guidance on the standard scale to be used and how to convert categorical, or noncontinuous, data to a scale score. The new subsection would also establish the submission date for local accountability plan component, domain, and overall scaled scores and ratings to TEA; address the audit process and requirements for school districts to maintain documentation of local accountability plans; establish responsibility for the accuracy and quality of data used to determine local accountability ratings; and provide information relating to appeals.

Proposed new subsection (g) would require school districts to post certain information about their local accountability ratings on their websites.

FISCAL IMPACT: Jeff Cottrill, deputy commissioner for governance and accountability, has determined that for the first five-year period the proposal is in effect there are no additional costs

to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation. The proposed amendment would add specific information for school districts and open-enrollment charter schools wishing to voluntarily participate in the local accountability system.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Cottrill has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing specific information related to the procedures and criteria required for public schools to locally evaluate campuses. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: School districts and open-enrollment charter schools may submit to TEA a local accountability plan. If a plan is approved, the school district or charter school is required to submit certain campus-level data relating to its plan.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would require a written report or other paperwork but does not specifically require a principal or classroom teacher to complete the report or paperwork. However, local district decisions may vary. Regardless, the proposal would impose the least burdensome requirement possible to achieve the objective of the rule. The written report or other paperwork required will vary by district and is dependent on what is included in the approved local accountability plan.

PUBLIC COMMENTS: The public comment period on the proposal begins June 12, 2020, and ends July 27, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 12, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39.0544, which requires the commissioner to adopt rules regarding the assignment of campus performance ratings by school districts and open-enrollment charter schools through a local accountability system.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.0544.

§97.1003. Local Accountability System.

(a) The local accountability system [~~rating~~] standards established by the commissioner of education under Texas Education Code (TEC), §39.0544, shall be used by school districts to develop a plan to locally evaluate the performance of their [~~districts,~~] campuses [~~, and charter schools~~] . For the purpose of this section, the term school district includes open-enrollment charter schools. [~~The procedures and criteria required to determine campus grades by the districts will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:~~]

[~~(1) acceptable indicators, standards, and procedures used to approve a local accountability plan, district calculations, and campus local accountability grades; and~~]

[~~(2) procedures for submitting a rating appeal.~~]

(b) A local accountability plan created by a school district must include domain performance ratings assigned by the commissioner under TEC, §39.054, and performance ratings based on locally developed domains or sets of accountability measures.

(1) A locally developed domain or set of accountability measures is referred to as a plan component. Plan components must describe each item and the reason for its inclusion in the plan. A school district must assign each component to one of the following five domains: academics, culture and climate, extra- and co-curricular, future-ready learning, and locally determined. The weight of all plan components must equal 100%.

(2) Each campus with an approved school district plan is eligible to receive local accountability rating. A campus with an overall state accountability rating of C or higher based on ratings derived from student performance at the campus is eligible to combine an overall local accountability rating with the overall state accountability rating to determine the combined rating.

(3) For the purposes of assigning state accountability ratings, a campus that does not serve any grade level for which a State of Texas Assessments of Academic Readiness (STAARÂ®) examination is administered is paired with a campus in its school district that serves grade levels for which STAARÂ® examinations are administered. A campus not rated under the state accountability system is not eligible to combine state and local ratings. Local accountability data for a campus without state ratings may be displayed on Texas Education Agency (TEA), school district, and campus websites but will not be combined with state accountability data. The state accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System)

provides information about campus ratings and eligibility for applicable years.

(4) A school district must create its local accountability plan based on school type. The four school types are elementary school, middle school, high school, and Kindergarten-Grade 12. The plan must include all campuses within a school type. The school district may also request to identify an additional school group within a school type for which to customize its local accountability plan. Otherwise, all campuses within a school type must be evaluated on a common set of components determined by the school district. A school district may also request to identify a campus rated under alternative education accountability provisions as a unique school type.

~~[(b) The procedures by which districts, campuses, and charter schools can locally rate their campuses for 2018 are based upon specific criteria and standards, which are described in the 2019 Local Accountability System Manual provided in this subsection.]~~
~~[Figure: 19 TAC §97.1003(b)]~~

(c) A school district may assign weights to each plan component described in subsection (b)(1) of this section, as determined by the district, provided that the plan components must in the aggregate account for no more than 50% of the combined overall performance rating. A local accountability plan may include no fewer than two and no more than ten components weighted between 5% and 60%.

(d) Each plan component must contain levels of performance that allow for differentiation, with assigned standards for achieving the differentiated levels that are aligned to a letter grade of A, B, C, D, or F.

(1) In order to provide for the assignment of a letter grade of A, B, C, D, or F, a school district must use data collected by the district to calculate the current baseline average. The baseline data calculated by the school district is used to set standards for each level by setting the average at a C, or mid-level, with the higher A and B grades designating levels considered to be exceptional and good, respectively, and the lower D and F grades designating levels considered to need improvement and be unacceptable, respectively.

(2) A school district may choose to include a single component with a weight not exceeding 10% with the levels of differentiation based on the face value of the average performance level rather than the average performance level, or baseline, being set at the C or mid-level value.

(3) In the case of components where current baseline levels are not used to set the campus rating scale to a C or mid-level value, TEA may require the school district to re-evaluate the inclusion of the component on an annual basis.

~~[(d) The specific criteria and standards used in the local accountability system manual are established annually by the commissioner and communicated to all school districts and charter schools.]~~

(e) Each plan component measure must meet standards for reliability and validity.

(1) In terms of specific measures, tests, or ratings, a measure is considered reliable if it delivers consistent results across administrations.

(2) In terms of specific measures, tests, or ratings, a measure is considered valid if the resulting outcome represents what the test is designed to measure.

(3) Reliability and validity are closely related, and both must be evident for a measure, test, or rating to be included as component outcomes in a local accountability system plan.

(f) Calculations for each plan component and overall performance ratings must be capable of being audited by a third party.

(1) A school district must use a one-to-one correspondence when converting campus grades based on plan component measures to a standard scale of 30-100 where A=90-100, B=80-89, C=70-79, D=60-69, and F=30-59.

(2) Categorical data, or data not on a continuous scale, must be converted to the standard scale of A=90-100, B=80-89, C=70-79, D=60-69, and F=30-59 by assigning the maximum value for each scaled score interval with the corresponding category used in the campus rating scale.

(3) A school district is required to submit local accountability plan component, domain, and overall scaled scores and ratings to TEA by the first week of July of the applicable accountability year.

(4) All scaled scores and letter grades submitted by a school district are subject to audit. Any data discrepancies or any indication that data have been compromised may result in verification and audit of school district and campus data used to assign local accountability ratings. The audit process may include requests for data used for campus-level calculation of component and domain scaled scores.

(5) On an annual basis, TEA will randomly select school districts for local accountability audits, and, for each such audit, TEA will randomly select components for review. Selected school districts must submit the requested data for review within the timeframe specified. A school district must maintain documentation of its local accountability plan, along with all associated data used to assign campus ratings, for two years after the end of the plan implementation period.

(6) Responsibility for the accuracy and quality of data used to determine local accountability ratings rests with each school district. Superintendent certification of data accuracy during the ratings submission process shall include an assurance that calculations have been verified to ensure that all data were included as appropriate for all components.

(7) An appeal of a local accountability rating may be submitted by the superintendent or chief operating officer once ratings are released. The local accountability appeals timeline follows the appeal deadline dates and processes as described in the state accountability manual adopted under §97.1001 of this title for the applicable year.

(g) A school district must produce a campus score card and make available on the district website an explanation of the methodology used to assign local accountability performance ratings. The campus score card shall include, at a minimum, the scaled score and rating for each component and domain along with the overall rating. A link to the local accountability ratings posted by the school district must be provided to TEA and may be included on the agency-developed school report card.

(h) [~~(e)~~] Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057(d) and (e).

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002220

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. FEES, LICENSE APPLICATIONS, AND RENEWALS

22 TAC §72.14

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.14 (License Renewal). The Board will propose a new §72.14 in a separate rulemaking. As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's rules simpler and easier to navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.14. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§72.14. License Renewal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002144
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.14

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.14 (Renewing a License). As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to remove unnecessary text and to make the Board's rules simpler and easier to navigate.

The new rule removes language in current subsections (c) through (e) concerning nonrenewal for student loan defaults that was made invalid by changes to Texas Occupations Code Chapter 56 in the last legislative session. The rule further removes outdated language related to facilities in current subsection (b), which is now addressed in current §75.2 (Place of Business). The new rule also removes duplicative language in current subsection (f) concerning appealing a Board decision to not renew a license, which is now contained in current §72.10 (Appealing a Denied Application or Permit).

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to

remove unnecessary text and to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new of 22 TAC §72.14. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§72.14. Renewing a License.

(a) A licensee shall renew a license every two years on or before the first day of the licensee's birth month.

(b) A licensee may submit a license renewal application no sooner than 60 days before the first day of the licensee's birth month.

(c) To renew a license, a licensee shall submit to the Board the license renewal form and the renewal fee.

(d) The Board may not consider a renewal application that is incomplete.

(e) A licensee who fails to renew a license under subsection (a) of this section shall be considered by the Board as practicing without a license and subject to disciplinary action.

(f) A licensee may apply for inactive status before the licensee's renewal deadline.

(g) An individual with a license that has been expired for less than one year may renew a license by complying with subsection (a) of this section and paying the applicable late fee.

(h) An individual with a license that has been expired for one year or longer may not renew a license but may obtain a new license by completing all requirements for obtaining an initial license.

(i) For a license that has been expired for one year but not more than three years, the Board may waive subsection (h) of this section if the individual can show evidence of good cause satisfactory to the Board and by paying all applicable late fees.

(j) The Board shall grant a military service member who holds a license an additional two years to complete any continuing education requirements and any other requirements related to the renewal of the license, including any late fees.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002148
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.15

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.15 (Temporary License). The Board will propose a new §72.15 in a separate rulemaking. As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's rules simpler and easier to navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.15. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§72.15. Temporary License.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002153
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.15

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.15 (Temporary License). As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to remove unnecessary text and to make the Board's rules simpler and easier to navigate.

In addition to overall simplifying the current rule's language, the new §72.15 will make it easier for an individual to apply for a temporary license. The new rule removes language in current subsection (b) requiring the submission of a letter of good standing from the individual's licensing jurisdiction and documentation from the individual's employer or other person that the individual has been requested to perform services temporarily in Texas.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to remove unnecessary text and to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new of 22 TAC §72.15. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§72.15. Temporary License.

(a) An individual licensed in chiropractic in another state, the District of Columbia, or a United States territory may provide chiropractic services in Texas for no more than 30 days within a calendar year.

(b) An individual seeking a temporary license shall hold an active unrestricted license, without any pending disciplinary action, in another state, the District of Columbia, or United States territory.

(c) An individual seeking a temporary license shall apply to the Board at least 14 days before the date work in Texas will begin.

(d) An individual shall submit with the application:

(1) a copy of the individual's active license with a signed statement that the individual holds an active unrestricted license without any pending disciplinary action in that or any other jurisdiction;

(2) a description of where and when chiropractic services are to be performed, the type of services, and a general description of the individuals who will receive those services; and

(3) the name of the business entity, person, or event with which the individual will associated or under which the individual will be employed by while working under the temporary license.

(e) An individual granted a temporary license may not provide chiropractic services to the general public.

(f) An individual granted a temporary license shall comply with Texas Occupations Code Chapter 201 and Board rules and practice only within the scope of practice in Texas.

(g) An individual granted a temporary license who violates Texas Occupations Code Chapter 201 or Board rules is subject to disciplinary action.

(h) This section does not apply to individuals residing in Texas, establishing residence in Texas, or seeking to practice under a regular Board-issued license.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002154
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.18

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §72.18 (Criminal History). The Board will propose a new §72.18 in a separate rulemaking. As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's rules simpler and easier to navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.18. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: *rules@tbce.state.tx.us;* or fax: 512-305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§72.18. Criminal History.

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

Filed with the Office of the Secretary of State on May 26, 2020.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.18

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.18 (Criminal History). As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to remove unnecessary text, to make the Board's rules simpler and easier to navigate, and to bring the rule into compliance with changes in Texas Occupations Code Chapter 53 made during the last legislative session (House Bill 1342, 86th Legislature, Regular Session).

In addition to overall simplifying the current rule's language, which mirrors the Board's obligations under Texas Occupations Code Chapter 53 (relating to the consequences of a criminal conviction on an occupational license), the new §72.18 will permit an incarcerated individual to apply for a license if the individual is within three months of release from prison. The

new rule also explicitly requires the Board to notify an individual whose application has been denied because of a criminal history of the procedures for appealing the Board's decision. The rule further allows the Board to delegate to the executive director the authority to consider an applicant's minor criminal convictions.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to remove unnecessary text, to make the Board's rules simpler and easier to navigate, and to bring the rule into compliance with changes in Texas Occupations Code Chapter 53 made during the last legislative session.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new of 22 TAC §72.185. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: *rules@tbce.state.tx.us;* or fax: 512-305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§72.18. Criminal History.

(a) The Board may suspend or revoke a current license or refuse to approve an applicant to sit for the jurisprudence examination because of the licensee's or applicant's conviction of an offense that directly relates to the practice of chiropractic.

(b) The Board shall revoke a license upon a licensee's imprisonment following a felony conviction or revocation of felony community supervision, parole, or mandatory supervision.

(c) An individual in prison is not eligible for a license.

(d) An individual in prison with a verifiable release date of three months or less may submit an application for a license.

(e) The Board shall consider the following to determine whether a criminal conviction directly relates to the occupation of chiropractic:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the practice of chiropractic; and

(3) if a license might reasonably lead to a repeat of the crime.

(f) The Board shall also determine an applicant's fitness to become a licensed chiropractor by considering:

(1) the extent and nature of the applicant's past criminal activity;

(2) the age at the time of the crime;

(3) the time since the crime occurred;

(4) the applicant's personal and work conduct after the crime;

(5) evidence of the applicant's rehabilitation while incarcerated and after release; and

(6) other evidence of fitness for a license, including recommendation letters from prosecutors, law enforcement, or correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant, the sheriff or chief of police where the applicant lives, or any other person familiar with the applicant.

(g) An applicant shall disclose in writing to the Board any conviction or deferred adjudication at the time of application.

(h) A current licensee shall disclose in writing to the Board any conviction or deferred adjudication no later than 30 days after the trial court's judgment.

(i) An applicant or licensee shall submit certified copies of the indictment or information and the court's judgment.

(j) Upon notification of a conviction or deferred adjudication, the Board may request the licensee or applicant explain why the Board should not deny the application or take disciplinary action against the license.

(k) An individual with a conviction or deferred adjudication shall respond to the Board within 15 days after receipt of the notice of a conviction.

(l) The Board shall notify an individual whose application has been denied or license revoked or suspended of the procedures for appealing the Board's decision.

(m) The Board may delegate to the executive director the authority to consider an applicant's minor criminal convictions.

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

Filed with the Office of the Secretary of State on May 26, 2020.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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CHAPTER 76. PATIENT RECORDS AND DOCUMENTATION

22 TAC §76.1

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §76.1 (Patient Request for Records). The Board will propose a new §76.1 in a separate rulemaking.

The Board has determined that its current patient records rules are incomplete and confusing. After substantial stakeholder feedback, The Board concluded the best solution was to repeal the current two rules (§76.1 and §76.2) and then break up patient records into four functional categories and to propose a separate new rule for each: patient record contents (new §76.1); requests for records (new §76.2); fees (new §76.3); and record maintenance (new §76.4). The Board will propose the repeal and replacement of current §76.2 and propose new §76.3 and §76.4 in separate rulemaking actions.

The purpose of the repeal is to make the Board's rules relating to patient records more complete as well as simpler and easier for stakeholders to navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the Board's rules relating to patient records more complete as well as simpler and easier for stakeholders to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §76.1. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: 512-305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§76.1. Patient Request for Records.

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

Filed with the Office of the Secretary of State on May 28, 2020.

TRD-202002187
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §76.1

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §76.1 (Required Contents of Patient Records).

Following a July 2019 meeting with key stakeholders on the topic of patient records, the Board agreed there was a lack of uniformity among licensees as to the information contained in patient records. In the Board's opinion, this lack could contribute to inefficiencies leading to physical or financial harm to patients and other stakeholders, including erroneous diagnosis, incomplete or unnecessary treatments, incorrect or improper billing for services, or incorrect insurance claims. To prevent those harms and to protect both patients and licensees, the Board is proposing new §76.1, which the Board believes codifies current best practices in the chiropractic profession relating to patient records. The new rule will provide licensees and other stakeholders with specific minimum guidance as to what constitutes a proper patient record.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to remove unnecessary text and to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §76.1. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: *rules@tbce.state.tx.us;* or fax: 512-305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§76.1. Required Contents of Patient Records.

(a) "Patient record" means any record regularly used, created, or stored by a licensee or other person pertaining to a patient's history, diagnosis, treatment, prognosis, or billing, including records of other health care providers, currently or having been in the possession or custody of the licensee or other person.

(b) "Initial visit" means a contact with a new patient, a patient presenting a new condition or illness, or a patient presenting a recurrence of a previous condition.

(c) A licensee shall ensure a patient record supports all diagnoses, treatments, services, and billing.

(d) A licensee shall ensure a patient record is timely created, accurately dated, legible, signed or initialed by the individual who actually performed the treatment or service, and contains a key to abbreviations.

(e) As a minimum, a licensee shall include the following in all patient records created during an initial visit:

(1) patient history;

(2) description of symptoms or purpose of the visit;

(3) findings of examinations, including imaging and laboratory records;

(4) assessment;

(5) diagnosis;

(6) prognosis;

(7) treatment plan, recommendations, and orders; and

(8) treatment or service provided and the patient's response.

(f) Other than consultations, reports of findings, or non-therapeutic contacts with a patient, a licensee shall include in all records of a subsequent visit:

(1) an updated history since last visit, if any;

(2) the purpose of visit and changes in symptoms, if any, since last visit;

(3) an examination of the area involved in the diagnosis;

(4) an assessment of any change in the patient's condition since last visit;

(5) the treatment or service provided and the patient's response; and

(6) change in treatment plan or planned referrals if indicated.

(g) A licensee shall comply with all state and federal documentation laws pertaining to health care providers.

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

Filed with the Office of the Secretary of State on May 28, 2020.

TRD-202002188
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §76.2

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §76.2 (Required Patient Records). The Board will propose a new §76.2 in a separate rulemaking.

The Board has determined that its current patient records rules are incomplete and confusing. After substantial stakeholder feedback, The Board concluded the best solution was to repeal

the current two rules (§76.1 and §76.2) and then break up patient records into four functional categories and to propose a separate new rule for each: patient record contents (new §76.1); requests for records (new §76.2); fees (new §76.3); and record maintenance (new §76.4). The Board will propose the repeal and replacement of current §76.1 and propose new §76.3 and §76.4 in separate rulemaking actions.

The purpose of the repeal is to make the Board's rules relating to requesting patient records more complete as well as simpler and easier for stakeholders to navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the Board's rules relating to requesting patient records more complete as well as simpler and easier for stakeholders to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §76.2. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§76.2. Required Patient Records.

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

Filed with the Office of the Secretary of State on May 29, 2020.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §76.2

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §76.2 (Requests for Patient Records).

Following a July 2019 meeting with key stakeholders on the topic of patient records, the Board agreed the Board's current rule for requesting patient records did not adequately explain the procedures for when a licensee believed disclosure could potentially harm a patient The new §76.2 establishes a process where a licensee shall seek a second opinion from another licensee as to any potential harm to a patient. The new rule further clarifies in subsection (h) that a licensee may charge fees for the records before disclosure (permissible fees are contained in new §76.3). The new rule will provide licensees and other stakeholders with additional guidance on how to properly handle requests for patient records.

This proposed rule is part of the Board's overall rewriting of its patient records rules in 22 TAC Chapter 76. The Board is proposing the repeal and replacement of §76.1 and §76.2 and proposing new §76.3 and §76.4. The proposed new rules separate the broad topic of patient records into four functional categories: patient record contents (new §76.1); requests for records (new §76.2); fees (new §76.3); and record maintenance (new §76.4).

The purpose of the repeal is to provide licensees and other stakeholders with additional guidance on how to properly handle requests for patient records.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to remove unnecessary text and to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new of 22 TAC §76.2. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§76.2. Requests for Patient Records.

(a) A patient may request patient records be disclosed to another person.

(b) A patient shall make the request for disclosure of patient records in writing.

(c) In a written request for disclosure of patient records, a patient shall include:

(1) the specific information or records to be disclosed; and

(2) the person to whom the records are to be disclosed.

(d) A patient or other person legally authorized to act on the patient's behalf shall sign the written request for disclosure of patient records.

(e) A patient may withdraw consent to disclosure in writing at any time.

(f) Withdrawal of consent does not affect any information disclosed before the withdrawal.

(g) A licensee or other person may honor an oral request for disclosure if the licensee or other person documents:

(1) the patient's identity by valid government identification or legal documents that identify a person as the patient's legal representative; and

(2) the information required by subsection (d) of this section.

(h) A licensee or other person shall disclose patient records, after receiving any applicable fees for the records, within 15 business days from the date of the request, unless the request is denied under subsection (j) of this section.

(i) A licensee or other person may not deny a patient's request for records for:

(1) a past due account for care or treatment previously rendered to the patient; or

(2) the lack of a letter of protection; or any other similar document.

(j) A licensee or other person may not disclose information in a patient record if a licensee determines that disclosure would harm the physical, mental, or emotional health of the patient.

(k) If a licensee determines that disclosure would be harmful, a licensee shall:

(1) document in writing the reasons why;

(2) notify the patient within 15 days of the date of the patient's request; and

(3) request in writing a second opinion from another licensee within 15 days of the patient's request for records.

(l) A licensee who receives a request for a second opinion under subsection (k) of this section shall provide a written opinion to the requesting licensee within 15 days of the request.

(m) A licensee shall disclose all information in a patient's record only if the licensee receives a written second opinion from another licensee which states disclosure would not be harmful to the patient.

(n) A licensee shall disclose only redacted non-harmful information in a patient's records if the licensee receives a second opinion from another licensee which states there is potential harm to the patient if disclosed.

(o) A subpoena may not be required for the release of patient records under this section.

(p) A licensee or other person who violates this section is subject to disciplinary action.

(q) This section does not supersede Texas Health and Safety Code Chapter 181 or any other applicable state or federal law.

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

Filed with the Office of the Secretary of State on May 29, 2020.

TRD-202002201
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

22 TAC §76.3

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §76.3 (Fees for Providing Patient Records).

Following a July 2019 meeting with key stakeholders on the topic of patient records, the Board agreed the Board's current rule on fees for patient records does not adequately cover licensees' present day costs, nor does it address changes in technology since the Board's general patient records rules were last amended in 2015. The new rules establishes reasonable maximum fees a licensee may charge for digital, paper, and imaging film records, as well as the actual cost of delivery. The rule in subsection (j) also makes it explicit that a licensee may charge a reasonable fee to answer a deposition by written question. The new rule will inform licensees, patients, and other stakeholders of what the allowable fees a licensee may charge for specific types of patient records.

This proposed rule is part of the Board's overall rewriting of its patient records rules in 22 TAC Chapter 76. The Board is proposing the repeal and replacement of §76.1 and §76.2 and proposing new §76.3 and §76.4. The proposed new rules separate the broad topic of patient records into four functional categories: patient record contents (new §76.1); requests for records (new §76.2); fees (new §76.3); and record maintenance (new §76.4).

The purpose of the repeal is to inform licensees, patients, and other stakeholders of what the allowable fees a licensee may charge for specific types of patient records.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to remove unnecessary text and to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new of 22 TAC §76.3. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§76.3. Fees for Providing Patient Records.

(a) A licensee or other person may charge a reasonable fee not to exceed $50 for providing routine patient records in a digital-only format.

(b) A licensee or other person may charge a reasonable fee not to exceed $25 for providing paper-only copies of routine patient records, plus an additional $0.25 per page.

(c) A licensee or other person may charge a reasonable fee not to exceed $50 for providing non-digital copies of routine films or other static diagnostic imaging studies, plus an additional $1.00 per page.

(d) A licensee or other person may charge an additional reasonable fee for providing patient records under subsection (a) of this section if:

(1) the digital records are voluminous and not routine; and

(2) the licensee or other person provides a written explanation of the need for the fee.

(e) A licensee or other person shall notify the requestor of patient records of any fee within five business days of receipt of the request.

(f) A licensee or other person may demand advance payment for patient records except from another health care provider if the request was made because of emergency or acute medical situation.

(g) If a licensee or other person does not receive the fee within ten business days after the requestor was notified of the fee, the licensee or other person shall notify the requestor of the need for payment.

(h) A licensee or other person may charge a separate fee for the actual costs of mailing, shipping, notarizing documents, or delivery of patient records.

(i) A licensee or other person may charge a reasonable fee not to exceed $25 for completing a custodian of records affidavit for patient records.

(j) A licensee or other person may charge a reasonable fee in advance to answer a deposition by written question.

(k) A licensee or other person may not charge for providing patient records where prohibited by Texas Health and Safety Code Chapter 161 or any other applicable state or federal law.

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

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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22 TAC §76.4

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §76.4 (Duty to Maintain and Store Patient Records).

Following a July 2019 meeting with key stakeholders on the topic of patient records, the Board agreed the Board's rule on the maintenance and storage of patient records (current §76.2) gives insufficient guidance to licensees on their duties concerning those records. The new §76.4 updates language in current §76.2 to make clear a licensee must maintain records for a minimum of six years from the date of the specific treatment or service. The new further clarifies a licensee's duties to a patient's records when a doctor-patient relationship has been established and the licensee subsequently leaves employment or a partnership, or when a partnership dissolves.

The new rule will give licensees and other stakeholders clear guidance as to who is responsible for the maintenance and storage of patient records and under what circumstances.

This proposed rule is part of the Board's overall rewriting of its patient records rules in 22 TAC Chapter 76. The Board is proposing the repeal and replacement of §76.1 and §76.2 and proposing new §76.3 and §76.4. The proposed new rules separate the broad topic of patient records into four functional categories: patient record contents (new §76.1); requests for records (new §76.2); fees (new §76.3); and record maintenance (new §76.4).

The purpose of the rule is to give licensees and other stakeholders clear guidance as to who is responsible for the maintenance and storage of patient records and under what circumstances.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to remove unnecessary text and to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new of 22 TAC §76.3. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§76.4. Duty to Maintain and Store Patient Records.

(a) A licensee or other person shall maintain the record of a patient's treatment or service for a minimum of six years from the date of that treatment or service.

(b) If a patient was younger than age 18 when the patient last received treatment or service, a licensee or other person shall maintain a patient's records until a patient reaches age 21 or for six years from the date of last treatment or service, whichever is longer.

(c) If another federal or state law or rule, or business agreement requires a patient record to be maintained for a time longer than in subsections (a) and (b) of this section, a licensee or other person shall comply with that law, rule, or business agreement.

(d) A licensee or other person shall maintain a patient record relating to a civil, criminal, or administrative proceeding until the proceeding is finally resolved.

(e) A licensee or other person shall ensure patient records are securely stored to protect a patient's privacy.

(f) If a licensee establishes a doctor-patient relationship solely due to a licensee's employment by or contract for services with another person, a licensee's duty to maintain patient records created during the employment or contract ceases when the licensee's employment or contract ends.

(g) If a licensee establishes a doctor-patient relationship solely due to a licensee's participation in a partnership with another person, a licensee's duty to maintain patient records created during the partnership ceases when the licensee's participation in the partnership ends and the remaining partners continue the partnership.

(h) If a partnership in which a licensee is a partner dissolves, each licensee and person in the partnership is individually and jointly

responsible for the maintenance of patient records unless a licensee or other person assumes that duty by written agreement.

(i) A licensee or other person shall reasonably notify a patient when the duty for maintaining patient records will change.

(j) A licensee or other person who violates this section is subject to disciplinary action.

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

Filed with the Office of the Secretary of State on May 29, 2020.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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CHAPTER 79. UNPROFESSIONAL CONDUCT

22 TAC §79.1

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §79.1 (Unprofessional Conduct). The Board will propose a new §79.1 in a separate rulemaking. As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's rules simpler and easier to navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §79.1. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§79.1. Unprofessional Conduct.

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

Filed with the Office of the Secretary of State on May 27, 2020.

TRD-202002173
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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22 TAC §79.1

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §79.1 (Inappropriate Sexual Conduct). As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to remove unnecessary text and to make the Board's rules simpler and easier to navigate, and to clarify the defense to disciplinary action for a consensual relationship.

In its modification of the current §79.1 (Unprofessional Conduct), the Board has removed the provisions about financial misconduct and moved those to a new §79.3 (Financial Misconduct), which is being proposed in a separate rulemaking action. The Board is renaming the new §79.1 to make it clear it covers only misconduct of a sexual nature. Aside from the non-substantive edits of the remaining text made for clarity, the Board made explicit in subsection (b) that it is a defense to disciplinary action if a consensual sexual relationship between a licensee, chiropractic college student, or recent graduate and an individual existed before the doctor-patient relationship began.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to com-

ply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to remove unnecessary text and to make the Board's rules simpler and easier to navigate, and to clarify the defense to disciplinary action for a consensual relationship.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new of 22 TAC §79.1. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§79.1. Inappropriate Sexual Conduct.

(a) A licensee, or a chiropractic college student or recent graduate employed by or under the supervision of a licensee, may not:

(1) engage in a consensual sexual relationship with a patient;

(2) inappropriately touch an individual's genitals, anus, or breasts;

(3) make any statements, gestures, or expressions, using any means, towards an individual which may reasonably be interpreted as sexual in nature;

(4) request unnecessary details of an individual's sexual history or sexual preferences;

(5) request to date a patient;

(6) discuss the licensee's sexual desires, problems, preferences, or fantasies;

(7) request sexual acts or favors in exchange for services;

(8) expose genitalia or other customarily covered body parts to an individual; or

(9) masturbate in the presence of an individual.

(b) It is a defense to disciplinary action under subsection (a)(1) of this section if the consensual sexual relationship began more than three months after the doctor-patient relationship ended, or existed before the doctor-patient-relationship began.

(c) It is not a defense to subsection (a)(2) - (9) of this section if the acts occurred:

(1) with the individual's consent; or

(2) outside the place of business used for the practice of chiropractic.

(d) A licensee, student, or recent graduate is subject to disciplinary action for violating this section.

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

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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22 TAC §79.3

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §79.3 (Financial Misconduct). As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to remove unnecessary text and to make the Board's rules simpler and easier to navigate.

This new §79.3 contains provisions relating to financial misconduct that are currently in §79.1 (Unprofessional Conduct). The Board has proposed the repeal and replacement of current §79.1 in separate rulemaking actions. The new §79.1 will address sexual misconduct while the new §79.3 will only contain prohibitions relating to financial matters. Aside from the non-substantive edits of the remaining text from current §79.1 made for clarity, the Board has also removed provisions relating to sanitary conditions, physical harm to a patient, and prohibited advertising practices, which are addressed specifically in other Board rules.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small

businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to remove unnecessary text and to make the Board's rules simpler and easier to navigate, and to clarify the defense to disciplinary action for a consensual relationship.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new of 22 TAC §79.3. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§79.3. Financial Misconduct.

(a) A licensee may not commit fraud in the charging or billing of goods or services.

(b) A licensee may not charge or bill a patient or a third party for goods or services that are clearly excessive.

(c) A licensee may not submit a claim for goods or services that are not sold or rendered.

(d) A licensee who violates this section is subject to disciplinary action.

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

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Christopher Burnett
General Counsel
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CHAPTER 80. COMPLAINTS

22 TAC §80.2

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §80.2 (Complaint Procedures). As part of the Board's comprehensive rule revision effort, the purpose of the repeal is to make the Board's rules simpler and easier to navigate.

The Board will propose a new §80.2 in a separate rulemaking. The Board will also propose a separate new §80.11, which will update the current §80.2's provisions relating to informal conferences into a stand alone rule. The Board has previously adopted provisions relating to emergency license suspension from the current §80.2 into a separate rule (current §80.9).

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §80.2. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§80.2. Complaint Procedures.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002159
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §80.2

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.2 (Complaint Procedures). As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to remove unnecessary text and to make the Board's rules simpler and easier to navigate.

In addition to making non-substantive edits to the current rule's language for clarity, the Board is at the same time proposing a new rule (§80.11), which will move the provisions in current §80.2 relating to informal settlement conferences conducted by the Board's Enforcement Committee into a stand alone rule. The new rule also makes it explicit that the Board will seek, if possible, to informally settle complaints without the need for an administrative hearing.

The Board previously adopted current §80.9 (Emergency Suspension of License), which moved the current §80.2's provisions relating to the Board's emergency license suspension procedures into a stand alone rule.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to remove unnecessary text and to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new of 22 TAC §80.2. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§80.2. Complaint Procedures.

(a) A person may file a complaint on the complaint form available on the Board's website or upon request to the Board office.

(b) The Board shall investigate all complaints.

(c) A complaint shall contain all necessary information available, including:

(1) the complainant's name, address, phone number, and email address;

(2) the name, address, phone number, and email address of the licensee or other person against whom the complaint is made;

(3) the date, time, and location where the alleged violation occurred; and

(4) a description of the incident giving rise to the complaint.

(d) A complainant shall cooperate in the investigation of a complaint.

(e) The Board's executive director may dismiss a complaint if:

(1) the allegation is not under the Board's jurisdiction;

(2) the complainant is uncooperative;

(3) the complainant withdraws the complaint in writing;

(4) there are insufficient facts or evidence to support the allegation; or

(5) continued investigation could interfere with a criminal investigation or judicial proceeding.

(f) The Board shall notify a complainant within 30 days if a complaint is dismissed under subsections (e) and (l) of this section.

(g) The Board shall prioritize investigations of complaints that allege criminal acts or serious physical or economic harm to patients.

(h) Board staff may initiate complaints.

(i) The Board president shall appoint an Enforcement Committee to initially consider all complaints not dismissed under subsection (e) of this section.

(j) The executive director, under the direction of the Enforcement Committee, shall oversee all investigations.

(k) Upon completion of an investigation, staff shall present their evidence and recommendation to the Enforcement Committee.

(l) Based on Board staff's evidence and recommendation, the Enforcement Committee shall:

(1) find no violation occurred and dismiss the complaint;

(2) order additional investigation; or

(3) find a violation occurred.

(m) If the Enforcement Committee finds a violation occurred, staff shall send written notice within 14 days to the licensee or other person that includes:

(1) the specific statutes or rules that were violated;

(2) a description of the facts and evidence supporting the finding of a violation;

(3) the maximum penalty under the law the licensee may be subject to;

(4) how the licensee can request an administrative hearing to contest the alleged violation; and

(5) the process for informally settling the complaint without an administrative hearing, including an informal conference if the committee requests one.

(n) A licensee shall respond in writing to the notice of violation within 20 days of receipt.

(o) If possible, staff shall seek to informally settle a complaint without an administrative hearing.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002160
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §80.8

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §80.8 (Default on Student Loans). In 2019, the Texas Legislature repealed the requirement in Texas Occupations Code Chapter 56 that state agencies take administrative action against licensees for being in default of student loans (Senate Bill 37, 86th Legislature, Regular Session) and prohibited agencies from doing so (Occupations Code §56.003). That legislative action made §80.8 void. The purpose of this repeal is to remove invalid agency rules and bring the Board's rules into compliance with Occupations Code §56.003.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove invalid agency rules and bring the Board's rules into compliance with Occupations Code §56.003.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §80.8. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§80.8. Default on Student Loans.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002143
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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22 TAC §80.11

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.11 (Informal Settlement Conferences). As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to make the Board's rules easier to navigate by separating language dealing with multiple subjects into individual rules.

New §80.11 removes language relating to informal settlement conferences conducted by the Board's Enforcement Committee contained in current §80.2(c)(3) and (4) (Complaint Procedures) into a stand alone rule. The Board is also proposing a new §80.2 to remove those provisions in a separate rulemaking action.

The new §80.11 clarifies that informal settlement conferences may be held at the Enforcement Committee's discretion if the committee believes the conference could settle a complaint without further administrative action. The rule also makes clear that a member of the committee who attends an informal conference that later results in a Proposal for Decision (PFD) after a hearing at the State Office of Administrative Hearings may not participate in any consideration or discussion of that PFD in a formal Board meeting. In addition, the Board is also making non-substantive edits to the provisions from current §80.2 for clarity.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to remove unnecessary text and to make the Board's rules easier to navigate by separating language dealing with multiple subjects into individual rules.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new of 22 TAC §80.11. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

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

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§80.11. Informal Settlement Conferences.

(a) After following the provisions of §80.2 of this title (relating to Complaint Procedures), the Enforcement Committee may invite a licensee to attend an informal conference to seek to settle a complaint.

(b) The Enforcement Committee shall notify a licensee of an invitation to attend an informal conference as part of a notice of violation through regular mail and email.

(c) A licensee shall respond in writing to the Enforcement Committee's notice of violation and invitation within 20 days from the date it was sent by the Board.

(d) Board staff shall docket a contested case with the State Office Administrative Hearings (SOAH) against the licensee if the licensee fails to respond or declines the notice of violation and invitation.

(e) The Enforcement Committee may withdraw an invitation to an informal conference at any time.

(f) The Enforcement Committee may invite a complainant to attend an informal conference.

(g) In its discretion, the Enforcement Committee may hold an informal conference in-person, or by telephone, video conference, or any other electronic means.

(h) The chairman of the Enforcement Committee may select one or more members of the committee to hold the informal conference.

(i) A staff attorney shall attend all informal conferences.

(j) A licensee may be represented by an attorney.

(k) After the conclusion of the informal conference, the Enforcement Committee may:

(1) dismiss the complaint;

(2) direct staff to further investigate the complaint;

(3) modify the original notice of violation; or

(4) direct staff to docket a contested case with SOAH.

(l) Any member of the Enforcement Committee who attends an informal conference that results in a final Proposal for Decision (PFD) after a hearing at SOAH shall recuse himself from any consideration and discussion of the PFD by the Board in a formal meeting.

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

Filed with the Office of the Secretary of State on May 26, 2020.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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CHAPTER 82. INTERNAL BOARD PROCEDURES

22 TAC §82.4

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §82.4 (Private Donors). During a review of 22 TAC Chapter 82 (Internal Board Procedures) done under Texas Government Code §2001.039, the Board determined that it does not have the legal authority to accept gifts or donations as required by Government Code §575.003 (Acceptance of Gift by State Agency Governing Board), thus making §82.4 void. The purpose of this action is to remove unnecessary agency rules and bring the Board into compliance with Government Code §575.003.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove unnecessary agency rules and bring the Board into compliance with Government Code §575.003.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §82.4. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

§82.4. Private Donors.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002141
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 305-6700

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.65

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.65, Responsibilities and Operations of Providers of Qualifying Courses.

The proposed amendments to §535.65 correct a reference within the rule to include the appropriate subsection.

The proposed amendments were recommended by the Education Standards Advisory Committee.

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

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated will be improved clarity and precision of rule references for members of the public and and education providers.

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

--create or eliminate a government program;

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

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

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

--create a new regulation;

--expand, limit or repeal an existing regulation;

--increase or decrease the number of individuals subject to the rule's applicability; or

--positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.65. Responsibilities and Operations of Providers of Qualifying Courses.

(a) - (d) (No change.)

(e) Refund of fees by approved provider.

(1) A provider shall establish written policies governing refunds and contingency plans in the event of course cancellation.

(2) If a provider approved by the Commission cancels a course, the provider shall:

(A) fully refund all fees collected from students within a reasonable time; or

(B) at the student's option, credit the student for another course.

(3) The provider shall inform the Commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(4) If a provider fails to give the notice required by subsection (d)(1)(H) of this section [~~(d)(1)(G)~~], and an individual's application for a license is denied by the Commission because the individual has been convicted of a criminal offense, the provider shall reimburse the individual the amounts required by Section 53.153, Texas Occupations Code.

(f) - (m) (No change).

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

Filed with the Office of the Secretary of State on May 27, 2020.

TRD-202002163
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 936-3284

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.208, 535.209, 535.212 - 535.214

The Texas Real Estate Commission (TREC) proposes amendments to §535.208, Application for a License; §535.209, Examinations; §535.212, Education and Experience Requirements for a License; §535.213, Qualifying Real Estate Inspector Courses; and new rule §535.214, Education and Experience Requirements for a License, in Subchapter R of Chapter 535, General Provisions.

The proposed amendments to §535.208 eliminate an obsolete requirement for an applicant for an apprentice inspector license to provide a photo to the Commission prior to issuance of a license. The proposed amendments also eliminate certain requirements and waivers for Military Service Members, Veterans, or Military Spouses that are now addressed under §535.58.

The proposed amendments to §535.209 move the one-year period for exam results to remain valid to a new subsection and create certain eligibility and course requirements for candidates in order to be able to take the state portion of the real estate inspector exam. Replaces specific hourly course requirements for someone who fails the exam three times with specific inspector modules addressed in the proposed amendments to §535.213. The proposed amendments also allow for an out of state inspector who has already passed the national portion of the licensing

exam to simply take the state portion of the exam after completion of certain Texas specific coursework.

The proposed amendments to §535.212 specifies the timeframe for education submitted under this rule is valid.

The proposed amendments to §535.213 provide a transition period for which education completed under the current requirements will be accepted. The proposed amendments lay out in detail the topics that must be covered in the new module courses, and the in-person Texas Practicum. The proposed amendments detail the required qualifications for an individual to supervise the Texas Practicum. The proposed amendments also establish a Commission audit processes related to the Texas Practicum credit request form.

The proposed new rule §535.214 establishes the education and experience requirements for a real estate inspector license after March 1, 2021. The new rule maintains the education and number of inspections currently required under the sponsorship pathway to licensure. The rule also details the substitute experience required for education in obtaining an inspector license based on the modules and practicum proposed in §535.213.

The proposed amendments and new rule were recommended by the Texas Real Estate Inspector Committee.

The proposed amendments and new rule were submitted to the Governor's Office of Regulatory Compliance in accordance with Chapter 57 of the Texas Occupations Code. The Governor's Office of Regulatory Compliance provided the agency with a determination letter on February 21, 2020. Concerns raised in this determination letter were brought to the Texas Real Estate Inspector Committee who subsequently addressed those issues.

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

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be improved clarity and precision of rule references for members of the public, military service members, veterans, military spouses, license holders, and education providers.

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

-create or eliminate a government program;

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

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

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

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or by email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments and new rule are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.208. Application for a License.

(a) Application.

(1) A person who intends to be licensed by the Commission must file an application for the license:

(A) - (B) (No change.)

(C) submit the required fee under §535.210 of this title (relating to Fees).

(2) - (3) (No change.)

(b) General Requirements for Licensure.

(1) To be eligible for any inspector license, an applicant must:

(A) meet the following requirements at the time of the application:

(i) be 18 years of age;

(ii) be a citizen of the United States or a lawfully admitted alien;

(B) comply with the fingerprinting, education, experience and examination requirements of the Act, Chapter 1102, or the rules of the Commission;

(C) meet the honesty, trustworthiness, and integrity requirements under the Act; and

(D) provide proof of financial responsibility as required by of Chapter 1102. [~~; and~~]

[~~(E) an applicant for an apprentice inspector license must provide the Commission with the applicant's photograph prior to issuance of a license certificate.~~]

(2) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.

(c) - (e) (No change.)

§535.209. Examinations.

(a) Examinations for licensure.

(1) The examination for a real estate inspector license and for a professional inspector license consists of a national part and a state part.

(2) The Commission adopts the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors for the national portion of the examination. For the state portion of the examination, questions shall be used which measure competency in the subject areas required for a license by Chapter 1102, and which demonstrate an awareness of its provisions relating to inspectors.

(3) Each real estate inspector applicant must achieve a score of at least 70% on the state portion of the examination. Each professional inspector applicant must achieve a score of at least 75% on the state portion of the examination. Examination results are valid for a period of one year from the date the examination is passed.

(b) Administration of examination. Except as otherwise required by Chapter 1102 or this section, examinations shall be conducted as provided by §535.57 of this title (relating to Examinations). An applicant is [~~not~~] eligible to take a qualifying examination for a license after [~~until~~] the Commission has received evidence of completion of all education and experience required by this subchapter.

(c) - (d) (No change.)

(e) [~~Examination results are valid for a period of one year from the date the examination is passed.~~] An examination is considered passed when an applicant has received a passing grade on both parts of the examination.

(f) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the commission that the applicant has completed additional core education as follows, after the date the applicant failed the examination for the third time:

(1) for an applicant who failed the national part of the examination, 32 hours;

(2) for an applicant who failed the state part of the examination, 8 hours; and

(3) for an applicant who failed both parts of the examination, 40 hours.

(g) Subsections (c) through (f) of this section expire on February 28, 2021.

(h) Exam Eligibility Effective March 1, 2021. The following eligibility requirements apply to applicant who takes the examination for licensure on or after March 1, 2021:

(1) Before the applicant is eligible to take the national portion of the examination the applicant must submit evidence of completion of the following courses to the Commission:

(A) Property and Building Inspection Module I;

(B) Property and Building Inspection Module II;

(C) Business Operations and Professional Responsibilities Module; and

(D) Analysis of Findings and Reporting Module, if required for licensure under §535.214 of this title (relating to Education and Experience Requirements for Licensure).

(2) Before the applicant is eligible to take the state portion of the examination, the applicant must submit evidence of completion of the following coursework to the Commission, if required for licensure under §535.214 of this title:

(A) Texas Law Module;

(B) Texas Standards of Practice Module; and

(C) Texas Practicum.

(3) If the applicant has previously passed the national portion of the examination, before the applicant is eligible to take the state portion of the examination, the applicant:

(A) must submit evidence of completion of the required coursework as provided under subsection (i)(2) of this section and pass the Texas portion of the examination; and

(B) is not required to complete coursework outlined under subsection (i)(1) of this section.

(4) If the applicant fails the examination three consecutive times, the applicant may not apply for reexamination or submit a new license application unless the applicant submits evidence to the Commission that the applicant has successfully completed additional qualifying education after the date of the third failed examination, as follows:

(A) for an applicant who failed the national part of the examination, Building Science Module I or Building Science Module II; or

(B) for an applicant who failed the state part of the examination, Texas Law Module, Texas Standards of Practice Module.

(5) if the applicant chooses to take the national portion and state portion of the exam separately, the national portion must be taken before the state portion of the exam.

§535.212. Education and Experience Requirements for a License.

(a) (No change.)

(b) Educational Requirements for a Professional Inspector License. To become licensed as a professional inspector, a person must satisfy the 130-hour education requirement for licensure by completing the courses required for licensure as a real estate inspector in subsection (a) of this section; and

(1) (No change.)

(2) 8 additional hours in non-elective coursework in legal, ethics, SOPs, and report writing as defined in §535.218 of this title (relating to Continuing Education Required for Renewal); and

(3) (No change.)

(c) (No change.)

(d) Substitute Experience Requirements for a Real Estate Inspector License.

(1) A person may satisfy the substitute experience requirements for licensure as a real estate inspector as follows:

(A) (No change.)

(B) complete:

(i) 20 hours of field work through ride-along inspection course sessions as defined [~~dfined~~] in §535.213(g) of this title (relating Qualifying Real Estate Inspector Instructors and Courses); and

(ii) (No change.)

(2) (No change.)

(g) Education submitted under this section will only be accepted to satisfy the requirements for licensure if started before March 1, 2021 and completed and submitted in conjunction with an application filed by June 30, 2021.

§535.213. Qualifying Real Estate Inspector Instructors and Courses.

(a) Subsections (a) - (f) of this section shall expire on February 28, 2021, and only apply to satisfy the education requirements for a license under §535.212 of this title (relating to Education and Experience Requirements for a License). [~~Approval of Qualifying Real Estate Inspection Instructors. Qualifying real estate inspector instructors are approved and regulated as required by §535.63 of this title.~~]

(b) Approval of Inspector Qualifying [~~Real Estate Inspection~~] Courses. Inspector qualifying [~~Qualifying real estate inspector~~] courses are approved and regulated as required by §535.62 of this title (relating to Approval of Qualifying Courses).

(c) (No change.)

(d) A course approved to satisfy a specific subject matter requirement under §535.212 of this title must address each part of the subject as described by this section

(e) (No change.)

[~~(f) Composite Courses.~~]

[~~(1) A course that combines more than one subject into a composite course may be approved by the Commission to satisfy real estate inspector core course education requirements.~~]

[~~(2) Composite courses will not satisfy the requirements for coursework in specific subject areas, unless they are approved for a specific number of hours for each subject area.~~]

(f)[~~(g)~~] Ride-along inspection course for qualifying education.

(1) A ride-along inspection course must:

(A) at a minimum consist of one full residential property inspection per 8 hours of course credit;

(B) review applicable standards of practice and departure provisions contained in §§535.227 - 535.233 of this title (relating to Standards of Practice); and

(C) consist of no more than four students per instructor.

(2) The instructor of a ride-along inspection course may:

(A) review report writing;

(B) deliver a notice regarding the ride-along session on a form approved by the Commission to the prospective buyer or seller of the home being inspected.

(g) Subsections (h) - (i) of this section are effective March 1, 2021 and apply to the education requirements for a license under §535.214 of this title (relating to Education and Experience Requirements for a License).

(h) Approval of Inspector Qualifying Courses. Inspector qualifying courses are approved and regulated as required by §535.62 of this title.

(i) Approved Qualifying Courses of Study. The subjects approved for credit for qualifying inspector courses consist of the following modules:

(1) Property and Building Inspection Module I (40 hours), which shall contain the following topics, the units of which are outlined in the Property and Building Inspection I Qualifying Inspector Course Approval Form:

(A) Site conditions; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(B) Exterior components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(C) Roof components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(D) Structural components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(E) Interior components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(F) Permanently installed kitchen appliances; assessing for proper condition and operations - 300 minutes; and

(G) Fireplaces, fuel-burning appliances, and their chimney and vent systems; assessing defects and issues that may affect people or the performance of the building - 200 minutes.

(2) Property and Building Inspection Module II (40 hours), which shall contain the following topics, the units of which are outlined in the Property and Building Inspection II Qualifying Real Estate Inspector Course Approval Form:

(A) Electrical systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(B) Cooling Systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(C) Heating systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(D) Insulation, moisture management systems, and ventilation systems in conditioned and unconditioned spaces; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(E) Plumbing systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(F) Mechanical exhaust systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes; and

(G) Optional Systems - 200 minutes.

(3) Analysis of Findings and Reporting Module (20 hours), which shall contain the following topics, the units of which are outlined in the Analysis of Findings and Reporting Module Qualifying Real Estate Inspector Course Approval Form:

(A) Informing the client what was inspected and describing building systems and components by their distinguishing characteristics - 200 minutes;

(B) Describing inspection methods and limitations in the inspection report to inform the client what was not inspected and why - 200 minutes;

(C) Describing systems and components inspected that are not functioning properly or are defective - 200 minutes;

(D) Describing systems and components in need of further evaluation or action - 200 minutes; and

(E) Describing the implication of defects so that the client understands what could occur if the defects are not corrected - 200 minutes.

(4) Business Operations and Professional Responsibilities Module (10 hours), which shall contain the following topics, the units of which are outlined in the Business Operations and Professional Responsibilities Qualifying Real Estate Inspector Course Approval Form:

(A) Elements of the written inspection contract and the rights and responsibilities of the inspector and the client - 250 minutes; and

(B) Inspector's responsibility to maintain the quality, integrity, and objectivity of the inspection process - 250 minutes.

(5) Texas Law Module (20 hours), which shall contain the following topics, the units of which are outlined in the Texas Law Module, Qualifying Real Estate Inspector Course Approval Form:

(A) Licensing Law; Chapter 1102 Texas Occupations Code - 200 minutes;

(B) General Provisions; TREC Rules, Chapter 535 Subchapter R - 400 minutes; and

(C) Inspector Legal & Ethics - 400 minutes.

(6) Texas Standards of Practice Module (24 hours), which shall contain the following topics, the units of which are outlined in the Texas Standards of Practice Module Qualifying Real Estate Inspector Course Approval Form:

(A) Structural systems; Texas SOP exclusions and unique reporting requirements - 400 minutes;

(B) Electrical systems; Texas SOP exclusions and unique reporting requirements - 400 minutes; and

(C) Mechanical systems; Texas SOP exclusions and unique reporting requirements - 400 minutes.

(7) Texas Practicum (40 hours); which shall consist of a minimum of five complete and in-person inspections.

(A) The Texas Practicum must:

(i) be supervised by a currently licensed inspector who has:

(I) been actively licensed as a Professional Inspector for at least five years; and

(II) at least three years of supervisory or training experience with inspectors; and

(ii) consist of no more than four students per inspector supervising the Texas Practicum.

(B) The inspector supervising the Texas Practicum must evaluate that upon completion by the student, each report is:

(i) considered satisfactory for release to an average consumer; and

(ii) demonstrates an understanding of:

(I) report writing;

(II) client interaction;

(III) personal property protection; and

(IV) concepts critical for the positive outcome of the inspection process.

(C) An applicant may request credit for completing the Texas Practicum (40 hours) by submitting the credit request form approved by the Commission.

(D) Audits.

(i) The Commission staff may conduct an audit of any information provided on a Texas Practicum credit request form, including verifying that the inspector supervising the Texas Practicum meets the qualifications required to supervise the practicum.

(ii) The following acts committed by a supervisory inspector conducting the Texas Practicum are grounds for disciplinary action:

(I) making material misrepresentation of fact;

(II) making a false representation to the Commission, either intentionally or negligently, that a student completed the Texas Practicum in its entirety, satisfying all requirements for credit to be awarded.

§535.214. Education and Experience Requirements for a License.

(a) Sponsored Experience and Education Requirements for a Real Estate Inspector License. To become licensed as a real estate inspector a person must:

(1) satisfy the 90-hour education requirement for licensure by completing the following coursework:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours; and

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(2) have been licensed as an apprentice inspector on active status for a total of at least three months within the 12 month period before the filing of the application;

(3) complete 25 inspections; and

(4) pass the licensure examinations set out in §535.209 of this title (relating to Examinations).

(b) Sponsored Experience and Education Requirements for a Professional Inspector License. To become licensed as a professional inspector, a person must:

(1) satisfy the 134-hour education requirement for licensure by completing the following coursework:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Texas Law Module, total 20 hours; and

(E) Texas Standards of Practice Module, total 24 hours;

(2) have been licensed as a real estate inspector on active status for a total of at least 12 months within the 24 month period before the filing of the application;

(3) complete 175 inspections; and

(4) pass the licensure examinations set out in §535.209 of this title.

(c) Sponsored Experience Criteria. To meet the experience requirements for licensure under subsections (a) or (b) of this section, or to sponsor apprentice inspectors or real estate inspectors:

(1) the Commission considers an improvement to real property to be any unit capable of being separately rented, leased or sold; and

(2) an inspection of an improvement to real property that includes the structural and equipment/systems of the unit constitutes a single inspection.

(d) Substitute Experience and Education Requirements for a Real Estate Inspector License. As an alternative to §535.214(a) of this title to become a licensed real estate inspector, a person must:

(1) complete a total of 154 hours of qualifying inspection coursework, which must include the following:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Texas Standards of Practice Module, total 24 hours; and

(E) Texas Practicum, total 40 hours; and

(2) pass the licensure examinations set out in §535.209 of this title.

(3) be sponsored by a professional inspector.

(e) Substitute Experience and Education Requirements for a Professional Inspector License. As an alternative to §535.214(b) of this title, to become a licensed professional inspector, a person must:

(1) complete a total of 194 hours of qualifying inspection coursework, which must include the following:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Analysis of Findings and Reporting Module, total 20 hours;

(E) Texas Law Module, total 20 hours;

(F) Texas Standards of Practice Module, total 24 hours; and

(G) Texas Practicum, total 40 hours; and

(2) pass the licensure examinations set out in §535.209 of this title.

(f) Courses completed for a real estate inspector license under this section shall count towards the identical qualifying inspection coursework for licensure as a profession inspector.

(g) This rule is effective March 1, 2021.

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

Filed with the Office of the Secretary of State on May 27, 2020.

TRD-202002164

Vanessa Burgess
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 936-3284

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SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §535.400

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.400, Registration of Easement or Right-of-Way Agents, in Chapter 535, General Provisions. The proposed amendments to §535.400 eliminates the requirement for an applicant for an easement or right-of-way agent to provide a photograph to the Commission. This change lessens a burden on an applicant and is consistent with changes made to eliminate this same requirement for real estate brokers and sales agents.

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

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be a streamlined application process because eliminating the photograph requirement is consistent with the statute and easier to understand, apply, and process.

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

--create or eliminate a government program;

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

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

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

--create a new regulation;

-expand an existing regulation;

--increase or decrease the number of individuals subject to the rule's applicability; or

--positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission

to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.400. Registration of Easement or Right-of-Way Agents.

(a) A person who intends to be registered by the Commission as an easement or right-of-way agent must:

(1) file an application for the registration:

(A) through the online process approved by the Commission; or

(B) on the form prescribed by the Commission for that purpose; and

(C) submit the required fee under §535.404 of this subchapter.

(2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) To be eligible for registration, an applicant must:

(1) meet the following requirements at the time of the application:

(A) be 18 years of age;

(B) be a citizen of the United States or a lawfully admitted alien;

(2) comply with the fingerprinting requirements of the Act;

(3) meet the honesty, trustworthiness, and integrity requirements under the Act; and

~~[(4) If the applicant is an individual, the applicant must provide the Commission with the individual's photograph not older than two years and signature before issuance of a registration certificate. The person may provide the photograph before the submission of an electronic application; and]~~

(4) [~~(5)~~] If the applicant is a business entity, the applicant must designate one of its managing officers who is registered under this title as agent for the business entity.

(c) - (i) (No change.)

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

Filed with the Office of the Secretary of State on May 27, 2020.

TRD-202002165
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 936-3284

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.28, 537.30 - 537.32, 537.37, 537.43, 537.58, 537.59

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.20, Standard Contract Form TREC No. 9-13; §537.28, Standard Contract Form TREC No. 20-14; §537.30, Standard Contract Form TREC No. 23-15; §537.31, Standard Contract Form TREC No. 24-15; §537.32, Standard Contract Form TREC No. 25-12; §537.37, Standard Contract Form TREC No. 30-13; §537.43, Standard Contract Form TREC No. 36-8; and new rules §537.58, Standard Contract form TREC No. 51-0; §537.59, and Standard Contract Form TREC No. 52-0, in Chapter 537, Professional Agreements and Standard Contracts. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted and recommended for adoption by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Broker Lawyer Committee recommended revisions to the contract forms adopted by reference under the proposed amendments and new rules to Chapter 537 to address issues that have arisen since the last contract revisions. The changes listed below apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale)*.

Paragraph 2 is amended to remove quotes and add a parenthetical around the word "Property."

Paragraph 2.C is amended security systems and "Controls" as Accessories and defines "Controls."

The language of Paragraph 4 was moved to the end of Paragraph 8, which is retitled "License Holders."

Language was added to Paragraph 4 to address leases to which the Seller is a party, and requires the Seller to acknowledge that Buyer has received a copy of all Leases or will receive a copy within 3 days after the Effective Date. The Buyer may terminate the contract after receipt of the Leases within a period of days set in the contract. Paragraph 4 also prohibits the Seller from executing any new lease or amending any Lease without Buyer's written consent after the effective date of the contract.

Paragraph 4 is also amended to include language regarding disclosure of existing leases and prohibits, without Buyer's consent, any new leases, amendments to exiting leases, or conveyance of interest in the property.

Paragraph 10.B is amended to remove redundancies found in Paragraph 4 by striking all language except "After the Effective Date, Seller may not convey any interest in the Property without Buyer's written consent."

Paragraph 10.C is amended to include definition of Smart Device and require delivery of access codes to Buyer and removal of seller access points.

Paragraph 18.A is amended to allow escrow agent to require any disbursement made under the contract to be made in good funds.

Paragraph 18.B is amended to further define expenses that an escrow agent may deduct.

Paragraph 23 is amended is authorize payment of option fee to escrow agent separately or combined with earnest money in single payment. Authorizes release of option money without further consent from Buyer.

The Option Fee Receipt is amended to strike reference to Seller/Broker and replace with Escrow Agent.

Language was deleted from the Broker Information page of all forms except the Farm and Ranch Contract form: "Listing Broker has agreed to pay Other Broker ___ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing."

Language was added to the Incomplete Construction Contract to mirror the language in the Complete Construction Contract Paragraph 7.I. regarding Residential Service Contracts. The language was added to the Incomplete Construction Contract as Paragraph 7.J.

In the Residential Condominium Contract, all references to a survey were removed from Paragraph 6.

The Addendum for Property Subject to Mandatory Membership in a Property Owners Association adopted by reference in §537.43 is amended to add deposits and reserves to the list of payments the Buyer will make in association with the transfer of the property.

The Addendum Regarding Residential Leases is adopted by reference in §537.58 is a new form that supplements changes made to Paragraph 4 regarding required consent to enter into any new leases, amendments to exiting leases, or conveyance of interest in the property.

The Addendum Regarding Fixture Leases adopted by reference in §537.59 is a new form protects the parties regarding fixture leases in place on the property at the time of contract execution.

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

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be improved clarity and greater transparency for members of the public and license holders, as well as requirements that are consistent with the statute and easier to understand, apply and process.

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

-create or eliminate a government program;

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

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

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

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments and new rules are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments and new rules is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments and new rules.

§537.20. Standard Contract Form TREC No. 9-14 [~~9-13~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 9-14 [~~9-13~~] approved by the Commission in 2020 [~~2018~~] for use in the sale of unimproved property where intended use is for one to four family residences.

§537.28. Standard Contract Form TREC No. 20-15 [~~20-14~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 20-15 [~~20-14~~] approved by the Commission in 2020 [~~2018~~] for use in the resale of residential real estate.

§537.30. Standard Contract Form TREC No. 23-16 [~~23-15~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 23-16 [~~23-15~~] approved by the Commission in 2020 [~~2018~~] for use in the sale of a new home where construction is incomplete.

§537.31. Standard Contract Form TREC No. 24-16 [~~24-15~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 24-16 [~~24-15~~] approved by the Commission in 2020 [~~2018~~] for use in the sale of a new home where construction is completed.

§537.32. Standard Contract Form TREC No. 25-13 [~~25-12~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 25-13 [~~25-12~~] approved by the Commission in 2020 [~~2018~~] for use in the sale of a farm or ranch.

§537.37. Standard Contract Form TREC No. 30-14 [~~30-13~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 30-14 [~~30-13~~] approved by the Commission in 2020 [~~2018~~] for use in the resale of a residential condominium unit.

§537.43. Standard Contract Form TREC No. 36-9 [~~36-8~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 36-9 [~~36-8~~] approved by the Commission in 2020 [~~2014~~] for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association.

§537.58. Standard Contract Form TREC No. 51-0.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 51-0 approved by the Commission in 2020 for use as an addendum to be added to promulgated forms of contracts as related to lease agreements.

§537.59. Standard Contract Form TREC No. 52-0.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 52-0 approved by the Commission in 2020 for use as an addendum to be added to promulgated forms as related to fixture leases.

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

Filed with the Office of the Secretary of State on May 27, 2020.

TRD-202002166
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 12, 2020
For further information, please call: (512) 936-3284

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER E. CLINIC PHARMACY

22 TAC §291.93

The Texas State Board of Pharmacy withdraws the proposed amended §291.93 which appeared in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2296).

Filed with the Office of the Secretary of State on May 29, 2020.

TRD-202002217
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: May 29, 2020
For further information, please call: (512) 305-8010

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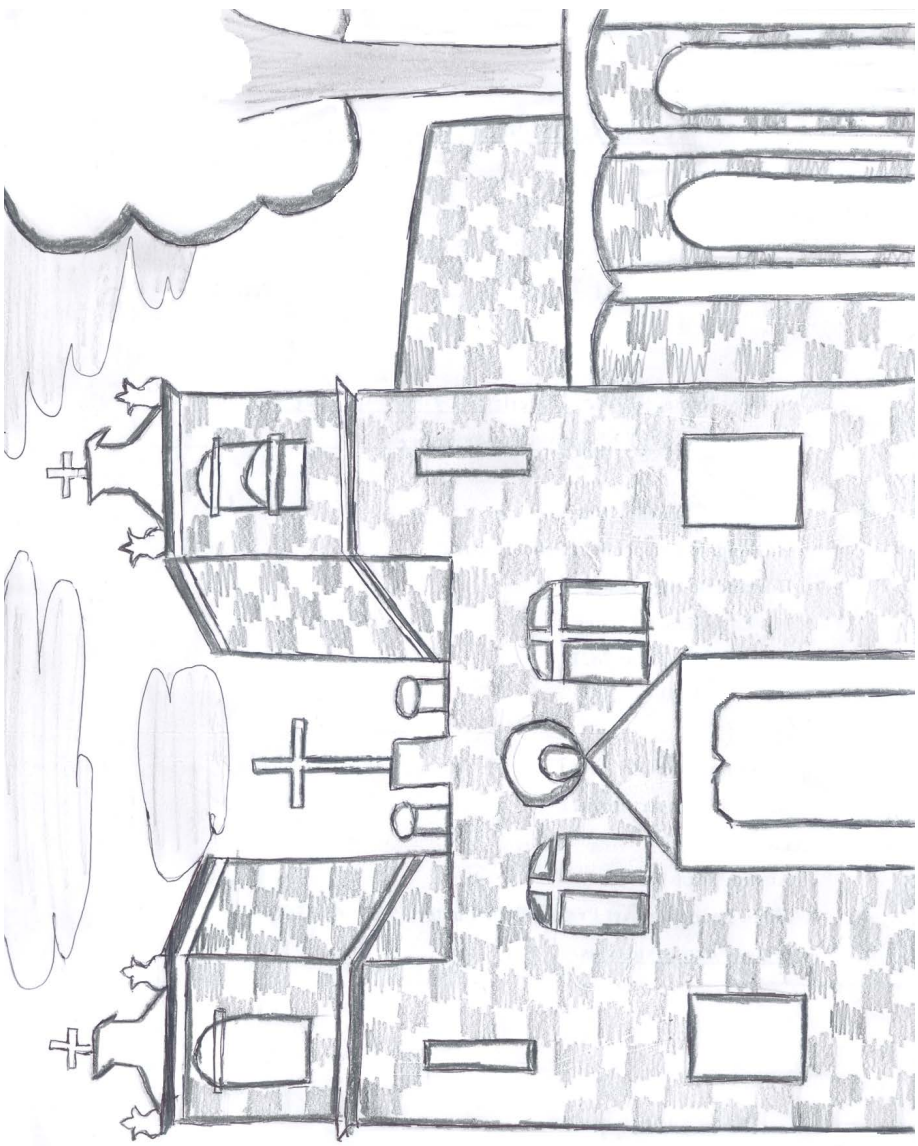

ADOPTED RULES

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

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.7

The Texas State Securities Board adopts an amendment to §109.7, concerning Secondary Trading Exemption under the Texas Securities Act, §5.O, without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1289). The amended rule will not be republished.

The amendment updates the "manual exemption" contained in §5.O of the Act by amending the definition of "recognized securities manual" in subsection (e) to remove S&P Capital IQ Standard Corporations Descriptions, which ceased publication in 2016.

The amendment apprises registered dealers relying upon the securities exemption contained in §5.O, for secondary market sales, of the manuals recognized by the Board for purposes of the exemption.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Article 581-5.O.

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

Filed with the Office of the Secretary of State on May 28, 2020.

TRD-202002190
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: June 17, 2020
Proposal publication date: February 28, 2020
For further information, please call: (512) 305-8303

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER E. RECORDS AND REPORTS

16 TAC §24.134

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §24.134, relating to financial, managerial and technical reports required for water and sewer utilities, without changes to the proposed text as published in the March 13, 2020 issue of the *Texas Register* (45 TexReg 1786). The rule implements section 1 of House Bill 3542, passed in the 86th Regular Legislative Session and effective September 1, 2019, which enacted Texas Water Code (TWC) §13.150 establishing reporting requirements for water and sewer utilities that are in violation of certain orders issued by the Texas Commission on Environmental Quality (TCEQ). This new rule is adopted under Project Number 50089.

The commission did not receive comments on the proposed new rule.

The new rule is adopted under TWC §13.041, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, and TWC §13.150 which establishes reporting requirements for water and sewer utilities.

Cross reference to statutes: Texas Water Code §§13.041 and 13.150.

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

Filed with the Office of the Secretary of State on May 29, 2020.

TRD-202002206
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: June 18, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 936-7244

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

SUBCHAPTER J. WORK-STUDY STUDENT MENTORSHIP PROGRAM

19 TAC §§4.191 - 4.196

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of 19 TAC, Chapter 4, Subchapter J, §§4.191 - 4.196 of Board rules concerning the Work-Study Student Mentorship Program, without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 832). The rules will not be republished.

Specifically, §§4.191 - 4.196 are repealed because the information has been integrated into 19 TAC, Chapter 22, Subchapter G, Texas College Work-Study to more clearly represent the Mentorship Program as a subset of the Texas College Work-Study Program.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §56.077, which provides the Coordinating Board the authority to adopt rules for the administration of the Mentorship Program.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002158
William Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: June 15, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 427-6318

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

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

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §100.1010(c) is not included in the print version of the Texas Register. The figure is available in the on-line version of the June 12, 2020, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §100.1010, concerning charter school performance frameworks. The amendment is adopted with changes to the proposed text as published in the November 22, 2019 issue of the *Texas Register* (44 TexReg 7124) and will be republished. The amendment adopts in rule excerpted sections of the *2019 Charter School Performance Frameworks (CSPF) Manual,* which has been updated to comply with statutory provisions and clarify the operation of the CSPF to rate the performance of open-enrollment charter schools in Texas.

REASONED JUSTIFICATION: Section 100.1010 was adopted effective September 18, 2014, and was last amended effective July 22, 2019. The rule is issued under Texas Education Code (TEC), §12.1181, which requires the commissioner to develop and adopt frameworks by which the performance of open-enrollment charter schools is measured. The performance frameworks consist of several indices within academic, financial, and operational categories with data drawn from various sources, as reflected in the CSPF Manual adopted as a figure in the rule and updated every year.

The adopted amendment replaces and updates excerpted sections of the 2018 CSPF Manual with excerpted sections of the 2019 CSPF Manual as Figure: 19 TAC §100.1010(c). The 2019 version of the manual includes the following significant changes from the 2018 version.

The weight of component frameworks for a school's overall CSPF score was altered to 70% academic indicators, 20% financial indicators, and 10% operational indicators. The alteration is intended to further emphasize the importance of academic achievement in establishing high-quality learning opportunities for Texas students.

The calculation method of a school's performance on its academic framework indicators was updated to be based 80% on a school's overall academic accountability (A-F) score, 10% on achievement status for student groups, and 10% on campus status score. For charter schools evaluated under alternative education accountability (AEA) provisions of the Texas Accountability Rating System, the weighting of their academic framework scores was 80% overall A-F score (AEA scaling), 10% Closing the Gaps score (AEA scaling), and 10% campus status score. These changes emphasize the goals set forth in Texas's A-F accountability system to establish high-quality learning opportunities for Texas students.

The financial framework solvency indicators were renamed to be more accurate, and the weighting of a school's performance on financial framework indicators was altered to be based 70% on its score on the Financial Integrity Rating System of Texas (Charter FIRST) and 7.5% on each of the other four indicators.

In the operational framework indicators, the description of the "not applicable" rating under indicator 3a was clarified to explain that such a rating would result from a school's data being masked due to small numbers. The rating of "far below" was eliminated for indicators 3b and 3c to standardize rating categories across indicators. Indicator 3d, "Program requirements: Career and technical education populations," was removed because TEA will report on such information under different criteria. To help ensure that charter school board members and officers are prepared to provide quality learning opportunities for Texas students, indicator 3e was amended to require that in order to achieve a "meets expectations" rating for training requirements, all affected charter board members and school officers must pro-

vide TEA with documentation of such training. The explanation of "meets expectations" in indicator 3l was amended to pertain to the student body makeup at the charter school level rather than at the campus level to be consistent with other rule language. Indicator 3n, which addresses appropriate handling of secure assessment materials, was amended to clarify which data would be reviewed to obtain rating information.

The Adult High School Diploma and Industry Certification Public Charter School Performance Frameworks was amended to cite statutory authority for each indicator. The explanation of "meets expectations" for indicator 1 was revised to require 50% of the school's students to perform at or above the passing score on the Texas Success Initiative Assessment (TSIA) to meet statutory requirements for satisfactory performance on an exit-level exam. In keeping with statutory requirements to measure how many program participants successfully complete the program, indicator 2 was revised to delete unnecessary language and explain that "meets expectations" could be achieved if the number of a school's graduates were equal to or greater than the number of students classified as 12th graders on its Texas Student Data System Public Education Information Management System (TSDS PEIMS) snapshot date in the same academic year. The language of indicator 3 was revised to clarify that graduates would be the group addressed by that indicator, and the data source was revised to take into account that the school may provide special industry-based certifications not necessarily delineated by TEA.

The 2019 CSPF Manual introduces and details a tiering system by which charter schools' CSPF scores will be used to designate them as falling into one of three tiers, which will in turn inform TEA's authorizing decisions, including assigning appropriate levels of oversight and determining eligibility for expansion amendments as described in 19 TAC §100.1033; making decisions related to renewal or non-renewal for schools in the discretionary category as defined by TEC, §12.1141(c); and revoking charters that have failed to meet CSPF standards as described in TEC, §12.115(a)(5).

Throughout the manual, language was revised to reflect the way Charter School Performance Frameworks are referred to in statute and include other technical edits.

In response to public comment, the following changes were made to the manual since published as proposed.

The overview section of the figure was revised to refer to charter school "expansion" pursuant to 19 TAC §100.1033 as a purpose for the CSPF, rather than charter school "growth."

Academic Frameworks indicator 1c of the figure, Campus Status, was revised to refer to "each" of a charter school's campuses, rather than "all." Academic Frameworks indicator 1c (AEA Provisions), was revised in the same way.

Operational indicators 3h and 3k of the figure were removed, and the remaining operational indicators were renumbered accordingly.

Operational indicator 3m was revised to include a "not applicable" rating category for those schools that do not participate in child nutrition programs and have obtained any required waivers.

In the Tiering Framework of the figure, clarifying language was added to the titles of the tiers, and language regarding charter renewal and commissioner review of charter school-submitted amendments was removed. The definition of Tier 3 was revised to include those schools having an overall academic accountability rating of D or F.

In response to public comment, the Adult High School Diploma and Industry Certification Public Charter School Performance Frameworks were revised as follows.

The five performance indicators described in TEC, §29.259(o), were renamed academic indicators. In the figure as adopted, academic indicator 1a (student achievement on exit-level assessment) will now be drawn from the Student Achievement Domain STAAR Component Score, and academic indicator 1b (completion of high school diploma program) will be calculated by the number of graduates divided by the number of students classified as 12th graders. The remaining three indicators from TEC, §29.259(o), were designated 1c, 1d, and 1e and scored collectively as the CCMR component; the score for the CCMR component will be calculated by the number of graduates who accomplished at least one of the indicators divided by the total number of graduates.

The overall academic framework score will now be calculated with indicator 1a being weighted at 20%, indicator 1b weighted at 50%, and indicators 1c, 1d, and 1e (the CCMR component) weighted at 30%.

The footnote to indicator 1c was revised to clarify the data source for industry-based certification.

The financial and operational frameworks applicable to open-enrollment charter schools were made applicable to the Adult High School Diploma and Industry Certification Public Charter School Performance Frameworks.

Finally, a change was made at adoption to clarify that the figure adopted in §100.1010 is excerpted sections of the *2019 Charter School Performance Frameworks Manual.*

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 22, 2019, and ended December 23, 2019, and included a public hearing on January 13, 2020. Following is a summary of public comments received and corresponding agency responses.

Comment: Concerning §100.1010 and the CSPF generally, Leadership4School, A+ Charter Schools, Texans Can Academies, Arlington Classics Academy, Rise Academy, Lone Star Language Academy, Academy for Academic Excellence, the Texas Charter School Association (TCSA), Legacy Preparatory Charter Academy District, Odyssey Academy, Life School, Newman International Academy, and an individual commented that the CSPF constitutes an unnecessary accountability system that need not exist alongside the agency's A-F accountability system and Financial Integrity Rating System of Texas (Charter FIRST). Commenters argued that the CSPF academic framework contains rating indicators that detail data already taken into account in a school's A-F accountability rating used by agency; that the CSPF financial framework contains rating indicators that detail data already taken into account in a school's Charter FIRST report; and because of these factors a school's CSPF score may be significantly different from that school's scores on A-F accountability and FIRST.

Agency Response: The agency disagrees. The Texas legislature in TEC, §12.1181, clearly mandated that the TEA consult national best practices to develop and adopt a CSPF with a variety of standards that would be used concurrently with other accountability systems to evaluate the performance of charter schools in Texas. In keeping with this mandate, the CSPF takes into

account the achievement of a charter school's student groups, which has long been part of CSPF evaluation criteria and in keeping with national best practices; similarly, the CSPF highlights solvency information from Charter FIRST because acceptable performance on those indicators is deemed essential to the school's ability to educate Texas students well into the future. Schools' scores on A-F accountability, Charter FIRST, and the CSPF may very well be different because these reports are designed to shed light on aspects of charter school performance using varieties of criteria.

Comment: Concerning the CSPF generally, an individual commented that TEA's generating charter school ratings using the CSPF is unfair, because TEC, §12.1181, already provides the necessary monitoring for charter school performance.

Agency Response: The agency disagrees. Section 100.1010 is the rule established to carry out the mandate of TEC, §12.1181, in as clear and straightforward a way as possible: The statutory bases of each indicator are cited, sources of data informing the indicators are clearly noted, and expectations for schools are explicitly established.

Comment: Concerning the CSPF generally, an Arlington Classics Academy, Leadership4School, and A+ Charter Schools commented that the CSPF should be used to provide information only, not punish charter schools with its assignment of a score.

Agency Response: The agency disagrees. The Texas legislature in TEC, §12.1181, clearly mandated that the TEA consult national best practices to develop and adopt a CSPF with a variety of standards that would be used concurrently with other accountability systems to evaluate the performance of open-enrollment charter schools in Texas. The CSPF was created and is revised every year to carry out that mandate in as clear and straightforward a way as possible. The calculation and reporting of scores based on charter schools' performance is logical to inform parents and students seeking high-quality educational opportunities.

Comment: Concerning the CSPF generally, Texas School Alliance, Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that for the overall CSPF score and for each framework, the target for "meets expectations" should be increased from 60% to 70%. Commenters reason that poor student performance at a level lower than 70% would be masked.

Agency Response: The agency disagrees. Section 100.1001(26)(A)(iii) currently defines acceptable performance as "a grade of A, B, or C, or as otherwise indicated in the applicable year's academic accountability manual." A rating of "D" reflects performance that needs improvement but is not necessarily considered failing performance. Districts and campuses that receive a "D" rating are required to prepare a Targeted Improvement Plan. See TEC, §39A.0545.

Comment: Concerning the CSPF generally, Life School commented that the score of any indicator or overall score on the CSPF should be appealable, especially when a clerical error results in a score adverse to the charter school.

Agency Response: The agency disagrees and offers the following clarification. As a matter of policy TEA rarely grants appeals of ratings resulting from a school's error in data reporting. The 2019 Accountability Manual, for instance, states that charter school responsibility for data quality is the cornerstone of a fair and uniform rating determination. As a matter of past practice, however, the agency has made CSPF reports available to schools for their review for a time before the reports have become available to the public; schools may informally contact the agency during that time and request to correct errors.

Comment: Concerning the Overview section of the CSPF in the figure to 19 TAC §100.1010, Texas School Alliance, Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that the commissioner's using a school's tier designation to determine "eligibility for growth" should instead be termed, "eligibility for expansion."

Agency Response: The agency agrees, and the Overview section of the CSPF will be modified at adoption.

Comment: Concerning the academic framework of the CSPF in the figure to 19 TAC §100.1010 (hereinafter "the academic framework"), Texas Urban Council of Superintendents, Ysleta ISD, Texas Association of School Boards (TASB), Texas Association of School Administrators (TASA), Association of Texas Professional Educators, Texas State Teachers Association/National Education Association (TSTA/NEA), Texas American Federation of Teachers (Texas AFT), Texas Classroom Teachers Association (TCTA), Raise Your Hand Texas, Pastors for Texas Children, Texas Association of Community Schools (TACS), CPPP, Texas School Alliance (TSA), Texas Association of Midsize Schools (TAMS), Fastgrowth School Coalition, Texas Association of Rural Schools (TARS), Texas Elementary Principals and Supervisors Association (TEPSA), and Intercultural Development Research Association (IDRA) commented that an indicator evidencing the performance of a school's English learner population, drawing from the Closing the Gaps domain calculation of the agency's A-F accountability rating, should be restored to the CSPF. The commenters maintain that charter schools are not being held accountable for equitably serving all students or for the academic performance of English learners, and such an indicator is necessary to cast light on how well schools are serving this population.

Agency Response: The agency disagrees. The specific academic performance indicator appropriately measures the performance of student groups against the established set of quality standards established in the state's Closing the Gaps domain and reflects accountability for the performance of this student group sufficiently.

Comment: Concerning the Academic framework, IDRA, Texas School Alliance Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that the weights for Closing the Gaps indicators in the standard accountability and Alternative Education Accountability (AEA) academic frameworks should be increased to the higher levels of the 2018 CSPF.

Agency Response: The agency disagrees. The changes between the 2018 and 2019 CSPF reflect an overall framework emphasis on academic accountability. There is an increase from 60% to 70% of the overall weight. Additionally, the academic framework reflects this emphasis by increasing the weight of indicator 1a from 70% to 80%. These changes highlight the need for all student groups to perform well.

Comment: Concerning the Academic framework, Richard Milburn Academy commented that an indicator should be added for dropout credit recovery schools that would allow additional points if the district mobility rate is higher than 25%, or if 50% or more of a the school's students are 17 years of age or older.

Agency Response: The agency disagrees. Special accountability considerations are already available for schools operating as credit recovery schools, in the form of Alternative Educational Accountability standards in Texas law.

Comment: Concerning Indicator 1b of the academic framework, Rise Academy commented that the indicator pertains to "subgroups" of students, which would largely address low-income, especially minority students. The commenter reasoned that these students are already highly represented in Texas charter schools, therefore focusing on them in Indicator 1b is unnecessary.

Agency Response: The agency disagrees. The Texas legislature in TEC, §12.1181, clearly mandated that the TEA consult national best practices to develop and adopt a CSPF with a variety of standards that would be used concurrently with other accountability systems to evaluate the performance of charter schools in Texas. In keeping with this mandate, the CSPF takes into account the achievement of a charter school's student groups, which has long been part of CSPF evaluation criteria and in keeping with national best practices. While the student groups referenced by the commenter do comprise a significant portion of charter school students in Texas, they have historically not been sufficiently well-served and therefore deserve additional attention in the CSPF.

Comment: Concerning Indicators 1b and 1c, of the academic framework, Legacy Preparatory Charter Academy District, Lone Star Language Academy, Life School, La Academia de Estrellas, Arlington Classics Academy, Odyssey Academy, Lumin Education, A+ Charter Schools, Leadership4School, International Leadership of Texas (ILT), Schulman, Lopez, Hoffer and Adelstein (SLHA), TCSA, and four individuals commented that the data detailed there is already measured within a school's A-F accountability score reported in indicator 1a, and is therefore redundant. Commenters maintain that indicator 1a should be the only indicator in the academic framework; to rate schools academically with scores in addition to their A-F accountability scores would be confusing.

Agency Response: The agency disagrees. The Texas legislature in TEC, §12.1181, clearly mandated that the TEA consult national best practices to develop and adopt a CSPF with a variety of standards that would be used concurrently with other accountability systems to evaluate the performance of charter schools in Texas. In keeping with this mandate, the CSPF takes into account the achievement of a charter school's student groups, which has long been part of CSPF evaluation criteria and in keeping with national best practices. Therefore, schools' scores on A-F accountability and the CSPF may be different, because these two reports are designed to shed light on aspects of charter school performance using varieties of criteria.

Comment: Concerning Indicator 1c, Responsive Education Solutions, SLHA, and Richard Milburn Academy commented that charter schools' campuses' performance should be assigned to a score category based on what percentage of the campuses were above a certain threshold, instead of disqualification from a given category if the charter school had any individual campuses scoring below the threshold.

Agency Response: The agency disagrees. Assigning points related to the performance of a charter school's individual campuses is necessary to highlight deficient campuses a school may have that need special attention. Aggregating levels of performance based on a percentage of campuses above a certain threshold may mask that relevant information.

Comment: Concerning Indicator 1c, Leadership4Learning and SLHA commented that tying the indicator's score to the performance of individual campuses could discourage charter schools from opening campuses in high-poverty areas because, the commenter maintains, high poverty tends to negatively affect test scores.

Agency Response: The agency disagrees. Texas public schools are replete with examples showing that socioeconomic level is not necessarily a determinant of student performance, and it is a firm policy of TEA that students of all backgrounds should have the opportunity to succeed. The Agency has an alternate accountability system to address the challenges of various student demographics.

Comment: Concerning Indicator 1c, Texas Association of School Boards (TASB), Texas Association of School Administrators (TASA), Association of Texas Professional Educators, Texas State Teachers Association/National Education Association (TSTA/NEA), Texas American Federation of Teachers (Texas AFT), Texas Classroom Teachers Association (TCTA), Raise Your Hand Texas, Pastors for Texas Children, Texas Association of Community Schools (TACS), CPPP, Texas School Alliance (TSA), Texas Association of Midsize Schools (TAMS), Fast-growth School Coalition, Texas Association of Rural Schools (TARS), Texas Elementary Principals and Supervisors Association (TEPSA), Texas School Alliance Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that if the agency's intention with the indicator was to take into account the performance of every single campus of a charter school, it should change the language of the indicator to refer to "each" of a school's campuses, rather than "all."

Agency Response: The agency agrees. Indicator 1c of the CSPF academic framework will be modified at adoption.

Comment: Concerning Indicator 1c, Texas School Alliance, Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that language should be added to the effect that any charter schools with a D or F campus would not be eligible for Tier 1 or Tier 2 status.

Agency Response: The agency disagrees. The Academic Framework's campus status indicator provides evidence of a high-quality charter operation. Low-performing campuses are concurrently monitored by TEA as part of its school improvement oversight. Any campus that continues to miss accountability targets would already be subject to action from TEA.

Comment: Concerning Indicator 1c, ILT commented that the indicator should be a standalone indicator or moved to the Operational framework.

Agency Response: The agency disagrees. The rating of a campus's status based on the academic performance of its students is appropriately located in the CSPF framework designed to address academic performance.

Comment: Concerning Indicator 2a, Leadership4Learning, Lumin Education, Odyssey Academy, A+ Charter Schools, Arlington Classics Academy, La Academia de Estrellas, SLHA, Rise Academy, Life School, TCSA, Legacy Preparatory Charter Academy District, ILT, Lone Star Language Academy, and four individuals commented that this indicator, based on a school's overall Charter FIRST rating, should be the only Financial framework indicator.

Agency Response: The agency disagrees. Charter FIRST provides an evaluation of numerous general indicators of a school's financial and operational health. Data indicative of the school's solvency are among them, but the school's performance on those may be masked by its overall performance on FIRST. With Indicators 2b-2e the CSPF focuses on those solvency indicators as a means to provide a picture of whether the school will be able to fulfill its mission to serve Texas students going forward.

Comment: Concerning the Operational framework, Rise Academy commented that the number of indicators should be reduced to only those indicators that have a rational basis.

Agency Response: The agency disagrees. Texas Education Code, §12.1181, directed the commissioner of education to create framework indicators using national best practices that charter school authorizers use in developing and applying standards for charter school performance, with advice from charter holders, the members of the governing bodies of open-enrollment charter schools, and other interested persons. The operational indicators of the CSPF are carefully reviewed, adopted, and updated every year in keeping with that mandate. The operational indicators are selected because best practices show they are evidence of a high-quality charter operation; and each of these indicators is concurrently monitored by TEA as part of its charter authorizing responsibility.

Comment: Concerning the Operational framework, Lumin Education, Newman International Academy, and an individual commented that charter schools should have the ability to appeal the score of any indicator.

Agency Response: The agency disagrees and offers the following clarification. As a matter of policy TEA rarely grants appeals of ratings resulting from a school's error in data reporting. The 2019 Accountability Manual, for instance, states that charter school responsibility for data quality is the cornerstone of a fair and uniform rating determination. As a matter of past practice, however, the agency has made CSPF reports available to schools for their review for a short amount of time before the reports have become available to the public; schools may informally contact the agency during that time and request to correct errors.

Comment: Concerning the Operational framework, IDRA commented that to promote equity an indicator should be added that states the percentage of students with disabilities served at a charter school.

Agency Response: The agency disagrees. Indicators for the CSPF are chosen based upon their applicability to most or all charter schools, to provide as uniform and consistent a rating system as possible. Reporting on schools' number of students with disabilities would result in a wide range of numbers that would vary from school to school, and such reporting would not readily fit with the uniformity and consistency required by the CSPF.

Comment: Concerning the Operational framework, Arlington Classics Academy and an individual commented that it is unfair to have "all or nothing" indicators rating whether schools do or do not meet expectations. The individual argued that justifiable reasons could prevent a charter school from receiving full credit on an indicator, but it should not therefore fail the indicator.

Agency Response: The agency disagrees. Many of the operational indicators are based upon a school's compliance with a statute or regulation: Either it did comply, or it did not. Of the few indicators that are not based on compliance in the same way, allowance for varying degrees of performance is provided in the description of the indicator.

Comment: Concerning the Operational framework, SLHA and Life School commented that the framework should incorporate a "dashboard" or other means by which charter school operators can monitor their compliance or appeal indicator scores.

Agency Response: The agency partially agrees. The agency already strives to make the CSPF as transparent as possible, so data informing all indicators is obtainable not just by TEA, but by the schools being rated. The data for many of the operational indicators is sourced from information submitted by the charter schools themselves; the rest are found in the Texas Academic Performance Report (TAPR), the state's testing vendor, or other state agencies. The data for one indicator (TREx usage), however, is not easily attainable by charter schools being rated, so that indicator will be removed from the rule at adoption.

Comment: Concerning the Operational framework, Texas State Teachers Association commented that a "does not meet expectations" rating for any indicator related to state or federal law should automatically disqualify a charter school from Tier 1 status.

Agency Response: The agency partially agrees. Texas Education Code, §12.1181, directed the commissioner of education to create framework indicators using national best practices that charter school authorizers use in developing and applying standards for charter school performance, with advice from charter holders, the members of the governing bodies of open-enrollment charter schools, and other interested persons. The operational indicators of the current proposed rule were adopted and are updated every year in keeping with that mandate. The operational indicators are selected because best practices show they are evidence of a high-quality charter operation; and each of these indicators is concurrently monitored by TEA as part of its charter authorizing responsibility. Any school that fails to meet any operational indicator could already be subject to adverse authorizer action through the CSPF or some other avenue. With regard to Operational indicator 3k, 501(c)(3) status, the agency acknowledges that failure to comply with that law constitutes a breach of the charter contract on its own, and through operation of that law the charter holder is no longer eligible to operate an open-enrollment charter school in the state of Texas. Therefore, Operational indicator 3k will be removed from the rule at adoption.

Comment: Concerning the Operational framework, Texas School Alliance, Alief ISD, Texas AFT, and an individual commented that a "does not meet expectations" rating for any indicator related to state or federal law should automatically disqualify a charter school operating in Texas at all.

Agency Response: The agency partially agrees. Texas Education Code, §12.1181, directed the commissioner of education to create framework indicators using national best practices that charter school authorizers use in developing and applying standards for charter school performance, with advice from charter holders, the members of the governing bodies of open-enrollment charter schools, and other interested persons. The operational indicators of the current proposed rule were adopted and are updated every year in keeping with that mandate. The operational indicators are selected because best practices show they are evidence of a high-quality charter operation; and each of these indicators is concurrently monitored by TEA as part of its

charter authorizing responsibility. Any school that fails to meet any operational indicator could already be subject to adverse authorizer action through the CSPF or some other avenue. With regard to Operational indicator 3k, 501(c)(3) status, the agency acknowledges that failure to comply with that law constitutes a breach of the charter contract on its own, and through operation of that law the charter holder is no longer eligible to operate an open-enrollment charter school in the state of Texas. Therefore, Operational indicator 3k will be removed from the rule at adoption.

Comment: Concerning the Operational framework, Texas AFT, Texas Urban Council of Superintendents and Ysleta ISD commented that the CTE indicator should be restored to the framework.

Agency Response: The agency disagrees and offers the following clarification. Charter schools' administration of Career and Technical Education (CTE) curriculum is an important component of high-quality educational opportunities for Texas students. The structure of reporting on CTE by the agency is in the process of changing, however; and because the CSPF is intended to be a collection of readily-obtainable, consistent data, and it would not have been possible to assign a score to every school to which it would apply, an indicator for CTE was left out of the CSPF this year.

Comment: Concerning Indicator 3a, Leadership4Learning commented that the indicator was not fair in that did not take into account the possibility of teacher qualification reporting errors.

Agency Response: The agency disagrees and offers the following clarification. As a matter of policy TEA rarely grants appeals of ratings resulting from a school's error in data reporting. The 2019 Accountability Manual, for instance, states that charter school responsibility for data quality is the cornerstone of a fair and uniform rating determination. As a matter of past practice, however, the agency has made CSPF reports available to schools for their review for a short amount of time before the reports have become available to the public; schools may informally contact the agency during that time and request to correct errors.

Comment: Concerning Indicator 3a, Life School commented that there should be a margin of error in reporting of a school's total number of degreed teachers and principals.

Agency Response: The agency disagrees. Except for a narrow exception, TEC, §12.129, requires that all people employed as principals and teachers at open-enrollment charter schools hold a baccalaureate degree. Operational indicator 3a is designed to reflect that clear mandate.

Comment: Concerning Indicators 3b and 3c, A+ Charter Schools commented that the indicators rating special population and bilingual program performance unfairly penalize schools that serve challenging student populations.

Agency Response: The agency disagrees. Whether a school is meeting program requirements for its special populations or bilingual students, is the province of TEA specialists in those areas. The CSPF appropriately reports the outcomes of those specialists' assessment.

Comment: Concerning Indicators 3b and 3c, Life School commented that addressing those groups in the Operational indicators unfairly counts adverse scores twice, as such groups are already addressed in A-F accountability.

Agency Response: The agency disagrees. Assessment of performance with regard to these special populations is not the same in the two frameworks: The Academic framework measures a school's student outcomes in those areas, while the Operational framework rates the quality of that school's programs serving the students.

Comment: Concerning Indicators 3b and 3c, Raise Your Hand Texas commented that a "does not meet expectations" rating for those indicators should automatically disqualify a charter school from Tier 1 status.

Agency Response: The agency disagrees. Texas Education Code, §12.1181, directed the commissioner of education to create framework indicators using national best practices that charter school authorizers use in developing and applying standards for charter school performance, with advice from charter holders, the members of the governing bodies of open-enrollment charter schools, and other interested persons. The operational indicators of the current proposed rule were adopted and are updated every year in keeping with that mandate. The operational indicators are selected because best practices show they are evidence of a high-quality charter operation; and each of these indicators is concurrently monitored by TEA as part of its charter authorizing responsibility. Any school that fails to meet any operational indicator could already be subject to adverse authorizer action through the CSPF or some other avenue.

Comment: Concerning indicator 3e, Leadership4Learning, A+ Charter Schools, and an individual commented that the training evidence indicator was unworkable and should be removed.

Agency Response: The agency partially agrees. At adoption the language of the indicator will be revised to clarify the nature of the training evidence required.

Comment: Concerning Indicator 3h, Leadership4Learning, A+ Charter Schools, Legacy Preparatory Charter Academy District, Richard Milburn Academy, Lumin Education, Odyssey Academy, Arlington Classics Academy, La Academia de Estrellas, SLHA, Rise Academy, Life School, Lone Star Language Academy, Academy for Academic Excellence, TCSA, Legacy Preparatory Charter Academy District, ILT, Newman International Academy, and three individuals commented that the TREx usage indicator was unworkable and should be eliminated.

Agency Response: The agency agrees, and the indicator will be removed from the rule at adoption.

Comment: Concerning Indicator 3j, ILT commented that the administrative cost ratio indicator is redundant as it is already measured in Charter FIRST.

Agency Response: The agency disagrees. Although it is an indicator in Charter FIRST and hence is related to a school's financial health, it also provides evidence of whether the state's money is being spent in a responsible way for the benefit of students, as the school is required to do by law and its own contract, making it appropriate as an operational indicator.

Comment: Concerning Indicator 3l, Leadership4Learning, Odyssey Academy, Rise Academy, Life School, Lone Star Language Academy, TCSA, A+ Charter Schools, and an individual commented that meeting expectations on the "50% of students in tested grades" indicator may be unattainable for some open-enrollment charter schools. For example, open-enrollment charter schools are required to accept students they are approved to serve regardless of what grade they are in, and a school may end up with more than half its students in

non-tested grades through no fault of its own; or a school has a growth plan that does not include serving tested grades in its early years. The commenters maintain that the indicator should be revised to specify an exception for such schools.

Agency Response: The agency disagrees. To address concerns such as those expressed by the commenters, the agency has already modified the indicator to accommodate exceptional scenarios: The indicator now measures students in tested grades at the charter school level, as opposed to campus level; the amount of students being in tested grades is not required to "meet expectations" until the school's fifth year of operation to accommodate those schools who grow by adding grade levels in each subsequent year; and the indicator makes specific reference to the opportunity for a school to obtain a waiver of the requirement.

Comment: Concerning Indicator 3m, Rise Academy commented that the child nutrition indicator should not be applicable to those schools that do not participate in a child nutrition program.

Agency Response: The agency agrees, and the indicator will be modified at adoption.

Comment: Concerning Indicators 3d, 3e, 3f, 3g, 3h, 3i, 3k, 3l, 3m, and 3n, ILT commented that the indicators do not have easily accessible data sources. The commenter maintained it should be able to monitor this data and have access to a rubric indicating what "acceptable" performance means.

Agency Response: The agency partially agrees. The agency strives to make the CSPF as transparent as possible, so data informing all indicators is obtainable not just by TEA, but by the schools themselves. Of the indicators described by the commenter, the data for one indicator (3h - TREx usage) is not easily attainable by charter schools being rated, so that indicator will be removed in the adopted version of this rule. However of the other indicators listed by the commenter, data for six of them (3d, 3e, 3f, 3g, 3i, and 3k) is sourced from information submitted by the charter schools themselves; one is found in the Texas Academic Performance Report (TAPR, 3l); one is available from the Texas Department of Agriculture (3m), and one would come to charter schools in the form of correspondence from the testing vendor well prior to generation of the CSPF report (3n).

Comment: Concerning the Tiering framework, an individual commented that the framework should be eliminated as underperforming charter schools are already subject to the "three strikes" rule of TEC, §12.115(c).

Agency Response: The agency disagrees. The Tiering Framework was conceived of to increase transparency, clearly communicate performance ratings, and identify low-performing schools that should be subject to increased oversight. Tier designations and CSPF scores would be used to inform TEA's authorizing decisions, including assigning appropriate levels of oversight, determining eligibility for expansion amendments, making decisions related to renewal or non-renewal for schools in the discretionary category, and revoking charters that have failed to meet CSPF standards (as described in TEC, §12.115(a)(5)). The CSPF is clearly intended by law to work in addition to the "three strikes" process described in TEC, §12.115(c). Texas Education Code, §12.1181, specifically precludes the CSPF from being considered as part of that process.

Comment: Concerning the Tiering framework, Responsive Education Solutions, SLHA, Lone Star Language Academy, TCSA, and Legacy Preparatory Charter Academy District commented that it should become a four-tier framework that would have a category for "above average" schools in between proposed Tiers 1 and 2.

Agency Response: The agency partially agrees. Two goals in conceiving the Tiering Framework were to increase transparency and clearly communicate performance ratings. The three-level structure, with straightforward designations analogous to "high," "medium," and "low" performance, each level clearly defining the category and describing the level of oversight to be exercised by the commissioner, best meets the agency's goals. However, the agency will revise explanatory language and titles of the Tiers to clarify the status of schools in each category, as well as remove language relating to charter renewal as it will be treated separately from the CSPF.

Comment: Concerning the Tiering framework, Texas School Alliance, Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that the overall CSPF thresholds necessary to be placed in the categories be raised by 10%; and oversight of schools in the 2nd and 3rd should additionally require that all schools in those categories submit Targeted Improvement or other action plans.

Agency Response: The agency partially agrees. Tiering assignments are intended to be based on fair oversight for charter schools with CSPF scores of A or B, C, and D or F. The agency has determined that these scores will align with the High-Quality Performance, Average Performance, and Deficient Performance commensurately. The Agency disagrees that tier 1 should only include "A" rated charter or that tier 2 should include "B" rated charters. However, the Agency agrees that tier 3 should include "D" and "F" rated charters and has changed the CSPF accordingly. Sanctions including targeted improvement plans are required and outlined under other statutory authority and as such are not part of the CSPF.

Comment: Concerning the Tiering framework, Leadership4learning, A+ Charter Schools, Lumin Education, Arlington Classics Academy, and an individual commented that the use of the tiers to inform TEA on matters of charter school expansion, renewals, and revocation may be prohibited by current law: TEC, §12.1181, states, "The performance of a school on a performance framework may not be considered for purposes of renewal of a charter under Section 12.1141(d) or revocation of a charter under Section 12.115c."

Agency Response: The agency disagrees. TEC, §12.1141(d) and §12.115(c), were specifically designed by the Texas legislature to operate solely on the results of accountability reports other than the CSPF; but the CSPF clearly carries weight as an evaluative tool as it is referenced in TEC, §12.1141(c) and §12.115(a).

Comment: Concerning Tier 1 of the Tiering framework, Texas Association of School Boards (TASB), Texas Association of School Administrators (TASA), Association of Texas Professional Educators, Texas State Teachers Association/National Education Association (TSTA/NEA), Texas American Federation of Teachers (Texas AFT), Texas Classroom Teachers Association (TCTA), Raise Your Hand Texas, Pastors for Texas Children, Texas Association of Community Schools (TACS), CPPP, Texas School Alliance (TSA), Texas Association of Midsize Schools (TAMS), Fastgrowth School Coalition, Texas Association of Rural Schools (TARS), Texas Elementary Principals and Supervisors Association (TEPSA) commented that expansion amendments for Tier 1 schools should not be granted automatically.

Agency Response: The agency offers the following clarification. At no point in the application of the Tiering Framework would the commissioner's approval of expansion be automatic. To clarify the issue, however, language in the Tiering framework will be revised in the adopted version of the rule.

Comment: Concerning Tier 3 of the Tiering framework, La Academia de Estrellas commented that schools in Tier 3 could potentially be closed before the "three strikes rule" of TEC, §12.115(c), would go into effect, and stated that Tier 3 should provide that three consecutive years of Tier 3-level performance may lead to revocation.

Agency Response: The agency disagrees. Tier 3 was designed to provide notice to chronically underperforming charter schools that the commissioner could take into account the totality of schools' performance over time when exercising oversight. A school might rate an F on A-F accountability five times over a 10-year period, but not risk closure under the "three strikes" rule of TEC, §12.115(c), as long as those Fs were nonconsecutive. The Tier 3 language of this rule regarding multi-year underperformance would clarify to the public that the commissioner has discretion to act in addition to TEC, §12.115(c).

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Frameworks, The Excel Center for Adults commented that the Frameworks description should be clarified to specify to what extent the school would be rated with academic, financial, and operational indicators, and suggested that the school's overall score on the frameworks should be weighted at 70% for the academic framework, 20% for the financial framework, and 10% for the operational framework.

Agency Response: The agency appreciates the input of the commenter and offers the following clarification. The Adult High School Diploma and Industry Certification Public Charter School is subject to performance standards consistent with those required in TEC, §12.1181, and it is required to include the indicators outlined in TEC, §29.259(o), along with other indicators currently used to rate the performance of open-enrollment charter schools. The scoring and weighing of this expanded list of indicators applicable to the Adult High School Diploma and Industry Certification Public Charter School will be revised in the rule as adopted.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Frameworks, The Excel Center for Adults commented that the indicators' rating system of Meets Expectations/Does Not Meet Expectations does not take into account a school's varying levels of success or progress toward the goals of those indicators; and that all the indicators are weighted equally in the proposed frameworks whereas some indicators should be weighted more heavily than others.

Agency Response: The agency agrees. The scoring and weighing of indicators applicable to the Adult High School Diploma and Industry Certification Public Charter School will be revised in the rule as adopted.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Frameworks, The Excel Center for Adults commented that the overall rating threshold to Meet Expectations should be a score of 60%, and the threshold for each framework should be 60% as well.

Agency Response: The agency partially agrees. Placement in the three tiers of the proposed rule is intended to be based on fair oversight for schools with CSPF scores of A or B, C or D, and F. The agency has determined that the quality of educational opportunities at both A- and B-rated schools are high; excluding B-rated schools from the highest tier would unduly limit replication of good educational programs to serve Texans. The agency has determined that schools scoring between 60% and 80% on the CSPF bear increased oversight, but schools in that range are not necessarily so substandard that they should be deemed failing their students.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that for the Student Achievement on Exit-Level Assessment indicator, the assessment in question should be the STAAR exam, not the Texas Success Initiative Assessment (TSIA).

Agency Response: The agency appreciates the input of the commenter. Based on this input the agency will use STAAR assessment data for the Student Achievement on Exit-Level Assessment indicator. Calculation for the indicator will be the same as for the Student Achievement Domain STAAR Component Score as described in the Accountability Manual.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that for the Completion of High School Diploma Program indicator, the score should be computed with the number of graduates as a percentage of the total number of students classified as 12th graders, multiplied by 100 and converted to a scale score using a table in the 2019 Accountability Manual.

Agency Response: The agency appreciates the input of the commenter. Based on this input, the agency will score this indicator using the graduation rates for the most recent-available school year's cohort and cross-cohort members who graduated in that same year. This calculation is the same as for the Federal Graduation Status Component.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that the Student Performance on the Completion of Industry-Based Certification, Graduates Enrolled in Institutions of Higher Education, and Significant Income Increase indicators should be in the alternative of one another. In other words, for the school to meet expectations on the CSPF its graduates need only to have achieved one of the three, not all three.

Agency Response: The agency disagrees. Texas Education Code, §29.259(o), states that all five indicators delineated there shall be included in performance frameworks to measure the performance of an adult high school program, and subsection (p) directs the commissioner to evaluate the performance of a school in the adult high school program based on these standards.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that the data sources and metrics for the Graduates Enrolled in Institutions of Higher Education and Significant Income Increase indicators should be more clearly defined.

Agency Response: The agency agrees and offers the following clarification. The Graduates Enrolled in Institutions of Higher Education and Significant Income Increase indicators were not set for reporting when the proposed 2019 CSPF was drafted, because data for those indicators were not available at the time.

Data for the Graduates Enrolled in Institutions of Higher Education indicator are now available, so outcomes will be reported and the data source identified in the adopted version of the rule. Data for the Significant Income Increase indicator are still insufficient, however, so results for that indicator will not be reported until sufficient data can be collected for future CSPF reports.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that the Student Performance on the Completion of Industry-Based Certification, Graduates Enrolled in Institutions of Higher Education, and Significant Income Increase indicators should give special consideration to its Justice Education campuses, where incarcerated students might not have access to such programs.

Agency Response: The agency disagrees. The CSPF rating is scored at the level of district performance, not campus performance. While campus performance on particular indicators may be reflected in the overall performance of the district, it would be inconsistent with the structure of the CSPF to include language in the indicators directed at particular campuses.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that for the Student Achievement on Exit-Level Assessment, Completion of High School Diploma Program, and Completion of Approved Industry-Based Certification indicators, the data sources cited in the proposed rule were not appropriate in light of the modifications to the CSPF sought by the school.

Agency Response: The agency offers the following clarification. The standard data sources for all indicators on the CSPF, both for traditional open-enrollment charter schools and the adult high school diploma and industry certification charter school, will be the most recently available, agency-approved information.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that for the Completion of Approved Industry-Based Certification indicator the description was not inclusive of industry-based certifications pursued by students at that school, which may not appear on TEA's list of certifications approved for traditional public high schools. Language in the CSPF should allow for such variance.

Agency Response: The agency partially agrees. In response to previous feedback on this question TEA has already acknowledged that the adult high school diploma and industry certification charter school 's list of industry certifications may be different than the state's general list; therefore the Completion of Approved Industry-Based Certification indicator data source in the proposed rule was "Adult High School Diploma and Industry Certification Public Charter School-submitted data." However, the language of the footnote associated with this indicator will be revised at adoption to provide more clarity.

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

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

§100.1010. Performance Frameworks.

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Frameworks (CSPF) Manual established under Texas Education Code (TEC), §12.1181. The CSPF Manual will include measures for charters registered under the standard system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) The performance of an adult high school diploma and industry certification charter school will be measured annually in the CSPF against a set of criteria established under TEC, §29.259.

(c) The assignment of performance levels for charter schools on the 2019 CSPF report is based on specific criteria, which are described in the excerpted sections of the *2019 Charter School Performance Frameworks Manual* provided in this subsection.
Figure: 19 TAC §100.1010(c)

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

Filed with the Office of the Secretary of State on May 22, 2020.

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Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

DIVISION 2. COMMISSIONER ACTION AND INTERVENTION

19 TAC §100.1033

The Texas Education Agency (TEA) adopts an amendment to §100.1033, concerning charter amendment. The amendment is adopted with changes to the proposed text as published in the November 29, 2019 issue of the *Texas Register* (44 TexReg 7286) and will be republished. The adopted amendment reflects Senate Bill (SB) 668, 86th Texas Legislature, 2019, and clarifies existing procedures.

REASONED JUSTIFICATION: Section 100.1033 was established under the commissioner's rulemaking authority to provide guidance pertaining to amendments of a charter holder's contract, including the growth or expansion of an existing charter school.

SB 668, 86th Texas Legislature, 2019, amended Texas Education Code (TEC), Chapter 12, to allow a charter holder to provide written notice of a new open-enrollment charter school campus or request approval of an expansion amendment up to 18 months in advance of the campus's anticipated opening or the expansion's effective date. In addition, the bill requires notification to the superintendent of each school district from which a proposed open-enrollment charter school or campus is likely to draw students.

The adopted amendment to §100.1033 implements SB 668 and updates procedures, aligns the rule with statute, provides clarification, and makes technical edits. Specifically, the following changes were made.

The adopted amendment to §100.1033(b)(2), relating to timeline, clarifies applicable timelines for different types of amendments.

The adopted amendment to §100.1033(b)(3), relating to relevant information considered, adds that relevant information considered by the commissioner for charter amendment includes the Charter School Performance Frameworks (CSPF). Use of the CSPF to measure the performance of charter schools is important for TEA's goal of ensuring high-quality learning opportunities for Texas students.

The adopted amendment to §100.1033(b)(5)-(8), relating to relocation amendment, ineligibility, and amendment determination, respectively, revises the rule text to remove redundant text and clarify rule text.

The adopted amendment to §100.1033(b)(9), relating to expansion amendment standards, establishes an 18-month timeline for charter school expansion pursuant to TEC, §12.101(b-10), as added by SB 668, 86th Texas Legislature 2019; specifies that, as part of TEA's goal to ensure high-quality learning opportunities for Texas students, the commissioner will approve an expansion amendment only if the charter school is designated as "Tier 1" or "Tier 2" under the CSPF; and adds language to align §100.1033 with 19 TAC §100.1035, Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving.

The adopted amendment to §100.1033(b)(10), relating to expansion amendments, clarifies the meaning of rule language.

The adopted amendment to §100.1033(b)(11), relating to expedited expansion, implements SB 668, 86th Texas Legislature, 2019, by establishing an 18-month timeline for charter school expansion and adding to the list of entities required to be notified of an expansion.

The adopted amendment to §100.1033(b)(12), relating to new school designation, clarifies rule language regarding the definition of and qualification for new school designation. For a charter school to obtain such a designation, and thus be eligible to participate in the charter school program competitive grant process when federal funding for the Texas charter school program is available, the charter school will be required to operate a new campus with a new educational program.

The adopted amendment to §100.1033(b)(13), relating to High-Quality Campus Designation, clarifies rule language regarding the definition of and qualification for high-quality campus designation. The adopted amendment to §100.1033(b)(13)(A)(vi) changes the requirement that a school seeking high-quality designation serve at least 100 students in its first year to its third year to allow for a charter's planned grade phase-in over the school's first three years.

In response to public comment, the amendment was modified at adoption as follows.

References to commissioner considerations throughout §100.1033(b) pertaining to students were revised to read "best interest of students."

Section 100.1033(b)(2) was revised to further clarify the timeline for submission of amendment requests.

Section 100.1033(b)(9)(A)(vi) was revised to clarify the operation of the tiering structure of 19 TAC §100.1010 as it pertains to §100.1033.

Section 100.1033(b)(12) and (b)(13) were revised to clarify the definition of and criteria for meeting requirements for new school designation and high-quality campus designation.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 29, 2019, and ended December 30, 2019, and included a public hearing on January 13, 2020. Following is a summary of public comments received and corresponding agency responses.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, Texas Association of School Boards (TASB), Texas Association of School Administrators (TASA), Association of Texas Professional Educators (ATPE), Texas State Teachers Association/National Education association (TSTA/NEA), Texas American Federation of Teachers (Texas AFT), Texas Classroom Teachers Association (TCTA), Raise Your Hand Texas, Pastors for Texas Children, Texas Association of Community Schools (TACS), Center for Public Policy Priorities (CPPP), Texas School Alliance (TSA), Texas Association of Midsize Schools (TAMS), Fast Growth School Coalition, Texas Association of Rural Schools (TARS), Texas Elementary Principals and Supervisors Association (TEPSA), Intercultural Development Research Association (IDRA), Coalition for Education Funding, and an individual commented that the proposed rule, read in conjunction with the CSPF adopted under 19 TAC §100.1010, could be interpreted to provide automatic granting of expansion amendment requests for schools deemed Tier 1 as describe in the CSPF.

Agency Response: The agency offers the following clarification. At no point in the application of the Tiering Framework of 19 TAC §100.1010 would the commissioner's review of expansion amendments submitted pursuant to 19 TAC §100.1033 result in automatic action. Proposed subsection (b)(9)(A)(vi) of the rule states only that schools in tiers 1 and 2 would be eligible for an expansion amendment.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, TASB, TASA, ATPE, TSTA/NEA, Texas AFT, TCTA, Raise Your Hand Texas, Pastors for Texas Children, TACS, CPPP, TSA, TAMS, Fast Growth School Coalition, TARS, TEPSA, IDRA, Coalition for Education Funding, Texas School Alliance, and Alief ISD commented that the automatic granting of expansion amendments could result in an unfettered increase in the number of charter school campuses in the state, causing dramatic state budget growth and impose significant costs on school districts.

Agency Response: The agency disagrees. The commissioner's action on expansion amendments submitted pursuant to 19 TAC §100.1033 takes into account several factors and is not dependent upon one measure, nor construed to be automatic. Whether the commissioner will grant or deny any charter school expansion amendment is still within his discretion. The agency does not anticipate the sort of unfettered state budget growth and cost imposition contemplated by the commenter.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, Newman International Academy commented that charter schools' expansion needs should not be tied to academic scores. Students at both successful and struggling campuses may benefit from a school's expansion or other amendment such as relocation.

Agency Response: The agency disagrees. TEA strives to ensure that Texas students have the opportunity to obtain a high-quality education. A charter school's test scores are one measure used to demonstrate how well the school is serving its students. Allowing a charter school to expand and serve more students, when the school has not demonstrated it can offer a high-quality education to all the students it has, would be inconsistent with TEA's goal.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, TASB and TASA commented that the charter school expansion process is not transparent and does not provide sufficient opportunities for input from the community. TEA needs to ask for more specific evidence of charter schools' expansion plans, such as the zip code of where new campus would open.

Agency Response: The agency partially agrees. Detailed location information contemplated by the commenter would not necessarily be available when expansion amendments are submitted. Charter schools must apply for an expansion amendment and receive commissioner approval in advance of determinations about the location of the new campus. Securing a facility to rent or buy would require a charter holder to negotiate a lease or purchase property which would be premature and is contingent on the commissioner's approval of the amendment. The agency will consider amending the expansion amendment form to gather information regarding the address with more specificity.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, Raise Your Hand Texas, Texas Urban Council of Superintendents, Ysleta ISD, ATPE, Urban Education Institute, and TSTA asserted that certain student groups are being underserved by charter schools, and that existing campuses in the vicinity of newly-opening campuses following an expansion amendment are being unduly impacted without sufficient oversight by TEA. They argued that any noncompliance with the law, particularly that pertaining to special education, should automatically disqualify charter schools from expanding.

Agency Response: The agency disagrees and offers the following clarification. The commissioner's action on expansion amendments submitted pursuant to 19 TAC §100.1033 takes into account several factors and is not dependent upon one measure. The legal requirements such as those cited by the commenters are also concurrently monitored by divisions across TEA as part of the agency's responsibility to increase the number of high-quality learning opportunities for students in Texas.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, TSA, Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that charter schools with low-performing campuses should not be allowed to expand at all, until the academic performance at those campuses has improved.

Agency Response: The agency disagrees and offers the following clarification. The commissioner's action on expansion amendments submitted pursuant to 19 TAC §100.1033 takes into account several factors and is not dependent upon one measure. To that end, §100.1033(b)(9)(a)(iii)-(vi) specify that a school applying to expand must meet certain standards on A-F accountability, Charter FIRST, and CSPF reports. The commissioner understands the need for exercising due diligence to ensure that any new campus opened as a result of an expansion amendment would serve Texas students well.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, Northside ISD, Texas Association of School Administrators, and Texas School Alliance commented that rules for expansion of charter schools should be in line with rules for opening new campuses pertaining to districts.

Agency Response: The agency disagrees. TEC, §12.114, provides for expansion and charter contract revision as a matter separate from laws pertaining to districts.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, Northside ISD, Texas Association of School Administrators, and Texas School Alliance commented that the Texas State Board of Education should have the authority to permit or deny all charter school expansion requests.

Agency Response: The agency disagrees. The provisions in TEC, §7.102, were repealed removing the State Board of Education's powers and duties related to charter school revisions. TEC, §12.114(c), specifically provides that charter expansion shall be allowed only with commissioner approval.

Comment: Concerning 19 TAC §100.1033(b)(3), Newman International Academy commented that the inclusion of the CSPF as information to be considered by the commissioner with regard to a school's amendment request, might unduly restrict the applying school from expanding and serving more students in need.

Response: The agency disagrees. The agency's goal is to increase the number of high-quality learning opportunities for Texas students, and whether a charter school should be allowed to expand or not is part of the agency's drive toward that goal. Adding the CSPF to 19 TAC §100.1033(b)(3) as one of the measures the commissioner considers when making his determination, is consistent with this goal.

Comment: Concerning 19 TAC §100.1033(b)(4), TASB, TASA, ATPE, TSTA/NEA, Texas AFT, TCTA, Raise Your Hand Texas, Pastors for Texas Children, TACS, CPPP, TSA, TAMS, Fast Growth School Coalition, TARS, TEPSA, IDRA, and Coalition for Education Funding commented that the language is inconsistent concerning whether, when making an approval or denial decision about a school's application for amendment, the commissioner is taking into account the best interest of students or the best interests of students at the charter school. The commenters maintained that all the subsection's references to students should be changed to the best interests of the students of Texas.

Agency Response: The agency agrees. TEA's mission is to improve outcomes for all public-school students in the state by providing leadership, guidance, and support to school systems. To align with that goal, at adoption 19 TAC §100.1033 will provide that in making amendment decisions the commissioner will take into the account the interests of all students.

Comment: Concerning 19 TAC §100.1033(b)(5), TASB, TASA, ATPE, TSTA/NEA, Texas AFT, TCTA, Raise Your Hand Texas, Pastors for Texas Children, TACS, CPPP, TSA, TAMS, Fast Growth School Coalition, TARS, TEPSA, IDRA, and Coalition for Education Funding commented that a provision requiring board approval of any amendment should not be removed.

Agency Response: The agency provides the following clarification. Section 100.1033(b)(1) requires all amendment requests to be submitted with governing board approval and is maintained for all amendment requests. The amended language in §100.1033(b)(5) related to the acceptance of the conditional approval of an amendment removes the need for a second written

resolution by the governing board accepting the condition. As a matter of practice, the notification of commissioner action on an amendment will include the condition and the appropriate parameters of the commissioner's conditional approval.

Comment: Concerning 19 TAC §100.1033(b)(6), TASB, TASA, ATPE, TSTA/NEA, Texas AFT, TCTA, Raise Your Hand Texas, Pastors for Texas Children, TACS, CPPP, TSA, TAMS, Fast Growth School Coalition, TARS, TEPSA, IDRA, and Coalition for Education Funding commented that relocation amendment requested under that subsection should be classified as an expansion amendment.

Agency Response: The agency disagrees. A relocation amendment is substantively different from an expansion amendment in that the applying charter school is not planning to add to the number of students it is approved to serve, so it is appropriate to apply a distinct set of requirements.

Comment: Concerning 19 TAC §100.1033(b)(6), TASB, TASA, ATPE, TSTA/NEA, Texas AFT, TCTA, Raise Your Hand Texas, Pastors for Texas Children, TACS, CPPP, TSA, TAMS, Fast Growth School Coalition, TARS, TEPSA, IDRA, and Coalition for Education Funding commented that the distance classified under the rule as relocation--25 miles--should be reduced to 10 miles.

Agency Response: The agency disagrees. Most charter schools in Texas are located in large urban areas, and twenty-five miles is the distance chosen to designate relocation because it roughly corresponds to the distance one might travel and remain within that urban area.

Comment: Concerning 19 TAC §100.1033(b)(9)(A)(ii), Schulman, Lopez, Hoffer & Adelstein commented that the agency should clarify which version of 19 TAC §100.1033 would apply to expansion amendment requests in 2020: The version prior to this proposal, or the new version scheduled to be adopted in March of 2020.

Agency Response: The agency offers the following clarification. The application of any administrative rule is based on the effective date of the rule. The agency has taken into account the timeline for adoption of 19 TAC §100.1033, and notes that the rule's effective date will be after the window for expansion amendment requests has closed for 2020.

Comment: Concerning 19 TAC §100.1033(b)(9)(A)(ii) and (11)(A)(ii)(II), Responsive Education Solutions (RES) noted the removal of a provision to allow an extra year to open a new campus approved pursuant to an expansion amendment request, and maintained that it should be restored.

Agency Response: The agency disagrees and provides the following clarification. The agency has determined that this provision is an exercise in lawful authority as determined under TEC, §12.114, to establish an 18-month window of time from when a charter school could submit a request for an expansion amendment, to when it would be expected to put that expansion into effect. The amended rule as it pertains to the time of effectiveness of an expansion amendment is essentially unchanged. Prior language in 19 TAC §100.1033 provided for a charter school to submit a request for such an amendment approximately six months before the expansion was to take effect. If a school demonstrated that it could not implement the expansion six months after the expansion amendment request, the commissioner could give the school an extension of one more year thereby providing for 18 months to implement its expansion.

Comment: Concerning 19 TAC §100.1033(b)(9)(A)(iii) and (vi), RES commented that a school's overall "Tier" (identified by the operation of 19 TAC §100.1010) should dictate whether it should be allowed to expand, and the requirement in 19 TAC §100.1033(b)(9)(A)(vi) that at least 90% of the school's campuses be academically acceptable was confusing and could conflict with a Tier 1 school's "automatic" expansion.

Agency Response: The agency disagrees. The commissioner's action on expansion amendments submitted pursuant to 19 TAC §100.1033 takes into account several factors and is not dependent upon one measure nor construed to be automatic. The two provisions are not in conflict. At no point in the application of the Tiering Framework of 19 TAC §100.1010 would the commissioner's review of expansion amendments result in automatic action; a school's Tier 1 status would never guarantee approval of its expansion request. Furthermore §100.1033(b)(9)(A)(iii) is consistent with the agency's goal of increasing high-quality learning opportunities for Texas students.

Comment: Concerning 19 TAC §100.1033(b)(9)(A), Texas Charter School Association (TCSA) commented that the subsection's references to "acceptable performance" as defined in §100.1001 of this title should be replaced with citation of 19 TAC §97.1001(b), which relates directly to the agency's accountability manual. The commenter maintained that any schools' achieving acceptable performance as indicated by application of the accountability manual should be allowed to expand.

Agency Response: The agency disagrees. The reference to the definition section of the commissioner's rules related to charter school is sufficient and references the accountability manual. The commissioner's action on expansion amendments submitted pursuant to 19 TAC §100.1033 takes into account several factors and is not dependent upon one measure nor construed to be automatic. Academic, fiscal, operational, and governing performance are factored into a determination of whether a charter school is capable of carrying out the responsibilities of the charter and is likely to operate a school of high-quality.

Comment: Concerning 19 TAC §100.1033(b)(9)(A)(iii), Odyssey Academy commented that the requirement that 90% of a charter school's campuses meet accountability standards was unfair to charter schools that may have only a handful of campuses. The commenter maintained that a charter school's overall district accountability score should be used to determine whether it should be allowed to expand, not the scores of its campuses.

Agency Response: The agency disagrees. The focus on campus performance in §100.1033(b)(9)(A)(iii) is consistent with the agency's goal of increasing high-quality learning opportunities for Texas students. A charter school should not be allowed to expand if a significant number of students at the school are on a campus with an unacceptable rating.

Comment: Concerning 19 TAC §100.1033(b)(9)(A)(vi), TCSA commented that the subsection's allowing expansion only for Tier 1 or Tier 2 charter schools, as described in the CSPF adopted under 19 TAC §100.1010, should be revised to include expansion for charter schools in Tier 3, since even schools not in Tier 1 or 2 may also have met minimum A-F accountability standards.

Agency Response: The agency disagrees. The commissioner's action on expansion amendments submitted pursuant to 19 TAC §100.1033 takes into account several factors and is not dependent upon one measure. The addition of the CSPF measure is one more accountability measure for the commissioner to take

into consideration. TEC, §12.1181, mandated that the commissioner develops and adopts performance frameworks that establish standards by which to measure the performance of open-enrollment charter schools. These performance frameworks were clearly intended by the legislature to be applied in addition to the agency's general accountability measure. The commissioner has the authority, therefore, to decide that a charter school--rated poorly but still passing under A-F accountability--may still not be acceptable for expansion.

Comment: Concerning 19 TAC §100.1033(b)(9)(A)(x), Texas Association of School Boards (TASB), Texas Association of School Administrators (TASA), Association of Texas Professional Educators (ATPE), Texas State Teachers Association/National Education association (TSTA/NEA), Texas American Federation of Teachers (Texas AFT), Texas Classroom Teachers Association (TCTA), Raise Your Hand Texas, Pastors for Texas Children, Texas Association of Community Schools (TACS), Center for Public Policy Priorities (CPPP), Texas School Alliance (TSA), Texas Association of Midsize Schools (TAMS), Fast Growth School Coalition, Texas Association of Rural Schools (TARS), Texas Elementary Principals and Supervisors Association (TEPSA), Intercultural Development Research Association (IDRA), and Coalition for Education Funding commented that among the commissioner's criteria for approving an expansion amendment, a school must meet "all other requirements applicable to expansion amendment requests and other amendments." The commenters maintained that "all other requirements" should include provisions of the school's charter.

Agency Response: The agency disagrees and offers the following clarification. The language "all applicable requirements" in 19 TAC §100.1033(b)(9)(A)(x) pertains to whether a school has met all the requirements of that rule, and it is one of the criteria to be met initially by a school in order to advance to commissioner consideration of an amendment request. It is the commissioner's practice to hold all charters to the provisions set forth in the school's charter; the commissioner has the authority to sanction a school for failure to meet said provisions as provided for in the TEC.

Comment: Concerning 19 TAC §100.1033(b)(10)(D)(ii)(I), TCSA commented that the language refers to the "accountability rating system established in TAC §97.1001," and that it is ambiguous regarding the accountability rating system to which it is referring; the commenter stated that the language requires an applying school to have achieved the highest- or second-highest accountability rating, but that it is unclear as to what those ratings would be.

Agency Response: The agency offers the following clarification. The accountability rating system established in 19 TAC §97.1001 is found twice in the proposed rule, in §100.1033(b)(12)(A)(ii) and (13)(A)(ii). In both instances, the rating system referred to is commonly known as "A-F accountability." Currently, the highest and second-highest scores in A-F accountability are A and B.

Comment: Concerning 19 TAC §100.1033(b)(10)(D)(ii)(I), TCSA commented that the requirement that applying schools have at least 50% of their students in grades assessed under TEC, Chapter 39, Subchapter B, was unfair to those schools that serve only grades not assessed under TEC, Chapter 39, Subchapter B. The commenter maintained that the subsection should be changed to state that the 50% requirement was not applicable to those schools serving only grades pre-K, K, 1, or 2.

Agency Response: The agency disagrees. The State Board of Education and the commissioner of education in the granting of charters have historically outlined a requisite number of students to be in tested grades in order to generate accountability ratings. This enables the state, parents, and public to be informed of the charter school's academic performance. Special consideration for schools serving prekindergarten students is already part of §100.1033(b)(10)(D)(ii) (E)(i).

Comment: Concerning 19 TAC §100.1033(b)(12)(A)(ii)(I) and (13)(A)(ii), TASB, TASA, ATPE, TSTA/NEA, Texas AFT, TCTA, Raise Your Hand Texas, Pastors for Texas Children, TACS, CPPP, TSA, TAMS, Fast Growth School Coalition, TARS, TEPSA, IDRA, and Coalition for Education Funding commented that the requirement that applying schools have achieved acceptable ratings in "two of the last four years" inappropriately gave these schools an opportunity to choose what ratings would apply to them. The commenters maintained that the language should be changed to make the applicable ratings the most recent three consecutive ratings.

Agency Response: The agency agrees. In keeping with TEA's goal of encouraging the highest-quality learning opportunities possible, it would be appropriate to award such designations to those charter schools with a consistent record of meeting high academic standards. The language of the rule will be revised for adoption.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.101, which authorizes the commissioner of education to grant and oversee charters for open-enrollment charter schools; TEC, §12.1101, which directs the commissioner of education to adopt a procedure for providing notice of an application for charter or the establishment of a campus; TEC, §12.114, which describes the circumstances under which a revision of a charter of an open-enrollment charter school may be made; TEC, §12.1181, which requires the commissioner to develop a set of performance frameworks by which open-enrollment charter schools' performance is to be measured; and TEC, §29.259, which includes a description of performance frameworks by which adult high school diploma and industry certification charter schools' performance is to be measured.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.101, 12.1101, 12.114, 12.1181, and 29.259.

§100.1033. Charter Amendment.

(a) Amendments in writing. Subject to the requirements of this section, the terms of an open-enrollment charter may be revised with the consent of the charter holder by written amendment approved by the commissioner of education in writing.

(b) Types of amendments. An amendment includes any change to the terms of an open-enrollment charter, including the following: maximum enrollment, grade levels, geographic boundaries, approved campus(es), approved sites, relocation of campus, charter holder name, charter school (district) name, charter campus name, charter holder governance, articles of incorporation, corporate bylaws, management company, admission policy, or the educational program of the school. An amendment must be approved by the commissioner under this subsection. Expanding prior to receiving the commissioner's approval will have financial consequences as outlined in §100.1041(d)(1) of this title (relating to State Funding).

(1) Charter amendment request. Prior to implementation, the charter holder shall file a request, in the form prescribed, with

the Texas Education Agency (TEA) division responsible for charter schools. As applicable, the request shall set forth the text and page references, or a photocopy, of the current open-enrollment charter language to be changed, and the text proposed as the new open-enrollment charter language. The request must be attached to a written resolution adopted by the governing body of the charter holder and signed by a majority of the members indicating approval of the requested amendment.

(2) Timeline. All non-expansion amendments may be filed with the commissioner at any time throughout the year. Expansion amendment requests must be received no earlier than the first day of January and no later than the first day of March, not to exceed 18 months preceding the effective date of the expansion.

(3) Relevant information considered. As directed by the commissioner, a charter holder requesting an amendment shall submit current information required by the prescribed amendment form, as well as any other information requested by the commissioner. In considering the amendment request, the commissioner may consider any relevant information concerning the charter holder, including its performance on the Charter School Performance Frameworks (CSPF) adopted by rule in §100.1010 of this title (relating to Performance Frameworks); student and other performance; compliance, staff, financial, and organizational data; and other information.

(4) Best interest of students. The commissioner may approve an amendment only if the charter holder meets all applicable requirements, and only if the commissioner determines that the amendment is in the best interest of students. The commissioner may consider the performance of all charters operated by the same charter holder in the decision to finally grant or deny an amendment.

(5) Conditional approval. The commissioner may grant the amendment without condition, or may require compliance with such conditions and/or requirements as may be in the best interest of students.

(6) Relocation amendment. An amendment to relocate an existing campus or site is not an expansion amendment subject to paragraphs (9)(A) and (10)(D) of this subsection. An amendment to relocate solely permits a charter holder to relocate an existing campus or site to an alternate address while serving the same students and grade levels without a significant disruption to the delivery of the educational services. The alternate address of the relocation shall not be in excess of 25 miles from the existing campus address.

(7) Ineligibility. The commissioner will not consider any amendment that is submitted by a charter holder that has been notified by the commissioner of the commissioner's intent to allow the expiration of the charter or intent to revoke the charter. This subsection does not limit the commissioner's authority to accept the surrender of a charter.

(8) Amendment determination. The commissioner's decision on an amendment request shall be final and may not be appealed. The same amendment request may not be submitted prior to the first anniversary of the submission of the original amendment request.

(9) Expansion amendment standards. An expansion amendment is an amendment that permits a charter school to increase its maximum allowable enrollment, extend the grade levels it serves, change its geographic boundaries, or add a campus or site.

(A) In addition to the requirements of this subsection, the commissioner may approve an expansion amendment only if:

(i) the expansion will be effective no earlier than the start of the fourth full school year at the affected charter school. This restriction does not apply if the affected charter school has a rating of "academically acceptable" as defined by §100.1001(26) of this title (relating to Definitions) as its most recent rating and is operated by a charter holder that operates multiple charter campuses and all of that charter holder's most recent campus ratings are "academically acceptable" as defined by §100.1001(26) of this title;

(ii) the amendment request under paragraph (1) of this subsection is received no earlier than the first day of January and no later than the first day of March, not to exceed 18 months preceding the effective date of the expansion;

(iii) the most recent district rating for the charter school is "academically acceptable" and the most recent campus rating for at least 90% of the campuses operated under the charter school is "academically acceptable" as defined by §100.1001(26) of this title;

(iv) the most recent district financial accountability rating for the charter school in the Financial Integrity Rating System of Texas (FIRST) for Charter Schools is "satisfactory" as defined by §100.1001(27) of this title;

(v) the charter school has an accreditation status of Accredited;

(vi) the most recent designation for the charter school under the CSPF is "Tier 1" or "Tier 2" as defined by §100.1010 of this title;

(vii) before voting to request an expansion amendment, the charter holder governing board has considered a business plan, has determined by majority vote of the board that the growth proposed is financially prudent relative to the financial and operational strength of the charter school, and includes such a statement in the board resolution. Upon request by the TEA, the business plan must be filed within ten business days. The business plan must be comprised of the following components:

(I) a statement discussing the need for the expansion;

(II) a statement discussing the current and projected financial condition of the charter holder and charter school;

(III) an unaudited statement of financial position for the current fiscal year;

(IV) an unaudited statement of financial activities for the current fiscal year;

(V) an unaudited statement of cash flows for the current fiscal year;

(VI) a pro forma budget that includes the costs of operating the charter school, including the implementation of the expansion amendment;

(VII) a statement or schedule that identifies the assumptions used to calculate the charter school's estimated Foundation School Program revenues;

(VIII) a statement discussing the use of debt instruments to finance part or all of the charter school's incremental costs;

(IX) a statement discussing the incremental cost of acquiring additional facilities, furniture, and equipment to accommodate the anticipated increase in student enrollment;

(X) a statement discussing the incremental cost of additional on-site personnel and identifying the additional number of full-time equivalents that will be employed; and

(XI) the required statement that the growth proposed is financially prudent relative to the financial and operational strength of the charter school;

(viii) the charter holder submits a signed statement attesting that within the last three years there have been no instances of nepotism, conflicts of interest, or revelations in criminal history checks that deemed any board member or employee ineligible to serve or submits, for the last three years of operation, copies of documents required by §100.1035 of this title (relating to Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving), including documents such as affidavits identifying a board member's substantial interest in a business entity or in real property, documentation of a board member's abstention from voting in the case of potential conflicts of interest, affidavits or other documents identifying other family members within the third degree of affinity or consanguinity who serve as board members and/or employees, and affidavits or other documentation that board members or employees whose criminal history checks deemed them ineligible to serve were removed from service;

(ix) the commissioner determines that the amendment is in the best interest of students; and

(x) the charter holder meets all other requirements applicable to expansion amendment requests and other amendments.

(B) Notice of the approval or disapproval of expansion amendments will be made by the commissioner within 60 days of the date the charter holder submits a completed expansion amendment request. The commissioner may provide notice electronically. The commissioner shall specify the earliest effective date for implementation of the expansion. In addition, the commissioner may require compliance with such conditions and/or requirements that may be in the best interest of students.

(10) Expansion amendments.

(A) Maximum enrollment. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to increase maximum allowable enrollment not more than once each calendar year.

(B) Grade span. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to extend the grade levels it serves only if it is accompanied by appropriate educational plans for the additional grade levels in accordance with Chapter 74, Subchapter A, of this title (relating to Required Curriculum), and such plan has been reviewed and approved by the charter governing board.

(C) Geographic boundary. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to expand the geographic boundaries of the charter school only if it is accompanied by evidence of notification, electronic or otherwise, to the relevant district(s).

(D) Additional campus. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to add a new campus only if it meets the following criteria:

(i) the charter holder has operated at least one charter school campus in Texas for a minimum of three consecutive years;

(ii) the charter school under which the proposed new campus will be assigned currently has at least 50% of the student population in grades assessed under TEC, Chapter 39, Subchapter B. For charter schools serving students in prekindergarten, the charter school may include the students in prekindergarten to count toward the 50% requirement if the charter school can demonstrate acceptable performance on a commissioner-approved prekindergarten assessment or monitoring tool as determined under §102.1003 of this title (relating to High-Quality Prekindergarten Program) and the addition of the prekindergarten students meets the 50% threshold; and

(iii) the charter holder has provided evidence, via certified mail documented by return receipt, that each school district affected by the expansion was sent a notice to the district's central office of the proposed location and, if available, the address of any new campuses or sites, including proposed grade levels to be served and projected maximum enrollment.

(E) Additional site. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to add a new site under an existing campus only if it meets the following criteria:

(i) the charter school campus under which the proposed new site will be assigned currently has at least 50% of the student population in grades assessed under TEC, Chapter 39, Subchapter B. For charter school campuses serving students in prekindergarten, the charter school may include the students in prekindergarten to count toward the 50% requirement if the charter school can demonstrate acceptable performance on a commissioner-approved prekindergarten assessment or monitoring tool as determined under §102.1003 of this title and the addition of the prekindergarten students meets the 50% threshold; and

(ii) the site will be located within 25 miles of the campus with which it is associated.

(11) Expedited expansion. An expedited expansion amendment allows for the establishment of a new charter campus under TEC, §12.101(b-4).

(A) In order to submit an expedited expansion amendment, the charter school must meet the following requirements.

(i) The charter school must have an accreditation status of Accredited and meet the following criteria:

(I) currently has at least 50% of its student population in grades assessed under TEC, Chapter 39, Subchapter B, or has had at least 50% of the students in the grades assessed enrolled in the school for at least three years; and

(II) is currently evaluated under the standard accountability procedures for evaluation under TEC, Chapter 39, and received a district rating in the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C, for three of the last five ratings with:

(-a-) at least 75% of the campuses rated under the charter school also receiving a rating in the highest or second highest performance rating category in the most recent ratings; and

(-b-) no campus receiving a rating in the lowest performance rating category in the most recent ratings.

(ii) The charter holder must submit an expedited expansion amendment request in the time, manner, and form prescribed to the TEA division responsible for charter schools. The expansion amendment request will be:

(I) effective no earlier than the start of the fourth full school year at the affected charter school;

(II) received no earlier than the first day of January and no later than the first day of March, not to exceed 18 months preceding the effective date of the expansion;

(III) communicated via certified mail with a return receipt to the following entities:

(-a-) the superintendent and board of trustees of each school district affected by the expedited expansion as described in the amendment request form; and

(-b-) the members of the legislature who represent the geographic area affected by the expedited expansion as described in the amendment request form, noting that each entity has an opportunity to submit a statement regarding the impact of the amendment to the TEA division responsible for charter schools;

(IV) voted on by the charter holder governing body after consideration of a business plan determined by majority vote of the board affirming the growth proposed in the business plan is financially prudent relative to the financial and operational strength of the charter school. Such a statement must be included in the board resolution. Upon request by the TEA, the business plan must be filed within ten business days; and

(V) submitted with copies of the most recent compliance information relating to §100.1035 of this title to include documents such as affidavits identifying a board member's substantial interest in a business entity or in real property, documentation of a board member's abstention from voting in the case of potential conflicts of interest, and affidavits or other documents identifying other family members within the third degree of affinity or consanguinity who serve as board members and/or employees.

(B) Notice of eligibility to establish an expedited campus under this section will be made by the commissioner within 60 days of the date the charter holder submits a completed expedited expansion amendment.

(12) New school designation. A new school designation is a separate designation and must be paired with an expansion amendment. If approved by the commissioner, this designation permits a charter holder to be eligible to participate in the charter school program competitive grant process when federal funding for the Texas charter school program is available.

(A) The commissioner may approve a new school designation for a charter only if:

(i) the charter holder meets all requirements applicable to an expansion amendment set forth in this section and has operated at least one charter school campus in Texas for a minimum of five consecutive years;

(ii) the charter school has been evaluated under the accountability rating system established in §97.1001 of this title (relating to Accountability Rating System) currently with at least 50% of the student population in grades assessed by the state accountability system, has an accreditation status of Accredited, and meets the following:

(I) is currently evaluated under the standard accountability procedures, currently has the highest or second highest district rating, and received the highest or second highest district rating in the previous two ratings with at least 75% of the campuses operated under the charter also receiving the highest or second highest rating and no campus with an "academically unacceptable" rating, as defined by §100.1001(26) of this title, in the most recent state accountability ratings. A rating that does not meet the criteria for "academically acceptable" as defined in §100.1001(26) of this title shall not be considered the highest or second highest academic performance rating for purposes of this section; or

(II) is currently evaluated under the alternative education accountability (AEA) procedures and received the highest or second highest AEA district rating for five of the last five ratings with:

(-a-) in the most recent applicable state accountability ratings, all rated campuses under the charter receiving an "academically acceptable" or higher rating, as defined by §100.1001(26) of this title; and

(-b-) if evaluated using AEA procedures, the district-level assessment data corresponding to the most recent accountability ratings demonstrate that at least 35% of the students in each of the following student groups (if evaluated) met the standard as reported by the sum of all grades tested on the standard accountability indicator in each subject area assessed: African American, Hispanic, white, special education, economically disadvantaged, limited English proficient, and at risk;

(iii) no charter campus has been identified for federal interventions in the most current report;

(iv) the charter school is not under any sanction imposed by TEA authorized under TEC, Chapter 39; Chapter 97, Subchapter EE, of this title (relating to Accreditation Status, Standards, and Sanctions); or federal requirements;

(v) the charter holder completes an application approved by the commissioner;

(vi) the new charter school campus that receives the new school designation will serve at least 100 students in its third year of operation;

(vii) the amendment complies with all requirements of this paragraph; and

(viii) the commissioner determines that the designation is in the best interest of students.

(B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a new school designation only if the campus with the proposed designation:

(i) satisfies each element of the definition of a public charter school as set forth in federal law;

(ii) is not merely an extension of an existing charter school;

(iii) is separate and distinct from the existing charter school campus(es) established under the open-enrollment charter school with a new facility and county-district-campus number; and

(iv) is governed, in the school's amended contract, by a separate written performance agreement that meets the requirements of federal law and TEC, §12.111(a)(3) and (4).

(C) In making the findings required by subparagraph (B)(i) and (iii) of this paragraph, the commissioner shall consider:

(i) the terms of the open-enrollment charter school as a whole, as modified by the new school designation; and

(ii) whether the campus with the proposed designation shall be established and recognized as a separate school under Texas law.

(D) In making the findings required by subparagraph (B)(ii) and (iii) of this paragraph, the commissioner shall consider whether the campus with the proposed designation and the existing charter school campus(es) have separate sites, employees, student populations, and governing bodies and whether their day-to-day operations are carried out by different officers. The presence or absence of any one of these elements, by itself, does not determine whether the campus with the proposed designation will be found to be separate

or part of an existing school. However, the presence or absence of several elements will inform the commissioner's decision.

(E) In making the finding required by subparagraph (B)(iv) of this paragraph, the commissioner shall consider:

(i) whether the campus with the proposed designation and the existing charter school campus(es) have distinctly different requirements in their respective written performance agreements; and

(ii) the extent to which the performance agreement for the campus with the proposed designation imposes higher standards than those imposed by TEC, §12.104(b)(2)(L).

(F) Failure to meet any standard or requirement outlined in this paragraph or agreed to in a performance agreement under subparagraph (B)(iv) of this paragraph shall mean the immediate termination of any federal charter school program grant and/or any waiver exempting a charter from some of the expansion amendment requirements that may have been granted to a charter holder as a result of the new school designation.

(13) High-quality campus designation. A high-quality campus designation is a separate designation and must be paired with an expansion amendment. If approved by the commissioner, this designation permits a charter holder to establish an additional charter school campus under an existing open-enrollment charter school pursuant to federal non-regulatory guidance. Charter holders of charter schools that receive high-quality campus designation from the commissioner will be eligible to participate in the charter school program competitive grant process when federal funding for the Texas charter school program is available.

(A) The commissioner may approve a high-quality campus designation for a charter only if:

(i) the charter holder meets all requirements applicable to an expansion amendment set forth in this section and has operated at least one charter school campus in Texas for a minimum of five consecutive years;

(ii) the charter school has been evaluated under the accountability rating system established in §97.1001 of this title, currently has at least 50% of the student population in grades assessed by the state accountability system, has an accreditation status of Accredited, is currently evaluated under the standard accountability procedures, currently has the highest or second highest district rating, and received the highest or second highest rating in the previous two ratings with all of the campuses operated under the charter also receiving the highest or second highest rating as defined by §100.1001(26) of this title in the most recent state accountability ratings;

(iii) no charter campus has been identified for federal interventions in the most current report;

(iv) the charter school is not under any sanction imposed by TEA authorized under TEC, Chapter 39; Chapter 97, Subchapter EE, of this title; or federal requirements;

(v) the charter holder completes an application approved by the commissioner;

(vi) the new charter school campus that receives the high-quality campus designation will serve at least 100 students in its third year of operation;

(vii) the amendment complies with all requirements of this paragraph; and

(viii) the commissioner determines that the designation is in the best interest of students.

(B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a high-quality campus designation only if the campus with the proposed designation:

(i) satisfies each element of the definition of a public charter school as set forth in federal law;

(ii) is separate and distinct from the existing charter school campus(es) established under the open-enrollment charter school with a separate facility and county-district-campus number; and

(iii) is governed, in the school's amended contract, by a separate written performance agreement that meets the requirements of federal law and TEC, §12.111(a)(3) and (4).

(C) In making the findings required by subparagraph (B)(i) and (iii) of this paragraph, the commissioner shall consider:

(i) the terms of the open-enrollment charter school as a whole, as modified by the high-quality campus designation; and

(ii) whether the campus with the proposed designation shall be established and recognized as a separate school under Texas law.

(D) In making the findings required by subparagraph (B)(ii) of this paragraph, the commissioner shall consider whether the campus with the proposed designation and the existing charter school campus(es) have separate sites, employees, student populations, and governing bodies and whether their day-to-day operations are carried out by different officers. The presence or absence of any one of these elements, by itself, does not determine whether the campus with the proposed designation will be found to be separate or part of an existing school. However, the presence or absence of several elements will inform the commissioner's decision.

(E) In making the finding required by subparagraph (B)(iii) of this paragraph, the commissioner shall consider:

(i) whether the campus with the proposed designation and the existing charter school campus(es) have distinctly different requirements in their respective written performance agreements;

(ii) whether an annual independent financial audit of the campus with the proposed designation is to be conducted. The high-quality campus must have a plan for a separate audit schedule apart from the open-enrollment charter school audit; and

(iii) the extent to which the performance agreement for the campus with the proposed designation imposes higher standards than those imposed by TEC, §12.104(b)(2)(L).

(F) Failure to meet any standard or requirement outlined in this paragraph or agreed to in a performance agreement under subparagraph (B)(iii) of this paragraph shall mean the immediate termination of any federal charter school program grant and/or any waiver exempting a charter from some of the expansion amendment requirements that may have been granted to a charter holder as a result of the high-quality campus designation.

(14) Delegation amendment. A delegation amendment is an amendment that permits a charter holder to delegate, pursuant to §100.1101(c) of this title (relating to Delegation of Powers and Duties), the powers or duties of the governing body of the charter holder to any other person or entity.

(A) The commissioner may approve a delegation amendment only if:

(i) the charter holder meets all requirements applicable to delegation amendments and amendments generally;

(ii) the amendment complies with all requirements of Chapter 100, Subchapter AA, Division 5, of this title (relating to Charter School Governance); and

(iii) the commissioner determines that the amendment is in the best interest of students.

(B) The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of students.

(C) The following powers and duties must generally be exercised by the governing body of the charter holder itself, acting as a body corporate in meetings posted in compliance with Texas Government Code, Chapter 551. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i)-(vi) of this subparagraph cannot reasonably be carried out by the charter holder governing body, the commissioner may not grant an amendment delegating such functions to any person or entity through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the governing body of the charter holder shall not delegate:

(i) final authority to hear or decide employee grievances, citizen complaints, or parental concerns;

(ii) final authority to adopt or amend the budget of the charter holder or the charter school, or to authorize the expenditure or obligation of state funds or the use of public property;

(iii) final authority to direct the disposition or safekeeping of public records, except that the governing body may delegate this function to any person, subject to the governing body's superior right of immediate access to, control over, and possession of such records;

(iv) final authority to adopt policies governing charter school operations;

(v) final authority to approve audit reports under TEC, §44.008(d); or

(vi) initial or final authority to select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer.

(D) The following powers and duties must be exercised by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i)-(iii) of this subparagraph cannot reasonably be carried out by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school, the commissioner may not grant an amendment permitting the superintendent/chief executive officer to delegate such function through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the superintendent/chief executive officer of the charter school shall not delegate final authority:

(i) to organize the charter school's central administration;

(ii) to approve reports or data submissions required by law; or

(iii) to select and terminate charter school employees or officers.

(c) Required forms and formats. The TEA division responsible for charter schools may develop and promulgate, from time to time, forms or formats for requesting charter amendments under this section. If a form or format is promulgated for a particular type of amendment, it must be used to request an amendment of that type.

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

Filed with the Office of the Secretary of State on May 29, 2020.

TRD-202002205
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: June 18, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. FEES, LICENSE APPLICATIONS, AND RENEWALS

22 TAC §72.2

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.2 (License Application) without changes as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1794). The repeal will not be republished. The Board is adopting a new §72.2 in a separate rulemaking. The purpose is to remove superfluous rules and make the Board's license application procedures easier to read and navigate.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002097
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.2

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.2 (License Application) without changes to the text

as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1795). The purpose is to clarify the general requirements for individuals applying for a license with the Board.

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002098
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.3

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.3 (Qualifications) as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1796). The Board is adopting a new §72.3 in a separate rulemaking. The purpose is to clarify the general qualifications for an individual applying for a license from the Board.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002099
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.3

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.3 (Qualifications) with non-substantive changes to the text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1796). The rule will be republished. The purpose is to clarify the general qualifications requirements for individuals applying for a license with the Board.

The Board received no comments concerning the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

§72.3. Qualifications.

(a) An individual applying for a chiropractic license shall comply with all application and license requirements in Texas Occupations Code Chapter 201.

(b) An individual, who was admitted to study chiropractic with academic credit from a United States institution, shall submit proof of earning at least 90 credit hours from a nationally accredited institution whose hours are transferrable to the University of Texas at Austin, not including courses included in a doctor of chiropractic degree program.

(c) An individual applying for a license must present proof of graduation from a chiropractic college accredited by an educational accrediting body that is a member of the Councils on Chiropractic Education International.

(d) A chiropractic college shall inform each student when admitted the possible limitations of practice location and licensing.

(e) A chiropractic college shall document in each student's file how the student was judged qualified for admission.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002100
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.5

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.5 (Approved Schools and Colleges) as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1797). The Board will adopt a new §72.5 in a separate rulemaking. The purpose is to generally update the rule's language and make the Board's rules easier to navigate.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002101

Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.5

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.5 (Approved Schools and Colleges) without changes as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1798). The rule will not be republished. The purpose is to generally update the rule's language and make the Board's rules easier to navigate.

The Board received no comments concerning the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002102
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.6

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.6 (Exam Information) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1798). The rule will not be republished. The Board will adopt a new §72.6 in a separate rulemaking. The purpose is to remove superfluous rules and make the Board's license application procedures easier to read and navigate.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

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TRD-202002103
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.6

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.6 (National Board Exam Requirements) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1799). The rule will not be republished. The purpose is to clarify the national board exam requirements for individuals applying for a license with the Board.

The Board received no comments concerning the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

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TRD-202002104
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.7

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.7 (Jurisprudence Exam) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1800). The rule will not be republished. The Board will adopt a new §72.7 in a separate rulemaking. The purpose is to remove superfluous rules and make the Board's license application procedures easier to read and navigate.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002105

Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.7

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.7 (Jurisprudence Exam Requirements) with changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1800). The rule will be republished. The purpose is to clarify the jursprudence exam requirements for individuals applying for a license with the Board.

The Board received no comments concerning the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

§72.7. Jurisprudence Exam Requirements.

(a) An individual applying for a license shall take the Board's jurisprudence examination with a passing score of 75%.

(b) An individual may not take the jurisprudence examination unless the individual complies with the licensing requirements in Texas Occupations Code Chapter 201 and Board rules.

(c) The jurisprudence examination shall test an individual on the law and Board rules governing the practice of chiropractic.

(d) All jurisprudence examinations shall be conducted in English.

(e) An individual may not take the jurisprudence examination unless the individual has first completed all required parts of the National Board Examination.

(f) Jurisprudence examination results are Board property.

(g) The Board or its agent shall retain all jurisprudence examination results for one year after final grading.

(h) An individual may request in writing an analysis of the individual's results.

(i) The Board's determination of examination matters, including grades, is final.

(j) The Board shall permit an individual who fails the jurisprudence examination to take subsequent examinations if the individual applies for reexamination and pays the required fee.

(k) An individual may take the jurisprudence examination as many times as required.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002106
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.9

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.9 (Reexaminations), as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1801). Portions of this rule will be incorporated into a new §72.7 in a separate rulemaking. The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by the adopted repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002093
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 15, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.11

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.11 (Temporary Faculty License) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1802). The rule will not be republished. The Board will adopt a new §72.11 in a separate rulemaking. The purpose is to remove superfluous rules and make the Board's temporary license application procedures easier to read and navigate.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002107

Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.11

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.11 (Temporary Faculty License) with non-substantive changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1802). The rule will be republished. The purpose is to clarify the Board's temporary license requirements for faculty at Texas chiropractic colleges.

The Board received no comments concerning the proposed rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

§72.11. Temporary Faculty License.

(a) An individual seeking a temporary faculty license shall submit an application and fee to the Board before beginning work at the sponsoring chiropractic school.

(b) The dean or president of the individual's sponsoring school shall endorse the application for a temporary faculty license on behalf of the individual.

(c) An individual applying for a temporary faculty license shall comply with the requirements of Texas Occupations Code §201.308.

(d) An individual holding a temporary faculty license may either apply for a renewal of the license or apply for a permanent license.

(e) An individual applying for renewal of a temporary license or for a permanent license may continue to practice under an expired temporary faculty license while the Board evaluates the application and while waiting for examination results.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002108
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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22 TAC §72.16

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.16 (Inactive Status) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1803). The rule will not be republished. The Board will adopt a new §72.16 in a separate rule-making. The purpose is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

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TRD-202002109
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.16

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.16 (Inactive Status) with non-substantive changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1804). The rule will be republished. The purpose is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board received no comments concerning the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

§72.16. Inactive Status.

(a) On or before a licensee's renewal date, a licensee not currently practicing chiropractic may renew the license and request it be placed on inactive status.

(b) To continue on inactive status and maintain a valid license, an inactive licensee shall renew the license and make a new request for inactive status each renewal period.

(c) An inactive licensee is not required to complete continuing education.

(d) To place a license on inactive status at a time other than license renewal, a licensee shall:

(1) return the current renewal certificate to the Board; and

(2) submit a sworn statement stating the licensee may not practice chiropractic in Texas while the license is inactive, and the date the license is to be inactive.

(e) To reactivate a license which has been inactive for less than 6 years, a licensee shall:

(1) apply to the Board for active status;

(2) submit verification of completing continuing education courses for the hours that would have been required for renewal of a license; and

(3) pay the fee.

(f) Continuing education earned in the calendar year before a licensee applies for reactivation may be applied to the continuing education requirement.

(g) A licensee who has been inactive 6 years or more may be reactivated only after passing the National Board of Examination's Part IV or receiving a minimum score of 375 on the National Board of Chiropractic Examiners' SPEC exam, and the Board's jurisprudence exam.

(h) The Board may exempt a licensee who has been inactive more than 6 years from subsection (g) of this section if the licensee held an active unrestricted license in good standing in another state or foreign jurisdiction.

(i) A licensee may not maintain an inactive license for more than twenty years.

(j) A licensee practicing chiropractic in Texas while inactive is practicing without a license and is subject to disciplinary action.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002110
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.17

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.17 (Fee Exemption for Charity Care) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1805). The rule will not be republished. The Board will adopt a new §72.17, to be titled "Retired Chiropractor," in a separate rulemaking. The purpose is to make clear the limitations of practicing on a chiropractor who has chosen to retire.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002111
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.17

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.17 (Retired Chiropractor) with non-substantive changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1805). The rule will be republished. The purpose is to make clear the limitations on practice for licensees who choose to retire.

The Board received no comments concerning the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

§72.17. Retired Chiropractor.

(a) A licensee in good standing may apply for retired status.

(b) A retired chiropractor may continue to practice by providing chiropractic services only to indigents, medically underserved areas, or disaster relief organizations for no compensation.

(c) A licensee applying for retired status shall submit to the Board a sworn statement that the licensee's practice:

(1) does not include services for any compensation; and

(2) complies with Texas Occupations Code Chapter 201 and Board rules.

(d) A retired licensee shall be exempt from the active license fee.

(e) A retired licensee section shall comply with all continuing education requirements of a licensee with an active license.

(f) A retired licensee shall comply with the requirements for an active license before returning to active status.

(g) A retired licensee shall use the term "DC - retired" or similar language to make clear to the public that the retired licensee does not hold an active license.

(h) A retired licensee who violates this section is subject to disciplinary action.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002112
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.20

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.20 (Requirements for Out-of-State Applicants) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1806). The rule will not be republished. The Board will adopt a new §72.20 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002113
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.20

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.20 (Requirements for Applicants Licensed in Another Jurisdiction) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1807). The rule will not be republished. The purpose is to clarify the existing requirements for individuals licensed in another jurisdiction wishing to obtain a license in Texas.

The Board received no comments concerning the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002114
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.21

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.21 (Requirements for Military Spouses) as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1807). The rules will not be republished. The Board will adopt a new §72.21 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002115
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §72.21

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.21 (Requirements for Military Spouses) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1808). The purpose is to clarify the existing requirements for military spouses licensed in another jurisdiction wishing to obtain a license in Texas. The rule will not be republished.

The Board received no comments concerning the proposed rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002116
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-7600

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22 TAC §72.22

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.22 (Requirements for Military Members and Veterans) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1809). The rule will not be republished. The Board will adopt a new §72.22 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002117
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

♦ ♦ ♦

22 TAC §72.22

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.22 (Requirements for Military Members and Veterans) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1810). The rule will not be republished. The purpose is to clarify the existing requirements for military members and veterans licensed in another jurisdiction or having an expired Texas license who wish to obtain a current license in Texas.

The Board received no comments concerning the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002118
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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CHAPTER 73. CONTINUING EDUCATION

22 TAC §73.1

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §73.1 (Continuing Education) as published in the March 13, 2020, issue of the Texas Register (45 TexReg 1811). The Board will adopt a new §73.1 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002119
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §73.1

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §73.1 (Continuing Education Requirements for Licensees) as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1811). The rule will not be republished. The purpose is to clarify the continuing education requirements for licensees. The Board is specifying the requirements for other individuals involved in providing continuing education in separate new rules in §§73.5 through 73.5.

The Board received no comments concerning the proposed rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002120
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §73.2

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §73.2 (Failure to Meet Continuing Education Requirements) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1812). The rule will not be republished. The Board will adopt a new §73.2 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002121
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §73.2

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §73.2 (Failure to Meet Continuing Education Requirements) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1813). The rule will not be republished. The purpose is to clarify the consequences and penalties for a licensee who fails to meet continuing education requirements.

The Board received no comments concerning the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002122
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §73.3

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §73.3 (Approved Continuing Education Courses) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1814). The rule will not be republished. The Board will adopt a new §73.3 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002123
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §73.3

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §73.3 (Requirements for Sponsors of Continuing Education Courses) with non-substantive changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1815). The rule will be republished. The purpose is to clarify the requirements for Board-approved providers of continuing education courses. The Board is specifying the requirements for other individuals involved in providing continuing education to licensees in separate rulemakings for §73.4 and §73.5.

The Board received no comments concerning the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

§73.3. Requirements for Sponsors of Continuing Education Courses.

(a) The Board may only approve continuing education courses sponsored by a chiropractic college accredited by the Council on Chiropractic Education or a statewide, national, or international professional association.

(b) A continuing education course sponsor shall submit a separate application for each course at least 60 days in advance.

(c) For each course application, a sponsor shall submit:

(1) course title, subject, and description;

(2) number of requested credit hours;

(3) course date, time, and location;

(4) method of instruction;

(5) course coordinator's name, address, and telephone number;

(6) signature of the sponsor's representative;

(7) a detailed hour-by-hour syllabus describing the material taught in each hour block;

(8) names of all instructors for each block of instruction;

(9) all instructors' curriculum vitae;

(10) proposed advertising showing the course title and content; and

(11) application fee.

(d) A sponsor shall certify the course complies with all Board requirements.

(e) The Board shall notify a sponsor in writing whether a course has been approved.

(f) A sponsor shall hold a Board-approved live course only on the date submitted on the application.

(g) A sponsor may offer a Board-approved recorded online course for up to one calendar year after approval.

(h) If a continuing education program consists of separate sessions on different topics and on different dates, each session is a separate course.

(i) If the same course is held in multiple cities with different speakers, each location is a separate course.

(j) To be approved, each course must:

(1) be presented by instructors with knowledge, training, and expertise in the topic;

(2) have content designed to maintain professional competency;

(3) relate to the scope of practice under Texas Occupations Code §201.002 and Board rules; and

(4) be on one or more of the following:

(A) general or spinal anatomy;

(B) neuro-muscular-skeletal diagnosis;

(C) radiology or radiographic interpretation;

(D) pathology;

(E) public health;

(F) chiropractic adjusting techniques;

(G) chiropractic philosophy;

(H) risk management;

(I) physiology;

(J) microbiology;

(K) hygiene and sanitation;

(L) biochemistry;

(M) neurology;

(N) orthopedics;

(O) jurisprudence;

(P) nutrition;

(Q) adjunctive or supportive therapy;

(R) sexual boundary issues;

(S) insurance reporting procedures;

(T) chiropractic research;

(U) communicable disease;

(V) acupuncture;

(W) ethics;

(X) recordkeeping, documentation, and coding; or

(Y) other Board-identified public health issues.

(k) The Board may not approve or accept credit for any course on practice management.

(l) A sponsor of an approved course shall notify the Board in writing before any change in course location, date, or cancellation.

(m) A sponsor shall submit a roster of course participants that contains each participant's name and Board license number, course number, and number of hours earned by each participant not later than 30 days after the course.

(n) A sponsor shall provide each participant an attendance certificate with the sponsor's name, the participant's name, the course number, title, date, and location, the amount and type of credit earned, and signature of the sponsor's representative.

(o) A sponsor may not give a course participant full credit for attendance if the participant is absent more than 10 minutes during any one hour period.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002124
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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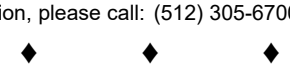
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700



22 TAC §73.4

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §73.4 (Requirements for Continuing Education Instructors) without changes to the text as published in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1595). The purpose of this action is to clarify the standards under which a continuing education instructor shall comply and to make the Board's rules easier to navigate.

The Board received no comments concerning the new rule. The rule was reviewed by the Governor's Division of Regulatory Compliance (Division). The Division gave the Board permission to adopt the rule on May 20, 2020.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002095
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 6, 2020
For further information, please call: (512) 305-6700

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22 TAC §73.5

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §73.5 (Requirements for Claiming Continuing Education as a National Board Examiner) without changes as published in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1596).

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002096
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 6, 2020
For further information, please call: (512) 305-6700

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CHAPTER 81. ENFORCEMENT ACTIONS AND HEARINGS

22 TAC §81.2

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §81.2 (Enforcement Actions) as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1816). The Board will adopt a new §81.2 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand and to clarify the role of the Enforcement Committee in the enforcement process.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002125
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.2

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §81.2 (Enforcement Actions) without changes as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1817) The rule will not be republished. The purpose is to make the rule easier to read and to clarify all parties' requirements in contested Board administrative actions.

The Board received no comments concerning the proposed rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002126
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.4

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §81.4 (Administrative Hearings), as published in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1596).

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by the adopted repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002094
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 15, 2020
Proposal publication date: March 6, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.5

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §81.5 (Appearance) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1818). The rule will not be republished. The Board will adopt a new §81.5 in a separate rulemaking. The purpose is to make the current rule's requirements easier to read.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002127
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.5

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §81.5 (Appearance) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1818). The rule will not be republished. The purpose is to clarify the language and make the administrative hearing process easier to understand for respondents in contested cases.

The Board received no comments concerning the proposed rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002128
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.6

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §81.6 (Default Judgment) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1819). The rule will not be republished. The Board will adopt a new §81.6 in a separate rulemaking. The purpose is to make the current rule's requirements easier to read.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002129
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.6

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §81.6 (Default Judgment) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1820). The rule will not be republished. The purpose is to clarify the language and make the Board's administrative process for obtaining a default judgment in a contested case easier to understand.

The Board received no comments concerning the proposed rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002130

Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.7

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §81.7 (Depositions, Subpoenas, and Witness Expenses) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1820). The rule will not be republished. The Board will adopt a new §81.7 in a separate rulemaking. The purpose is to make the current rule's requirements easier to read.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002131
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.7

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §81.7 (Depositions, Subpoenas, and Witness Expenses) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1821). The rule will not be republished. The purpose is to clarify the language and make the Board's administrative processes in a contested case easier to understand.

The Board received no comments concerning the proposed rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002132
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.8

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §81.8 (Hearing Exhibits and Record) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1822). The rule will not be republished. The Board will adopt a new §81.8 in a separate rulemaking. The purpose is to make the current rule's requirements easier to read.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002133
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.8

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §81.8 (Hearing Exhibits and Record) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1823). The rule will not be republished. The purpose is to clarify the language and make the Board's administrative processes in a contested case easier to understand.

The Board received no comments concerning the proposed rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002134

Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.9

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §81.9 (Proposal for Decision) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1823). The rule will not be republished. The Board will adopt a new §81.9 in a separate rulemaking. The purpose is to make the current rule's requirements easier to read.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002135
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.9

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §81.9 (Proposal for Decision) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1824). The rule will not be republished. The purpose is to clarify the language and make the Board's administrative processes in a contested case easier to understand.

The Board received no comments concerning the proposed rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002136
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.10

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §81.10 (Board Order) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1825). The rule will not be republished. The Board will adopt a new §81.10 in a separate rulemaking. The purpose is to make the current rule's requirements easier to read.

The Board received no comments concerning the proposed repeal.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this repeal.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002137
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: June 30, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 305-6700

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22 TAC §81.10

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §81.10 (Final Board Order) without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1825). The rule will not be republished. The purpose is to clarify the language and make the Board's administrative processes in a contested case easier to understand.

The Board received no comments concerning the proposed rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

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

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

22 TAC §281.35

The Texas State Board of Pharmacy adopts new rule §281.35, concerning Temporary Suspension or Restriction. This new rule is adopted without changes to the proposed text as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2287). The rule will not be republished.

The new rule details procedures for the temporary suspension or restriction of a license or registration.

No comments were received.

The new rule is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8010

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CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.2

The Texas State Board of Pharmacy adopts amendments to §283.2, concerning Definitions. These amendments are adopted without changes to the proposed text as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2288). The rule will not be republished.

The amendments remove the definition of and references to a pharmacist intern-trainee.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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For further information, please call: (512) 305-8010

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22 TAC §283.4

The Texas State Board of Pharmacy adopts amendments to §283.4, concerning Internship Requirements. These amendments are adopted without changes to the proposed text as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2290). The rule will not be republished.

The amendments remove references to a pharmacist intern-trainee and certain requirements for a pharmacist intern, and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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22 TAC §283.5

The Texas State Board of Pharmacy adopts amendments to §283.5, concerning Pharmacist-Intern Duties. These amendments are adopted without changes to the proposed text as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2293). The rule will not be republished.

The amendments remove references to a pharmacist intern-trainee.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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22 TAC §283.6

The Texas State Board of Pharmacy adopts amendments to §283.6, concerning Preceptor Requirements and Ratio of Preceptors to Pharmacist-Interns. These amendments are adopted without changes to the proposed text as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2294). The rule will not be republished.

The amendments remove references to a pharmacist intern-trainee, clarify that a pharmacist preceptor must be certified by the board, and remove a fee for a duplicate or amended certificate.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.19

The Texas State Board of Pharmacy adopts amendments to §291.19, concerning Administrative Actions as a Result of Compliance Inspection. These amendments are adopted without changes to the proposed text as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2295). The rule will not be republished.

The amendments update the actions that may be taken after violations are observed during a compliance inspection to reflect current procedures.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Texas State Board of Pharmacy
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SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.155

The Texas State Board of Pharmacy adopts the repeal of §291.155, concerning Limited Prescription Delivery Pharmacy (Class H). This repeal is adopted without changes to the proposed repeal as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2301). The rule will not be republished.

The repeal of §291.155 provides for a more organized subchapter by removing the rules for a class of pharmacy that no longer exists.

No comments were received.

The repeal is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the adopted repeal: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Texas State Board of Pharmacy
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For further information, please call: (512) 305-8010

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CHAPTER 295. PHARMACISTS

22 TAC §295.1

The Texas State Board of Pharmacy adopts amendments to §295.1, concerning Change of Address and/or Name. These amendments are adopted without changes to the proposed text as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2301). The rule will not be republished.

The amendments remove the change of name fee for pharmacists to reflect the new procedure of no longer charging this fee.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8010

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22 TAC §295.8

The Texas State Board of Pharmacy adopts amendments to §295.8, concerning Continuing Education Requirements. These amendments are adopted without changes to the proposed text as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2302). The rule will not be republished.

The amendments add a requirement for mental health awareness continuing education and clarify the continuing education requirements for pharmacists during their initial license period.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8010

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.9

The Texas State Board of Pharmacy adopts amendments to §297.9, concerning Notifications. These amendments are adopted without changes to the proposed text as published in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2306). The rule will not be republished.

The amendments remove the change of name fee for pharmacy technicians and pharmacy technician trainees to reflect the new procedure of no longer charging this fee.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Texas State Board of Pharmacy
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For further information, please call: (512) 305-8010

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §§535.72, 535.73, 535.75

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.72, Approval of Non-elective Continuing Education Courses; §535.73, Approval of Elective Continuing Education Courses; and §535.75, Responsibilities and Operations of Continuing Education Providers, with changes to the proposed text, as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1296) and will be republished.

The amendments to §535.72 streamline the requirements of non-elective continuing education courses between classroom delivery and distance education delivery, so that no matter the delivery method, the requirements are the same. Specifically, the rule is amended to allow the examination at the end of a distance education course to be conducted within the course instruction time rather than after course completion and removes the requirement to grade the examination and receive a passing score of 70%. Prior language was reinserted into the rule so that examination requirements for real estate inspectors were not changed. The amendments to §535.73 add a requirement for education providers to submit a timed course outline when applying for approval of an elective continuing education course. Adding this requirement removes the subjectivity and variability in how a course is described and explained by a provider in an application for course approval and allows providers to have a clear understanding in what is required for course approval. The changes to §535.75 further streamline the requirements for continuing education providers by only requiring end of course examinations for non-elective continuing education courses, regardless of course delivery (classroom or distance). Language requiring examinations for real estate inspectors was reinserted into the text. This change maintains the current exam requirements for real estate inspectors. As such, there is no change to the current rule as it relates to exams for real estate inspectors. The Commission declined to make any changes as the rule in its current draft is in line with these comments.

The amendments were recommended by the Education Standards Advisory Committee.

Two comments were received on §535.72 as proposed. One comment specifically noted the importance of examinations for real estate inspectors and the other supported elimination of the examination for realtors. Two comments were received on §535.75 that supported the elimination of exams generally, but did not specifically address with regard to inspectors. Commission declined to make changes as the rule in its current draft is in line with the majority of these comments and as the Real Estate Inspector Committee voted to include examination requirements for real estate inspectors.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

§535.72. Approval of Non-elective Continuing Education Courses.

(a) General requirements.

(1) The non-elective continuing education courses must be conducted as prescribed by the rules in this subchapter.

(2) Elective continuing education courses are approved and regulated under §535.73 of this subchapter (relating to Approval of Elective Continuing Education Courses).

(b) Application for approval to offer non-elective real estate or inspector CE courses.

(1) A CE provider seeking to offer a specific non-elective real estate or inspector CE course as outlined in this section shall:

(A) for a non-elective real estate course:

(i) submit a Real Estate Non-Elective Continuing Education CE Course Application to the Commission; and

(ii) pay the fee required by §535.101 of this title (relating to Fees); and

(B) for a non-elective real estate inspection course:

(i) submit an Inspector Non-Elective Continuing Education CE Course Application to the Commission; and

(ii) pay the fee required by §535.210 of this title (relating to Fees).

(2) A provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application, and pay all required fees, including a fee for content review.

(4) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Commission approval of non-elective course materials. Every two years, the Commission shall approve subject matter and course materials to be used for the following non-elective continuing education courses:

(1) a four-hour Legal Update I: Laws, Rules and Forms course;

(2) a four-hour Legal Update II: Agency, Ethics and Hot Topics course;

(3) a six-hour Broker Responsibility course; and

(4) a four-hour Inspector Legal and Ethics course.

(d) Course expiration.

(1) Each legal update course expires on December 31 of each odd-numbered year.

(2) Each broker responsibility course expires on December 31 of each even-numbered year.

(3) Each Inspector Legal and Ethics course expires on August 31 of each odd-numbered year.

(e) Delivery method. Non-elective CE courses must be delivered by one of the following delivery methods:

(1) classroom delivery;

(2) distance education delivery; or

(3) a combination of (1) and (2) of this subsection if at least 50% of the combined course is offered by classroom delivery.

(f) Except as provided in this section, non-elective CE courses must meet the presentation requirements of §535.65(g) of this title (relating to Responsibilities and Operations of Providers of Qualifying Courses). The provider must submit a course completion roster in accordance with §535.75(d) of this subchapter (relating to Responsibilities and Operations of Continuing Education Providers). Non-elective real estate courses are designed by the Commission for interactive classroom delivery. Acceptable demonstration of methods to engage students in interactive discussions and activities to meet the course objectives and time requirements are required for approval.

(g) Course examinations. A provider must administer a final examination promulgated by the Commission for non-elective CE courses.

(1) Real estate non-elective CE courses. The examination will be included in course instruction time. Each student will complete the examination independently followed by a review of the correct answers by the instructor. There is no minimum passing grade required to receive credit.

(2) Inspector non-elective CE courses for classroom delivery.

(A) The examination will be given as a part of class instruction time with each student answering the examination questions independently followed by a review of the correct answers by the instructor.

(B) A student is not required to receive a passing grade on the examination to receive course credit.

(3) Inspector non-elective CE courses for distance education delivery.

(A) An examination is required after completion of regular course work.

(B) The examination must be:

(i) proctored by a member of the provider faculty or staff, or third party proctor set out in §535.65(h)(5) of this title, who is present at the test site and has positively identified that the student taking the examination is the student who registered for and took the course; or

(ii) administered using a computer under conditions that satisfy the Commission that the student taking the examination is the student who registered for and took the course; and

(iii) kept confidential.

(C) A provider may permit a student to take one subsequent final examination if the student fails the initial final examination. The subsequent final examination must be:

(i) different from the initial final examination; and

(ii) completed no later than the 30th day after the date the original course concludes.

(D) Credit will not be awarded to a student for a course where the student receives a pass rate on a final examination or subsequent final exam below 70%.

(E) A student who fails the subsequent final course examination is required to retake the course and the final course examination.

(h) Approval of currently approved courses by a secondary provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that secondary provider must:

(A) submit the CE course application supplement form(s);

(B) submit written authorization to the Commission from the author or provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 (relating to Fees) or §535.210 of this title (relating to Fees).

(2) If approved to offer the currently approved course, the secondary provider is required to:

(A) offer the course as originally approved, assume the original expiration date, include any approved revisions, use all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter.

(i) Approval notice. A CE Provider shall not offer non-elective continuing education courses until the provider has received written notice of the approval from the Commission.

(j) Required revision of a currently approved non-elective CE course. Providers are responsible for keeping current on changes to the Act and Commission Rules and must supplement materials for approved non-elective CE courses to present the current version of all

applicable statutes and rules on or before the effective date of those statutes or rules.

§535.73. Approval of Elective Continuing Education Courses.

(a) General requirements.

(1) This subsection applies to continuing education providers seeking to offer an elective CE course approved by the Commission.

(2) Non-elective CE courses are approved and regulated under §535.72 of this subchapter (related to Approval of Non-elective Continuing Education Courses).

(b) Application for approval of an elective CE course.

(1) For each continuing education course an applicant intends to offer, the applicant must:

(A) submit the appropriate CE Course Application form;

(B) pay the fee required by §535.101 (relating to Fees) and §535.210 of this title (relating to Fees); and

(C) submit a timed course outline that includes:

(i) course topics;

(ii) assignments and activities, if applicable;

(iii) topic or unit quizzes, if applicable; and

(iv) the amount of time dedicated for each item listed in clauses (i) - (iii) of this subparagraph.

(2) A provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application and pay all required fees, including a fee for content review.

(4) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Standards for course approval of elective CE course.

(1) To be approved as an elective CE course by the Commission, the course must:

(A) cover subject matter appropriate for a continuing education course for real estate or real estate inspection license holders;

(B) be current and accurate; and

(C) be at least one hour long with daily presentations no more than 10 hours long.

(2) A provider must demonstrate that a course meets the requirements under paragraph (1) of this subsection by submitting a statement describing the objective of the course and the relevance of the subject matter to activities for which a real estate or inspector license is required, including but not limited to relevant issues in the real estate market or topics which increase or support the license holder's development of skill and competence.

(3) The course must be presented in full hourly units.

(4) The course must be delivered by one of the following delivery methods:

(A) classroom delivery;

(B) distance education delivery; or

(C) a combination of (A) and (B), if at least 50% of the combined course is offered by classroom delivery.

(d) Approval notice. A CE provider shall not offer elective continuing education courses until the provider has received written notice of the approval from the Commission.

(e) Renewal of elective CE course approval.

(1) An elective CE course expires two years from the date of approval.

(2) Not earlier than 90 days before the expiration of a course approval, a provider may apply for a renewal of course approval for another two-year period.

(3) Approval of an application to renew an elective CE course approval shall be subject to the standards for initial approval set out in this section.

(4) The Commission may deny an application to renew an elective CE course approval if the provider is in violation of a Commission order.

(f) Approval of currently approved courses by a subsequent provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that subsequent provider must:

(A) submit the applicable course approval form(s);

(B) submit written authorization to the Commission from the owner of the rights to the course material granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the currently approved course, the subsequent provider is required to:

(A) offer the course as originally approved, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter (relating to Responsibilities and Operations of Continuing Education Providers).

§535.75. Responsibilities and Operations of Continuing Education Providers.

(a) Except as provided by this section, CE providers must comply with the responsibilities and operations requirements of §535.65 of this title (relating to Responsibilities and Operations of Providers of Qualifying Courses).

(b) Use of Qualified Instructor.

(1) Except as provided by this subsection, a CE provider must use an instructor that:

(A) is currently qualified under §535.74 of this title (relating to Qualifications for Continuing Education Instructors) ; and

(B) has expertise in the subject area of instruction and ability as an instructor;

(2) A CE instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval form;

(3) A CE provider may use the services of a guest instructor who is not qualified under §535.74 of this title for real estate or inspector elective CE courses provided that:

(A) the guest instructor instructs for no more than a total of 50% of the course; and

(B) a CE instructor qualified under §535.74 of this title remains in the classroom during the guest instructor's presentation.

(4) A CE provider may use the services of a guest instructor who is not qualified under §535.74 of this title for 100% of a real estate or inspector elective CE courses provided that:

(A) The CE provider is:

(i) an accredited college or university;

(ii) a professional trade association that is approved by the Commission as a CE provider under §535.71 of this subchapter (relating to Approval of Continuing Education Providers); or

(iii) an entity exempt under §535.71 of this subchapter; and

(B) the course is supervised and coordinated by a CE instructor qualified under §535.74 of this title who is responsible for verifying the attendance of all who request CE credit.

(c) CE course examinations.

(1) For real estate CE courses, examinations are only required for non-elective CE courses and must comply with the requirements in §535.72(g) of this subchapter (relating to Approval of Non-elective Continuing Education Courses) and have a minimum of four questions per course credit hour.

(2) For inspector CE courses, examinations are only required for CE courses offered through distance education delivery and must comply with the requirements in §535.72(g) of this subchapter (relating to Approval of Non-elective Continuing Education Courses) and have a minimum of four questions per course credit hour.

(d) Course completion roster. Instead of providing a course completion certificate, upon completion of a course, a CE provider shall submit a class roster to the Commission as outlined by this subsection.

(1) Classroom:

(A) A provider shall maintain a course completion roster and submit information contained in the roster by electronic means acceptable to the Commission not sooner than the number of course credit hours has passed and not later than the 10th calendar day after the date a course is completed.

(B) A course completion roster shall include:

(i) the provider's name and license;

(ii) a list of all instructors whose services were used in the course;

(iii) the course title;

(iv) the course numbers;

(v) the number of classroom credit hours;

(vi) the course delivery method;

(vii) the dates the student started and completed the course; and

(viii) the signature of an authorized representative of the provider for whom an authorized signature is on file with the Commission.

(C) The Commission shall not accept unsigned course completion rosters.

(2) Distance Education delivery method. A provider shall maintain a Distance Education Reporting form and submit information contained in that form by electronic means acceptable to the Commission, for each student completing the course not sooner than the number of course credit hours has passed after the student starts the course and not later than the 10th calendar day after the student completed the course.

(3) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(4) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(e) Maintenance of records. Maintenance of CE provider's records is governed by this subsection.

(1) A CE provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) All records may be maintained electronically but must be in a common format that is legibly and easily printed or viewed without additional manipulation or special software.

(3) A CE provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(4) Upon request, a CE provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(f) Changes in Ownership or Operation of an approved CE Provider. Changes in ownership or operation of an approved CE provider are governed by this subsection.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

(A) ownership;

(B) management; and

(C) the location of main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide a CE Provider Application including all required information and the required fee.

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

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Vanessa Burgess
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3284

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SUBCHAPTER I. LICENSE RENEWAL

22 TAC §535.92

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.92, Continuing Education Requirements, in Chapter 535, General Provisions, without changes to the proposed text, as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1299) and will not be republished. A correction of error to the preamble was published in the March 20, 2020, issue (45 TexReg 2082).

The amendments to §535.92 require three hours of continuing education (CE) to real estate sales agents or broker license renewals, the subject matter of which must be real estate contracts. The amendments additionally clarify which license holders must take the broker responsibility course and updates the professional designations available through CE credit.

The amendments were recommended by the Education Standards Advisory Committee.

Three comments were received on the amendments as proposed. Two commenters were in favor of the amendments as long as the hours didn't increase overall and the other commenter opposed the amendments because she felt the required course would not be beneficial to license holders engaged in commercial real estate. The Commission also received public comment in its meeting from an individual who believed the additional three hours of contracts should be in addition to the required 18 hours. The Commission declined to make any changes to the amendments based on these comments, noting that the Commission had deliberated the benefits of keeping the required hours to eighteen in its last open meeting. The effective date of this rule is February 1, 2021, which provides license holders and education providers with additional time to meet these new requirements and allows the agency to implement an approval and tracking system to ensure a more effective implementation of these requirements.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.210, §535.215

The Texas Real Estate Commission (TREC) adopts amendments to §535.210, Fees and §535.215, Inactive Inspector Status, in Subchapter R of Chapter 535, General Provisions, without changes to the proposed text, as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1300) and will not be republished.

The amendments to §535.210 eliminate the fee for inspectors for preparing certificates of active licensure or sponsorship. Eliminating the fee limits fund growth and provides more straightforward fee setting. The amendments also removes the amount of the fee assessed for licensing examinations, which is established by the third-party examination vendor. The amendments to §535.215 removes a provision that places a license on inactive status when an inspector applies to renew a license and pays the applicable fee, but who fails to complete the required continuing education as a condition for renewal. The provision is adopted for removal because it is no longer necessary. Previously it was needed to avoid a license holder who failed to complete required continuing education by the license expiration date from having to reapply for the license. Subsequently, a rule was added that allows license holders to pay a late renewal fee up to 180 days after license expiration. These amendments were recommended by the Texas Real Estate Inspector Committee.

One comment was received. The commenter disagreed with the rule and believed real estate inspectors should be placed on inactive status as they completed outstanding required continuing education. The Commission declined to make any changes as changes would be in conflict with new rules adopted by the Commission, which provide for an inspector to pay a late renewal fee up to 180 days after license expiration.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

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

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CHAPTER 539. RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT
SUBCHAPTER O. ADMINISTRATIVE PENALTIES

22 TAC §539.140

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.140, Schedule of Administrative Penalties, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes to the proposed text, as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1301) and will not be republished.

The amendments to §539.140 correct a reference within the rules.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

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

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 421. HEALTH CARE INFORMATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §421.41, concerning Definitions; §421.61, concerning Definitions; §421.71, concerning Definitions; §421.72, concerning Collection of Outpatient Emergency Visit Data; §421.77, concerning Event Files--Records, Data Fields and Codes; and §421.78, concerning Outpatient Emergency Visit Event Data Release.

The amendment to §421.61 is adopted with changes to the proposed text as published in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1602) and will be republished. The amendments to §§421.41, 421.71, 421.72, 421.77, and 421.78 are adopted without changes and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The rules are necessary to comply with House Bill 2041, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code, §108.002(10) and requires DSHS to collect, process, and make claim level data from freestanding emergency medical care facilities available.

COMMENTS

The 31-day comment period ended April 6, 2020. During this period, DSHS did not receive any public comments regarding the proposed rules.

Due to a staff comment, §421.61(16) was revised to include a period at the end of the definition of "Department of State Health Services."

SUBCHAPTER C. RULES RELATING TO REPORTS, DATA REQUESTS AND DATA FEES

25 TAC §421.41

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §§108.006, 108.009, 108.010, 108.011 and 108.013; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

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

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SUBCHAPTER D. COLLECTION AND RELEASE OF OUTPATIENT SURGICAL AND RADIOLOGICAL PROCEDURES AT HOSPITALS AND AMBULATORY SURGICAL CENTERS

25 TAC §421.61

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §§108.006, 108.009, 108.010, 108.011 and 108.013; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

§421.61. Definitions.

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

(1) Accurate and Consistent Data--Data that has been edited by DSHS and subjected to provider validation and certification.

(2) Ambulatory Surgical Care Data--Data for events associated with facility services, which require surgery to be performed in an operating room on an anesthetized patient.

(3) Ambulatory surgical center--An establishment licensed as an ambulatory surgical center under the Texas Health and Safety Code, Chapter 243.

(4) Anesthetized patient--For the purposes of this subchapter, an outpatient who receives an anesthetic (a substance that reduces sensitivity, feeling, or awareness to pain or bodily sensations or renders the patient unconscious) prior to surgical services from a hospital or ambulatory surgical center.

(5) ANSI 837 Institutional Guide--American National Standards Institute, Accredited Standards Committee X12N, 837 Health Care Institutional Claim Implementation Guide.

(6) ANSI 837 Professional Guide--American National Standards Institute, Accredited Standards Committee X12N, 837 Health Care Professional Claim Implementation Guide.

(7) APC--Ambulatory Payment Classification.

(8) APG--Enhanced Ambulatory Patient Grouper --A prospective payment system (PPS) for ambulatory patient care developed by 3M™. The APGs provide information regarding the kinds and amounts of resources utilized in an outpatient visit and classify patients with similar clinical characteristics.

(9) Audit--An electronic standardized process developed and implemented by DSHS to identify potential errors and mistakes in file structure format or data element content by reviewing data fields for the presence or absence of data and the accuracy and appropriateness of data.

(10) Certification File--One or more electronic files (may include reports concerning the data and its compilation process) compiled by DSHS that contain one record for each patient event which has at least one procedure covered in the revenue codes or surgical and radiological categories specified in §421.67(f) or §421.67(g) of this title (relating to Event Files--Records, Data Fields and Codes) submitted for each facility under this subchapter during the reporting quarter and may contain one record for any patient event occurring during one prior reporting quarter for whom additional event claims have been received.

(11) Certification Process--The process by which a provider confirms the accuracy and completeness of the certification file required to produce the public use data file as specified in §421.66 of this title (relating to Certification of Compiled Event Data).

(12) Charge--The amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances, government mandated fee schedules or write offs for charity care, bad debt or administrative courtesy. The term does not include co-payments charged to health maintenance organization enrollees by providers paid by capitation or salary in a health maintenance organization.

(13) Clinical Classifications Software--A classification system that groups diagnoses and procedures into a limited number of clinically meaningful categories developed at the United States Department of Health and Human Services, Agency for Healthcare Research and Quality (AHRQ).

(14) Comments--The notes or explanations submitted by the facilities, physicians or other health professionals concerning the provider quality reports or the encounter data for public use as described in the Texas Health and Safety Code, §108.010(c) and (e) and §108.011(g) respectively.

(15) Data format--The sequence or location of data elements in an electronic record according to prescribed specifications.

(16) DSHS--Department of State Health Services.

(17) EDI--Electronic Data Interchange--A method of sending data electronically from one computer to another. EDI helps providers and payers maintain a flow of vital information by enabling the transmission of claims and managed care transactions.

(18) Electronic Filing--The submission of computer records in machine readable form by modem transfer from one computer to another (EDI) or by recording the records on a nine-track magnetic tape, computer diskette, magnetic, or portable data storage media acceptable to DSHS.

(19) Emergency Department--Department or room within a hospital as determined by federal or state law for the provision of emergency health care.

(20) Emergency Department Data--Events associated with hospital services in an emergency department or emergency room.

(21) Error--Data submitted on a event file which are not consistent with the format and data standards contained in this subchapter or with auditing criteria established by DSHS.

(22) Ethnicity--The status of patients relative to Hispanic background. Facilities shall report this data element according to the following ethnic types: Hispanic or Non-Hispanic.

(23) Event--The medical screening examination, triage, observation, diagnosis or treatment of a patient within the authority of a facility.

(24) Event claim--A set of computer records as specified in §421.67 of this title relating to a specific patient. "Event claim" corresponds to the ANSI 837 Institutional Guide and ANSI 837 Professional Guide term, "Transaction set."

(25) Event file--A computer file as defined in §421.67 of this title periodically submitted on or on behalf of a facility in compliance with the provisions of this subchapter. "Event File" corresponds to the ANSI 837 Institutional Guide and ANSI 837 Professional Guide terms, "Communication Envelope" or "Interchange Envelope."

(26) Facility--For the purposes of this subchapter, a facility is a hospital or ambulatory surgical center, required to report under the Texas Health and Safety Code, Chapter 108 and this subchapter.

(27) Facility Type Indicators--An indicator that provides information to the data user as to the type of facility or the primary health services delivered at that hospital (e.g., Hospital based ambulatory surgical unit and hospitals with an emergency department or emergency room) and ambulatory surgical centers. A facility may have more than one indicator.

(28) Geographic identifiers--A set of codes indicating the health service region and county in which the patient resides.

(29) HCPCS--Healthcare Common Procedure Coding System of the Centers for Medicare and Medicaid Services. This includes the "Current Procedural Terminology" (CPT) codes (maintained by the "American Medical Association" (AMA)), which are "Level 1" HCPCS codes.

(30) HIPPS--Health Insurance Prospective Payment System.

(31) Hospital--A public, for-profit or nonprofit institution licensed as a general or special hospital (25 TAC §133.2(21)) of this title, or a hospital owned by the state.

(32) ICD--International Classification of Disease.

(33) IRB--Institutional Review Board composed of DSHS' appointees or agents who have experience and expertise in ethics, patient confidentiality, and health care data who review and approve or disapprove requests for data or information other than the outpatient event public use data.

(34) Operating or Other Physician--The "physician" licensed by the Texas Medical Board or "other health professional" licensed by the State of Texas who performed the surgical or radiological procedure most closely related to the principal diagnosis.

(35) Other health professional--A person licensed to provide health care services other than a physician. An individual other than a physician who provides diagnostic or therapeutic procedures to patients. The term encompasses persons licensed under various Texas practice statutes, such as psychologists, chiropractors, dentists, nurse practitioners, nurse midwives, and podiatrists who are authorized by the facilities to examine, observe or treat patients.

(36) Other Provider--For the purposes of reporting on the modified ANSI 837 Institutional Guide, the physician, other health professional or facility as reported on a claim, who performed a secondary surgical or a primary or secondary radiological procedure on the patient for the event if they are not reported as the operating or other physician or the facility. In the case where a substitute provider (locum tenens) is used, that physician or other health professional shall be submitted as specified in this subchapter.

(37) Outpatient or patient--For the purposes of this subchapter, a patient who receives surgical or radiological services from an ambulatory surgical center, or a patient who receives surgical or radiological services from a hospital and is not admitted to a hospital for inpatient services. Outpatients include patients who receive one or more services covered by the revenue codes or surgical and radiological categories that are specified in §421.67(f) or §421.67(g) of this title, which may occur in the emergency department, ambulatory care, radiological, imaging or other types of hospital units. Outpatient includes a patient who is transferred from an ambulatory surgical center to another facility or a hospital patient who is under observation and not admitted to the hospital.

(38) Patient account number--A number assigned to each patient by the facility which appears on each computer record in a patient event claim. This number is not consistent for a given patient from one facility to the next, or from one admission to the next in the same facility. DSHS will delete or encrypt this number to protect patient confidentiality prior to release of data.

(39) Physician--An individual licensed under the laws of this state to practice medicine under the Medical Practice Act, Occupations Code, Chapter 151 et seq.

(40) Provider--For the purposes of this subchapter, a physician or facility.

(41) Public use data file--For the purposes of this subchapter, a data file composed of event claims which have been altered by the deletion, encryption or other modification of data fields to protect patient and physician confidentiality and to satisfy other restrictions on the release of data imposed by statute.

(42) Race--A division of patients according to traits that are transmissible by descent and sufficient to characterize them as distinctly human types. Facilities shall report this data element according to the following racial types: American Indian, Eskimo, or Aleut; Asian or Pacific Islander; Black; White; or Other.

(43) Radiological procedures--For the purposes of this subchapter, diagnostic procedures performed on a patient using radiant energy devices (Projection Radiology (for example - X-ray), Computed Tomography, or other ionizing radiation) or diagnostic radioactive material or other non-ionizing imaging devices (e.g., Magnetic Resonance Imaging, Nuclear Medicine devices (for example Positron Emission Tomography), Sound Imaging devices (for example Ultrasound or Echocardiography), Thermal imaging devices, Diagnostic Light imaging devices (for example - diagnostic photography, endoscopy, and fundoscopy) and other diagnostic imaging devices.

(44) Rendering provider or rendering other health professional--For the purposes of reporting on the modified ANSI 837 Professional Guide, the physician or other health professional who performed the surgical or radiological procedure on the patient for the event. In the case where a substitute provider (locum tenans) is used, that physician or other health professional shall be submitted as specified in this subchapter. For purposes of this definition, the term "provider" is not limited to only a physician or facility as defined in paragraphs (26), (36), and (40) of this subsection.

(45) Required minimum data set--The list of data elements for which facilities may submit an event claim for each patient event occurring in the facility. The required minimum data sets are specified in §421.67(d) and (e) of this title. This list does not include all the data elements that are required by the modified ANSI 837 Institutional Guide or modified ANSI 837 Professional Guide to submit an acceptable event file. For example: Interchange Control Headers and Trailers, Functional Group Headers and Trailers, Transaction Set Headers and Trailers and Qualifying Codes (which identify or qualify subsequent data elements).

(46) Research data file--A customized data file, which may include the data elements in the public use file and may include data elements other than the required minimum data set submitted to DSHS, except those data elements that could reasonably identify a patient or physician.

(47) Submission--The transfer of a set of computer records as specified in §421.67 of this title that constitutes the event file for one or more reporting hospitals under this subchapter.

(48) Submitter--The person or organization which physically prepares an event file for one or more facilities and submits them under this subchapter. A submitter may be a facility or an agent designated by a facility or its owner.

(49) Surgical procedure--For the purposes of this subchapter, an invasive procedure that penetrates or breaks the skin or other patient tissue (in vivo) for the purpose diagnosing, evaluating, analyzing, monitoring or treating a patient.

(50) THCIC Identification Number--A string of 6 characters assigned by DSHS to identify facilities for reporting and tracking purposes. For a facility operating multiple facility locations under one license number and duplicating services at those locations, DSHS will assign a distinguishable identifier for each separate facility location under one license number. The relationship of the identifier to the name and license number of the facility is public information.

(51) Uniform patient identifier--A unique identifier assigned by DSHS to an individual patient and composed of numeric, alpha, or alphanumeric characters, which remains constant across facilities and patient events. The relationship of the identifier to the patient-specific data elements used to assign it is confidential.

(52) Uniform physician identifier--A unique identifier assigned by DSHS to a physician or other health professional who is reported as operating, rendering or other provider providing health care services or treating a patient in a facility and which remains constant across facilities. The relationship of the identifier to the physician-specific data elements used to assign it is confidential. The uniform physician identifier shall consist of alphanumeric characters.

(53) Validation--The process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification.

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

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SUBCHAPTER E. COLLECTION AND RELEASE OF EMERGENCY VISIT DATA

25 TAC §§421.71, 421.72, 421.77, 421.78

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code, §§108.006, 108.009, 108.010, 108.011 and 108.013; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.5

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 23, 2020 adopted an amendment to §53.5, concerning Recreational Hunting Licenses, Stamps, and Tags the Managed Lands Deer (MLD) Programs, without changes to the proposed text as published in the December 6, 2019 issue of the *Texas Register* (44 TexReg 7487). The rules will not be republished.

The amendment establishes fees for participation in the Managed Lands Deer Program (MLDP) administered by the department. The MLDP is an extremely popular program providing landowners and land managers with additional flexibility to manage deer populations, improve habitats, and provide greater hunting opportunities under the guidance of department biologists. Demand in MLDP participation has increased ten-fold since 2000, which has presented significant challenges for the department, primarily with respect to the allocation of workforce resources to meaningfully engage with MLDP participants, meet technical guidance requests, and administer the MLDP. In response, the Texas Legislature in 2019 enacted Senate Bill 733, which explicitly authorizes the commission to establish a fee for participation in the MLDP.

The proposed amendment establishes a $30 fee for each management unit within a property that is enrolled in the Harvest Option (HO), provided the property is not part of an aggregate acreage enrolled in the MLDP; a $30 fee for each aggregate acreage enrolled in the HO; a $300 fee for the first management unit of each property enrolled in the Conservation Option (CO) plus a $30 fee for each additional management unit of a property enrolled in the CO; a $300 fee for each aggregate acreage enrolled in the CO; and a $30 fee for each management unit of a wildlife management association or cooperative enrolled in the CO. The department has determined that fees for HO participation should be less than those for CO participation because administration of the HO places substantially less demand on agency resources than that for the CO, participation in which includes customized habitat and harvest recommendations from department staff as well as program benefits not available to HO participants. Similarly, because wildlife management associations and cooperatives for the most part desire assistance only with respect to the harvest of antlerless deer, the department has determined that fees for those types of entities should reflect that smaller footprint.

The fee amounts were selected by the department after soliciting and receiving input from department staff, stakeholder groups, and advisory committees regarding what would be a reasonable fee for participation in the MLDP considering the benefits received, the demands on department staff in administering the various options available to landowners under the MLDP, and which would not result in significant attrition from the MLDP by landowners. The intended purpose of the fees is to support additional biologist positions and maintenance of the department's online Land Management Assistance (LMA) system that is used to administer MLDP.

The department received 725 comments opposing adoption of the rules as proposed. Of those comments 472 offered a reason

or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Sixty-four commenters opposed adoption and stated that the proposed fees for MLDP participation are a tax. The department disagrees with the comments and responds that the MLDP fee is not a tax, but rather a fee authorized by statute to be used to administer the MLDP. MLDP participation is voluntary and participants receive a greater amount of time to accomplish a department-dictated harvest quota and are exempt from individual bag limits. Landowners who choose not to enroll in the program have the complete freedom to achieve their own management and harvest goals under the regular season and bag limits; therefore, there is no coercive effect forcing anyone to participate in the MLDP. No changes were made as a result of the comments.

Sixty-two commenters opposed adoption and stated that there should be no fee for MLDP participation because program participation already requires financial expense in the form of habitat management practices and surveys. The department agrees with the comments but responds that program participation is completely voluntary; therefore, expenses incurred by cooperators are not mandated but elective. No changes were made as a result of the comments.

Twenty-eight commenters opposed adoption and stated that MLDP fees should be calculated on a sliding scale based on the number of tags issued, acreage, or biologist time. The department disagrees with the comments and responds that several different funding models were investigated and rejected because of logistical or administrative complexities that tended to defeat the purpose of the fees, which is to create additional capacity to meet demand for technical guidance. The department, with advice and guidance from various advisory committees and MLDP cooperators, determined that the construct of an initial participation fee tied to a discrete management unit, augmented by additional fees for aggregate properties and additional management units, is the most equitable, efficient and effective method of achieving the goal of the rule. No changes were made as a result of the comments.

Twenty-seven commenters opposed adoption and stated that MLDP fees will discourage or decimate wildlife management associations and co-ops. The department disagrees with the comments and responds that the MLDP fee structure for wildlife management associations and co-ops, will consist of a $30 fee for each management unit within an association or co-op and as such will not constitute a significant financial barrier to program participation in or by wildlife management associations and co-ops. No changes were made as a result of the comments.

Twenty-seven commenters opposed adoption and stated that MLDP fees should not be imposed because the burden of conservation is on the landowners who do all the work and provide free data to the department. The department disagrees with the comments and responds that technical guidance is the transmission from the department to the public of proven techniques and methods of habitat and population management, acquired by many years of scientific observation, trial and error experimentation, and practical knowledge. The MLDP is not and was never intended to be a program in which the department conducts the habitat management recommendations on behalf of the landowner. Additionally, the department responds that it is impossible to provide technical guidance for any property without data of some kind, and that landowners unwilling to do data collection for their own benefit are probably not going to benefit from program participation. No changes were made as a result of the comments.

Twenty-six commenters opposed adoption and stated that hunting license fees should be raised to pay for additional technical guidance, since hunters are the ultimate beneficiaries of good wildlife management. The department disagrees with the comments and responds that MLDP participants receive additional benefits in the form of longer hunting season and harvest flexibility not afforded to other hunters that follow county deer harvest regulation. Therefore, all hunters should not be required to pay a higher hunting license fee for the benefit of those under MLDP. No changes were made as a result of the comments.

Twenty-two commenters opposed adoption and stated that it costs the department nothing to administer the program because everything is done by computer and the biologists work from their offices. The department disagrees with the comments and responds that fees for administering the MLDP are necessary precisely because the department cannot address the increasing demand for technical guidance without imposing a fee for MLDP services. The department also notes that information technology development, delivery, and maintenance are a significant but necessary expense and additional revenue is necessary to reduce administrative burdens on department biologists to allow more time in the field providing technical guidance with landowners. No changes were made as a result of the comments.

Twenty-one commenters opposed adoption and stated either that the MLDP fees favor large/wealthy landowners or are unfair to small landowners. The department disagrees with the comments and responds that the MLDP fees as adopted represent only the department's efforts to fund the provision of technical assistance to as many landowners and land managers as possible, and were calculated based in part on input from a variety of landowners and land managers, including department advisory committees. No changes were made as a result of the comments.

Twenty commenters opposed adoption and stated that charging a fee for MLDP punishes landowners and land managers for cooperating with the department and doing the right things for conservation. The department disagrees with the comments and responds that the fee for MLDP participation is necessary to make the department's biological expertise available to more landowners and thus is not punitive. No changes were made as a result of the comments.

Sixteen commenters opposed adoption and stated the MLDP fees were a government power grab or government overreach. The department disagrees with the comments and responds that the rules were adopted under authority explicitly delegated to the commission by the legislature for that purpose and do not exceed legislative intent in any way. No changes were made as a result of the comments.

Fifteen commenters opposed adoption and stated that the MLDP provides no value. The department disagrees with the comments and responds that program participation is entirely voluntary; any person who doesn't believe that there is value in the MLDP is free to choose not to participate. No changes were made as a result of the comments.

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Four commenters opposed adoption and stated the department should enforce hunting lease license requirements. The department disagrees that it is not enforcing hunting lease license requirements. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that wildlife cooperatives should be exempted from the fee requirement. The department disagrees with the comments and responds that the department believes that every entity that receives the benefits of MLDP participation should help to fund the program. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that MLDP fees would result in revenue losses to the department because fewer out-of-state hunters will purchase non-resident hunting licenses. The department disagrees with the comments and responds that there is no data to suggest that the MLDP fees will cause non-residents to avoid hunting in Texas. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that fees and restrictions are killing hunting heritage. The department disagrees with the comments and responds that although hunting participation has experienced a decline, fees and regulations are

not the drivers of that phenomenon. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that charging a fee for MLDP participation will result in the overharvest of does. The department disagrees with the comments and responds that because the harvest of antlerless deer under MLDP is tailored to individual properties and is otherwise governed by county bag limits that have been calculated to prevent overharvest, there is little chance that the MLDP fees will result in an overharvest of antlerless deer. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that charging a fee for MLDP participation will result in the underharvest of does. The department disagrees with the comments and responds that the harvest of antlerless deer under MLDP is tailored to individual properties and landowners who don't participate in the MLDP are free to allow the harvest of as many antlerless deer per hunter as the county bag limits allow, accordingly, there is little likelihood that underharvest of antlerless deer will occur as a result of the rule. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that charging a fee for MLDP participation will result in the overharvest of bucks. The department disagrees with the comments and responds that because the harvest of buck deer under MLDP is tailored to individual properties and is otherwise governed by county bag limits that have been calculated to prevent overharvest, there is little chance that the MLDP fees will result in an overharvest of buck deer. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the MLDP fees will just be passed on to hunters. The department neither agrees nor disagrees with the comments and responds that cost-recovery methodologies are completely up to individual landowners and land managers. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the department should discontinue programs or divert other revenue streams to the MLDP. The department disagrees with the comments and responds that the discontinuation of other programs or diversion of revenue streams would hamper and disrupt the ability of the agency to achieve its mission. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule will result in cooperators spending more money for less service. The department disagrees with the comment and responds that the decision to participate in the MLDP (and pay a fee) is completely up to the individual landowner. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will cause people to abandon the Conservation Option and move to the Harvest Option. The department neither agrees nor disagrees with the comment and responds that landowners and land managers should be able to choose the MLDP option that is best for them. No changes were made as a result of the comment.

One commenter opposed adoption and stated that ranchers depend on the MLDP to make money and the system works fine without a fee. The department disagrees with the comment and responds that while hunting-related income is certainly a valuable downstream effect of the MLDP, the program's intent is to encourage habitat conservation, which is becoming more and more difficult to provide without additional fiscal inputs. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule will result in fewer hunters because of shorter seasons. The department disagrees with the comment and responds, first, that the length of hunting seasons is not affected by the rule (because harvest on MLDP properties is governed by the period of validity of the tags), and second, that hunters, as consumers of a service, will go where the service they seek is available. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule amounts to "pay to play." The department neither agrees nor disagrees with the comment and responds that the MLDP is a voluntary program that up until now has been able to be offered at no cost to participants; the popularity of the program, in conjunction with limited department resources, makes it necessary to charge an affordable fee for program participation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the cost/benefit note in the proposed rulemaking did not prove that habitat and populations will suffer if the MLDP fees are not adopted and that, therefore the rulemaking cannot be justified. The department disagrees with the comment and responds that there is no requirement of the Administrative Procedure Act that requires the department to analyze the proposed rule's impacts to habitats and populations nor is this the intent of the rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the preamble to the proposed rule contained no explanation of how the revenue will be used. The department disagrees with the comment and responds that the preamble to the proposed rule not only explained the legislative dedication of MLDP fee revenue, but also stated, "The intended purpose of the fees is to support additional biologist positions and maintenance of the department's online Land Management Assistance (LMA) system that is used to administer MLDP." No changes were made as a result of the comment.

One commenter opposed adoption and stated that the preamble to the proposed rulemaking stated no staff would be needed, which means the MLDP fees aren't needed. The department disagrees with the comment and responds that a review of the proposal as published does not substantiate the commenter's claim. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the economic impact statement in the preamble of the proposed rulemaking was untruthful because the rule will have an economic impact. The department disagrees with the comment and responds that the economic impact statement required under the Administrative Procedure Act need only address direct impacts, such as fees, administrative costs, professional services, and so on. The fee provisions of the rule were the only direct economic impacts imposed by the rule and were addressed as required. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP fees will put pressure on properties with low fences. The department disagrees with the comment and responds that there is no connection between MLDP participation and fencing, unless it is cross-fencing within a property. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP fees will hurt senior citizens on fixed incomes. The department, while sympathetic to senior citizens on fixed incomes, disagrees with the comment and responds that the decision to participate in the MLDP is voluntary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the MLDP should be run by the Texas Department of Agriculture if the department isn't up to the task. The department disagrees with the comment and responds that the Texas Parks and Wildlife Department is the state agency with primary responsibility for managing wildlife resources in this state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP fees will reduce the contribution of hunters to the state economy. The department disagrees with the comment and responds that there is no connection between hunter behavior and the MLDP. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP fees will reduce the number of hunting clubs in the program. The department disagrees with the comment and responds that it is difficult to envision a scenario in which MLDP fees would be a significant factor in hunting club numbers. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the MLDP should be discontinued. The department disagrees with the comment and responds that the MLDP is immensely popular as well as being a proven success. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP fees should be paid by hunters. The department disagrees with the comment and responds that although the revenues from hunting license sales are used to benefit all hunters and landowners, not all hunters hunt on MLDP properties. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has been dishonest by establishing the MLDP without a fee and then imposing a fee after people participated in the program. The department disagrees with the comment and responds that the MLDP was first implemented as a no-cost habitat management initiative a quarter-century ago without any expectation that it would eventually become as popular and as effective as it has become, or that the popularity of the program would outstrip the department's ability to administer it at no cost to participants. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should reduce salaries instead of imposing a fee for MLDP participation. The department disagrees with the comment and responds that salary reductions cannot generate the revenues necessary to achieve the goals of the implementation of the MLDP fee. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if the department wants to reduce burden on staff, the Harvest Option should allow the take of bucks by firearm in the month of October. The department disagrees with the comment and responds that the Harvest Option is designed for landowners and land managers who do not wish to engage in habitat management practices other than deer harvest; the Conservation Option offers benefits such as early harvest of deer by firearm in exchange for an agreement to implement specific habitat management practices. Therefore, allowing buck harvest by firearm during October would defeat the purpose of the program. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the legislature should cap the fee. The department disagrees with the comment and responds that the legislature, in delegating the explicit authority to the department to impose a fee for MLDP participation, did not provide for the capping of fees. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP fees should be capped. The department disagrees with the comment and responds that the fees for MLDP participation are established to provide for expanding the capacity of the MLDP to meet program demand. No changes were made as a result of the comment.

One commenter opposed adoption and stated that parkland should be sold to pay for additional biologists. The department disagrees with the comment and responds that revenues from the sale of parklands are required by statute to be spent only on the state park system. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a reduced fee for landowners who employ private biologists. The department disagrees with the comment and responds that the department still incurs expenses evaluating management plans and survey data supplied by private biologists. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the agency is in violation of 31 U.S.C. §1341. The department disagrees with the comment and responds that 31 U.S.C. §1341 applies to contracts made by the federal government and has no bearing on this rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no MLDP fee for cooperators that are non-commercial and family owned. The department disagrees with the comment and responds that program participation in the MLDP is not predicated on the nature of the entity seeking guidance. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule penalizes those participating in the Conservation Option, which does more for the resource. The department disagrees with the comment and responds, that participation in the MLDP is voluntary and the department does not believe the fee structure imposed by the rule is a significant disincentive to participation. No changes were made as a result of the comment.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter Y, which authorizes the establishment of a fee for participation in the MLDP.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002149

Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Effective date: June 15, 2020
Proposal publication date: December 6, 2019
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION
DIVISION 1. GENERAL PROVISIONS

31 TAC §65.29

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 23, 2020, adopted an amendment to §65.29, concerning the Managed Lands Deer (MLD) Programs, with changes to the proposed text as published in the December 6, 2019, issue of the *Texas Register* (44 TexReg 7489). The rule will be republished.

Changes to the proposed text: The terms in subsection (a) have been rearranged according to alphabetical order. In subsection (b)(1)(C), the phrase "Friday closest to September 30" with the phrase "Friday immediately preceding the Saturday closest to September 30." The intent of the proposed language was to allow cooperators to wait until, but not beyond, the first day of MLDP tag validity to remit MLDP fees to the department or decline program participation. However, in some years, the Friday closest to September 30 falls after the beginning of the period of validity for MLDP tags which is on the Saturday closest to September 30, necessitating a change to preserve the original intent of the provision. Finally, proposed subsection (c)(2)(H)(ii)(IV) was redesignated as (c)(2)(H)(iii) for purposes of parallelism, which is nonsubstantive.

The amendment consists of several components, beginning with renaming the title of the section to reflect the fact that the Managed Lands Deer Program is a single program, and not multiple programs.

Next, the amendment adds definitions for "aggregate acreage" and "management unit" to subsection (a), which is necessary to differentiate between the options available for enrollment of multiple portions of a tract of land or multiple tracts of land in the MLDP. "Aggregate acreage" is defined as "contiguous tracts of land, to, from, and between which deer have complete and unrestricted access, combined by multiple landowners to create an area of land for the purpose of enrollment in the MLDP." "Management unit" is defined as "a specific portion of a tract of land enrolled in the MLDP for which the department shall specify a harvest quota and tag issuance."

The amendment also updates a definition. The department has determined that the term "Resource Management Unit" does not accurately describe the scale at which deer population data are utilized by the department under the MLDP and should be re-titled "Deer Management Unit." The replacement is made throughout the rule.

Next, the amendment alters current subsection (b)(1), (9), and (10) to create a new deadline for decisions to decline participation in the MLDP, stipulate that date as the deadline for fee payment for program participation, and provide for default harvest regulation in the event that a program participant does not remit the required fee by the deadline. The current rules stipulate September 15 as the deadline for declining program participation, which the amendment as adopted replaces with "the Friday immediately preceding September 30." Since the amendment also requires fee payment by no later than the Friday immediately preceding September 30 in order for MLDP enrollment to be valid, the department has determined that instead of having two deadlines for essentially the same thing, it is prudent to have one deadline. The Friday immediately preceding September 30 was selected because the period of validity for MLDP tags begins at that time. Additionally, the amendment provides that failure to timely remit required fees will result in disqualification for program participation and automatic default to the harvest regulations established by §65.42, relating to Deer *(i.e.,* the standard county seasons, bag limits, special provisions, etc.). Obviously, failure to remit required fees should not result in enjoyment of program benefits. The amendment also corrects an internal reference that is missing from the current rule.

The amendment also alters subsection (c)(1) and (2) to provide that the department shall issue a harvest quota for each management unit of a tract of land enrolled in the HO or CO. The department has determined that on a single tract of land it is necessary to provide a harvest quota and tag issuance for unique management units within the tract of land *(i.e.,* the property is divided into multiple "high-fenced" pastures) or that landowners may desire to have a harvest quota and tag issuance for unique management units with the tract of land *(i.e.,* separate pastures are leased to different groups of hunters).

The amendment also alters subsection (c)(2) to expressly provide for the use of MLDP tags on any tract of land within an aggregate acreage enrolled under the CO. The current rule allows participants in the HO to use tags on any property within an aggregate acreage. The department has determined there is no reason not to allow this practice on aggregate acreages under the CO as well.

Finally, the amendment makes a non-substantive modification to provisions regarding the enrollment of aggregate acreages in the HO and CO in order to utilize consistent language and rule structure and avoid confusion.

The department received 725 comments opposing adoption of the rules as proposed. Of those comments 472 offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Sixty-four commenters opposed adoption and stated that the proposed fees for MLDP participation are a tax. The department disagrees with the comments and responds that the MLDP fee is not a tax, but rather a fee authorized by statute to be used to administer the MLDP. MLDP participation is voluntary and participants receive a greater amount of time to accomplish a department-dictated harvest quota and are exempt from individual bag limits. Landowners who choose not to enroll in the program have the complete freedom to achieve their own management and harvest goals under the regular season and bag limits; therefore, there is no coercive effect forcing anyone to participate in the MLDP. No changes were made as a result of the comments.

Sixty-two commenters opposed adoption and stated that there should be no fee for MLDP participation because program participation already requires financial expense in the form of habitat management practices and surveys. The department agrees with the comments but responds that program participation is

completely voluntary; therefore, expenses incurred by cooperators are not mandated but elective. No changes were made as a result of the comments.

Twenty-eight commenters opposed adoption and stated that MLDP fees should be calculated on a sliding scale based on the number of tags issued, acreage, or biologist time. The department disagrees with the comments and responds that several different funding models were investigated and rejected because of logistical or administrative complexities that tended to defeat the purpose of the fees, which is to create additional capacity to meet demand for technical guidance. The department, with advice and guidance from various advisory committees and MLDP cooperators, determined that the construct of an initial participation fee tied to a discrete management unit, augmented by additional fees for aggregate properties and additional management units, is the most equitable, efficient and effective method of achieving the goal of the rule. No changes were made as a result of the comments.

Twenty-seven commenters opposed adoption and stated that MLDP fees will discourage or decimate wildlife management associations and co-ops. The department disagrees with the comments and responds that the MLDP fee structure for wildlife management associations and co-ops, will consist of a $30 fee for each management unit within an association or co-op and as such will not constitute a significant financial barrier to program participation in or by wildlife management associations and co-ops. No changes were made as a result of the comments.

Twenty-seven commenters opposed adoption and stated that MLDP fees should not be imposed because the burden of conservation is on the landowners who do all the work and provide free data to the department. The department disagrees with the comments and responds that technical guidance is the transmission from the department to the public of proven techniques and methods of habitat and population management, acquired by many years of scientific observation, trial and error experimentation, and practical knowledge. The MLDP is not and was never intended to be a program in which the department conducts the habitat management recommendations on behalf of the landowner. Additionally, the department responds that it is impossible to provide technical guidance for any property without data of some kind, and that landowners unwilling to do data collection for their own benefit are probably not going to benefit from program participation. No changes were made as a result of the comments.

Twenty-six commenters opposed adoption and stated that hunting license fees should be raised to pay for additional technical guidance, since hunters are the ultimate beneficiaries of good wildlife management. The department disagrees with the comments and responds that MLDP participants receive additional benefits in the form of longer hunting season and harvest flexibility not afforded to other hunters that follow county deer harvest regulation therefore all hunters should not be required to pay a higher hunting license fee for the benefit of those under MLDP. No changes were made as a result of the comments.

Twenty-two commenters opposed adoption and stated that it costs the department nothing to administer the program because everything is done by computer and the biologists work from their offices. The department disagrees with the comments and responds that fees for administering the MLDP are necessary precisely because the department cannot address the increasing demand for technical guidance without imposing a fee for MLDP services. The department also notes that information technology development, delivery, and maintenance are a significant but necessary expense and additional revenue is necessary to reduce administrative burdens on department biologist to allow more time in the field providing technical guidance with landowners. No changes were made as a result of the comments.

Twenty-one commenters opposed adoption and stated either that the MLDP fees favor large/wealthy landowners or are unfair to small landowners. The department disagrees with the comments and responds that the MLDP fees as adopted represent only the department's efforts to fund the provision of technical assistance to as many landowners and land managers as possible, and were calculated based in part on input from a variety of landowners and land managers, including department advisory committees. No changes were made as a result of the comments.

Twenty commenters opposed adoption and stated that charging a fee for MLDP punishes landowners and land managers for cooperating with department and doing the right things for conservation. The department disagrees with the comments and responds that the fee for MLDP participation is necessary to make the department's biological expertise available to more landowners and thus is not punitive. No changes were made as a result of the comments.

Sixteen commenters opposed adoption and stated the MLDP fees were a government power grab or government overreach. The department disagrees with the comments and responds that the rules were adopted under authority explicitly delegated to the commission by the legislature for that purpose and do not exceed legislative intent in any way. No changes were made as a result of the comments.

Fifteen commenters opposed adoption and stated that the MLDP provides no value. The department disagrees with the comments and responds that program participation is entirely voluntary; any person who doesn't believe that there is value in the MLDP is free to choose not to participate. No changes were made as a result of the comments.

Thirteen commenters opposed adoption and stated that people should not have to pay to hunt or engage in conservation on their own land. The department agrees with the comments, but disagrees that the rules as adopted require any landowner to incur a financial obligation as a condition for engaging in hunting or conservation. No changes were made as a result of the comments.

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funds in the Game, Fish, and Water Safety account in the state treasury. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated that participation in the MLDP will decline and deer populations will increase. The department disagrees with the comments and responds that even if MLDP participation declined, county deer harvest regulations are still in effect that allow for deer harvest and management of the deer population. MLDP provides for a longer season and flexibility in bag limits, but does not ensure appropriate deer harvest by participants to control deer populations. No changes were made as a result of the comments.

Ten commenters opposed adoption and stated that the state should be paying landowners to manage wildlife. The department disagrees with the comments and responds that funding mechanisms for such a program do not exist. No changes were made as a result of the comments.

Eight commenters opposed adoption and stated that hunting costs are already too high. The department, while agreeing that the costs of hunting are a concern, disagrees that participation in the MLDP, even on a fee basis, is a significant contributor to that situation, because landowners and land managers are the ultimate arbiters of the final cost of providing hunting opportunity, which is the greatest share of the cost of hunting. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that a fee for MLDP participation on top of the costs of CWD (chronic wasting disease) testing are too much for landowners and land managers to absorb. The department disagrees with the comments and responds that the only persons required to personally pay for CWD testing are the holders of deer breeder permits and the owners of certain release sites. A deer breeder permit is required to breed white-tailed or mule deer in captivity for sale or release, and is not a required permit for any activity other than breeding white-tailed or mule deer in captivity for sale or release. However, the regulations governing deer breeding require CWD testing to be performed, a factor that certainly must be considered by anyone who seeks to engage in the regulated activity. Similarly, participation in the MLDP is voluntary, not mandatory, and can but is not required to involve financial commitment on the part of the cooperator, although that is the choice of the cooperator, because the program offers great flexibility in meeting program requirements. Therefore, the department reasons that because in both cases participation is voluntary, the landowner or land manager makes the ultimate decision as to any costs incurred as a result of participation. No changes were made as a result of the comments.

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Four commenters opposed adoption and stated the department should enforce hunting lease license requirements. The department disagrees that it is not enforcing hunting lease license requirements. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that wildlife cooperatives should be exempted from the fee requirement. The department disagrees with the comments and responds that the department believes that every entity that receives the benefits of MLDP participation should help to fund the program. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that MLDP fees would result in revenue losses to the department because fewer out-of-state hunters will purchase non-resident hunting licenses. The department disagrees with the comments and responds that there is no data to suggest that the MLDP fees will cause non-residents to avoid hunting in Texas. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that fees and restrictions are killing hunting heritage. The department disagrees with the comments and responds that although hunting participation has experienced a decline, fees and regulations are not the drivers of that phenomenon. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that charging a fee for MLDP participation will result in the overharvest of does. The department disagrees with the comments and responds that because the harvest of antlerless deer under MLDP is tailored to individual properties and is otherwise governed by county bag limits that have been calculated to prevent overharvest, there is little chance that the MLDP fees will result in an overharvest of antlerless deer. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that charging a fee for MLDP participation will result in the underharvest of does. The department disagrees with the comments and responds that the harvest of antlerless deer under MLDP is tailored to individual properties and landowners who don't participate in the MLDP are free to allow the harvest of as many antlerless deer per hunter as the county bag limits allow, accordingly, there is little likelihood

that underharvest of antlerless deer will occur as a result of the rule. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that charging a fee for MLDP participation will result in the overharvest of bucks. The department disagrees with the comments and responds that because the harvest of buck deer under MLDP is tailored to individual properties and is otherwise governed by county bag limits that have been calculated to prevent overharvest, there is little chance that the MLDP fees will result in an overharvest of buck deer. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the MLDP fees will just be passed on to hunters. The department neither agrees nor disagrees with the comments and responds that cost-recovery methodologies are completely up to individual landowners and land managers. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the department should discontinue programs or divert other revenue streams to the MLDP. The department disagrees with the comments and responds that the discontinuation of other programs or diversion of revenue streams would hamper and disrupt the ability of the agency to achieve its mission. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule will result in cooperators spending more money for less service. The department disagrees with the comment and responds that the decision to participate in the MLDP (and pay a fee) is completely up to the individual landowner. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will cause people to abandon the Conservation Option and move to the Harvest Option. The department neither agrees nor disagrees with the comment and responds that landowners and land managers should be able to choose the MLDP option that is best for them. No changes were made as a result of the comment.

One commenter opposed adoption and stated that ranchers depend on the MLDP to make money and the system works fine without a fee. The department disagrees with the comment and responds that while hunting-related income is certainly a valuable downstream effect of the MLDP, the program's intent is to encourage habitat conservation, which is becoming more and more difficult to provide without additional fiscal inputs. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule will result in fewer hunters because of shorter seasons. The department disagrees with the comment and responds, first, that the length of hunting seasons is not affected by the rule (because harvest on MLDP properties is governed by the period of validity of the tags), and second, that hunters, as consumers of a service, will go where the service they seek is available. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule amounts to "pay to play." The department neither agrees nor disagrees with the comment and responds that the MLDP is a voluntary program that up until now has been able to be offered at no cost to participants; the popularity of the program, in conjunction with limited department resources, makes it necessary to charge an affordable fee for program participation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the cost/benefit note in the proposed rulemaking did not prove that habitat and populations will suffer if the MLDP fees are not adopted and that therefore the rulemaking cannot be justified. The department disagrees with the comment and responds that there is no requirement of the Administrative Procedure Act that requires the department to analyze the proposed rule's impacts to habitats and populations nor is this the intent of the rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the preamble to the proposed rule contained no explanation of how the revenue will be used. The department disagrees with the comment and responds that the preamble to the proposed rule not only explained the legislative dedication of MLDP fee revenue, but also stated, "The intended purpose of the fees is to support additional biologist positions and maintenance of the department's online Land Management Assistance (LMA) system that is used to administer MLDP." No changes were made as a result of the comment.

One commenter opposed adoption and stated that the preamble to the proposed rulemaking stated no staff would be needed, which means the MLDP fees aren't needed. The department disagrees with the comment and responds that a review of the proposal as published does not substantiate the commenter's claim. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the economic impact statement in the preamble of the proposed rulemaking was untruthful because the rule will have an economic impact. The department disagrees with the comment and responds that the economic impact statement required under the Administrative Procedure Act need only address direct impacts, such as fees, administrative costs, professional services, and so on. The fee provisions of the rule were the only direct economic impacts imposed by the rule and were addressed as required. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP fees will put pressure on properties with low fences. The department disagrees with the comment and responds that there is no connection between MLDP participation and fencing, unless it is cross-fencing within a property. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP fees will hurt senior citizens on fixed incomes. The department, while sympathetic to senior citizens on fixed incomes, disagrees with the comment and responds that the decision to participate in the MLDP is voluntary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the MLDP should be run by the Texas Department of Agriculture if the department isn't up to the task. The department disagrees with the comment and responds that the Texas Parks and Wildlife Department is the state agency with primary responsibility for managing wildlife resources in this state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP fees will reduce the contribution of hunters to the state economy. The department disagrees with the comment and responds that there is no connection between hunter behavior and the MLDP. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP fees will reduce the number of hunting clubs in the program. The department disagrees with the comment and responds that it is difficult to envision a scenario in which MLDP fees would be a significant factor in hunting club numbers. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the MLDP should be discontinued. The department disagrees with the comment and responds that the MLDP is immensely popular as well as being a proven success. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP fees should be paid by hunters. The department disagrees with the comment and responds that although the revenues from hunting license sales are used to benefit all hunters and landowners, not all hunters hunt on MLDP properties. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has been dishonest by establishing the MLDP without a fee and then imposing a fee after people participated in the program. The department disagrees with the comment and responds that the MLDP was first implemented as a no-cost habitat management initiative a quarter-century ago without any expectation that it would eventually become as popular and as effective as it has become, or that the popularity of the program would outstrip the department's ability to administer it at no cost to participants. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should reduce salaries instead of imposing a fee for MLDP participation. The department disagrees with the comment and responds that salary reductions cannot generate the revenues necessary to achieve the goals of the implementation of the MLDP fee. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if the department wants to reduce burden on staff, the Harvest Option should allow the take of bucks by firearm in the month of October. The department disagrees with the comment and responds that the Harvest Option is designed for landowners and land managers who do not wish to engage in habitat management practices other than deer harvest; the Conservation Option offers benefits such as early harvest of deer by firearm in exchange for an agreement to implement specific habitat management practices. Therefore, allowing buck harvest by firearm during October would defeat the purpose of the program. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the legislature should cap the fee. The department disagrees with the comment and responds that the legislature, in delegating the explicit authority to the department to impose a fee for MLDP participation, did not provide for the capping of fees. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLDP fees should be capped. The department disagrees with the comment and responds that the fees for MLDP participation are established to provide for expanding the capacity of the MLDP to meet program demand. No changes were made as a result of the comment.

One commenter opposed adoption and stated that parkland should be sold to pay for additional biologists. The department disagrees with the comment and responds that revenues from the sale of parklands are required by statute to be spent only on the state park system. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a reduced fee for landowners who employ private biologists. The department disagrees with the comment and responds that the department still incurs expenses evaluating management plans and survey data supplied by private biologists. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the agency is in violation of 31 U.S.C. §1341. The department disagrees with the comment and responds that 31 U.S.C. §1341 applies to contracts made by the federal government and has no bearing on this rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no MLDP fee for cooperators that are non-commercial and family owned. The department disagrees with the comment and responds that program participation in the MLDP is not predicated on the nature of the entity seeking guidance. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule penalizes those participating in the Conservation Option, which does more for the resource. The department disagrees with the comment and responds, that participation in the MLDP is voluntary and the department does not believe the fee structure imposed by the rule is a significant disincentive to participation. No changes were made as a result of the comment.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; Chapter 42, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of Section 42.001, 42.018, 42.0185, 42.019, or 42.020, or other similar requirements or provisions of that chapter; and Chapter 43, Subchapter Y, which authorizes the commission to impose a fee by rule for participation in the MLDP.

§65.29. Managed Lands Deer Program (MLDP).

(a) Definitions. The following words and terms shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this section shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) Aggregate acreage--Contiguous tracts of land, to, from, and between which deer have complete and unrestricted access, combined by multiple landowners to create an area of land for the purpose of enrollment in the MLDP.

(2) Deer management unit (DMU)--An area of the state designated by the department on the basis of shared characteristics such as soil types, vegetation types, precipitation, land use practices, and deer densities.

(3) Landowner--Any person who has an ownership interest in a tract of land.

(4) Management unit--A tract of land or a specific portion of a tract of land enrolled in the MLDP for which the department shall specify a harvest quota and tag issuance.

(5) MLDP--The Managed Lands Deer Program established by this subchapter, which consists of:

(A) the Harvest Option (HO) set forth in subsection (c)(1) of this section; and

(B) the Conservation Option (CO) set forth in subsections (c)(2) and (d) of this section.

(6) MLDP tag--A tag issued by the department to a participant in any option under this section.

(7) Program participant--A landowner or a landowner's authorized agent who is enrolled in the MLDP.

(8) Unbranched antlered deer--A buck deer having at least one antler with no more than one antler point.

(9) Wildlife Management Associations and Cooperatives--A group of landowners who have mutually agreed in writing to act collectively to improve wildlife habitat and populations on their tracts of land.

(10) Wildlife Management Plan (WMP)--A written document on a form furnished or approved by the department that addresses habitat and population and management recommendations, associated data, and data collection methodologies.

(b) General Provisions.

(1) A landowner and the landowner's tract(s) of land are enrolled:

(A) in the Harvest Option (HO) set forth in subsection (c)(1) of this section, when an application has been approved by the department; or

(B) in the Conservation Option (CO) set forth in subsection (c)(2) or (d) of this section, when the department has approved:

(i) an application; and

(ii) the WMP required by subsection (c)(2) of this section.

(C) An enrollment is not valid unless the applicant has remitted the fees prescribed by §53.5 of this title (relating to Recreational Hunting Licenses, Stamps, and Tags) to the department on or before the Friday immediately preceding the Saturday closest to September 30 of the year for which program participation is sought.

(2) A landowner may appoint a person to act as the landowner's authorized agent for purposes of program participation. The authorization must be on a form approved by the department.

(3) MLDP tags are issued to a program participant.

(4) If MLDP tags are issued under the provisions of subsection (c)(1)(B) or (2)(H)(ii) of this section, the tags are valid on any tract of land within the aggregate acreage enrolled in the MLDP; otherwise, tags are valid only on the specific enrolled tract of land for which they are issued.

(5) On an enrolled tract of land there is no personal or annual bag limit for the type of deer (buck, unbranched antlered, or antlerless) for which MLDP tags have been issued and the provisions of §65.42(b)(6) of this title (relating to Deer), §65.42(b)(7) of this title, and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I (relating to Archery Stamps), do not apply.

(6) A person who kills a deer on an enrolled tract of land must immediately tag the deer with a MLDP tag valid for the species (white-tailed deer or mule deer) and type of deer (buck, unbranched antlered, antlerless) harvested. A person who kills a deer and immediately takes the carcass to a location on the enrolled tract of land where a valid MLDP tag provided by the program participant is immediately attached shall be considered to have complied with the immediate tagging requirement. The MLDP tag shall remain attached to the carcass until the carcass reaches a final destination. Notwithstanding any other provision of this section, it is unlawful for any person to:

(A) attach a mule deer tag to a white-tailed deer or vice versa;

(B) attach an unbranched antlered MLDP tag or antlerless MLDP tag to a buck deer having more than one point on both antlers;

(C) tag an unbranched antlered deer with an antlerless MLDP tag;

(D) tag an antlerless deer with any tag other than an antlerless MLDP tag;

(E) use an MLDP tag or tag number more than once; or

(F) use an MLDP tag on a tract of land other than the tract for which the tag was issued.

(7) A program participant shall maintain a legible daily harvest log.

(A) For tracts of land enrolled under the provisions of subsection (c)(1)(B) or (2)(H)(ii) of this section, the daily log must be maintained on the aggregate acreage enrolled in the MLDP; otherwise, the daily harvest log must be maintained on the specific enrolled tract for which tags are issued.

(B) The daily harvest log shall be on a form provided or approved by the department and shall be maintained by the program participant until the last day of tag validity.

(C) A person who kills a deer that is required to be tagged under the provisions of this section must, on the same day that the deer is killed, legibly enter the required information in the daily harvest log.

(D) The daily harvest log shall contain the following information for each deer killed on the enrolled tract of land:

(i) the name and hunting license or driver's license number of the person who killed the deer;

(ii) the date the deer was killed;

(iii) the species (white-tailed or mule deer) and type of deer killed (buck, unbranched antlered, or antlerless); and

(iv) the tag number of the MLDP tag affixed to the deer.

(E) The daily harvest log shall be made available to any department employee acting in the performance of official duties upon request.

(8) By not later than April 1 in each year of participation, a program participant shall report to the department, on a form provided or prescribed by the department:

(A) the number of buck deer and/or antlerless deer harvested on each tract of land enrolled in the MLDP;

(B) the habitat management practices implemented on each tract of land enrolled in the CO; and

(C) additional information as requested by the department.

(9) If an applicant does not wish to engage in program participation, the applicant must affirmatively decline program participation by the Friday immediately preceding the Saturday closest to

September 30 via the department's online web application. On an enrolled tract of land for which a program participant has failed to timely decline participation as provided in this paragraph, the provisions of this section continue to apply to the harvest of deer until the last day of tag validity in the year following application.

(10) The provisions of this section cease effect and the provisions of §65.42 of this title (relating to Deer) apply on any tract of land for which:

(A) an applicant has timely declined participation under the provisions of paragraph (9) of this subsection; or

(B) the fees required by §53.5 of this title have not been remitted in accordance with subsection (b)(1)(C) of this section.

(11) A program participant who complies with the requirements of paragraph (7)(A) - (E) of this paragraph also satisfies the requirements of Parks and Wildlife Code, §62.029, (relating to Records of Game in Cold Storage or Procession Facility), with respect to deer, provided the daily harvest log maintained on the tract of land:

(A) contains the address and hunting license number of each person who harvested a deer; and

(B) is retained at the cold storage/processing facility for a period of at least one year following the date of the last entry.

(c) MLDP--White-tailed Deer. The provisions of this subsection shall govern the authorization and conduct of MLDP participation with respect to white-tailed deer.

(1) Harvest Option (HO).

(A) Any landowner or authorized agent may apply to enroll a tract of land in the HO by submitting an application to the department by no later than September 1 of each year on a form provided by the department.

(B) An aggregate acreage may be enrolled in the HO, provided:

(i) the application contains the name, address, and express consent of the landowner of each tract of land comprising the aggregate acreage for which enrollment is sought; and

(ii) a single program participant is designated to receive MLDP tags for the aggregate acreage.

(C) The department shall specify a harvest quota establishing the maximum number of buck, unbranched antlered, or antlerless deer to be harvested on each management unit within a tract of land or aggregate acreage enrolled in the HO. The harvest quota shall be based on:

(i) department-derived survey data for the DMU in which the tract of land is located;

(ii) the size of the tract of land enrolled in MLDP;

(iii) the types of habitat and the amounts of each type of habitat on the tract of land enrolled in the MLDP; and

(iv) any other information deemed relevant by the department.

(D) On a tract of land enrolled under this subsection:

(i) MLDP tags for antlerless deer and unbranched antlered deer are valid from the Saturday closest to September 30 until the last day of February, during which time antlerless deer and unbranched antlered deer may be taken by any lawful means; and

(ii) MLDP tags for buck deer are valid:

(I) from the Saturday closest to September 30 for 35 consecutive days during which time buck deer may be taken only by means of lawful archery equipment; and

(II) from the first Saturday in November until the last day of February, during which time buck deer may be taken by any lawful means.

(E) If a program participant under this paragraph elects to receive a tag issuance for only one type of deer (buck or antlerless), the provisions of §65.42 of this title apply to the harvest of the other type of deer on the enrolled tract of land.

(2) Conservation Option (CO).

(A) Any landowner or authorized agent may apply to enroll a tract of land in the CO by applying for acceptance by no later than June 15 on a form provided or prescribed by the department.

(B) A department-approved WMP is required for program participation under this paragraph. The WMP must contain, at a minimum:

(i) acreage and habitat information requested by the department;

(ii) deer population and harvest data for each of the two years immediately preceding the year in which initial program participation is sought;

(iii) evidence satisfactory to the department that at least two department-approved habitat management practices have been implemented on the tract of land during each of the two years immediately preceding application; and

(iv) acknowledgement that site visits by the department to assess habitat management practices on the tract of land may be conducted at the request of any department employee.

(C) A WMP is not valid unless it has been signed by a Wildlife Division employee assigned to evaluate wildlife management plans.

(D) To be eligible for continued program participation, a program participant must implement three habitat management practices specified in a department-approved WMP during each year of program participation.

(E) On each management unit within a tract of land enrolled under this subsection:

(i) the department will specify a harvest quota of buck and/or antlerless deer, based on the unique characteristics of the tract of land and the deer population; and

(ii) MLDP tags are valid from the Saturday closest to September 30 until the last day of February, during which time deer may be taken by any lawful means.

(F) The department may authorize additional harvest on any tract of land enrolled in the CO, provided the program participant furnishes survey or population data that in the opinion of the department justifies the additional harvest.

(G) In the event that unforeseeable developments such as floods, droughts, or other natural disasters make the attainment of recommended habitat management practices impractical or impossible, the department may, on a case-by-case basis, waive or defer the habitat management requirements of this section.

(H) Special Provisions

(i) Wildlife Management Associations and Cooperatives.

(I) The department may enroll a wildlife management association or cooperative in the CO under the provisions of this subsection, provided:

(-a-) the application contains the name, address, and express consent of the landowner of each tract of land for which enrollment is sought; and

(-b-) a single WMP that addresses all tracts of land within the wildlife management association or cooperative is submitted and approved by the department.

(II) A wildlife management association or cooperative may choose to receive antlerless-only or either-sex tag issuance.

(III) The department shall issue MLDP tags to the individual landowners or landowner's authorized agent within a wildlife management association or cooperative and the tags are valid only on the tract of land for which they are issued.

(ii) An aggregate acreage may be enrolled in the CO , provided:

(I) the application contains the name, address, and express consent of the landowner of each tract of land comprising the aggregate acreage for which enrollment is sought;

(II) a single WMP that addresses all tracts of land within the aggregate acreage is submitted and approved by the department; and

(III) a single program participant is designated to receive MLDP tags for the aggregate acreage.

(iii) MLDP tags issued under the provisions of this paragraph may be utilized on any tract of land within the aggregate acreage enrolled in the MLDP.

(d) MLDP--Mule Deer. The provisions of subsection (c)(2)(A) - (H) of this section also shall govern the authorization and conduct of program participation with respect to mule deer, except:

(1) the harvest of mule deer shall occur only between the Saturday closest to September 30 and the last Sunday of January, as follows:

(A) from the Saturday closest to September 30 for 35 consecutive days, the lawful means of harvest is restricted to lawful archery equipment; and

(B) from the first Saturday in November through the last Sunday in January, any lawful means may be used to harvest deer; and

(2) program eligibility is specifically restricted to tracts of land in counties for which an open season for mule deer is provided under §65.42 of this title.

(e) Refusal of Enrollment.

(1) The department may refuse to allow or continue enrollment in the MLDP for any applicant who:

(A) as of a reporting deadline has failed to report to the department any information required to be reported under the provisions of this section;

(B) has exceeded the total harvest recommendation established for an enrolled tract of land; or

(C) has failed to implement the three habitat management practices specified in a department-approved WMP during each year of program participation, if the tract of land is enrolled in the CO.

(2) The department may prohibit any person from participating in the MLDP if the person has a final conviction or has been assessed an administrative penalty for a violation of:

(A) Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1;

(B) a provision of the Parks and Wildlife Code that is not described by subparagraph (A) of this paragraph that is punishable as a Parks and Wildlife Code:

(i) Class A or B misdemeanor;

(ii) state jail felony; or

(iii) felony;

(C) Parks and Wildlife Code, §63.002; or

(D) the Lacey Act (16 U.S.C. §§3371-3378).

(3) The department may refuse to allow or continue enrollment in the MLDP to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this section from participation in the MLDP.

(4) The department may refuse to allow or continue enrollment in the MLDP for any tract of land on which a deer has been harvested but not presented to a mandatory check station for chronic wasting disease (CWD) testing as required by Subchapter B of this chapter.

(5) In determining whether to refuse to allow or continue enrollment in the MLDP under paragraph (4) of this subsection the department shall consider:

(A) whether the applicant advised hunters of any mandatory check station requirements in effect at the time a deer was harvested on the tract of land owned or managed by the applicant;

(B) whether the applicant encouraged, advised, or directed a person who killed a deer on the tract of land owned or managed by the applicant not to present a harvested deer at a mandatory check station;

(C) the number of deer harvested on the tract of land owned or managed by the applicant that were not presented at mandatory check stations; and

(D) any other aggravating or mitigating factors the department deems relevant.

(f) Special Provisions.

(1) On September 1, 2017:

(A) the provisions of this section take effect;

(B) the annual bag limit established under §65.42 of this title does not apply to deer lawfully taken and tagged under the provisions of this section;

(C) the tagging requirements of Parks and Wildlife Code, §42.018, do not apply to deer lawfully taken under the provisions of this section;

(D) completion of the harvest log required under §65.7 of this title (relating to Harvest Log) is not required for deer lawfully tagged under the provisions of this section; and

(E) the provisions of §65.10 of this title (relating to Possession of Wildlife Resources) apply to deer lawfully taken under this section.

(2) To the extent that any provision of this subchapter conflicts with the provisions of this section, the provisions of this section prevail.

(3) In the event that the department's web-based application is unavailable or inoperable, the department may specify manual procedures for compliance with the requirements of this section.

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

Filed with the Office of the Secretary of State on May 26, 2020.

TRD-202002150
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Effective date: June 15, 2020
Proposal publication date: December 6, 2019
For further information, please call: (512) 389-4775

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 3. PUBLIC INFORMATION
SUBCHAPTER B. ACCESS TO OFFICIAL RECORDS

43 TAC §§3.11 - 3.13

The Texas Department of Transportation (department) adopts amendments to §§3.11-3.13, concerning access to official records. The amendments to §§3.11-3.13 are adopted without changes to the proposed text as published in the March 13, 2020 issue of the *Texas Register* (45 TexReg 1844). The rules will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §3.11, Definitions, delete the definitions of "political subdivision" and "special district," as these definitions are not used in the subchapter. Amendments to §3.11 also modify the definition of "written request" to update the definition to comply with the changes made by this rulemaking in §3.12 and to remove the reference to facsimile transmission.

Amendments to §3.12, Public Access, modify the manner in which a request for records under Government Code, Chapter 552, the Texas public information law, may be made to the department. Government Code, §552.234, which was added by S. B. No. 944, Acts of the 86th Legislature, Regular Session, provides that a written request for public information must be made by United States mail, email, hand delivery, or another appropriate method approved by the agency's governing body and allows a governmental body to designate addresses for receipt of open records requests. The amendments provide that a person may send a request by United States mail or by hand delivery to any district or division office. For email requests, the amended section continues to authorize email requests through the department's Internet website and adds a specified email address as another option. Requests will no longer be accepted by facsimile transmission.

Amendments to §3.13, Waiver of Fees for Certain Copies of Official Records, to provide clarity concerning the waiver of fees for official records. Subsection (a) currently requires the department to provide without charge records that are relevant to a filed internal employee grievance, with the General Counsel of the department determining which records are relevant. The amendments clarify that on request, the department will provide without charge to an official party to an internal complaint relating to discrimination, harassment, retaliation, or unprofessional conduct copies of documents that are relevant to that complaint. The amendments also provide that the division responsible for performing the complaint investigation, rather than the department's general counsel, will determine which records are relevant because that division will have all information relating to the investigation and can make the determination more efficiently and economically.

COMMENTS

No comments concerning the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department and Government Code, §552.234, which authorizes the commission to approve one or more methods of delivery of requests for public information in addition to those required by statute and to designate one electronic mail address for receiving requests for public information.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, §552.234.

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

Filed with the Office of the Secretary of State on May 28, 2020.

TRD-202002191
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: June 17, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 463-8630

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CHAPTER 7. RAIL FACILITIES

The Texas Department of Transportation (department) adopts amendments to §§7.30, 7.32, 7.33, 7.34, 7.38, and 7.42 concerning Rail Safety and §7.105 concerning Railroad Grade Crossings. The amendments to §§7.30, 7.32, 7.33, 7.34, 7.38, 7.42 and 7.105 are adopted without changes to the proposed text as published in the December 27, 2019 issue of the *Texas Register* (45 TexReg 8218) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department has transferred the Rail Safety program from the Traffic Safety Division, formerly known as Traffic Operations Division, to the Rail Division. The amendments to §§7.30, Definitions, 7.32, Filing Requirements, 7.33, Reports of Accidents/In-

cidents, 7.34, Hazardous Materials - Telephonic Reports of Incidents, 7.38, Wayside Detector Map, List, or Chart, and 7.42, Administrative Review, are needed to change the responsible division in the rules from the Traffic Safety Division to the Rail Division.

Amendments to §§7.33 and 7.34, also delete the telephone number used for giving telephonic notice and refer to the telephone number posted on the department's website. This change allows for greater ease in locating the proper number.

Amendments to §7.105, Spur Tracks Crossing Existing Highways, delete the term "spur" from the phrase "spur tracks" so that the rule applies to all railroad tracks that cross a highway or road. This change is made to conform the text of the rule with actual practice. "Spur" is not a defined term, and §7.105 has been applied to all railroad crossings. A change is also made to §7.105 to state that the person requesting the crossing is responsible for all initial construction costs, but not necessarily all future costs as implied by the current rule. The initial construction costs include active warning devices considered appropriate by the department to assure the crossing meets applicable safety requirements. The regulation does not address future costs, as such costs are handled under applicable state and federal law.

COMMENTS

No comments on the proposed amendments to §§7.30, 7.32, 7.33, 7.34, 7.38, 7.42, and 7.105 were received.

SUBCHAPTER D. RAIL SAFETY

43 TAC §§7.30, 7.32 - 7.34, 7.38, 7.42

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §111.101, which authorizes the commission to adopt rules to implement federal rail safety laws, Transportation Code, §193.001, which relates to the safe packing or transportation of hazardous materials, and Transportation Code, §471.004, which requires the department to adopt rules governing the installation and maintenance of reflecting material at grade crossings.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapters 111, 193, and 471.

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

Filed with the Office of the Secretary of State on May 28, 2020.

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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: June 17, 2020
Proposal publication date: December 27, 2019
For further information, please call: (512) 463-8630

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SUBCHAPTER F. RAILROAD GRADE CROSSINGS

43 TAC §7.105

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §111.101, which authorizes the commission to adopt rules to implement federal rail safety laws, Transportation Code, §193.001, which relates to the safe packing or transportation of hazardous materials, and Transportation Code, §471.004, which requires the department to adopt rules governing the installation and maintenance of reflecting material at grade crossings.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapters 111, 193, and 471.

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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

INTRODUCTION. The Texas Department of Motor Vehicles adopts amendments to 43 TAC §§217.3, 217.141 - 217.143 and new §§217.401 - 217.407, concerning assembled vehicles and additional changes in §217.3 to conform provisions that are not related to assembled vehicles with statute. The department adopts §§217.141, 217.143, 217.401 - 217.403, and 217.407 without changes to the proposed text as published in the December 20, 2019 issue of the *Texas Register* (44 TexReg 7866). The department adopts §§217.3, 217.142, and 217.404 - 217.406 with changes to the proposed text as published in the December 20, 2019 issue of the *Texas Register* (44 TexReg 7866). The rules will be republished.

REASONED JUSTIFICATION. The amendments to §217.3(5) and (6), §§217.141 - 217.143, and new §§217.401 - 217.407 are necessary to implement Transportation Code Chapter 731, as added by House Bill (HB) 1755, 86th Legislature, Regular Session (2019). Transportation Code Chapter 731 establishes titling and registration requirements for assembled vehicles.

House Bill 1755, Section 12, directs the board of the Texas Department of Motor Vehicles, as soon as practicable after the effective date of HB 1755, to: (1) adopt the rules required under Transportation Code Chapter 731; and (2) adopt or modify any rules necessary to implement the changes in law made by HB 1755. Transportation Code Chapter 731 requires rules concerning eligibility for title and registration in Transportation Code §731.051(a); rules concerning procedures and requirements for title and registration in Transportation Code §731.052(a); and rules concerning inspection requirements for issuance of title in Transportation Code §731.101(c). The amendments to §217.3 and §§217.141 - 217.143 and new §§217.401 - 217.407 provide the necessary rules and implement Transportation Code Chapter 731 as required in HB 1755, Section 12.

Transportation Code §731.051 provides that the owner of an assembled vehicle may apply for a title and register the vehicle in accordance with Transportation Code Chapters 501 and 502 and the rules adopted to implement Chapter 731. The department applies that provision in these rules to create a certain and workable path for owners to title and register assembled vehicles, but also to maintain the purpose of Transportation Code Chapter 501 that is stated, in part, in Transportation Code §501.003 as to lessen and prevent: (1) the theft of motor vehicles; and (2) the importation into this state of and traffic in motor vehicles that are stolen.

Also, the department adopts amendments to §217.3(1), (2), and (4) to conform those provisions with statute, including Transportation Code §501.036 concerning farm trailers and farm semitrailers; Transportation Code §501.037 concerning trailers and semitrailers; and Transportation Code §541.201 and other changes made in HB 3171, 86th Legislature, Regular Session (2019), concerning motor-driven cycles. The amendments to §217.3(1), (2), and (4) are unrelated to Transportation Code Chapter 731, but are necessary to conform those provisions with statute.

The amendment to §217.3 conforms the opening sentence with changes in statute made by HB 1548, 86th Legislative Session, Regular Session (2019), that allow for certain vehicles, for example off-highway vehicles, to be titled under Transportation Code Chapter 501 without a registration requirement. The amendment also adds Transportation Code Chapter 731, concerning assembled vehicles, to reflect changes in statutes made by HB 1755.

The amendments to §217.3(1), (2), and (4) conform the rules to existing statute, including statutory amendments passed by the 86th Legislature, Regular Session (2019). The amendments to §217.3(5) and (6) are necessary to implement Transportation Code Chapter 731, concerning assembled vehicles, as added by HB 1755.

The amendment to §217.3(1) removes the term "motor-driven cycle." House Bill 3171 repealed the definition of the term in Transportation Code §541.201 and removed all uses of the term in the Transportation Code.

The amendment to §217.3(2)(D) concerning farm trailers and farm semitrailers conforms the subparagraph to Transportation Code §501.004(b)(1) and §501.036. These statutes require a farm trailer or farm semitrailer with a gross weight of more than 34,000 pounds to be titled, while permissively allowing farm trailers or farm semitrailers with a gross weight of 34,000 pounds or less to be titled. As addressed in response to comments, the proposed rule text has been changed to remove the first sentence referring to registration under Transportation Code §502.146, because Transportation Code §501.036 does not require a farm trailer or farm semitrailer to be eligible for registration under Transportation Code §502.146. Thus, a reference to Transportation Code §502.146 is not necessary for permissive titling purposes under Transportation Code §501.036.

The amendment to §217.3(4) conforms the paragraph with Transportation Code §501.037, concerning trailers, semitrailers, and house trailers, by removing terms that are not in that section or the Transportation Code, and makes nonsubstantive changes to conform with department style.

The amendment to §217.3(5) removes the existing language and adds a reference to proposed new Subchapter L of Chapter 217, which will implement Transportation Code Chapter 731, concerning assembled vehicles.

The amendment to §217.3(6)(A) conforms the language to Transportation Code §731.051(b)(6), which prohibits titling of a vehicle that has been stripped to the extent that the vehicle loses its original identity. The amendment to §217.3(6)(B) removes the prohibition against titling a dune buggy, because a dune buggy is an assembled vehicle and eligible for title under Transportation Code Chapter 731.

The amendment to §217.3(6)(C) redesignates the subparagraph as subparagraph (B) and conforms the language to Transportation Code §731.051(b)(5), which prohibits titling of a vehicle that the manufacturer has designated for on-track racing only. Additionally, the amendment to §217.3(6) redesignates the subparagraphs following subparagraph (B), and changes "and/or" to "or" to reflect current department style.

The amendments to §§217.141 - 217.143 implement the assembled vehicle inspection requirements under Transportation Code §731.101 and §731.102 as enacted by HB 1755. The department has amended the existing sections related to the Transportation Code §504.501(e) street rod and custom vehicle registration inspection because it is the same inspection that will be applied to titling assembled vehicles under Transportation Code §731.101.

The amendment to §217.141 accounts for the changed scope of §§217.141 - 217.143. The sections now address the new initial titling inspection of assembled vehicles required under Transportation Code §731.101, and the existing registration inspection required for street rods and custom vehicles under Transportation Code §504.501(e).

The amendments to §217.142 provide definitions for terms used in §§217.141 - 217.143. The amendment to §217.142(a) incorporates terms defined in Transportation Code §731.001. Because Transportation Code §731.001 and the existing text of §217.142(2) and (4) both define the terms "street rod" and "custom vehicle" by reference to Transportation Code §504.501, the existing definitions of "street rod" and "custom vehicle" in this section have been removed.

The amendment to §217.142(b)(1) adds the term "modification" to clarify that the defined phrase "altered from the manufacturer's original design" is not limited to the "removal, addition, or substitution, of at least one major component part." In addition, the department has amended the definition to include a direct reference to the definition of a major component part under Transportation Code §501.091. The change is to clarify that the term "major component part" continues to apply to making a determination under Transportation Code §504.501(f) of whether a vehicle qualifies as a custom vehicle or street rod, but is not a

definition for general application in Subchapter G. The department has removed the existing stand-alone definition of "major component part" in §217.142. The department has also removed the quotation marks around the defined term in accordance with current department style.

The terms "basic component part," "equipment," and "major component part" are substantively independent, and each term serves a different purpose in the proposed rules. The term "basic component part" is used in Subchapter L to identify the items for which evidence of ownership will need to be established for titling assembled vehicles. The term "major component part" is only used in the definition of "altered from the manufacturer's original design" in §217.142(b)(1) of Subchapter G to identify the elements of a motor vehicle that, when modified, substituted, removed, or added, are relevant to the classification of a vehicle as a custom vehicle or street rod. The term "equipment" is used in Subchapter G to establish the items and systems that need to be inspected under Transportation Code §504.501(e) or §731.101.

The terminology used in the definitions is based on statute, historical application, and purpose. In scope, the definitions of all three terms refer to portions of a vehicle. As defined, the term "major component part" would include all items that are "basic component parts," but not all items and systems that are "equipment."

The amendment to §217.142(b)(2) defines the term "applicant." The term clarifies the types of owners that would apply for title to an assembled vehicle. The term is defined in §217.402 with the same meaning and for the same purpose.

The amendment to §217.142(b)(3) defines the new term "equipment" to describe the items and systems that the inspector will need to inspect. The inspection will be of those items and systems required by law to be present on the vehicle as inspected, which may not include all the listed items and systems depending on the type of vehicle. The definition also distinguishes "equipment" from "basic component part" and "major component part" as previously discussed in this proposal. The definition has been changed to correct the references to the defined terms "basic component part" and "major component part."

As addressed in the response to comments, the definition of "equipment" includes four systems: brakes, steering, fuel supply, and exhaust; and the "integral items" to those systems. All the systems are items currently inspected for an assembled vehicle on the ASE Safety Inspection for Assembled Vehicles (Form VTR-64). The inspection will be of parts that cause the system to function to ensure that they are designed for the purpose for which they are being used, meet applicable safety standards, and are assembled for stable and safe operation on the roadway.

The amendment to §217.142(b)(4) defines the term "manufacturer" by reference to the definition in Occupations Code §2301.002. The definition also clarifies that a hobbyist is not a manufacturer, which is consistent with the definition of hobbyist in Transportation Code §731.001. The term is also defined in §217.402 with the same meaning and for the same purpose.

The amendment to §217.142(b)(5) clarifies that the definition of "master technician" used in this subchapter refers to a Certified Master Automobile and Light Truck Technician, which is required under Transportation Code §731.101(b)(2). The clarification is necessary because Transportation Code §731.101(a) requires an assembled vehicle to pass an inspection based on the type of assembled vehicle being inspected. Transportation Code §731.101(b) requires the applicant to submit proof that the assembled vehicle passed the inspection and a copy of the master technician's Automobile and Light Truck certification. The limitation of the credentialing requirement in §731.101(b)(2) limits the titling inspection requirement to those assembled vehicle types that can be inspected by an individual holding an Automobile and Light Truck master certification. The relevant types of assembled vehicles are assembled motor vehicles, custom vehicles, replicas, and street rods, as described in proposed amendments to §217.143(a). The legislative requirement limiting the inspection to the Automobile and Light Truck certification is also consistent with the consideration that a master certification does not exist for motorcycles or trailers; and the limited number of individuals holding a Medium and Heavy Truck master certification could create an impediment to titling glider kits.

As discussed in response to comments, the inspection will apply to assembled vehicles newly constructed and required to be titled under Transportation Code Chapter 731. Previously titled vehicles or newly manufactured vehicles that are not assembled vehicles would be titled under the same requirements that existed prior to the enactment of Transportation Code Chapter 731. The inspection would apply to the equipment listed in §217.142(b)(3) and be based on the standards in §217.143.

The amendments to §217.143 implement the new initial titling inspection requirements under Transportation Code §731.101 and maintain the existing custom vehicle and street rod registration requirement under Transportation Code §501.504(e). To reflect the change, the department has changed the title of §217.143 to "Inspection Requirements."

The amendments to §217.143(a) provide that an assembled motor vehicle, replica, custom vehicle, or street rod must be inspected by a master technician as required under Transportation Code Chapter 731 and 43 Texas Administrative Code, Chapter 217, Subchapter L. For reasons previously discussed regarding the definition of "master technician," the inspection is not required for an assembled motorcycle, assembled trailer, or glider kit.

As discussed in response to comments, the inspection is not limited to the items listed in Transportation Code §731.102. Transportation Code §731.101(c) provides that the "[T]he board by rule shall establish procedures and requirements for the inspection required by this section. Rules adopted under this subsection: (1) must establish inspection criteria; [and] (2) may specify additional items of equipment that must be inspected by a master technician and may specify different items of equipment that must be inspected based on the type of assembled vehicle."

The amendment to §217.143(b) requires a custom vehicle or street rod to have a safety inspection performed by a master technician as required under Transportation Code §504.501(e) for initial registration.

As discussed in response to comments, the titling inspection is only required when the assembled vehicle is titled for the first time. A subsequent titling inspection would be required if the vehicle is disassembled and reassembled as described in proposed §217.407.

A street rod and custom vehicle inspection is only required if the owner of the vehicle desires street rod or custom vehicle license plates. The street rod and custom vehicle inspection is required under Transportation Code §504.501, and it applies to the owner of any vehicle seeking street rod or custom vehicle license

plates. However, the department will accept a single inspection if street rod or custom vehicle license plates are requested during the initial title application process, because the inspections are the same, except for meeting the additional street rod and custom vehicle requirements.

The amendments to §217.143(c) and (d) provide the inspection requirements for assembled vehicles. The amendment to existing §217.143(c) states that the inspection of an assembled vehicle must evaluate the structural integrity of the equipment. The proposed amendments to §217.143(d)(1), (2), and (4) amend the style of existing text in §217.143(b) requiring the inspector to certify that the vehicle is structurally stable, meets the necessary conditions to be operated safely on the roadway, and is equipped and operational with all equipment required by statute as a condition of sale during the year the vehicle was manufactured or resembles. The amendments to §217.143(d) also add new §217.143(d)(3) that tracks the safety requirement in Transportation Code §731.051(b)(7). The department proposes removing the existing text of §217.143(c) because it is duplicative of the requirement in proposed §217.143(d)(4).

As discussed in response to comments, the master technician is not required to certify that the vehicle has not been built using a body or frame from a "nonrepairable" vehicle or that it does not contain any electrical or mechanical components from a "flood-damaged" vehicle. The items are prohibited under Transportation Code §731.051(2) and (3), but commenters did not describe the means, process, or costs for a master technician to reasonably make such determinations. In reviewing applications, the department will check the National Motor Vehicle Title Information System (NMVTIS) as is the department's current procedure. Purchasers and others may also inspect the motor vehicle before acquiring it as is the case with any used motor vehicle.

The amendments to §217.143 also add new §217.143(e), which provides that an inspection under §217.143(a) is in addition to any other required inspection of an assembled vehicle, including an inspection required under Transportation Code Chapter 548. An assembled vehicle designated as a custom vehicle or street rod is not subject to the annual Transportation Code Chapter 548 inspection. Other assembled vehicles may be subject to the Chapter 548 inspection requirement.

The amendments to §217.143 also add new §217.143(f) and (g) relating to the payment of fees. Under new §217.143(f), the applicant must pay all fees to the master technician for the inspection of an assembled vehicle required under subsection (a) of this section, including any reinspection. Under proposed new §217.143(g), any additional fees must be paid to the inspector or as otherwise required by law. The subsections clarify that inspection fees under this section are not to be paid to the department. The department does not set any of the inspection fees for an inspection required under this section.

New Chapter 217, Subchapter L, §§217.401 - 217.407 implements the assembled vehicle titling and registration requirements under Transportation Code Chapter 731, as enacted by HB 1755. New §217.401(a) describes the purpose and scope of proposed new Subchapter L. New §217.401(b) provides that for the purposes of this subchapter a glider kit issued a title with a "RECONSTRUCTED" remark is a replica. The purpose of this is to state the department's interpretation that a dealer may transfer, or be transferred ownership, of a glider kit under new Transportation Code §503.013.

New §217.402 defines terms that will be used in the subchapter. Proposed new §217.402(a) incorporates terms defined in Transportation Code §731.001.

New §217.402(b)(1) defines the term "applicant." The term clarifies the types of owners that would apply for title of an assembled vehicle. The term is defined in §217.142 with the same meaning and for the same purpose.

New §217.402(b)(2) defines the term "basic component part" for use in this chapter. The term is limited to the vehicle's motor, body, and frame, as applicable for the type of vehicle. For example, an automobile would have all three parts; a motorcycle just a motor and frame; and a trailer just a frame and body.

Evidence of ownership will be required based on the basic component part of the assembled vehicle under proposed new §217.405. The definition also distinguishes between "basic component part" and "major component part" as previously discussed in this proposal.

As discussed in response to comments, the department recognizes that other parts of a motor vehicle may have an identification number stamped on them, such as a motorcycle transmission. A law enforcement VIN inspection may still check for such numbers, but the department does not consider it necessary to expand the existing number or type of basic component parts that the owner must demonstrate ownership of to obtain an assembled vehicle title under Transportation Code Chapter 731.

New §217.402(b)(3) defines the term "continuous sale," which is basic in determining if a person is a hobbyist as defined in Transportation Code §731.001. The definition provides that the term means "offering for sale or the sale of five or more assembled vehicles of the same type in a calendar year when such vehicles are not owned and titled in the name of the owner." The department has proposed five vehicles in the definition because that is the number of vehicles that could classify the person as a dealer under Transportation Code §503.024.

New §217.402(b)(4) defines the term "manufacturer" by reference to the definition in Occupations Code §2301.002. The definition also clarifies that a hobbyist is not a manufacturer, which is consistent with the definition of hobbyist in Transportation Code §731.001. The term is also defined in §217.142 with the same meaning and for the same purpose.

New §217.402(b)(4) defines the term "personal use" which is basic in determining if a person is a hobbyist as defined in Transportation Code §731.001. The definition provides that the term means "the construction of an assembled vehicle by a hobbyist for use by the hobbyist."

New §217.403 provides the basic procedure for issuing an initial title on an assembled vehicle and subsequent transfers of the title. Proposed new §217.403(a) requires an applicant for an initial title on an assembled vehicle to apply for the title in accordance with 43 Texas Administrative Code Chapter 217, Subchapter L, and Transportation Code Chapter 731.

New §217.403(b) requires a person transferring title on a titled assembled vehicle to transfer title in accordance with proposed new §217.407. That section provides that once an assembled vehicle is titled, including assembled vehicles brought in from another state, title to the assembled vehicle will transfer in that same manner as any other titled vehicle, except that only assembled vehicles that are replicas may be transferred to and by dealers.

New §217.403(c) provides that unless the assembled vehicle is ineligible for title under Transportation Code §731.051(b), the department shall issue a title if the assembled vehicle passes the required inspection under proposed amended §217.143 and Transportation Code §731.101; passes any additional inspection required by Transportation Code Chapter 548; and following receipt of a fully completed application and all required forms and fees, as identified in §217.404.

New §217.404 details the application process. The process differs from ordinary title application transactions, because in this case the department will review the application before it is formally submitted to a county tax assessor-collector. The process should add uniformity and avoid rejections and the need for resubmission of the application.

New §217.404(a) lists the information required in the application. New §217.404(a)(1) requires photographs of the vehicle and, if a replica, a photograph of what the vehicle is a replica of. These will assist in identifying the vehicle.

New §217.404(a)(2) requires evidence of ownership of the basic component parts of the assembled vehicle as described in §217.405. Evidence of ownership is necessary to establish title to the vehicle or process an application for assignment or reassignment of a vehicle identification number under Transportation Code §501.033 as required by Transportation Code §731.054.

New §217.404(a)(3) requires, if applicable, proof, on a form prescribed by the department, of a safety inspection required under §217.143. Under the proposal, the requirement is applicable only to assembled motor vehicles, custom vehicles, replicas, and street rods.

New §217.404(a)(4) requires a copy of the Automobile and Light Truck certification, or a successor certification, for the master technician who completed the inspection described in §217.404(a)(3), if the inspection was required.

New §217.404(a)(5) requires a copy of the inspection that may be required under Transportation Code Chapter 548 if the assembled vehicle is to be registered for operation on the roadway. New §217.404(a)(6) requires a rebuilt vehicle statement; (7) a weight certificate; and (8) the applicant's identification information as required in §217.5(d).

New §217.404(a)(9) requires a vehicle identification number to be established by one of the four listed means. The means are authorized in Transportation Code §731.054. New §217.404(a)(9)(A) and (B) allow for the process of applying for an application for assignment or reassignment of a vehicle identification number. That process is under Transportation Code §501.033 and requires a vehicle identification number inspection under Transportation Code §501.032. The inspection is consistent with Transportation Code §731.051 which requires titling to be done under Chapter 501 and Chapter 731. Transportation Code §501.003 states that Transportation Code Chapter 501 is to be liberally construed to lessen and prevent (1) the theft of motor vehicles, and (2) the importation into this state of and traffic in motor vehicles that are stolen. New §217.404(a)(9)(C) and (D) are based on the vehicle identification numbers assigned by the maker of a kit or the manufacturer of the assembled vehicle respectively authorized in Transportation Code §731.054.

As discussed in response to comments, vehicle identification numbers (VIN), serial numbers, and motor numbers are collected in the vehicle identification number inspection process and master technician inspection process on forms VTR 68-A and VTR-64, respectively. Under existing procedures, the department will as necessary assign or reassign a motor number to a vehicle that is identified by a motor number (for example a pre-1956 General Motors vehicle). The department does not track motor or transmission numbers for vehicles identified by VIN. Also, the department does not require persons replacing a motor or a transmission on an assembled vehicle or other vehicle to go through an additional registration process if the vehicle is identified by a VIN.

New §217.404(b) provides that the department will review the documents and determine that the application is complete and the vehicle meets the qualifications to be titled as an assembled vehicle. As addressed in response to comments, the proposed procedures and document submission requirements implement Transportation Code Chapter 731 and HB 1755. The department will review each title application for compliance with the rules. If the department determines that a potential violation has occurred, the department may seek an enforcement action as authorized by statute.

New §217.404(c) provides that the department will notify the applicant in writing if the department determines the application is complete and the vehicle is determined to qualify for titling as an assembled vehicle. As addressed in response to comments, the letter under §217.404(c) will list the supporting documents and information approved by the department and required to be submitted the tax assessor collector.

New §217.404(d) provides that upon the receipt of the department's written approval, the applicant may proceed to the county tax assessor-collector for submission and processing of the application. New §217.404(d) lists that the applicant must provide the county tax assessor with the department's written letter, a copy of the items required under §217.404(a)(1) - (9) that were submitted to the department, and, if the vehicle is being registered, the requirements identified in §217.23.

New §217.405 addresses evidence of ownership and how it may be demonstrated either from a manufacturer, a hobbyist or other owner, or with a bond. New §217.405(a) provides that evidence of ownership must accompany the title application submitted to the department, which is consistent with the requirement in §217.404(a)(2).

New §217.405(b) provides that evidence of ownership for a replica, custom vehicle, street rod, or glider kit built by a manufacturer must be provided on a manufacturer's certificate of origin and contain the information listed in that subsection.

New §217.405(c) describes the evidence of ownership requirements for an assembled vehicle that has been built by a hobbyist, or has not otherwise been previously titled by the owner. Evidence is required for the basic component parts of the vehicle. If the basic component parts are from vehicles titled in the name of the owner, evidence of ownership will be based on the identifying numbers on the parts. These will vary based on the type of part and the year of manufacture. Additionally, component parts not titled in the name of the owner may be used with proper documentation, such as a bill of sale.

New §217.405(d) provides that an owner unable to obtain evidence of ownership may file a bond with the department under Transportation Code §501.053 and §217.9. Proposed new §217.405(e) lays out the process of obtaining the vehicle identification number and the bond. The bond will be the evidence of ownership to obtain the title.

The process is similar to that of any other applicant, in that the applicant must take or deliver the documentation required under §217.404(a)(1) - (9) to the department's regional service center for review, except that the applicant utilizing the bond procedure will not be required to have evidence of ownership under §217.405(a) - (c). The documentation requirements for the bond procedure would include a vehicle identification number inspection report if the applicant intends to establish a vehicle identification number under §217.404(a)(9)(A) or (B). The department will review the vehicle identification number inspection report and other documents.

A vehicle identification number will be reassigned based on the report and documentation if a vehicle identification number by which the assembled vehicle will be identified can be determined. If the vehicle identification number cannot be reassigned based on the lack of a number, the department will assign a department-issued number.

The applicant will then need to complete a statement of fact concerning the acquisition of the vehicle. If the application is complete, the department will use the assigned or reassigned number to issue a letter for the applicant to obtain a bond. The applicant will take the bond as evidence of ownership and other required documents to the county tax assessor-collector.

New §217.406 describes the issuance and form of title. Proposed new §217.406 provides that the county tax assessor-collector will process the transaction and issue a receipt upon receiving the completed application, all required documents, and all required fees.

New §217.406(b) describes the form of the title. As described in that subsection, the title will comply with the requirements of Transportation Code §731.053 and be issued with the make of "ASVE" unless original parts are used that reflect an established year and make of a manufactured vehicle and will contain the remarks "RECONSTRUCTED," or "REPLICA," as applicable, except for assembled trailers which will be titled with a make of "HMDE."

As discussed in response to comments, subsequent transfers of an assembled vehicle will be made as provided by Chapters 501 and 502, as applicable. Transportation Code Chapter 731 does not require additional disclosure requirements concerning the transfer of a titled assembled vehicle. Also, as discussed in response to comments the department will add a remark of "NOT FOR DEALER RESALE" to the titles of assembled vehicles initially titled under Transportation Code Chapter 731 and this subchapter that cannot be transferred to or by a dealer under Transportation Code §503.013. This will allow purchasers to distinguish between them and other ASVE vehicles without a REPLICA remark that were titled prior to the effective date of the implementing rules.

New §217.406(c) provides that the department will issue and mail or deliver the title to the owner or lienholder disclosed in the application. New §217.406(d) provides that the receipt issued at the time of application for title may be used only as evidence of title and may not be used to transfer any interest or ownership in a motor vehicle or to establish a new lien.

New §217.407 provides for subsequent transfer of title for a titled assembled vehicle. New §217.407(a) provides that after an assembled vehicle is titled under Transportation Code Chapter 731 and Subchapter L, the vehicle is then subject to Transportation Code Chapters 501 and 502, and 43 Texas Administrative Code Chapter 217, Subchapter L. The vehicle may be transferred similarly to any other vehicle, except as provided in §217.407(c).

New §217.407(b) provides that an assembled vehicle titled or registered in another jurisdiction may be titled and registered in this jurisdiction subject to Transportation Code Chapters 501 and 502, and 43 Texas Administrative Code Chapter 217, Subchapter L, except as provided in §217.407(c). As such, the vehicle does not have to go through the initial title process in Transportation Code Chapter 731 or Subchapter L.

New §217.407(c) states two statutory limitations that apply to the transfer and construction of assembled vehicles. New §217.407(c) states the limitation in new Transportation Code §503.013 that ownership of an assembled vehicle may not be transferred to or by a dealer unless the assembled vehicle is a "replica" as that term is defined in Transportation Code §731.001. As defined, a "replica" includes a street rod or custom vehicle. New §217.407(c) states the limitation in new Occupations Code §2302.009 that a salvage vehicle dealer may not rebuild an assembled vehicle.

New §217.407(d) provides that if an assembled vehicle is disassembled and then reassembled, the resulting vehicle is subject to the initial titling requirements in Transportation Code Chapter 731 and 43 Texas Administrative Code Chapter 217, Subchapter L.

Implementation of this rule requires the department to reconfigure its internal systems to conform to the new requirements. The department adopts §§217.3, and 217.141 - 217.143, and new §§217.401 - 217.407 to be effective June 22, 2020.

SUMMARY OF COMMENTS.

The department received written and spoken comments requesting clarifications or changes in the proposed text from: the Assembled Vehicle Coalition of Texas, Lamar County Tax Assessor-Collector, Lubbock County Tax Assessor-Collector, the Specialty Equipment Market Association, the Tarrant Regional Auto Crimes Task Force, the Tax Assessor-Collectors Association of Texas, the Texas Automobile Dealers Association, the Texas Recreational Vehicle Association, and an individual.

§217.3(2)(D)

Comment.

A commenter raises questions concerning the registration of a farm trailer or farm semitrailer and asks for confirmation that a trailer or semitrailer of more than 34,000 pounds would not be considered a farm trailer or farm semitrailer.

Agency Response.

The department disagrees with the comment. There are no weight restrictions for a farm trailer or farm semitrailer. As noticed in the preamble to the proposal, the amendment to §217.3(2)(D) is to address permissive titling requirements under Transportation Code §501.036. The section permissively allows farm trailers or farm semitrailers with a gross weight of 34,000 pounds or less to be titled. Transportation Code §501.004 and §501.036 do not limit the ultimate weight of a farm trailer or farm semitrailer.

Also, Transportation Code §501.036 does not require a farm trailer or farm semitrailer to be eligible for registration under Transportation Code §502.146. Thus, a reference to Transportation Code §502.146, is not necessary for permissive titling purposes under Transportation Code §501.036. To avoid

confusion and better conform the rule to statute, the proposed rule text has been changed to remove the first sentence of §217.3(2)(D) referring to registration under Transportation Code §502.146. The change does not affect persons not on notice of this proposal or add new costs.

§217.3(6)(B)

Comment.

A commenter questioned why a certain kit car was rejected for titling and registration.

Agency Response.

The department appreciates the comment. Rules have general applicability. The department cannot make specific determinations of fact in a rule or the rulemaking process. Individual questions should be addressed to the department or one of its regional service centers. Locations and contact information can be identified online at *https://www.txdmv.gov/contact-us*.

§217.142

Comment.

Two commenters request the department to provide additional information concerning "all integral items" referenced with "motor fuel supply systems" and "exhaust system."

Agency Response.

The department disagrees that additional information is necessary. The definition of "equipment" includes four systems: brakes, steering, fuel supply, and exhaust; and the "integral items" to those systems. All four systems are items currently inspected for an assembled vehicle on the ASE Safety Inspection for Assembled Vehicles (Form VTR-64).

Assembled vehicles may take different forms and have different solutions for the systems listed, such that an exhaustive list for each possible system would be impractical, if not impossible. Rather, the inspection certification will be of parts that cause the system to function to determine that they are designed for the purpose for which they are being used, meet applicable safety standards, and are assembled for stable and safe operation on the roadway. The department has made no changes to the proposed text based on this comment.

§217.142

Comment.

A commenter raised the question of whether a master technician inspection will be required for a motor driven or towed recreational vehicle (RV). The commenter states that the RV industry has established its own master certified technician training program "under the guidance of two nationally recognized trade associations which are the Recreational Vehicle Dealers Association (RVDA) and the Recreational Vehicle Industry Association (RVIA). RVDA represents dealer's interests, where RVIA represents manufacturer's interests in the RV industry."

Agency Response.

The department agrees with the comment and the issues raised. The purpose of the proposal is to implement Transportation Code Chapter 731 and HB 1755, which concern assembled vehicles. Assembled vehicles are defined in Transportation Code §731.001(a)(4), as seven types of vehicles, including an assembled motor vehicle and an assembled trailer.

The master technician inspection requirement applies only to assembled vehicles newly constructed and required to be titled under Transportation Code Chapter 731. Previously titled vehicles or newly manufactured vehicles that are not assembled vehicles would be titled under the same requirements that existed prior to the enactment of Transportation Code Chapter 731. Transportation Code Chapter 731 does not make an exception because the assembled motor vehicle is built as a motor home. The inspection would apply to the equipment listed in §217.142(b)(3) and based on the standards in §217.143.

Also, the assembled vehicle must be of a type that could be inspected by a Certified Master Automobile and Light Truck Technician, or equivalent successor certification, issued by the National Institute for Automotive Service Excellence. The department is limited under Transportation Code Chapter 731 to accepting a qualifying inspection only from a person who holds a master technician certification issued by the National Institute for Automotive Service Excellence.

Assembled vehicles not subject to the inspection requirement are a motorcycle, trailer, or glider kit. An assembled trailer includes the term travel trailer as defined under Transportation Code §501.002. However, the department is not requiring an inspection by a master technician for assembled trailers because the National Institute for Automotive Service Excellence does not issue a master technician certification for trailers. The department has made no changes to the proposed text based on this comment.

§217.143

Comment.

Two commenters assert that the Certified Master Automobile and Light Truck Technician inspection should be limited to the specific equipment listed in Transportation Code §731.102.

Agency Response.

The department disagrees with the comment. Transportation Code §731.101(c), provides that the "[~~T~~]he board by rule shall establish procedures and requirements for the inspection required by this section. Rules adopted under this subsection: (1) must establish inspection criteria; [~~and~~] (2) may specify additional items of equipment that must be inspected by a master technician and may specify different items of equipment that must be inspected based on the type of assembled vehicle."

In addition, Transportation Code §731.102, provides that an inspection conducted under §731.101 must "include" those items listed in §731.102(1) and (2). Government Code §311.005(13) defines "includes" and "including" as "terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded." The department has made no changes to the proposed text based on this comment.

§217.143

Comment.

A commenter requested that the owner of an assembled vehicle should not be required to obtain a subsequent inspection of the vehicle during the period of ownership and that a subsequent purchaser of an inspected and titled assembled vehicle should be allowed a grace period following purchase to obtain an inspection.

Agency Response.

The department agrees with the comment. Section 217.143 requires the assembled vehicle ASE certified master mechanic inspection only at the time the vehicle is initially titled. Sale of a titled assembled vehicle does not require another inspection for purposes of being an assembled vehicle. With limited exceptions, a titled assembled vehicle can be transferred, titled, and registered, like any other vehicle under Transportation Code Chapters 501 and 502 as addressed in Transportation Code §731.051(a); and §217.143 and §217.407. A subsequent inspection would be required if the vehicle is disassembled and reassembled as described in proposed §217.407.

Like owners of other vehicles, if the owner desires to have street rod or custom vehicle license plates, then the owner must comply with the vehicle inspection requirements under Transportation Code §504.501. That section applies based on changes in registration. However, the department will accept a single inspection for both if street rod or custom vehicle license plates are requested during the initial title application process, because the inspections are the same, except for meeting the street rod and custom vehicle requirements. The department has made no changes to the proposed text based on this comment.

§217.143

Comment.

A commenter requests that the department-prescribed verification form that is completed by the master technician require written verification that the vehicle was not assembled, built, constructed, rebuilt, or reconstructed in any manner with a body or frame from a "nonrepairable" vehicle as well as written verification from the master technician that the inspected vehicle does not have a motor or engine that has water damage.

Agency Response.

The department agrees with the comment that Transportation Code §731.051(b)(2) and (3) prohibits titling an assembled vehicle that has been built using a body or frame from a "nonrepairable" vehicle or that contains any electrical or mechanical components from a "flood-damaged" vehicle. The department's current rules also prohibit an assembled vehicle from being built with a body or frame from a "nonrepairable" or a "flood-damaged" motor or engine.

However, the department under this proposal and its current rules does not require the master technician to certify the that no "nonrepairable" or "flood-damaged" parts were used in the building of the assembled vehicle. While the master technician may identify parts that were previously damaged, the master technician will not necessarily have access to information to determine the parts were from a nonrepairable vehicle, as defined by Transportation Code §501.091, or from a "flood-damaged" vehicle.

In reviewing applications, the department will continue its current procedure to check the National Motor Vehicle Title Information System (NMVTIS) to identify assembled vehicles that would not be eligible for title under Transportation Code §731.051(b)(2) and (3).

The commenter makes no statement as to how the items would be inspected in the type of inspection contemplated by Transportation Code §731.101 or that a master technician could reasonably make such a determination. Purchasers and others can conduct their own inspection before deciding to acquire such a vehicle. Finally, the proposed change would add new requirements and costs to the inspection process. The department has made no changes to the proposed text based on the comment.

§217.143

Comment.

A commenter requests that the department-prescribed verification form that is completed by the master technician require written verification that the vehicle does not use any parts that do not meet Federal Motor Vehicle Safety Standards (FMVSS), if such standards are applicable for those parts.

Agency Response.

The department agrees with the comment. As proposed, the inspection requirement in §217.143(d)(3) requires the master technician to certify that parts used in the vehicle meet FMVSS, if a standard is applicable. The department has made no changes to the proposed text based on the comment.

§217.402

Comment.

A commenter disagrees with the department's reference in the preamble that the basic component parts of an assembled motorcycle are limited to the motorcycle's motor and frame, because an identifying number may also be stamped on the transmission.

Agency Response.

The department agrees with the comment. A motorcycle may have an identifying number stamped on the transmission. However, the purpose of the definition of "basic component part" is to establish the parts of the vehicle that the owner must demonstrate ownership of for titling purposes under §217.404.

Also, the definition is consistent with the department's existing assembled vehicle rules §217.3(5)(A) and §217.3(5)(B)(i), which are being incorporated into the Subchapter G rules. A law enforcement VIN inspection may still check the transmission, but the department does not consider it necessary to expand the existing number or type of basic component parts. The department has not made any changes to the proposed text in response to this comment.

§217.404(a)

Comment.

A commenter proposes that an applicant should submit the preliminary title application directly to the department instead of the county tax assessor-collector office.

Agency Response.

The department agrees with the comment. The department has revised proposed §217.404(a) to remove reference to the county tax assessor-collector, because the county tax assessor-collector offices would not be reimbursed for the costs associated with preparing and delivering the preliminary title application to the department for review.

Counties may accept and transmit preliminary title applications directly to the department if they choose to do so. The proposal identified submission of the preliminary application to the department or a county tax assessor-collector for forwarding to the department, so the change does not add a new requirement not addressed in the proposal or new costs to the proposal.

The change to the text in response to this comment does not affect the requirement for the final application to be submitted to the county tax assessor-collector under §217.404(d).

Comment.

A commenter proposes that the submission under §217.404(a) be amended to require photocopies.

Agency Response.

The department disagrees with the comment. The department intends to be flexible, but in some cases the department may need to review the original document or under §217.404(d)(2) the original document may be required by statute. The department has not made any changes to the proposed text in response to this comment.

217.404(a)(9)

Comment.

A commenter suggests requiring the inspector to record the motor number or the transmission number on the inspection if the numbers differ from the manufacturer's original vehicle identification number (VIN). The commenter also suggests assigning a VIN to a motor if no number exists on the motor.

Agency Response.

The department agrees with the comment. VINs, serial numbers, and motor numbers should be identified and recorded in the vehicle identification number inspection process conducted by law enforcement on Form VTR 68-A. The rule does not prevent law enforcement from identifying a transmission and determining whether it is stolen, or from a stolen vehicle.

Under existing procedures, the department will as necessary assign or reassign a motor number to a vehicle that is identified by a motor number (for example a pre-1956 General Motors vehicle). However, for most vehicles the department uses the VIN on the body of the vehicle or requires an assigned or reassigned VIN to be affixed on the body of the vehicle. For vehicles identified by VIN, the department does not track motor numbers. The department does not identify vehicles by transmission numbers, record transmission numbers, or require evidence of ownership for the transmission.

In addition, requiring the motor to be assigned a number would require persons replacing a motor or transmission on an assembled vehicle to go through an additional registration process when the vehicle is identified by VIN. The process would add costs and would not be consistent with the requirement for other vehicles titled under Transportation Code Chapter 501. The requirement is also not specifically authorized in Transportation Code Chapter 731. The department has not made any changes to the proposed text in response to this comment.

217.404(b)

Comment.

A commenter states that it is necessary for the department to confirm the title applicant's status before issuing the title on the assembled vehicle and requests that the department adopt procedures regarding the verification and enforcement that an assembled vehicle title "applicant" meets the requirements for an assembled vehicle title issuance prior to issuing the title.

Agency Response.

The department agrees with the comment. The proposed procedures and requirement to submit documents for review prior to title issuance implement Transportation Code Chapter 731, and HB 1755. The department will review each title application for compliance with the statute and rules. If the department determines that a potential violation has occurred, the department may seek an enforcement action as authorized by statute. The department has made no changes to the proposed text based on the comment.

§217.404(c) and (d)(1)

Comment.

A commenter proposes that the letter issued under §217.404(c) list the supporting documents and information required to be submitted as approved by the department.

Agency Response.

The department agrees with the comment. A second sentence has been added to §217.404(c) to read "The letter shall include a list of the supporting documents and information identified in subsection (d)(2) of this section." The department has also added to 217.404(d)(1) the statement "described in subsection (c) of this section" to clarify the letter being referred to. The changes will provide assurance to the county and the applicant that the application submitted to the county is complete. The change does not add a new requirement or cost for applicants or county tax assessor-collectors.

§217.406

Comment.

A commenter is concerned that the "REPLICA" title notation may not be an adequate disclosure to a purchaser that the vehicle is an assembled vehicle, especially if an individual does not have access to the title, to the state's title system, or does not know to look for the title remark. The commenter requests the department to require that a disclosure statement accompany the vehicle in which the master technician's inspection certification is incorporated and provided to the buyer prior to purchase. The commenter asserts that requiring disclosure of the master technician's inspection informs the subsequent purchaser of the master technician's findings and the details regarding that inspection, allowing the purchaser to make an informed decision regarding the assembled vehicle.

Agency Response.

The department agrees with the comment as to the benefits of disclosure, but disagrees that an additional requirement is necessary. Transportation Code §731.051 provides that an owner of an assembled vehicle shall apply for a title for the vehicle and register the vehicle as provided by Transportation Code Chapters 501 and 502, as applicable. Transportation Code Chapter 731 does not require additional disclosure requirements concerning the transfer of a titled assembled vehicle.

Assembled vehicles will have the title issued with a make of ASVE, or HMDE if it is a homemade trailer. Further, the title should be present and available to the purchaser when the transfer is completed by the seller in accordance with Transportation Code §501.028.

However, the department does agree that identifying whether the assembled vehicle is subject to the sales restriction under Transportation Code §503.013 could be difficult to determine. This is because Transportation Code Chapter 731 and HB 1755 apply to assembled vehicles to be titled under Transportation Code Chapter 731 and these rules. Transportation Code Chapter 731 and HB 1755 does not state that either applies to assembled vehicles that are currently titled or that either limits the ability of an owner to transfer title to that vehicle.

Transportation Code §731.051(a) provides that "... an owner of an assembled vehicle shall apply for a title for the vehicle and register the vehicle as provided by Chapters 501 and 502, as applicable, and in accordance with rules adopted under this chapter..." Transportation Code §731.002 authorizes "the board may adopt rules as necessary to implement and administer this chapter." House Bill 1755 Section 12 requires "[A]s soon as practicable after the effective date of this Act, the board of the Texas Department of Motor Vehicles shall: (1) adopt the rules required by Chapter 731, Transportation Code as added by this Act; and (2) adopt or modify any rules necessary to implement the changes in law made by this Act."

Transportation Code §503.013 applies to an assembled vehicle as defined in Transportation Code §731.001. Transportation Code §731.051(a) and the requirements of Transportation Code Chapter 731 and HB 1755 provide that an "assembled vehicle" cannot be titled under Chapter 731 until the department adopts implementing rules. Transportation Code Chapter 731 and HB 1755 make no reference to assembled vehicles that were titled prior to the adoption of the department's implementing and administrative rules.

Titled assembled vehicles that are subsequently transferred would be transferred in the same manner as any used vehicle under Transportation Code Chapter 501 and Chapter 502, either because the vehicle was not initially titled under Transportation Code Chapter 731 and these rules, or because of §217.407 for vehicles initially titled under Transportation Code Chapter 731 and these rules.

As such, a title indicating ASVE as make may not indicate if and how Transportation Code §503.013 applies. To aid in identification of assembled vehicles initially titled after the effective date of these rules and that cannot be transferred to or by a dealer under Transportation Code §503.013, the department will add a remark "NOT FOR DEALER RESALE."

The change has been made by the department adding to the text of §217.406(b) "A vehicle that is titled under Transportation Code Chapter 731 and this subchapter that cannot be transferred to or by a dealer under Transportation Code §503.013 shall have a "NOT FOR DEALER RESALE" remark included on the title." All affected persons were on notice of the limitation, because Transportation Code §503.013 is in statute, and the proposal discusses its limitations on the subsequent transfer of assembled vehicles titled under Transportation Code Chapter 731 and this subchapter. The change does not add new costs or affect the rights of persons owning vehicles titled before or after the effective date of the proposed rules, including dealers who may have such vehicles for sale.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.3

STATUTORY AUTHORITY. The department adopts amendments to §217.3 and §§217.141 - 217.143 and new §§217.401 - 217.407 under Occupations Code §2301.155 and §2302.051; and Transportation Code §§501.0041, 502.0021, 504.011, 731.002, 731.051, 731.052, 731.101, and 1002.001.

- Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure before the board.

- Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer this chapter.

- Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter 501.

- Transportation Code §502.0021 authorizes the department to adopt rules to administer Chapter 502.

- Transportation Code §504.0011 authorizes the board to adopt rules to implement and administer Transportation Code Chapter 504.

- Transportation Code §731.002 authorizes the board to adopt rules as necessary to implement and administer Transportation Code Chapter 731.

- Transportation Code §731.051 authorizes the board to adopt rules under Transportation Code Chapter 731 for owners to apply for a title and register as provided by Chapters 501 and 502, as applicable, regardless of whether the assembled vehicle was built or assembled using a vehicle that was previously titled in this state or another jurisdiction.

- Transportation Code §731.052 requires the board to adopt rules establishing procedures and requirements for: (1) issuance of a title for an assembled vehicle; and (2) registration of an assembled vehicle. Rules adopted under this section may not exclude a type of assembled vehicle, other than an assembled vehicle described by Section 731.051(b), from eligibility for title and registration; must establish the form of a title issued for an assembled vehicle; and must exempt an assembled vehicle or a type of assembled vehicle from any provision of Chapter 501 or 502 that an assembled vehicle or type of assembled vehicle, by its nature, cannot comply with or otherwise meet the requirements of.

- Transportation Code §731.101 requires the board to adopt rules establishing procedures and requirements for the inspection required by Transportation Code §731.101. Rules adopted under Transportation Code §731.101: (1) must establish inspection criteria; (2) may specify additional items of equipment that must be inspected by a master technician and may specify different items of equipment that must be inspected based on the type of assembled vehicle; and (3) must require an owner of an assembled vehicle that is being inspected under this section to pay all fees required for the inspection, including any reinspection, in addition to all applicable fees required under Chapter 548 for an inspection or reinspection conducted under that chapter.

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2301.0045 and §2302.009; and Transportation Code §§501.003, 501.032, 501.033, 501.036, 501.037, 501.052, 501.053, 503.013, 504.501, 731.051 - 731.054, 731.101, and 731.102.

§217.3. Motor Vehicle Titles.

Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be titled, including any motor vehicle required to be registered in accordance with Transportation Code Chapter 502, shall apply for a Texas title in accordance with Transportation Code Chapter 501 or 731.

(1) Motorcycles, autocycles, and mopeds.

(A) The title requirements for a motorcycle, autocycle, and moped are the same requirements prescribed for any motor vehicle.

(B) A vehicle that meets the criteria for a moped and has been certified as a moped by the Department of Public Safety will be registered and titled as a moped. If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(2) Farm vehicles.

(A) The term "motor vehicle" does not apply to implements of husbandry, which may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code §502.453, are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code §502.451.

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Owners of farm trailers and farm semitrailers with a gross weight of 34,000 pounds or less may apply for a Texas title. Owners of farm trailers and farm semitrailers with a gross weight in excess of 34,000 pounds shall apply for a Texas title. If a farm trailer or farm semitrailer with a gross weight of 34,000 pounds or less has been titled previously, any subsequent owner shall apply for a Texas title for the farm trailer or farm semitrailer.

(3) Neighborhood electric vehicles. The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for a Texas title for any trailer or semitrailer with a gross weight in excess of 4,000 pounds. Owners of trailers and semitrailers with a gross weight of 4,000 pounds or less may apply for a Texas title. If a trailer or semitrailer with a gross weight of 4,000 pounds or less has been titled previously, any subsequent owner shall apply for a Texas title for the trailer or semitrailer. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled:

(A) The rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle that is less than eight feet six inches in width or less than 45 feet in length is classified as a travel trailer and shall be registered and titled.

(ii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iii) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or less when measured at the largest horizontal projection when in the set up mode shall be titled as a house trailer and may be issued travel trailer license plates.

(5) Assembled vehicles. The title requirements for assembled vehicles are prescribed in Subchapter L of this title (relating to Assembled Vehicles).

(6) Not Eligible for Title. The following are not eligible for a Texas title regardless of the vehicle's previous title or registration in this or any other jurisdiction:

(A) vehicles that are missing or are stripped of their motor, frame, or body, to the extent that the vehicle loses its original identity or makes the vehicle unsafe for on-road operation as determined by the department;

(B) vehicles designed by the manufacturer for on-track racing only;

(C) vehicles designed or determined by the department to be for off-highway use only, unless specifically defined as a "motor vehicle" in Transportation Code Chapter 501; or

(D) vehicles assembled, built, constructed, rebuilt, or reconstructed in any manner with:

(i) a body or frame from a vehicle which is a "nonrepairable motor vehicle" as that term is defined in Transportation Code §501.091(9); or

(ii) a motor or engine from a vehicle which is flood damaged, water damaged, or any other term which may reasonably establish the vehicle from which the motor or engine was obtained is a loss due to a water related event.

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

Filed with the Office of the Secretary of State on June 1, 2020.

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Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

SUBCHAPTER G. INSPECTIONS

43 TAC §§217.141 - 217.143

STATUTORY AUTHORITY. The department adopts amendments to §217.3 and §§217.141 - 217.143 and new §§217.401 - 217.407 under Occupations Code §2301.155 and §2302.051; and Transportation Code §§501.0041, 502.0021, 504.011, 731.002, 731.051, 731.052, 731.101, and 1002.001.

- Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure before the board.

- Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer this chapter.

- Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter 501.

- Transportation Code §502.0021 authorizes the department to adopt rules to administer Chapter 502.

- Transportation Code §504.0011 authorizes the board to adopt rules to implement and administer Transportation Code Chapter 504.

- Transportation Code §731.002 authorizes the board to adopt rules as necessary to implement and administer Transportation Code Chapter 731.

- Transportation Code §731.051 authorizes the board to adopt rules under Transportation Code Chapter 731 for owners to apply for a title and register as provided by Chapters 501 and 502, as applicable, regardless of whether the assembled vehicle was built or assembled using a vehicle that was previously titled in this state or another jurisdiction.

- Transportation Code §731.052 requires the board to adopt rules establishing procedures and requirements for: (1) issuance of a title for an assembled vehicle; and (2) registration of an assembled vehicle. Rules adopted under this section may not exclude a type of assembled vehicle, other than an assembled vehicle described by Section 731.051(b), from eligibility for title and registration; must establish the form of a title issued for an assembled vehicle; and must exempt an assembled vehicle or a type of assembled vehicle from any provision of Chapter 501 or 502 that an assembled vehicle or type of assembled vehicle, by its nature, cannot comply with or otherwise meet the requirements of.

- Transportation Code §731.101 requires the board to adopt rules establishing procedures and requirements for the inspection required by Transportation Code §731.101. Rules adopted under Transportation Code §731.101: (1) must establish inspection criteria; (2) may specify additional items of equipment that must be inspected by a master technician and may specify different items of equipment that must be inspected based on the type of assembled vehicle; and (3) must require an owner of an assembled vehicle that is being inspected under this section to pay all fees required for the inspection, including any reinspection, in addition to all applicable fees required under Chapter 548 for an inspection or reinspection conducted under that chapter.

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2301.0045 and §2302.009; and Transportation Code §§501.003, 501.032, 501.033, 501.036, 501.037, 501.052, 501.053, 503.013, 504.501, 731.051 - 731.054, 731.101, and 731.102.

§217.142. Definitions.

(a) The definitions in Transportation Code §731.001 apply to this subchapter.

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

(1) Altered from the manufacturer's original design - as that term is used in §504.501(f), Transportation Code, is defined as the removal, addition, modification, or substitution, of at least one major component part, as defined in Transportation Code §501.091, except that an engine, frame, and body or cab, must be replaced if removed.

(2) Applicant - a person applying for title to an assembled vehicle who:

(A) is a hobbyist;

(B) is the owner of an assembled vehicle that has not been previously titled as an assembled vehicle; or

(C) purchased an assembled vehicle constructed and designated by the manufacturer as a replica, custom vehicle, street rod, or glider kit.

(3) Equipment - items and systems, including the connection points of the items and systems, to include the frame; chassis; structural components; wheel assembly; tires; brake system, including each brake, power brake unit, and all integral items of the system; steering system, including power steering, and all integral items of the system; front seat belts if constructed with seat belt anchorages; body; drivetrain; suspension; motor; fuel supply system and all integral items of the system; exhaust system and all integral items of the system; mirrors; windshield; windshield wipers; turn signal lamps; beam indicator; head lamps, minimum of two; tail lamps; stop lamps; and rear red reflectors. This term includes the basic component parts of motor, body, and frame, as defined in §217.402 of this chapter; and some major component parts as defined in Transportation Code §501.091. The term basic component part is defined by rule to identify the parts that will be used in determining evidence of ownership. The term major component part is defined by statute for use in determining whether the vehicle is a custom vehicle or street rod.

(4) Manufacturer - is a person that builds an assembled vehicle and is not a hobbyist, has the meaning as defined in Occupations Code §2301.002, and is subject to the requirements of that chapter applicable to manufacturers, including sale through a franchise dealer network.

(5) Master technician - a person who holds a valid certification as a Certified Master Automobile and Light Truck Technician, or equivalent successor certification, issued by the National Institute for Automotive Service Excellence.

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002223
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Effective date: June 22, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 465-5665

SUBCHAPTER L. ASSEMBLED VEHICLES

43 TAC §§217.401 - 217.407

STATUTORY AUTHORITY. The department adopts amendments to §217.3 and §§217.141 - 217.143 and new §§217.401 - 217.407 under Occupations Code §2301.155 and §2302.051; and Transportation Code §§501.0041, 502.0021, 504.011, 731.002, 731.051, 731.052, 731.101, and 1002.001.

- Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure before the board.

- Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer this chapter.

- Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter 501.

- Transportation Code §502.0021 authorizes the department to adopt rules to administer Chapter 502.

- Transportation Code §504.0011 authorizes the board to adopt rules to implement and administer Transportation Code Chapter 504.

- Transportation Code §731.002 authorizes the board to adopt rules as necessary to implement and administer Transportation Code Chapter 731.

- Transportation Code §731.051 authorizes the board to adopt rules under Transportation Code Chapter 731 for owners to apply for a title and register as provided by Chapters 501 and 502, as applicable, regardless of whether the assembled vehicle was built or assembled using a vehicle that was previously titled in this state or another jurisdiction.

- Transportation Code §731.052 requires the board to adopt rules establishing procedures and requirements for: (1) issuance of a title for an assembled vehicle; and (2) registration of an assembled vehicle. Rules adopted under this section may not exclude a type of assembled vehicle, other than an assembled vehicle described by Section 731.051(b), from eligibility for title and registration; must establish the form of a title issued for an assembled vehicle; and must exempt an assembled vehicle or a type of assembled vehicle from any provision of Chapter 501 or 502 that an assembled vehicle or type of assembled vehicle, by its nature, cannot comply with or otherwise meet the requirements of.

- Transportation Code §731.101 requires the board to adopt rules establishing procedures and requirements for the inspection required by Transportation Code §731.101. Rules adopted under Transportation Code §731.101: (1) must establish inspection criteria; (2) may specify additional items of equipment that must be inspected by a master technician and may specify different items of equipment that must be inspected based on the type of assembled vehicle; and (3) must require an owner of an assembled vehicle that is being inspected under this section to pay all fees required for the inspection, including any reinspection, in addition to all applicable fees required under Chapter 548 for an inspection or reinspection conducted under that chapter.

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §2301.0045 and §2302.009; and Transportation Code §§501.003, 501.032, 501.033, 501.036, 501.037, 501.052, 501.053, 503.013, 504.501, 731.051 - 731.054, 731.101, and 731.102.

§217.404. Initial Application for Title.

(a) Prior to applying for title, an applicant must submit to the department a complete application for title. The application may be submitted in person, by mail, or electronically, to the department. The application must include:

(1) photographs of the front, rear, and side of the assembled vehicle, and if a replica, a photograph of what the vehicle is a replica of;

(2) evidence of ownership of the basic component parts of the assembled vehicle as described in §217.405 of this subchapter (relating to Evidence of Ownership), as applicable to the type of assembled vehicle;

(3) if applicable, proof, on a form prescribed by the department, of a safety inspection required under §217.143 of this chapter (relating to Assembled Vehicle Inspection Requirements), and Transportation Code §731.101;

(4) if applicable, a copy of the Automobile and Light Truck certification, or a successor certification, for the master technician who completed the inspection described in paragraph (3) of this subsection;

(5) a copy of the inspection that may be required under Transportation Code Chapter 548 if the assembled vehicle is to be registered for operation on the roadway;

(6) a Rebuilt Vehicle Statement;

(7) a weight certificate;

(8) identification as required in §217.5(d) of this chapter (relating to Evidence of Motor Vehicle Ownership); and

(9) any of the following means to establish the vehicle identification number:

(A) an Application for Assigned or Reassigned Number, and Notice of Assigned Number or Installation of Reassigned Vehicle Identification Number, on forms prescribed by the department;

(B) an Application for Assigned or Reassigned Number, establishing the vehicle identification number assigned by the manufacturer of the component part by which the assembled vehicle will be identified;

(C) acceptable proof, as established by the department, of a vehicle identification number assigned by the maker of the kit used to construct the assembled vehicle; or

(D) acceptable proof, as established by the department, of a vehicle identification number assigned by the manufacturer of the replica, custom vehicle, street rod, or glider kit.

(b) Following receipt of all information required under subsection (a) of this section, the department will review the application for completeness and to determine that the vehicle meets assembled vehicle qualifications.

(c) If the department determines that the application is complete and the vehicle meets assembled vehicle qualifications, the department will issue a letter to the applicant on department letterhead, stating that the application is complete and that the vehicle qualifies as an assembled vehicle. The letter shall include a list of the supporting documents and information identified in subsection (d)(2) of this section.

(d) Following receipt of the department's letter described in subsection (c) of this section, the applicant may then submit the letter and the completed application to the county tax assessor-collector for processing. The application must include:

(1) the department-issued letter described in subsection (c) of this section;

(2) copies of all items required to be submitted to the department in subsection (a)(1) - (9) of this section; and

(3) the requirements as identified in §217.23 of this chapter (relating to Initial Application for Vehicle Registration) if obtaining registration.

§217.405. Evidence of Ownership.

(a) Evidence of ownership in the name of or properly assigned to the applicant must accompany the title application submitted to the department.

(b) The evidence of ownership for a replica, custom vehicle, street rod, or glider kit built by a manufacturer must be a manufacturer's certificate of origin, indicating:

(1) the vehicle identification number assigned to the vehicle by the manufacturer;

(2) the make as ASVE, unless a glider kit;

(3) a notation the vehicle is a replica and what the vehicle is a replica of if a replica, custom vehicle, or street rod; and

(4) the municipality and state in which the vehicle was completed.

(c) The evidence of ownership for an assembled vehicle not previously titled as an assembled vehicle by the owner, or built by a hobbyist, must contain the identifying number(s) of the corresponding basic component part(s). Evidence of ownership is required for basic component parts used from a vehicle titled in the name of the applicant, depending on the year and manufacturer of the vehicle. The following evidence of ownership is required if the assembled vehicle is constructed with basic component parts from a vehicle not titled in the name of the applicant:

(1) Motor. A bill of sale is required.

(2) Frame. A bill of sale, certificate of origin, or title depending on the year and manufacturer of the frame.

(3) Body. A bill of sale, certificate of origin, or title depending on the year and manufacturer of the body.

(4) Kit. A bill of sale or certificate of origin for the kit.

(5) New fabrication. A bill of sale, invoice, or receipts covering the material used to construct the basic component part.

(d) An owner who is unable to obtain the evidence of ownership required under subsection (a) of this section may:

(1) file a bond with the department in accordance with Transportation Code §501.053, and §217.9 of this chapter (relating to Bonded Titles); and

(2) submit an application for title in the same manner as an applicant in accordance with Transportation Code Chapter 731, and this subchapter.

(e) The department will assign a number or reassign the manufacturer's vehicle identification number to an assembled vehicle based on the result of the vehicle inspection under §217.404(a)(9)(A) or (B) of this subchapter (relating to Initial Application for Title). The owner under subsection (d) of this section establishing the vehicle identification number of an assembled vehicle under §217.404(a)(9)(A) or (B) of this subchapter, may use the vehicle identification number to satisfy the vehicle identification number requirement under §217.9 of this chapter and obtain a bond under §217.9 of this chapter to be filed with the department. The bond will be evidence of ownership under subsection (a) of this section.

§217.406. Title Issuance.

(a) Issuance. The county tax assessor-collector shall process the application for title and issue a receipt upon receiving:

(1) a completed application for title;

(2) required documents identified in §217.404(d) of this subchapter (relating to Initial Application for Title);

(3) the statutory fee for a title application, unless exempt under:

(A) Transportation Code §501.138; or

(B) Government Code §437.217, and copies of official military orders are presented as evidence of the person's active duty status and deployment orders to a hostile fire zone; and

(4) any other applicable fees.

(b) Form of Title. In addition to the requirements under Transportation Code §731.053, an assembled vehicle, other than an assembled trailer, will be titled using the year it was assembled as the model year and "ASVE" for assembled as the make of the vehicle unless it is established to the department's satisfaction to be constructed from original parts that reflect an established year and make of a manufactured vehicle. An assembled vehicle constructed from original parts that reflect an established year and make of a manufactured vehicle will be titled by that year and make, but must reflect a "RECONSTRUCTED" remark if the component parts, excluding the motor, used to construct the vehicle are not original to that vehicle. An assembled vehicle not utilizing an original body may obtain a title with a "REPLICA" remark featuring the year and make of the replica if the vehicle resembles a prior model year vehicle. This subsection applies regardless of how the vehicle's model year or make was previously identified in this or any other jurisdiction. An assembled trailer will be titled using the year it was assembled as the model year and "HMDE" for homemade as the make. A vehicle that is titled under Transportation Code Chapter 731 and this subchapter that cannot be transferred to or by a dealer under Transportation Code §503.013 shall have a "NOT FOR DEALER RESALE" remark included on the title.

(c) Distribution. The department will issue and mail or deliver a title to the applicant, or if a lien is disclosed in the application, to the first lienholder unless the title is an electronic record of title.

(d) Receipt. The receipt issued at the time of application for title may be used only as evidence of title and may not be used to transfer any interest or ownership in a motor vehicle or to establish a new lien.

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

Filed with the Office of the Secretary of State on June 1, 2020.

TRD-202002224
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Effective date: June 22, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 465-5665

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Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of the Attorney General

Title 1, Part 3

Chapter 60

The Office of the Attorney General (OAG) files this notice of its intent to review 1 TAC Chapter 60, Texas Crime Victim Services Grant Programs. The review is conducted in accordance with Government Code §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the OAG will assess whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Comments should be directed to Melissa Foley, Division Chief, Grants Administration Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Melissa.Foley@oag.texas.gov.

Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption.

Chapter 61

The Office of the Attorney General (OAG) files this notice of its intent to review 1 TAC Chapter 61, Crime Victims' Compensation. The review is conducted in accordance with Government Code §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the OAG will assess whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Comments should be directed to Kristen D. Huff, Assistant Attorney General, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Kristen.Huff@oag.texas.gov.

Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption.

Chapter 62

The Office of the Attorney General (OAG) files this notice of its intent to review 1 TAC Chapter 62, Sexual Assault Prevention and Crisis Services. The review is conducted in accordance with Government Code §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the OAG will assess whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Comments should be directed to Kristen D. Huff, Assistant Attorney General, Crimes Victim Services Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Kristen.Huff@oag.texas.gov.

Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption.

TRD-202002198
Lesley French
General Counsel
Office of the Attorney General
Filed: May 28, 2020

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Adopted Rule Reviews

State Securities Board

Title 7, Part 7

Pursuant to the notice of proposed rule review published in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1721), the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal all sections of the following chapters of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039, Agency Review of Existing Rules: Chapter 115, Securities Dealers and Agents, and Chapter 116, Investment Advisers and Investment Adviser Representatives. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Board's website at *www.ssb.texas.gov/texas-securities-act-board-rules.*

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Texas Government Code.

No comments were received regarding the readoption of Chapters 115 or 116.

This concludes the review of 7 TAC Chapters 115 and 116.

Issued in Austin, Texas on May 19, 2020.

TRD-202002189

Travis J. Iles
Securities Commissioner
State Securities Board
Filed: May 28, 2020

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Texas Department of Transportation

Title 43, Part 1

The Texas Department of Transportation (department) files notice of the completion of review and the readoption of Title 43 TAC, Part 1, Chapter 1, Management; Chapter 5, Finance; Chapter 11, Design; Chapter 15, Financing and Construction of Transportation Projects; Chapter 21, Right of Way; and Chapter 27, Toll Projects.

This review and readoption has been conducted in accordance with Government Code, §2001.039. The Texas Transportation Commission (commission) has reviewed these rules and determined that the reasons for adopting them continue to exist. The department received no comments on the proposed rule review, which was published in the January 24, 2020, issue of the *Texas Register* (45 TexReg 595).

This concludes the review of Chapters 1, 5, 11, 15, 21, and 27.

TRD-202002194
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: May 28, 2020

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The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Request for Application Access and Visitation (AV)

PROCUREMENT INFORMATION

Point of Contact Information

Any communication with the Office of the Attorney General (OAG) employees or vendors regarding specifications outlined in this Request for Application (RFA) should be directed to the Point of Contact. Any communication made outside of the Point of Contact MAY RESULT IN AN APPLICANT BEING DISQUALIFIED.

Correspondence shall be submitted via email to: av.grants@oag.texas.gov. See Questions section.

Before submitting a question, Applicants are encouraged to review the Frequently Asked Questions on the OAG website at https://www.texasattorneygeneral.gov/child-support/families-and-parenting/access-and-visitation.

Questions

Applicant shall submit all questions regarding this Request for Application (RFA) to the email address listed in the Point of Contact Information section. The deadline for submitting questions regarding this RFA is the date and time listed in the Application Kit.

Any questions submitted will be answered at the sole discretion of the OAG in a Question and Answer Document posted at https://www.texasattorneygeneral.gov/child-support/families-and-parenting/access-and-visitation. Only answers provided in writing by the OAG shall be considered official. All questions should, to the degree possible, cite the specific RFA section and paragraph number(s) to which the question refers.

Information in any form other than the materials constituting this RFA, the Frequently Asked Questions document, any further Questions and Answers document(s), and any Application Kit shall not be binding on the OAG.

Authority

Under 42 U.S.C. §669b, the federal government provides grants to states for AV programs. The grants may be used to establish and administer programs to support and facilitate Non-custodial Parents' (NCP) access to and visitation with their children. The OAG will solicit applications for projects under the federal Child Access and Visitation Grant under this Request for Application.

This procurement shall be conducted in accordance with the State Purchasing and General Services Act (Title 10, Subtitle D, Chapters 2151 through 2176, Texas Government Code) and the rules of the Comptroller of Public Accounts (Title 34, Part 1, Chapter 20, Subchapter B, Subchapter C, Texas Administrative Code) Statewide Procurement Division (SPD) including, but not limited to, the procedures prescribed by SPD.

All official communication (including, but not limited to, RFA Addenda and Question and Answer Documents) concerning this procurement will be posted at https://www.texasattorneygeneral.gov/child-support/families-and-parenting/access-and-visitation. The OAG has no responsibility to communicate personally with each potential Subrecipient for this procurement. Each potential Subrecipient is solely responsible for checking the website for official OAG communication concerning this procurement.

INTRODUCTION

Background

The federal Office of Child Support Enforcement (OCSE) publication, https://www.acf.hhs.gov/css/resource/collaboration-and-strategic-planning-guide-access-and-visitation-grant, emphasizes the importance of both parents providing financial and emotional support to their children. The OAG echoes this philosophical approach and highlights our support for the emotional connection between parents and their children through the OAG Access and Visitation (AV) program.

Federal eligible activities include:

--Mediation

--Co-parenting Education

--Counseling

--Parenting Plan Development

--Visitation Enforcement

Federal and State Program Goals

The congressional goal of the federal Child Access and Visitation Grant program is to "remove barriers and increase opportunities for biological parents who are not living in the same household as their children to become more involved in their children's lives." Under the federal statute, Child Access and Visitation grant funds may be used to support and facilitate NCPs' access to and visitation with their children by means of activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision, and neutral drop-off and pick-up), and development of guidelines for visitation and alternative custody arrangements.

The goal for the Texas Child Access and Visitation Grant program is to focus on serving NCPs and Custodial Parents (CPs) with cases in the Title IV-D child support program.

The federal Child Access and Visitation Grant program is a grant for direct services. The grant-related services must be designed to increase NCPs' access to and visitation with their children.

Initial Term and Renewal

The Contract shall be awarded on a Federal Fiscal Year cycle. The initial term will be from October 1, 2020 through September 30, 2021. After the initial term, Subrecipients successfully performing program services may be eligible for up to three (3) optional one (1) year Contract renewals, based on performance or availability of funds. The decision to renew the Contract shall be at the sole and absolute discretion of the OAG. Such renewal(s) shall be subject to the requirements of the

Contract, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision.

OBJECTIVE AND SCOPE OF SERVICES

Objective

The primary objective of the AV program is to support and facilitate NCPs' AV with their children. Target customers for this grant are NCPs who are experiencing barriers in gaining access to and visitation with their children.

Scope of Services

Subrecipients shall utilize the funds to provide services to parents that support and facilitate AV with their children. Activities may include:

--Mediation

--Co-parenting education

--Counseling

--Parenting plans development

--Supporting co-parenting for never married parents

--Alternative dispute resolution services

--Visitation enforcement programs (including monitored and supervised visitation and neutral drop-off and pick-up)

--Guidelines for visitation and alternative custody arrangements

--Subrecipients shall submit monthly demographic information on customers served to support federal reporting requirements. Categories include:

--Referral Source

--Customer Information

--Marital Status

--Ethnicity

--Income

--Services Provided (includes Parenting Education)

Outcome (*e.g.* increased parenting time)

Subrecipients shall work with the Director of AV to implement an approved domestic violence protocol. On an annual basis, Subrecipients are required to take a four (4) hour domestic violence training course by an approved domestic violence agency. The course can be via webinar and led by the Director of AV or can be local to the Subrecipient's area.

Subrecipients are not required to use materials provided by OAG. However, any materials created by a subrecipient for use in the AV program must be submitted to the OAG for approval before use or distribution.

AWARD

The OAG will make funding decisions and award Contracts that support the efficient, effective use of public funds and that meet the objectives of this RFA. All grant decisions rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final. All funds are subject to federal grant awards.

In determining an award, the OAG will consider information provided by the Applicant, including but not limited to, the organization's:

--capacity

--infrastructure

--knowledge

--efforts

--expertise

--experience

--proposed project activities and related budget.

Evaluation of Application Kit

The OAG will evaluate and score the Application Kit against the following four (4) criteria to determine awards:

--General Information (10%)

--Applicant Information (50%)

--Performance Indicator Report (20%)

--Budget (20%)

Contract Elements

Unless the OAG issues a request for Best and Final Offer, the Contract will consist of the following documents which are listed in the order priority that will be given in the event of a conflict between the documents:

The provisions in this OAG RFA;

The Application Kit submitted by the Applicant, including the required attachments and forms; and

Acknowledgement Letter

No prior agreement or understanding, oral or otherwise, of the parties or their agents will be valid or enforceable unless embodied in the applicable documents listed above.

Notwithstanding the above, the OAG, in its sole discretion, may elect to have the Contract consist of one (1) document. This document will contain all of the rights and duties of the parties extracted from the relevant terms and conditions of the RFA and the Application Kit submitted by the Applicant (including its attachments and forms). Prior to award, the OAG will prepare the Contract for review by the apparent awardee. Discussions may be had concerning possible revisions to the Contract in order to clarify points, further define Contract text, or to correct minor technicalities. These discussions are to be finalized and all requests for revisions resolved within ten (10) Business Days after the Subrecipient receives the Contract for review or such additional period that may be agreed to by the OAG. Agreement must be reached on any such matters for the Contract to be signed and a PO issued. If the OAG is unable to reach an agreement on the Contract with the apparent awardee within such time frame, the response representing the second-best interest of the state may be selected in place of the apparent awardee.

GRANT APPLICATION INFORMATION

Eligibility Requirements

Entities do not have to be statewide to be eligible for grant funding; however, they shall meet the following requirements:

Be a court, local government or other public entity, or a nonprofit organization with a minimum of two (2) years' operating history.

Match funds (cash or in-kind) of at least ten percent (10%).

Demonstrate a consistent message of co-parenting throughout the entity's public education materials, web and social media sites, and any media or public comments, without any bias toward either parent or set of parents.

Provide services at no cost or for a nominal administration fee. All administration fees are used for program costs (or used as program funds) and are expended and accounted for during the project period.

Application Kit Submission Instructions

The OAG will post the required Letter of Intent, Acknowledgement Letter, and Application Kit on the OAG's website at https://www.texasattorneygeneral.gov/child-support/families-and-parenting/access-and-visitation. Should an addition or correction become necessary after an Application Kit is issued, the necessary information will also be posted at this location. Applicants are responsible for periodically checking the site for updates or additional information.

Application Kit Contents

Applicant shall provide the following items with their response:

Letter of Intent. Submission of a Letter of Intent is required to apply for this grant. If a Letter of Intent is not completed and submitted by the deadline, the Application Kit will not be accepted.

Application Kit document and attachments.

Acknowledgement Letter. Submission of the Acknowledgement Letter is required to apply for this grant. If the Acknowledgement Letter is not completed and submitted by the deadline, the Application Kit will not be accepted.

The OAG may require additional information or clarification of any portion of the application. Failure to provide the required information or fully disclose all such information may, at OAG discretion, disqualify Applicant or result in the termination of any resulting Contract. **APPLICANT HAS AN ONGOING DUTY TO UPDATE ALL INFORMATION INCLUDED IN ITS OFFER AT ANY TIME THAT SUCH INFORMATION CHANGES.**

Application Kit Submission Delivery

To be eligible for consideration, Application Kits must be received prior to the date and time specified in the Application Kit. Late Application Kits will not be considered under any circumstance.

Application Kits may only be submitted by email to: av.grants@oag.texas.gov and must be submitted in one of the following formats:

Read-only files (with electronic signature); **OR** Single PDF file.

NOTE: Applicants are encouraged to print and retain the sent email as proof of timely submission.

TRD-202002261
Lesley French
General Counsel
Office of the Attorney General
Filed: June 2, 2020

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Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Texas Rain Holding Company, Inc.;* Cause No. D-1-GN-20-002678 in the 345th Judicial District Court, Travis County, Texas.

Background: Defendant Texas Rain Holding Company, Inc. is a water utility management company that operated a public water system in La Vernia, Wilson County, Texas, from at least October 2014 through January 2019. The State filed suit in 2018 on behalf of the Texas Commission on Environmental Quality for Defendant's alleged failure to comply with numerous operational, maintenance, and reporting requirements pertaining to public water systems under chapter 341 of the Texas Health and Safety Code and chapter 7 of the Texas Water Code. Since January 2019, the public water system has been operating under a court-appointed receivership.

Proposed Settlement: The parties propose an Agreed Final Judgment which provides for an award to the State of $117,550 in civil penalties and $32,000 in attorney's fees.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Ekaterina DeAngelo, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: Ekaterina.DeAngelo@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202002254
Lesley French
General Counsel
Office of the Attorney General
Filed: June 2, 2020

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Capital Area Rural Transportation System

Request for Proposals (RFP)

Capital Area Rural Transportation System (CARTS) invites qualified General Contractors to submit proposals for the Relocation of the CARTS's Tucker Hill Lane Complex Hwy. 71 Entry in Cedar Creek, Texas.

RFP and Construction Documents will be available on the CARTS Website beginning at 2:00 p.m., Tuesday, June 16th, 2020. Go to: http://ridecarts.weebly.com/procurement.html, select the **THL Entry Relocation** link and follow the instructions.

A non-mandatory pre-proposal meeting will be held Virtually at 1:00 p.m., June 23, 2020. Link to the event will be posted in the RFP.

The schedule is:

Tuesday, June 16 2:00 p.m. - RFP Documents available for download

Tuesday, June 23 11:00 a.m. - Virtual pre-proposal conference

Tuesday, June 30 2:00 p.m. - Deadline for proposal questions

Thursday, July 2 Responses to questions posted on website

Thursday, July 9 2:00 p.m. - Proposals due at CARTS

Proposals will be evaluated on cost, qualifications, experience, the quality and content of the submittal.

TRD-202002245

David Marsh
General Manager
Capital Area Rural Transportation System
Filed: June 1, 2020

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Request for Proposals (RFP)

Capital Area Rural Transportation System (CARTS) invites qualified General Contractors to submit proposals for the Renovations of the CARTS's Bastrop Station in Bastrop, Texas.

RFP and Construction Documents will be available on the CARTS Website beginning at 2:00 p.m., Tuesday, June 16th, 2020. Go to: http://ridecarts.weebly.com/procurement.html, select the **Bastrop Station** link and follow the instructions.

A non-mandatory pre-proposal meeting will be held Virtually at 11:00 a.m., June 23, 2020. Link to the event will be posted in the RFP.

The schedule is:

Tuesday, June 16 2:00 p.m. - RFP Documents available for download

Tuesday, June 23 1:00 p.m. - Virtual pre-proposal conference

Tuesday, June 30 2:00 p.m. - Deadline for proposal questions

Thursday, July 2 Responses to questions posted on website

Thursday, July 9 2:00 p.m. - Proposals due at CARTS

Proposals will be evaluated on cost, qualifications, experience, the quality and content of the submittal.

TRD-202002246
David Marsh
General Manager
Capital Area Rural Transportation System
Filed: June 1, 2020

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil -- April 2020

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period April 2020 is $34.63 per barrel for the three-month period beginning on January 1, 2020, and ending March 31, 2020. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of April 2020, from a qualified low-producing oil lease, is not eligible for a credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period April 2020 is $1.02 per mcf for the three-month period beginning on January 1, 2020, and ending March 31, 2020. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of April 2020, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of April 2020 is $16.70 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from oil produced during the month of April 2020, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of April 2020 is $1.77 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of April 2020, from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

TRD-202002199
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: May 28, 2020

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/08/20 - 06/14/20 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/08/20 - 06/14/20 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 06/01/20 - 06/30/20 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 06/01/20 - 06/30/20 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/20 - 09/30/20 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/20 - 09/30/20 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 07/01/20 - 09/30/20 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101[1] for the period of 07/01/20 - 09/30/20 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 07/01/20 - 09/30/20 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 07/01/20 - 09/30/20 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 07/01/20 - 09/30/20 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/20 - 06/30/20 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed §304.003 for the period of 06/01/20 - 06/30/20 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

[4] Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-202002258
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 2, 2020

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Court of Criminal Appeals

Misc. Docket No. 20-012 Final Approval TRE 103(C)

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 20-012

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULE OF EVIDENCE 103(c)

ORDERED that:

1. On January 22, 2020, the Court of Criminal Appeals (Misc. Docket No. 20-001) and the Supreme Court of Texas (Misc. Docket No. 20-9011) approved amendments to Rule 103(c) of the Texas Rules of Evidence, to be effective June 1, 2020, and invited public comment.

2. The comment period has expired, and no additional changes have been made to the rule. This Order gives final approval to the amendments set forth in Court of Criminal Appeals Misc. Docket No. 20-001 and Supreme Court of Texas Misc. Docket No. 20-901.

3. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

Dated: June 1, 2020.

Sharon Keller, Presiding Judge

Michael Keasler, Judge

Barbara Hervey, Judge

Bert Richardson, Judge

Kevin P. Yeary, Judge

David Newell, Judge

Mary Lou Keel, Judge

Scott Walker, Judge

Michelle M. Slaughter, Judge

TRD-202002274
Deana Williamson
Clerk of the Court
Court of Criminal Appeals
Filed: June 3, 2020

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State Board for Educator Certification

Correction of Error Relating to Adopted Amendments to 19 Texas Administrative Code (TAC) Chapter 230, Professional Educator Preparation and Certification

The Texas Education Agency (TEA) filed on behalf of the State Board for Educator Certification the adopted amendments to 19 TAC Chapter 230, Professional Educator Preparation and Certification, on April 27, 2020, for publication in the May 15, 2020 issue of the *Texas Register*.

Due to error by the TEA, one of the statutory citations listed as authority was inadvertently filed as Texas Education Code, "§22.064" instead of "§21.064." The narrative description of the citation was accurate.

TRD-202002264
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: June 3, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 13, 2020.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **July 13, 2020.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 1585 A-Plus R.V., Incorporated; DOCKET NUMBER: 2020-0315-PWS-E; IDENTIFIER: RN107702987; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; PENALTY: $52; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: City of Hooks; DOCKET NUMBER: 2019-1738-PWS-E; IDENTIFIER: RN101389245; LOCATION: Hooks, Bowie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(3)(C) and Texas Health and Safety Code, §341.033(a), by failing to operate a purchase water system serving more than 1,000 connections under the direct supervision of at least two operators who hold a Class C or higher water license and who each work at least 16 hours per month at the public water systems treatment or distribution facilities; and 30 TAC §290.46(s)(2)(D), by failing to verify the accuracy of the analyzer used to determine the effectiveness of chloramination at least every 90 days in accordance with the manufacturer's recommendations; PENALTY: $345; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: City of Junction; DOCKET NUMBER: 2020-0102-MWD-E; IDENTIFIER: RN101920288; LOCATION: Junction, Kimble County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010199001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $16,187; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(4) COMPANY: City of Mason; DOCKET NUMBER: 2020-0266-MWD-E; IDENTIFIER: RN101917599; LOCATION: Mason, Mason County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010670001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: City of Wills Point; DOCKET NUMBER: 2020-0099-PWS-E; IDENTIFIER: RN101388973; LOCATION: Wills Point, Van Zandt County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligram per liter of chloramine (measured as total chlorine) throughout the distribution system at all times; PENALTY: $600; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: David T. Hindman dba Canyon Cove RV Park and Debra J. Hindman dba Canyon Cove RV Park; DOCKET NUMBER: 2019-1505-PWS-E; IDENTIFIER: RN109454363; LOCATION: Canyon Lake, Comal County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated, and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the facility's well pump prior to treatment; 30 TAC §290.43(c)(1), by failing to provide the ground storage tank (GST) with a gooseneck roof vent or a roof ventilator designed by an engineer and installed in strict accordance with American Water Works Association standards and equipped with a corrosion-resistant 16-mesh or finer screen; 30 TAC §290.43(c)(2), by failing to ensure that the facility's GST hatch remains locked except during inspections and maintenance; 30 TAC §290.43(c)(3), by failing to provide an overflow discharge opening on the GST with a gravity-hinged and weighted cover that closes automatically and fits tightly with no gap over 1/16 inch, an elastomeric duckbill valve, or other approved device to prevent the entrance of insects and other nuisances; 30 TAC §290.43(e), by failing to provide all potable water storage tanks and pressure maintenance facilities with a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates that are kept locked whenever the facility is unattended; 30 TAC §290.45(c)(1)(B)(iv) and Texas Health and Safety Code, §341.0315(c), by failing to provide a pressure tank capacity of ten gallons per unit; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.46(n)(3),

by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $900; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: ETC Texas Pipeline, Ltd.; DOCKET NUMBER: 2020-0270-AIR-E; IDENTIFIER: RN107716664; LOCATION: Crockett, Houston County; TYPE OF FACILITY: natural gas production plant; RULES VIOLATED: 30 TAC §§116.115(c), 116.615(2), and 122.143(4), Standard Permit Registration Number 123434, Federal Operating Permit Number O3840/General Operating Permit Number 514, Site-wide Requirements Numbers (b)(2) and (9)(E)(ii), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: JC DISPOSAL LLC and Gerardo Castruita; DOCKET NUMBER: 2020-0173-MSW-E; IDENTIFIER: RN110852621; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: unauthorized waste processing facility; RULE VIOLATED: 30 TAC §330.9(a), by failing to obtain authorization from the TCEQ prior to engaging in the activity of storage, processing, removal, or disposal of municipal solid waste; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Kinder Morgan Crude & Condensate LLC; DOCKET NUMBER: 2019-1430-AIR-E; IDENTIFIER: RN100237452; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: industrial chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Numbers 101199 and N158, Special Conditions Number 1, Federal Operating Permit Number O3764, General Terms and Conditions and Special Terms and Conditions Number 14, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: $53,662; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $21,465; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Lake Livingston Water Supply Corporation; DOCKET NUMBER: 2019-1757-PWS-E; IDENTIFIER: RN105711931; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director (ED) regarding the failure to report the results of chlorite sampling to the ED for the March 2018 monitoring period; PENALTY: $1,897; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Lehigh Gas Wholesale Services, Incorporated dba Snax Basket 2 TX0314; DOCKET NUMBER: 2020-0316-PST-E; IDENTIFIER: RN102376787; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(12) COMPANY: MAXWELL Water Supply Corporation; DOCKET NUMBER: 2020-0084-PWS-E; IDENTIFIER: RN101456424; LOCATION: Maxwell, Caldwell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $3,450; ENFORCEMENT COORDINATOR: Jée Willis, (512) 239-1115; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(13) COMPANY: MILITARY HIGHWAY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2020-0259-MWD-E; IDENTIFIER: RN101611366; LOCATION: Progreso, Hidalgo County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013462001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $9,500; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(14) COMPANY: RIVER OAKS WATER SUPPLY CORPORATION; DOCKET NUMBER: 2020-0314-PWS-E; IDENTIFIER: RN101187318; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: $52; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-5212; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Trend Gathering & Treating, LLC; DOCKET NUMBER: 2020-0313-AIR-E; IDENTIFIER: RN102979473; LOCATION: Donie, Limestone County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3452/General Operating Permit Number 514, Site-wide Requirements Number (b)(3), and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Undine Texas Environmental, LLC; DOCKET NUMBER: 2020-0233-MWD-E; IDENTIFIER: RN102344157; LOCATION: Joshua, Johnson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013846001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $3,125; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: UVALDE COUNTY FARMERS' COOPERATIVE; DOCKET NUMBER: 2020-0317-PST-E; IDENTIFIER: RN104496336; LOCATION: Knippa, Uvalde County; TYPE OF FACILITY: fleet refueling station; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground

storage tank system; PENALTY: $2,560; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: V A V Investments, LLC; DOCKET NUMBER: 2020-0302-PWS-E; IDENTIFIER: RN105862197; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(j), by failing to ensure that all chemicals and any additional or replacement process media used in treatment of water supplied by the facility conform to the American National Standards Institute/National Sanitation Foundation Standard 61 for Drinking Water Treatment Components; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $100; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: VAPIWALLA & SON'S INCORPORATED dba Right Choice Food Mart 8; DOCKET NUMBER: 2020-0326-PST-E; IDENTIFIER: RN102273711; LOCATION: Waelder, Gonzales County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and (iii)(II) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, failing to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons, and failing to use equipment capable of measuring the level of stored substance over the full range of the tank's height to the nearest 1/8 inch; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C, for the facility; PENALTY: $7,813; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(20) COMPANY: Webb County; DOCKET NUMBER: 2020-0213-PWS-E; IDENTIFIER: RN102698719; LOCATION: Rio Bravo, Webb County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant (MCL) level of 0.080 milligram per liter for total trihalomethanes (TTHM) based on the locational running annual average and to provide public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the MCL for TTHM during the third quarter of 2019; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-202002252
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 2, 2020

♦ ♦ ♦

Amended Notice of Hearing (to change hearing date and location.) Port of Corpus Christi Authority of Nueces County: SOAH Docket No. 582-20-1895; TCEQ Docket No. 2019-1156-IWD; Permit No. WQ0005253000

APPLICATION.

Port of Corpus Christi Authority of Nueces County, P.O. Box 1541, Corpus Christi, Texas 78403, which proposes to operate the Harbor Island Property - Former FINA Tank Farm, a seawater desalination facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005253000, to authorize the discharge of water treatment wastes at a daily average flow not to exceed 95,600,000 gallons per day via Outfall 001. The TCEQ received this application on March 7, 2018.

The facility will be located adjacent to State Highway 361 just northeast of the Ferry Landing, in Nueces County, Texas 78336. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: *https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-97.0675%2C27.845833&level=12.* For the exact location, refer to the application.

The effluent will be discharged via pipe directly to Corpus Christi Bay in Segment No. 2481 of the Bays and Estuaries. The designated uses for Segment No. 2481 are primary contact recreation, exceptional aquatic life use, and oyster waters.

In accordance with Title 30 Texas Administrative Code (TAC) Section 307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Corpus Christi Bay, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the following locations: Ed & Hazel Richmond Public Library, located at 110 N Lamont Street, Aransas Pass, Texas 78336; City Hall of Port Aransas, located at 710 W Avenue A, Port Aransas, Texas 78373; La Retama Central Library, located at 805 Comanche Street, Corpus Christi, Texas 78401; and Sinton Public Library, located at 100 N Pirate Blvd, Sinton, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via

Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - July 9, 2020

To join the Zoom meeting via computer:

www.zoom.us/join

Meeting ID: 950-3842-5697

Password: 4eK#C8

or

To join the Zoom meeting via telephone:

(346) 248-7799

Meeting ID: 950-3842-5697

Password: 669094

or

To join the Zoom meeting via Smart Device:

Download the free app

Meeting ID: 950-3842-5697

Password: 4eK#C8

Additional details and methods for joining the Zoom meeting are available online in SOAH Order No. 3 at: *https://www.tceq.texas.gov/assets/public/comm_exec/agendas/comm/backup/SOAH/POCCA/2019-1156-IWD-Order3.pdf*

Visit the SOAH website for registration at: *http://www.soah.texas.gov/*

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on November 21, 2019. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "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."**

INFORMATION

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at *www.tceq.texas.gov.*

Further information may also be obtained from Port of Corpus Christi Authority of Nueces County at the address stated above or by calling Ms. Sarah L. Garza, Director of Environmental Planning, at (361) 885-6163.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: May 28, 2020

TRD-202002266
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 3, 2020

♦ ♦ ♦

Enforcement Orders

An agreed order was adopted regarding Crest Metal Doors, Inc. Docket No. 2018-1702-AIR-E on June 2, 2020 assessing $6,814 in administrative penalties with $1,362 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MESA GRANDE WATER SUPPLY CORPORATION, Docket No. 2019-0178-PWS-E on June 2, 2020 assessing $100 in administrative penalties with $20 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GRUPO PETROGAS, L.L.C., Docket No. 2019-0367-MLM-E on June 2, 2020 assessing $6,341 in administrative penalties with $1,268 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Johan Gerrit Koke and Sonya Ann Koke dba Blue Jay Dairy, Docket No. 2019-0548-AGR-E on June 2, 2020 assessing $4,251 in administrative penalties with $850 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CWP ASSET CORP. dba Mister Carwash 11, Docket No. 2019-0700-PST-E on June 2, 2020 assessing $3,976 in administrative penalties with $795 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KMBR Management, Inc dba Stop-N-Shop, Docket No. 2019-0734-PST-E on June 2, 2020 assessing $4,623 in administrative penalties with $924 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Circle 7 Dairy LLC and GRAND CANYON DAIRY LLC, Docket No. 2019-0804-AGR-E on June 2, 2020 assessing $3,038 in administrative penalties with $607 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 7 GEMS ENTERPRISE INC dba Bills 3 Gs Food Mart, Docket No. 2019-0835-PST-E on June 2, 2020 assessing $6,892 in administrative penalties with $1,378 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Huntington, Docket No. 2019-0927-MLM-E on June 2, 2020 assessing $5,464 in administrative penalties with $1,092 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bells, Docket No. 2019-0952-MWD-E on June 2, 2020 assessing $4,875 in administrative penalties with $975 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CRYSTAL CLEAR WATER, INC, Docket No. 2019-1105-MLM-E on June 2, 2020 assessing $757 in administrative penalties with $151 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sophia Group, LLC. dba Louis Food Store, Docket No. 2019-1111-PST-E on June 2, 2020 assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Steve Lively dba Shady Shores RV Park and Melinda Lively dba Shady Shores RV Park, Docket No. 2019-1115-PWS-E on June 2, 2020 assessing $1,850 in administrative penalties with $370 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Federal Bureau of Prisons, Docket No. 2019-1196-PST-E on June 2, 2020 assessing $3,938 in administrative penalties with $787 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ryan Stahr dba Indian Hills Stop N Go, Docket No. 2019-1197-PST-E on June 2, 2020 assessing $4,858 in administrative penalties with $971 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KPH-CONSOLIDATION, INC. dba HCA Houston Healthcare North Cypress, Docket No. 2019-1203-PST-E on June 2, 2020 assessing $2,546 in administrative penalties with $509 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chong Min Choi dba US Super Market 3, Docket No. 2019-1344-PST-E on June 2, 2020 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding S K R BUSINESS LLC dba Burleson Food, Docket No. 2019-1367-PST-E on June 2, 2020 assessing $4,188 in administrative penalties with $837 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding P.K. BUSINESS ENTERPRISES, INC., Docket No. 2019-1375-PWS-E on June 2, 2020 assessing $100 in administrative penalties with $20 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Richwood, Docket No. 2019-1376-PWS-E on June 2, 2020 assessing $356 in administrative penalties with $71 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ARTAVIA Development Company, Docket No. 2019-1428-WQ-E on June 2, 2020 assessing $5,625 in administrative penalties with $1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding UTLX Manufacturing LLC, Docket No. 2019-1441-AIR-E on June 2, 2020 assessing $4,575 in administrative penalties with $915 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GPM Southeast, LLC dba EZ Mart 4249, Docket No. 2019-1497-PST-E on June 2, 2020 assessing $2,813 in administrative penalties with $562 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2019-1549-MWD-E on June 2, 2020 assessing $3,050 in administrative penalties with $610 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, En-

forcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Exxon Mobil Corporation, Docket No. 2019-1593-AIR-E on June 2, 2020 assessing $6,787 in administrative penalties with $1,357 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding American Midstream Gas Solutions, LP, Docket No. 2019-1617-AIR-E on June 2, 2020 assessing $4,875 in administrative penalties with $975 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 114TH Mobile Home Park, LLC, Docket No. 2019-1623-PWS-E on June 2, 2020 assessing $535 in administrative penalties with $107 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shintech Incorporated, Docket No. 2019-1664-AIR-E on June 2, 2020 assessing $6,263 in administrative penalties with $1,252 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Targa Midstream Services LLC, Docket No. 2019-1700-AIR-E on June 2, 2020 assessing $2,888 in administrative penalties with $577 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MB Chaparral, LLC, Docket No. 2019-1702-OSS-E on June 2, 2020 assessing $750 in administrative penalties with $150 deferred. Information concerning any aspect of this order may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Paducah, Docket No. 2019-1739-PWS-E on June 2, 2020 assessing $330 in administrative penalties with $66 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sjolander Park, LTD., Docket No. 2019-1780-PWS-E on June 2, 2020 assessing $300 in administrative penalties with $60 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Yoakum, Docket No. 2019-1790-PWS-E on June 2, 2020 assessing $1,691 in administrative penalties with $338 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Total Petrochemicals & Refining USA, Inc., Docket No. 2019-1792-AIR-E on June 2, 2020 assessing $1,250 in administrative penalties with $250 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LYONS GROCERY STORE INC dba Lyons Shell, Docket No. 2020-0045-PST-E on June 2, 2020 assessing $1,789 in administrative penalties with $357 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Topcon Inc, Docket No. 2020-0128-WQ-E on June 2, 2020 assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding J&J EXCAVATING MATERIALS CO, Docket No. 2020-0206-WR-E on June 2, 2020 assessing $350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Remarkable Homes LLC, Docket No. 2020-0223-WQ-E on June 2, 2020 assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Sidney Eugene Kuykendall, Docket No. 2020-0243-OSI-E on June 2, 2020 assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Juan G Jasso, Docket No. 2020-0275-WOC-E on June 2, 2020 assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Jack Dexter, Docket No. 2020-0276-WOC-E on June 2, 2020 assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202002265
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 3, 2020

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Notice of Receipt of Application and Intent to Obtain a New Municipal Solid Waste Permit: Proposed Permit No. 2408

Application. Edwards Construction, 2821 State Highway 42 North, Kilgore, Gregg County, Texas 75662-5380, the prospective owner

and operator of a proposed Type V municipal solid waste facility, has applied to the Texas Commission on Environmental Quality (TCEQ) requesting authorization for a new liquid waste dewatering facility. The facility is proposed to be located at 2821 State Highway 42 North, Kilgore, 75662-5380 in Gregg County, Texas. The TCEQ received this application on April 29, 2020. The permit application is available for viewing and copying at the Kilgore Public Library, 301 North Henderson Boulevard, Kilgore, Gregg County, Texas 75662, and may be viewed online at *http://www.Cook-Joyce.com/permits/.* The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: *https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f816 8250f&marker=-94.870277%2C32.407222&level=12.* For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at *www.tceq.texas.gov/goto/ci.d.* Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at *www14.tceq.texas.gov/epic/eComment/* or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at *www.tceq.texas.gov/goto/pep.* Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Edwards Construction at the address stated above or by calling Mr. William Edwards, President at (903) 643-7585.

TRD-202002270
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 3, 2020

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Semiannual Report due January 15, 2020

Jenifer Rene Pool, P.O. Box 572211, Houston, Texas 77257

Deadline: 30 Day Pre-Election Report due February 3, 2020

James A. Armstrong, 1839 Leath St., Dallas, Texas 75212

Evan A. Bohl, 6206 Checkrein St. , San Antonio, Texas 78240

Richard A. Bonton, 12680 West Lake Houston Pkwy., Ste. 510 PMB 180, Houston, Texas 77044

William J. Booher, 8127 Weeping Willow Pl, Missouri City, Texas 77459

Sandra Crenshaw, P.O. Box 15088, Dallas, Texas 75315

Christopher L. Graham, P.O. Box 625, DeSoto, Texas 75123

Michelle D. Hammel, 6340 N. Eldridge Pkwy. Ste. N107, Houston, Texas 77041

Robert Stanley Litoff, 7026 Forest Crest North, San Antonio, Texas 78240-3314

Marilynn S. Mayse, 2201 Main St. Ste 1220, Dallas, Texas 75201

Bill Metzger (only email on file)

Melissa M. Morris, 7650 Springhill St Unit 704, Houston, Texas 77021

Fernando Jesus Padron, P.O. Box 40216, San Antonio, Texas 78229

Angeanette Thibodeaux, 6713 Cathcart, Houston, Texas 77091

Shawn Nicole Thierry, 5100 Westheimer #200, Houston, Texas 77056

TRD-202002253
Anne Peters
Executive Director
Texas Ethics Commission
Filed: June 2, 2020

♦ ♦ ♦

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 4, 2020 to May 29, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, June 5, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, July 5, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Corpus Christi Authority

Location: The project site is located in Corpus Christi Ship Channel at Tule Lake Channel, Corpus Christi, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.81795, -97.46068

Project Description: The applicant proposes to increase the previously authorized dredged depth from -37.5 feet Mean Lower Low Water (MLLW, Navd88) to -54 MLLW plus 4 feet of advance maintenance, and 2 feet of allowable over depth to accommodate larger vessels at the applicant's Bulk Dock 1. A new 1,970 foot combi-wall bulkhead below Mean High Water will be installed at the shoreline to increase the dredge depth of the dock safely. Dredging, of approximately 172,000 cubic yards of material in a 10.5-acre area, would be executed following the combi-wall installation to avoid undermining of existing structures. Dredging would take place by either mechanical or hydraulic means, and material would be disposed of at one or more of the designated Dredge Material Placement Areas owned by the Port of Corpus Christi Authority. Additionally, the applicant proposes to discharge 40 cubic yards of fill material into 0.04 acres below the high tide line to approximately -5 feet MLLW. The fill material is being placed to protect the shoreline and restore washouts that have occurred around the existing abutment. The project timeline is estimated to take three years to construct with an additional ten years for maintenance dredging.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2020-00239. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 20-1255-F1

Applicant: Epic Crude Terminal Company

Location: The project is located on the south side of the Tule Lake Channel, approximately 0.83 miles WNW of the former Tule Lift Bridge site, Corpus Christi, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.815750, - 97.466917

Project Description: The applicant is requesting a modification to reconfigure the original dock design in order to accommodate Suezmax and Aframax Class Vessels. The proposed dredge footprint will be 6.75 acres to the previously authorized depth of -47 feet mean lower low water (MLLW) with two feet of over dredge and two feet of advanced maintenance, for a total of -51 feet MLLW. The 70-foot by 50-foot dock platform will accommodate three loading arms, deck crane, ship gangway, and a dock house. EPIC is proposing a 120-foot-long by 16-foot-wide ramp/walkway connecting the dock to the shoreline. The ramp will have a 90-degree bend along the shoreline to avoid the existing railroad tracks and provide an 85-foot-long by 16-foot-wide approach to accommodate loading access to the dock. In addition, EPIC is proposing the installation of a 602-foot-long sheet-pile bulkhead to be placed an average of 90 feet waterward from the shoreline (approximately 1.24-acre area) with approximately 16,000 cubic yards (CY) of fill placed below the Ordinary High Water Mark. The applicant has stated permanent impacts to the enclosed 0.001-acre fringe wetland is expected due to the placement of fill material within the enclosed bullheaded area.

The project was originally permitted on 2 January 2015 to dredge a 7.23-acre area of open water within Tule Lake Channel to a depth of -25 feet Mean Low Tide (MLT). The project was amended on 17 August 2015 to increase the amount of material to be hydraulically and mechanically dredged to an additional 160,000 cubic yards from the previously authorized 181,000 cubic yards for a total of approximately 341,000 cubic yards of material from a 7.66-acre area adjacent to the Tule Lake Channel to be placed into one of the following Dredge Material Placement Areas (DMPA): (1) Tule Lake DMPA - Cells A, B & C; (2) Suntide DMPA; (3) South Shore DMPA - Cells A & B; (4) DMPA No. 1; and/or (5) Herbie Mauer DMPA. The 17 August 2015 amendment also included an authorization to dredge the project area to a depth of -45 feet Mean Lower Low Water (MLLW). The applicant was authorized on 18 October 2019 to modify the existing authorized permit and shift the footprint of the project west by approximately 167 feet. The dock geometrics, walkways and structures will remain the same.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2020-00239. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 20-1256-F1

Applicant: Texas Department of Transportation-Houston District (TxDOT)

Location: The project route is located in waters of the US, including Galveston Bay, and adjacent wetlands, along Interstate Highway (IH) 45 from the Texas City Wye to the North Causeway Bridge, approximately 3.65 miles in length, in Galveston County, Texas.

Latitude & Longitude (NAD 83): Begin: 29.33506, -94.93799; End: 29.30399, -94.90264

Project Description: The applicant proposes to temporarily discharge cubic yards of fill material into 3.56 acres of wetlands and to permanently discharge acres of fill material into 17.125 acres of wetlands, during the roadway improvements associated with the reconstruction and widening of IH 45. The total discharge for all impacts is cumulatively 27,624 cubic yards of fill material.

Discharges are directly from road construction materials (fill dirt and/or road bed material) being placed in wetlands, or culverts, as well as rip-rap and bridge pilings being placed into streams. Indirect impacts will occur from disturbances such as gradings or excavating.

The proposed project from approximately 4,000 feet north of the Texas City Wye (intersection of IH 45 and State Highway (SH) 6 and SH 146) to north of the Galveston Causeway Bridge would consist of reconstructing and widening IH 45 from a six-lane interstate to an eight-lane interstate. Additionally, frontage roads would be reconstructed with a minimum of four 12-foot lanes (2 in each direction), with bicycle accommodations. The proposed project also includes the reconstruction of the intersection of IH 45 and SH 6 and SH 146. Five-foot-wide sidewalks would be constructed where feasible.

The proposed improvements of IH 45 South would include reconstructing and widening approximately 3.65 miles of the existing six-lane divided highway. The proposed improvements would consist of eight 12-foot-wide travel lanes (four in each direction) with 12-foot-wide shoulders, and two-lane frontage roads with an eight-foot-wide shoulder on either side of the highway. The project also includes reconstructing the IH 45/State Highway (SH) 6/ SH 146 interchange. The proposed project would be mostly constructed within the existing 380-foot right-of-way (ROW) but does include areas of outside of existing ROW.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2020-00053. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 20-1266-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at *pialegal@glo.texas.gov.*Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at *federal.consistency@glo.texas.gov.*

TRD-202002257
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: June 2, 2020

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of April, 2020, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Dallas	Archana Srivastava M.D., P.A. dba Heart Clinic of Dallas	L07050	Dallas	00	04/27/20

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	136	04/27/20
Dallas	Baylor University Medical Center	L01290	Dallas	147	04/24/20
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Memorial Campus	L02353	El Paso	147	04/21/20
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Sierra Campus	L02365	El Paso	114	04/21/20
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence East Campus	L06152	El Paso	34	04/21/20
Fort Worth	North Texas MCA L.L.C. dba Medical City Alliance	L06687	Fort Worth	10	04/21/20
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	53	04/22/20
Houston	Memorial Hermann Health System dba Memorial Hermann Texas Medical Center	L06439	Houston	17	04/21/20
Houston	Baker Hughes Oilfield Operations L.L.C.	L07047	Houston	01	04/27/20
Lewisville	Cardiovascular Specialists L.P.	L05507	Lewisville	25	04/17/20
Lubbock	Methodist Children's Hospital dba Covenant Children's Hospital	L06852	Lubbock	02	04/28/20
Lubbock	Covenant Medical Center	L06993	Lubbock	01	04/28/20
Midland	Texas Oncology P.A. dba Allison Cancer Center	L04905	Midland	28	04/21/20
New Braunfels	TXI Operations L.P. dba Martin Marietta	L01421	New Braunfels	59	04/28/20
Rowlett	Lake Pointe Operating Company L.L.C. dba Baylor Scott & White Medical Center – Lake Pointe	L04060	Rowlett	22	04/17/20

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	Proportional Technologies Inc.	L04747	Houston	35	04/24/20
Throughout TX	Profrac Services L.L.C.	L06808	Cisco	08	04/21/20
Throughout TX	Cardinal Health 414 L.L.C. dba Cardinal Nuclear Pharmacy Services	L02048	Dallas	159	04/29/20
Throughout TX	Alliance Geotechnical Group Inc.	L05314	Dallas	40	04/21/20
Throughout TX	Desert NDT L.L.C. dba Shawcor	L06462	Fort Worth	44	04/21/20
Throughout TX	QES Wireline L.L.C	L06620	Fort Worth	23	04/17/20
Throughout TX	Nuclear Sources & Services Inc. dba NSSI/Sources & Services Inc. NSSI	L02991	Houston	48	04/21/20
Throughout TX	HVJ Associates Inc.	L03813	Houston	65	04/29/20
Throughout TX	Core Laboratories L.P. dba Protechnics Division of Core Laboratories L.P.	L03835	Houston	65	04/16/20
Throughout TX	Tolunay Wong Engineers Inc.	L04848	Houston	25	04/22/20
Throughout TX	4A Inspection L.L.C.	L06716	Houston	05	04/23/20
Throughout TX	Stronghold Inspection Ltd	L06918	La Porte	07	04/23/20
Throughout TX	Intertek Asset Integrity Management Inc.	L06801	Longview	13	04/24/20
Throughout TX	Allen Butler Construction Inc.	L06788	Lubbock	02	04/21/20
Throughout TX	Weld Spec Inc.	L05426	Lumberton	116	04/29/20
Throughout TX	Pro Inspection Inc.	L06666	Odessa	10	04/22/20
Throughout TX	Chempro Technologies Inc. dba Environicsusa Inc.	L07016	Round Rock	05	04/20/20
Throughout TX	AGD Inspection Services	L06368	Stafford	13	04/16/20
Throughout TX	Professional Service Industries Inc.	L04943	Victoria	10	04/16/20
Throughout TX	KLX Energy Services Holdings Inc.	L07002	Weatherford	03	04/28/20

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Angleton	Isotherapeutics Group L.L.C.	L05969	Angleton	41	04/27/20
Houston	Memorial Hermann Health System dba Memorial Hermann – Texas Medical Center	L00650	Houston	95	04/24/20
Houston	Interventional Cardiology Associates	L05294	Houston	15	04/29/20
La Porte	Nouryon Functional Chemicals L.L.C.	L04372	La Porte	21	04/29/20
Orange	Chevron Phillips Chemical Company L.P.	L00031	Orange	62	04/27/20
Pasadena	Marathon Pipe Line L.L.C.	L05303	Pasadena	14	04/16/20
San Marcos	Texas State University San Marcos	L03321	San Marcos	41	04/08/21
Seguin	Structural Metals Inc. dba CMC Steel Texas	L02188	Seguin	24	04/22/20
Throughout TX	Material Inspection Technology Inc.	L05672	Houston	41	04/23/20
Throughout TX	All-Terra Engineering Inc.	L06215	Houston	06	04/30/20

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Dallas	Hooper Testing Laboratories Inc.	L02309	Dallas	14	04/23/20
Dallas	Peloton Therapeutics Inc.	L06490	Dallas	09	04/20/20
Denton	Tanveer A. Qureshi M.D., P.A.	L04815	Denton	10	04/29/20
Houston	GE Energy Oilfield Technology Inc.	L06542	Houston	09	04/20/20

TRD-202002273
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: June 3, 2020

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Texas Department of Insurance

Company Licensing

In the September 6, 2019, issue of the *Texas Register* (44 TexReg 4903), a name reservation was published for Triple-S Vida Inc., a foreign life, accident and/or health company. The correct name is Triple-S Vida, Inc. The home office is in San Juan, Puerto Rico.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202002271
James Person
General Counsel
Texas Department of Insurance
Filed: June 3, 2020

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Notice of Correction

In the Adopted Rules section of the May 29, 2020, issue of the *Texas Register* (45 TexReg 3635), the Texas Department of Insurance submitted for publication an adoption of amended 28 TAC §5.9332, relating to workers' compensation classification relativities. The effective date of the rule was submitted incorrectly as June 1, 2020. The correct effective date of the rule should be July 1, 2020.

TRD-202002204
James Person
General Counsel
Texas Department of Insurance
Filed: May 29, 2020

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Texas Lottery Commission

Scratch Ticket Game Number 2225 "TRIPLE 333s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2225 is "TRIPLE 333s". The play style is "find symbol".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2225 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2225.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: ELEPHANT SYMBOL, SUN SYMBOL, CHERRY SYMBOL, GOLD BAR SYMBOL, SPADE SYMBOL, HEART SYMBOL, HORSESHOE SYMBOL, MOON SYMBOL, RAINBOW SYMBOL, DIAMOND SYMBOL, UMBRELLA SYMBOL, WISHBONE SYMBOL, WATERMELON SYMBOL, DICE SYMBOL, CLUB SYMBOL, LEMON SYMBOL, LIGHTNING BOLT SYMBOL, BOAT SYMBOL, MONEY BAG SYMBOL, COIN SYMBOL, CACTUS SYMBOL, CASH SYMBOL, 3 SYMBOL, 333 SYMBOL, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2225 - 1.2D

PLAY SYMBOL	CAPTION
ELEPHANT SYMBOL	ELEPHT
SUN SYMBOL	SUN
CHERRY SYMBOL	CHERRY
GOLD BAR SYMBOL	BAR
SPADE SYMBOL	SPADE
HEART SYMBOL	HEART
HORSESHOE SYMBOL	HRSHOE
MOON SYMBOL	MOON
RAINBOW SYMBOL	RAINBW
DIAMOND SYMBOL	DMD
UMBRELLA SYMBOL	UMBRLA
WISHBONE SYMBOL	WSHBNE
WATERMELON SYMBOL	WTRMLN
DICE SYMBOL	DICE
CLUB SYMBOL	CLUB
LEMON SYMBOL	LEMON
LIGHTNING BOLT SYMBOL	BOLT
BOAT SYMBOL	BOAT
MONEY BAG SYMBOL	BAG
COIN SYMBOL	COIN
CACTUS SYMBOL	CACTUS
CASH SYMBOL	CASH
3 SYMBOL	WIN$
333 SYMBOL	TRP
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$1,000	ONTH
$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2225), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2225-0000001-001.

H. Pack - A Pack of the "TRIPLE 333s" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "TRIPLE 333s" Scratch Ticket Game No. 2225.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "TRIPLE 333s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty (20) Play Symbols. If a player reveals a "3" Play Symbol, the player wins the PRIZE for that symbol. If the player reveals a "333" Play Symbol, the player wins TRIPLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty (20) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty (20) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty (20) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty (20) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to ten (10) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $30,000 will each appear at least once, except on Tickets winning nine (9) times or more.

E. No matching non-winning Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. On all Tickets, a Prize Symbol will not appear more than three (3) times, except as required by the prize structure to create multiple wins.

H. All non-winning Play Symbols will be different.

I. The "3" (WIN$) Play Symbol will win the PRIZE for that Play Symbol.

J. The "333" (TRP) Play Symbol will win TRIPLE the PRIZE for that Play Symbol.

K. The "333" (TRP) Play Symbol will never appear more than once on a Ticket.

L. The "3" (WIN$) and "333" (TRP) Play Symbols will never appear on Non-Winning Tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE 333s" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLE 333s" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE 333s" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "TRIPLE 333s" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "TRIPLE 333s" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the

Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2225. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2225 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	720,000	10.00
$4.00	384,000	18.75
$5.00	336,000	21.43
$10.00	192,000	37.50
$15.00	48,000	150.00
$20.00	48,000	150.00
$30.00	12,000	600.00
$50.00	4,500	1,600.00
$100	3,300	2,181.82
$1,000	12	600,000.00
$30,000	6	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.12. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2225 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2225, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002218
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 1, 2020

♦ ♦ ♦

Scratch Ticket Game Number 2230 "FIND THE 9s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2230 is "FIND THE 9s". The play style is "coordinate with prize legend".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2230 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2230.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 9 SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $500, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2230 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
30	TRTY
9 SYMBOL	NINE
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$40.00	FRTY$
$50.00	FFTY$
$500	FVHN
$1,000	ONTH
$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2230), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2230-0000001-001.

H. Pack - A Pack of the "FIND THE 9s" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "FIND THE 9s" Scratch Ticket Game No. 2230.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "FIND THE 9s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-seven (27) Play Symbols. 1. If a player matches any of the YOUR NUMBERS Play Symbols to any of the LUCKY NUMBERS Play Symbols, the player wins the prize for that number. 2. If the player reveals 2 or more "9" Play Symbols in the play area, the player wins the corresponding prize in the PRIZE LEGEND. (Only highest prize paid.) No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-seven (27) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-seven (27) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-seven (27) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-seven (27) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to three (3) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $30,000 will each appear at least once.

E. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

F. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching LUCKY NUMBERS Play Symbols will appear on a Ticket.

I. On Non-Winning Tickets, a LUCKY NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol and there will never be more than one (1) "9" (NINE) Play Symbol.

J. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 02 and $2, 04 and $4, 05 and $5, 10 and $10 and 20 and $20).

K. On all Tickets, a Prize Symbol will not appear more than two (2) times, except as required by the prize structure to create multiple wins, or to win by collecting "9" (NINE) Play Symbols.

L. Winning Tickets will contain a LUCKY NUMBERS Play Symbol that matches a YOUR NUMBERS Play Symbol or at least two (2) "9" (NINE) Play Symbols.

M. No Ticket will contain more than five (5) "9" (NINE) Play Symbols.

N. Winning Tickets will display the number of "9" (NINE) Play Symbols as dictated in the PRIZE LEGEND shown on the Ticket.

O. The "9" (NINE) Play Symbol will appear at least once per Ticket.

P. The "9" (NINE) Play Symbol can win as per the prize structure.

Q. The "9" (NINE) Play Symbol will never appear as a LUCKY NUMBERS Play Symbol.

R. When a "9" (NINE) Play Symbol appears as a YOUR NUMBERS Play Symbol, the corresponding Prize Symbol will always be the "COLLECT" (NINES) Prize Symbol.

S. The "COLLECT" (NINES) Prize Symbol will only ever appear with a "9" (NINE) Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "FIND THE 9s" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $60.00, $90.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00, $50.00, $60.00, $90.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FIND THE 9s" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FIND THE 9s" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "FIND THE 9s" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "FIND THE 9s" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2230. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2230 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	825,600	8.72
$4.00	441,600	16.30
$5.00	57,600	125.00
$10.00	134,400	53.57
$20.00	67,200	107.14
$40.00	8,700	827.59
$50.00	5,490	1,311.48
$60.00	3,000	2,400.00
$90.00	2,190	3,287.67
$100	2,100	3,428.57
$500	2,850	2,526.32
$1,000	40	180,000.00
$30,000	10	720,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.64. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2230 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2230, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the

State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002219
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 1, 2020

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Scratch Ticket Game Number 2231 "50X FAST CASH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2231 is "50X FAST CASH". The play style is "match 3 of x".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2231 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2231.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: BINOCULARS SYMBOL, CAP SYMBOL, CLOCK SYMBOL, FIRE EXTINGUISHER SYMBOL, FLAG SYMBOL, FUEL SYMBOL, GLOVE SYMBOL, HELMET SYMBOL, KEY SYMBOL, LIGHTS SYMBOL, MEDAL SYMBOL, MEGAPHONE SYMBOL, PUMP SYMBOL, SUN SYMBOL, TIRE SYMBOL, TROPHY SYMBOL, WATER BOTTLE SYMBOL, WRENCH SYMBOL, RACE CAR SYMBOL, $5.00, $10.00, $20.00, $50.00, $100, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2231 - 1.2D

PLAY SYMBOL	CAPTION
BINOCULARS SYMBOL	BINOC
CAP SYMBOL	CAP
CLOCK SYMBOL	CLOCK
FIRE EXTINGUISHER SYMBOL	FIRE EXT
FLAG SYMBOL	FLAG
FUEL SYMBOL	FUEL
GLOVE SYMBOL	GLOVE
HELMET SYMBOL	HELMET
KEY SYMBOL	KEY
LIGHTS SYMBOL	LIGHTS
MEDAL SYMBOL	MEDAL
MEGAPHONE SYMBOL	MEGAPHON
PUMP SYMBOL	PUMP
SUN SYMBOL	SUN
TIRE SYMBOL	TIRE
TROPHY SYMBOL	TROPHY
WATER BOTTLE SYMBOL	WATER
WRENCH SYMBOL	WRENCH
RACE CAR SYMBOL	WIN
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$1,000	ONTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2231), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2231-0000001-001.

H. Pack - A Pack of "50X FAST CASH" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "50X FAST CASH" Scratch Ticket Game No. 2231.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set

forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "50X FAST CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-four (64) Play Symbols. If a player reveals 3 matching Play Symbols in the same GAME, the player wins the PRIZE for that GAME. If the player reveals 2 matching Play Symbols and a "RACE CAR" Play Symbol in the same GAME, the player wins 2X the PRIZE for that GAME. If the player reveals 2 "RACE CAR" Play Symbols in the same GAME, the player wins 5X the PRIZE for that GAME. If the player reveals 3 "RACE CAR" Play Symbols in the same GAME, the player wins 50X the PRIZE for that GAME. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-four (64) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-four (64) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the sixty-four (64) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-four (64) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to sixteen (16) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. There will be no matching non-winning GAMES on a Ticket. GAMES are considered matching if they have the same Play Symbols in the same spots.

E. No three (3) or more matching non-winning Play Symbols will appear in adjacent positions diagonally or in a column.

F. The "RACE CAR" (WIN) Play Symbol will only appear on winning Tickets and will appear on winning GAMES as dictated by the prize structure.

G. No more than two (2) matching non-winning Play Symbols will appear in one (1) GAME.

H. Non-winning Prize Symbols will never appear more than three (3) times.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "50X FAST CASH" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket;

provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "50X FAST CASH" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "50X FAST CASH" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "50X FAST CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "50X FAST CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "50X FAST CASH" Scratch Ticket may be entered into one (1) of four (4) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 5,520,000 Scratch Tickets in the Scratch Ticket Game No. 2231. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2231 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	809,600	6.82
$10.00	699,200	7.89
$20.00	147,200	37.50
$50.00	34,500	160.00
$100	10,120	545.45
$500	184	30,000.00
$1,000	50	110,400.00
$100,000	4	1,380,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.25. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2231 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2231, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002221
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 1, 2020

♦ ♦ ♦

Scratch Ticket Game Number 2233 "GOLD MINE 9X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2233 is "GOLD MINE 9X". The play style is "slots - straight line".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2233 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2233.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: STAR SYMBOL, HORSESHOE SYMBOL, POT OF GOLD SYMBOL, COIN SYMBOL, JOKER SYMBOL, KEY SYMBOL, SEVEN SYMBOL, MONEYBAG SYMBOL, CHERRY SYMBOL, WISHBONE SYMBOL, CROWN SYMBOL, HEART SYMBOL, DIAMOND SYMBOL, BELL SYMBOL, LEMON SYMBOL, BANANA SYMBOL, MELON SYMBOL, APPLE SYMBOL, GRAPE SYMBOL, PLUM SYMBOL, GOLD BAR SYMBOL, $5.00, $10.00, $15.00, $30.00, $60.00, $90.00, $500, $1,000, $10,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2233 - 1.2D

PLAY SYMBOL	CAPTION
STAR SYMBOL	STAR
HORSESHOE SYMBOL	HRSHOE
POT OF GOLD SYMBOL	PTGOLD
COIN SYMBOL	COIN
JOKER SYMBOL	JOKER
KEY SYMBOL	KEY
SEVEN SYMBOL	SEVN
MONEYBAG SYMBOL	MNBAG
CHERRY SYMBOL	CHRY
WISHBONE SYMBOL	BONE
CROWN SYMBOL	CROWN
HEART SYMBOL	HEART
DIAMOND SYMBOL	DIMND
BELL SYMBOL	BELL
LEMON SYMBOL	LEMN
BANANA SYMBOL	BNNA
MELON SYMBOL	MELN
APPLE SYMBOL	APPL
GRAPE SYMBOL	GRPE
PLUM SYMBOL	PLUM
GOLD BAR SYMBOL	GOLDBAR
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$30.00	TRTY$
$60.00	SXTY$
$90.00	NITY$
$500	FVHN
$1,000	ONTH
$10,000	10TH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2233), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2233-0000001-001.

H. Pack - A Pack of the "GOLD MINE 9X" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of

Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "GOLD MINE 9X" Scratch Ticket Game No. 2233.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "GOLD MINE 9X" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty (80) Play Symbols. If a player reveals 3 matching Play Symbols in the same GAME, the player wins the PRIZE for that GAME. If the player reveals a "GOLD BAR" Play Symbol in any GAME, the player wins 3X the PRIZE for that GAME. If the player reveals 2 "GOLD BAR" Play Symbols in the same GAME, the player wins 6X the PRIZE for that GAME. If the player reveals 3 "GOLD BAR" Play Symbols in the same GAME, the player wins 9X the PRIZE for that GAME. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty (80) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eighty (80) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eighty (80) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty (80) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. A Ticket may have up to four (4) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

D. A Ticket may have up to six (6) matching non-winning Play Symbols, unless restricted by other parameters, play action or prize structure.

E. There will be no matching non-winning GAMES in any order.

F. The "GOLDBAR" (GLDBAR) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

G. A non-winning Prize Symbol will never be the same as a winning Prize Symbol on a Ticket.

H. Vertically adjacent winning GAMES will not have matching winning Play Symbols.

I. Non-Winning Tickets will have at least four (4), but no more than eight (8), matching Play Symbols in the first and second positions of a GAME.

J. A winning GAME using one (1) "GOLDBAR" (GLDBAR) Play Symbol will include a pair of matching Play Symbols in the same GAME.

K. There will be no occurrence of three (3) matching Play Symbols in any adjacent vertical or diagonal row.

2.3 Procedure for Claiming Prizes.

A. To claim a "GOLD MINE 9X" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $30.00, $60.00, $90.00 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $60.00, $90.00 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GOLD MINE 9X" Scratch Ticket Game prize of $1,000, $10,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GOLD MINE 9X" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "GOLD MINE 9X" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "GOLD MINE 9X" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2233. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2233 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	755,200	9.38
$10.00	566,400	12.50
$15.00	283,200	25.00
$30.00	88,500	80.00
$60.00	39,294	180.18
$90.00	25,075	282.35
$500	3,658	1,935.48
$1,000	413	17,142.86
$10,000	20	354,000.00
$100,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.02. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2233 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2233, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002260
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 2, 2020

♦ ♦ ♦

North Central Texas Council of Governments

Request for Proposals to Conduct a Planning Process to Help the North Texas Region Prepare for Automated Transportation and Related Technologies

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms for a planning process focused on helping the North Texas region prepare for vehicle automation and related technologies. The purpose of this project is to understand the mobility-related challenges facing North Texas, identify ways transportation automation and related technologies can help address those challenges, and recommend policies and best practices to achieve positive results for the region.

Hard copies of the proposals must be received via mail or hand-delivery no later than 5:00 p.m., Central Standard Time, on Friday, August 7, 2020, to Clint Hail, Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, June 12, 2020.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate based on age, race, color, religion, sex, national origin, or disability.

TRD-202002272

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 3, 2020

♦ ♦ ♦

Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9075

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULE OF EVIDENCE 103(c)

ORDERED that:

1. On January 22, 2020, the Supreme Court of Texas (Misc. Docket No. 20-9011) and the Court of Criminal Appeals (Misc. Docket No. 20-001) approved amendments to Rule 103(c) of the Texas Rules of Evidence, to be effective June 1, 2020, and invited public comment.

2. The comment period has expired, and no additional changes have been made to the rule. This Order gives final approval to the amendments set forth in Supreme Court of Texas Misc. Docket No. 20-9011 and Court of Criminal Appeals Misc. Docket No. 20-9011.

3. The Clerk is directed to:

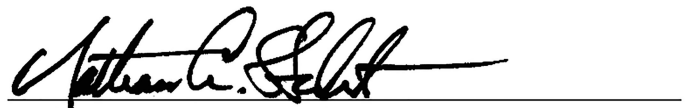
   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

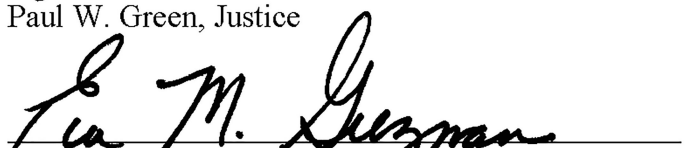
   d. submit a copy of the order for publication in the *Texas Register*.

Dated: May 26, 2020.

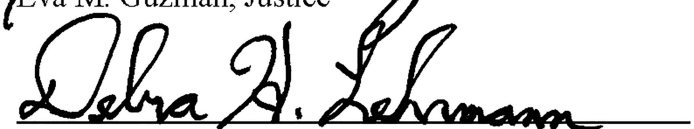


Nathan L. Hecht, Chief Justice

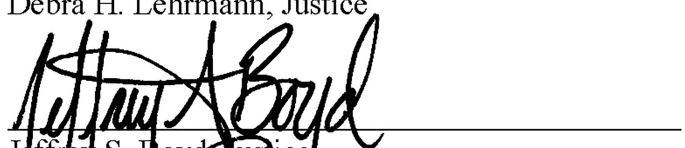
Paul W. Green, Justice



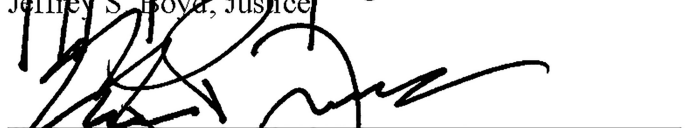
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice

James D. Blacklock, Justice

J. Brett Busby, Justice

Jane N. Bland, Justice

Rule 103. Rulings on Evidence

***

(c) **Court's Statement About the Ruling; Directing an Offer of Proof.** The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court must allow a party to make an offer of proof as soon as practicable. In a jury trial, the court must allow a party to make the offer outside the jury's presence and before the court reads its charge to the jury. At a party's request, the court must direct that an offer of proof be made in question-and-answer form. Or the court may do so on its own.

***

TRD-202002235
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: June 1, 2020

♦ ♦ ♦

Order Amending Texas Rules of Civil Procedure 47, 500.3, 509.2, and 509.6

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9070

ORDER AMENDING TEXAS RULES OF CIVIL PROCEDURE 47, 500.3, 509.2, and 509.6

ORDERED that:

1. In accordance with the Act of May 26, 2019, 86th Leg., R.S., ch. 696 (SB 2342), the Supreme Court approves the following amendments to Rules 47, 500.3, 509.2, and 509.6 of the Texas Rules of Civil Procedure.

2. The amendments are effective September 1, 2020.

3. The amendments may be changed before September 1, 2020 in response to public comments. Written comments should be sent to rulescomments@txcourts.gov. The Court requests that comments be sent by August 30, 2020.

4. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

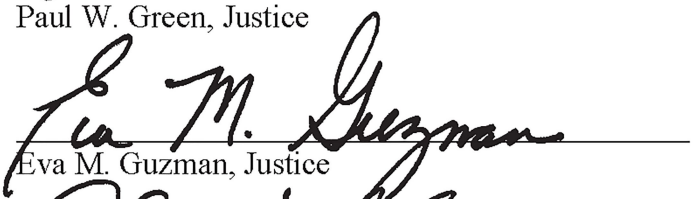
   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

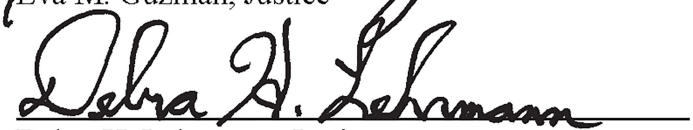
Dated: May 26, 2020.

Nathan L. Hecht, Chief Justice

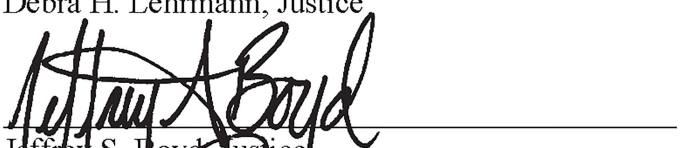
Paul W. Green, Justice



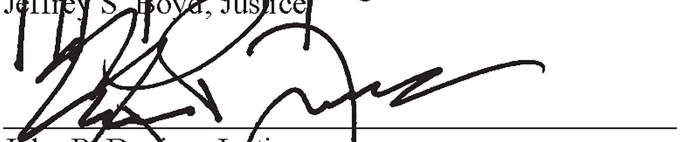
Eva M. Guzman, Justice



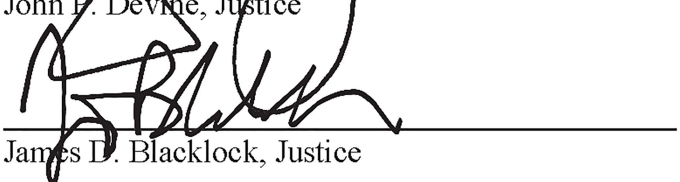
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice

J. Brett Busby, Justice

Jane N. Bland, Justice

RULE 47. CLAIMS FOR RELIEF

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain:

(a) a short statement of the cause of action sufficient to give fair notice of the claim involved;

(b) a statement that the damages sought are within the jurisdictional limits of the court;

(c) except in suits governed by the Family Code, a statement that the party seeks:

(1) only monetary relief of $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or

(2) monetary relief of $100,000 or less and non-monetary relief; or

(3) monetary relief over $100,000 but not more than ~~$200,000~~$250,000; or

(4) monetary relief over ~~$200,000~~$250,000 but not more than $1,000,000; or

(5) monetary relief over $1,000,000; and

(d) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

RULE 500.3. APPLICATION OF RULES IN JUSTICE COURT CASES

(a) *Small Claims Case.* A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than ~~$10,000~~$20,000, excluding statutory interest and court costs but including attorney fees, if any. Small claims cases are governed by Rules 500-507 of Part V of the Rules of Civil Procedure.

(b) *Debt Claim Case.* A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than ~~$10,000~~$20,000, excluding statutory interest and court costs but

including attorney fees, if any. Debt claim cases in justice court are governed by Rules 500-507 and 508 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 508 and the rest of Part V, Rule 508 applies.

(c) *Repair and Remedy Case.* A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than ~~$10,000~~$20,000, excluding statutory interest and court costs but including attorney fees, if any. Repair and remedy cases are governed by Rules 500-507 and 509 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 509 and the rest of Part V, Rule 509 applies.

(d) *Eviction Case.* An eviction case is a lawsuit brought to recover possession of real property under Chapter 24 of the Texas Property Code, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than ~~$10,000~~$20,000, excluding statutory interest and court costs but including attorney fees, if any. Eviction cases are governed by Rules 500-507 and 510 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 510 and the rest of Part V, Rule 510 applies.

(e) *Application of Other Rules.* The other Rules of Civil Procedure and the Rules of Evidence do not apply except:

(1) when the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are fair to all parties; or

(2) when otherwise specifically provided by law or these rules.

(f) *Examination of Rules.* The court must make the Rules of Civil Procedure and the Rules of Evidence available for examination, either in paper form or electronically, during the court's business hours.

RULE 509.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS

(a) *Contents of Petition.* The petition must be in writing and must include the following:

(1) the street address of the residential rental property;

(2) a statement indicating whether the tenant has received in writing the name and business street address of the landlord and landlord's management company;

(3) to the extent known and applicable, the name, business street address, and telephone number of the landlord and the landlord's management company, on-premises manager, and rent collector serving the residential rental property;

(4) for all notices the tenant gave to the landlord requesting that the condition be repaired or remedied:

(A) the date of the notice;

(B) the name of the person to whom the notice was given or the place where the notice was given;

(C) whether the tenant's lease is in writing and requires written notice;

(D) whether the notice was in writing or oral;

(E) whether any written notice was given by certified mail, return receipt requested, or by registered mail; and

(F) whether the rent was current or had been timely tendered at the time notice was given;

(5) a description of the property condition materially affecting the physical health or safety of an ordinary tenant that the tenant seeks to have repaired or remedied;

(6) a statement of the relief requested by the tenant, including an order to repair or remedy a condition, a reduction in rent, actual damages, civil penalties, attorney's fees, and court costs;

(7) if the petition includes a request to reduce the rent:

(A) the amount of rent paid by the tenant, the amount of rent paid by the government, if known, the rental period, and when the rent is due; and

(B) the amount of the requested rent reduction and the date it should begin;

(8) a statement that the total relief requested does not exceed ~~$10,000~~$20,000, excluding interest and court costs but including attorney's fees; and

(9) the tenant's name, address, and telephone number.

(b) *Copies*. The tenant must provide the court with copies of the petition and any attachments to the petition for service on the landlord.

(c) *Forms and Amendments*. A petition substantially in the form promulgated by the Supreme Court is sufficient. A suit may not be dismissed for a defect in the petition

unless the tenant is given an opportunity to correct the defect and does not promptly correct it.

RULE 509.6. JUDGMENT: AMOUNT; FORM AND CONTENT; ISSUANCE AND SERVICE; FAILURE TO COMPLY

(a) *Amount.* Judgment may be rendered against the landlord for failure to repair or remedy a condition at the residential rental property if the total judgment does not exceed ~~$10,000~~$20,000, excluding interest and court costs but including attorney's fees. Any party who prevails in a lawsuit brought under these rules may recover the party's court costs and reasonable attorney's fees as allowed by law.

(b) *Form and Content.*

(1) The judgment must be in writing, signed, and dated and must include the names of the parties to the proceeding and the street address of the residential rental property where the condition is to be repaired or remedied.

(2) In the judgment, the judge may:

(A) order the landlord to take reasonable action to repair or remedy the condition;

(B) order a reduction in the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

(C) award a civil penalty of one month's rent plus $500;

(D) award the tenant's actual damages; and

(E) award court costs and attorney's fees, excluding any attorney's fees for a claim for damages relating to a personal injury.

(3) If the judge orders the landlord to repair or remedy a condition, the judgment must include in reasonable detail the actions the landlord must take to repair or remedy the condition and the date when the repair or remedy must be completed.

(4) If the judge orders a reduction in the tenant's rent, the judgment must state:

(A) the amount of the rent the tenant must pay, if any;

(B) the frequency with which the tenant must pay the rent;

(C) the condition justifying the reduction of rent;

(D) the effective date of the order reducing rent;

(E) that the order reducing rent will terminate on the date the condition is repaired or remedied; and

(F) that on the day the condition is repaired or remedied, the landlord must give the tenant written notice, served in accordance with Rule 501.4, that the condition justifying the reduction of rent has been repaired or remedied and the rent will revert to the rent amount specified in the lease.

(c) *Issuance and Service*. The judge must issue the judgment. The judgment may be served on the landlord in open court or by any means provided in Rule 501.4 at an address listed in the citation, the address listed on any answer, or such other address the landlord furnishes to the court in writing. Unless the judge serves the landlord in open court or by other means provided in Rule 501.4, the sheriff, constable, or other authorized person who serves the landlord must promptly file a return of service in the justice court.

(d) *Failure to Comply*. If the landlord fails to comply with an order to repair or remedy a condition or reduce the tenant's rent, the failure is grounds for citing the landlord for contempt of court under Section 21.002 of the Texas Government Code.

♦ ♦ ♦

TRD-202002234
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: June 1, 2020


TEXAS

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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