

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.6

The Texas Animal Health Commission (Commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 40 titled "Chronic Wasting Disease." Specifically, amendments are proposed to §40.6 CWD Movement Restriction Zones.

BACKGROUND AND SUMMARY OF PROPOSED AMENDMENTS

The purpose of this chapter is to prevent and control the incidence of chronic wasting disease (CWD) in Texas by seeking to reduce the risk of interstate and intrastate transmission of CWD in susceptible cervid species. The Commission proposes amendments to §40.6 to eliminate surveillance zones and add two new containment zones based on high-risk CWD exposure. These amendments will provide more targeted surveillance and reduce the risk of CWD being spread from areas where it may exist while eliminating unnecessary restrictions from other areas.

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

The purpose of the movement restriction zones is to both increase surveillance and reduce the risk of CWD being spread from areas of high risk where it may exist. As required by §40.6(g), the Commission reviewed the movement restriction zones and recommends the modifications as stated herein.

SECTION-BY-SECTION DISCUSSION

The proposed changes to §40.6(a) eliminate the definition of "CWD Surveillance Zone (SZ)" and other references to surveillance zone throughout the definitions.

The proposed amendment to §40.6(b)(9) would add a new containment zone in Coleman County in response to the detection of CWD in a free-range white-tailed deer in that county.

The proposed amendment to §40.6(b)(10) would add a new containment zone in Collingsworth County in response to high-risk elk from an adjacent farm.

The proposed changes to §40.6(b)(2) would eliminate all surveillance zones.

The proposed changes to §40.6(d) would eliminate requirements associated with surveillance zones.

The proposed changes to §40.6(e) would eliminate carcass movement requirements for surveillance zones.

The proposed changes to §40.6(f)-(g) renumber the sections to match formatting.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel of the Texas Animal Health Commission, determined for each year of the first five years the 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. Commission employees will administer and enforce these rules as part of their regular job duties and resources. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules and the proposed rules do not have foreseeable implications relating to costs or revenues of state governments.

PUBLIC BENEFIT

Ms. Coggeshall determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefits will be the protection of CWD susceptible species by increasing the probability of detecting CWD in areas of the state where it is confirmed or likely to be detected and by reducing the inadvertent movement of the disease from those areas.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

MAJOR ENVIRONMENTAL RULE

The Commission determined that Texas Government Code §2001.0225 does not apply to the proposed rules because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure, and therefore, is not a major environmental rule.

TAKINGS ASSESSMENT

The Commission determined that the proposal does 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. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

ECONOMIC IMPACT STATEMENT

The Commission determined that the proposed amendments to §40.6 may impact animal agricultural industries, which meet the definition of a small business or microbusiness pursuant to Texas Government Code, Chapter 2006, and may affect rural communities. Specifically, the Commission determined that the proposed rules may affect herd owners of exotic CWD susceptible species located in the proposed containment zones.

The Commission determined that the proposed containment zones in response to recent positive CWD cases would not adversely affect herd owners of exotic CWD susceptible species because the proposal applies to exotic CWD susceptible species located in geographic areas where CWD has been detected or there is a high probability of detection. As such, the movement and testing requirements resulting from the proposed zones are intended to reduce exposure to other susceptible species in the same rural community, where the disease risk is greatest, and other communities and small businesses across the state. As a result, the application of the rule will help prevent adverse economic impacts associated with CWD.

REGULATORY FLEXIBILITY ANALYSIS

The Commission considered several alternative methods for achieving the proposed rule's purpose while minimizing adverse economic impacts on small businesses, microbusinesses, and rural communities, as applicable, pursuant to Texas Government Code, Chapter 2006. The following sections analyze the substantive proposed changes that may have direct, adverse economic impacts on regulated parties in the order they are presented in Chapter 40.

Containment Zones. The Commission considered alternatives for all proposed zones, especially where there are known exotic CWD susceptible species, including voluntary surveillance and alternative zone boundaries that followed more recognizable features. However, the Commission determined that voluntary testing would not protect the health of other CWD susceptible species in the affected area and across the state. The Commission determined these proposals are necessary to follow the legislative requirement that the Commission protect exotic livestock from certain diseases that pose a serious threat to exotic livestock, specifically CWD.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, for each year of the first five years the proposed rules would be in effect, the Commission determined the following:

- (1) The proposed rules will not create or eliminate a government program;
- (2) Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the Commission;

(4) The proposed rules will not require an increase or decrease in fees paid to the Commission;

(5) The proposed rules will not create a new regulation;

(6) The proposed rules will expand some existing rules and eliminate other existing rules, but will not otherwise limit or repeal an existing regulation;

(7) The proposed rules may decrease the number of individuals subject to the regulation; and

(8) The proposed rules will not adversely affect this state's economy.

COST TO REGULATED PERSONS

The proposed amendments to §40.6 may impose an indirect cost on a regulated person if they are owners of exotic CWD susceptible species located within a proposed containment zone. The Commission determined these proposals are necessary to follow the legislative requirement that the Commission protect exotic livestock from chronic wasting disease, a disease that poses a serious threat to the exotic livestock industry in Texas. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state. Pursuant to Section 161.041 of the Texas Agriculture Code, Section 2001.0045 of the Texas Government Code does not apply to rules adopted under Section 161.041; therefore, it is unnecessary to amend or repeal any other existing rule.

REQUEST FOR COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Chapter 40-CWD Rules" in the subject line.

STATUTORY AUTHORITY

The amendments to §40.6 within Chapter 40 of the Texas Administrative Code are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," Commission personnel are permitted to enter public or private property for the performance of an authorized duty.

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

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

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

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

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

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

Pursuant to §161.057, titled "Classification of Areas," the Commission may prescribe criteria for classifying areas in the state for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.058, titled "Compensation of Livestock or Fowl Owner," the Commission may pay indemnity to the owner of livestock or fowl if necessary to eradicate the disease.

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

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

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

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

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

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

Pursuant to §161.148, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter

161. The penalty for a violation may be in an amount not to exceed \$5,000.

The proposed rules in this chapter for adoption do not affect other statutes, sections, or codes.

§40.6. CWD Movement Restriction Zones.

(a) Definitions. In addition to the definitions in §40.1 (relating to Definitions) of this chapter, the following words and terms, when used in this section, shall have the following meanings:

(1) Check Station--TPWD-established mandatory check stations in any CZ [or SZ] or any portion of a CZ [or SZ] for the purpose of collecting biological information on CWD susceptible species taken within a CZ [or SZ].

(2) CWD Containment Zone (CZ)--A geographic area in this state which CWD has been detected or the commission has determined, using the best available science, a high risk of CWD exists or may exist.

[(3) CWD Surveillance Zone (SZ)--A geographic area in the state which the commission, using the best available science, has determined or where there is a risk of CWD existing and surveillance is necessary.]

(3) [(4)] Exotic CWD Susceptible Species--A non-native cervid species determined to be susceptible to CWD, which means a species that has had a diagnosis of CWD confirmed by an official test conducted by an approved laboratory. This includes but is not limited to North American elk or wapiti (*Cervus canadensis*), red deer (*Cervus elaphus*), sika deer (*Cervus nippon*), moose (*Alces alces*) reindeer and caribou (*Rangifer tarandus*), muntjac (*Muntiacus*), and any associated subspecies and hybrids. All mule deer, white-tailed deer, and other native species under the jurisdiction of the Texas Parks and Wildlife Department are excluded from this definition and application of this section.

(4) [(5)] Final processing--The cleaning and processing by more than quarters of CWD susceptible species for cooking or storage purposes.

(5) [(6)] High fence premises--A premises enclosed on all sides by a fence adequate to prevent the ingress and egress of all exotic CWD susceptible species.

(6) [(7)] Processing facility--A stationary facility designed and constructed to store or process CWD susceptible species.

(7) [(8)] TPWD--The Texas Parks and Wildlife Department.

(b) Declaration of area restricted for CWD. CWD has been detected in susceptible species in different locations in Texas. This creates a high risk for CWD exposure or infection in CWD susceptible species in those geographic areas. In order to protect other areas of the state from the risk of exposure and spread of CWD, restricted areas[; such] known as containment zones [and surveillance zones], are created to protect against the spread of and exposure to CWD and have necessary surveillance to epidemiologically assess the risk. The high-risk areas are delineated as follows:

[(1) Containment Zone Boundaries:]

(1) [(A)] Containment Zone 1. That portion of the state within the boundaries of a line beginning in Culberson County where U.S. Highway (U.S.) 62-180 enters from the State of New Mexico; thence southwest along U.S. 62-180 to Farm-to-Market Road (F.M.) 1111 in Hudspeth County; thence south on F.M. 1111 to I.H. 10 thence west along I.H. 10 to S.H. 20; thence northwest along S.H. 20 to F.M. 1088; thence south along F.M. 1088 to the Rio Grande River; thence

northwest along the Rio Grande River to the Texas-New Mexico border.

Figure: 4 TAC §40.6(b)(1)

[Figure: 4 TAC §40.6(b)(1)(A)]

(2) [(B)] Containment Zone 2. That portion of the state within the boundaries of a line beginning where I.H. 40 enters from the State of New Mexico in Deaf Smith County; thence east along I.H. 40 to U.S. 385 in Oldham County; thence north along U.S. 385 to Hartley in Hartley County; thence east along U.S. 87 to County Rd. 47; thence north along C.R. 47 to F.M. 281; thence west along F.M. 281 to U.S. 385; thence north along U.S. 385 to the Oklahoma state line.

Figure: 4 TAC §40.6(b)(2)

[Figure: 4 TAC §40.6(b)(1)(B)]

(3) [(C)] Containment Zone 3. Those portions of Bandera County, Medina County, and Uvalde County lying within the area described by the following latitude-longitude coordinate pairs: -99.37150859, 29.63847446; -99.37149089, 29.63846663;

-99.37140892,	29.63848554;	-99.37060541,	29.63866345;
-99.36979992,	29.63883436;	-99.36899251,	29.63899824;
-99.36818327,	29.63915509;	-99.36737228,	29.63930489;
-99.36655962,	29.63944762;	-99.36574537,	29.63958327;
-99.36492962,	29.63971183;	-99.36411244,	29.63983328;
-99.36329391,	29.63994760;	-99.36247412,	29.64005480;
-99.36165314,	29.64015486;	-99.36083106,	29.64024776;
-99.36000797,	29.64033351;	-99.35918393,	29.64041208;
-99.35835904,	29.64048348;	-99.35753338,	29.64054769;
-99.35670702,	29.64060471;	-99.35588005,	29.64065454;
-99.35505256,	29.64069716;	-99.35422462,	29.64073258;
-99.35339632,	29.64076079;	-99.35256773,	29.64078179;
-99.35173895,	29.64079558;	-99.35091005,	29.64080215;
-99.35008112,	29.64080150;	-99.34925224,	29.64079364;
-99.34842348,	29.64077856;	-99.34759495,	29.64075627;
-99.34676670,	29.64072677;	-99.34593884,	29.64069006;
-99.34511143,	29.64064614;	-99.34428457,	29.64059503;
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-99.33362198,	29.63927859;	-99.33281130,	29.63912752;
-99.33200238,	29.63896941;	-99.33119531,	29.63880427;
-99.33039016,	29.63863210;	-99.32958702,	29.63845294;
-99.32878597,	29.63826680;	-99.32798708,	29.63807369;
-99.32719043,	29.63787363;	-99.32639610,	29.63766665;
-99.32560418,	29.63745277;	-99.32481474,	29.63723200;
-99.32402786,	29.63700438;	-99.32324361,	29.63676991;
-99.32246208,	29.63652863;	-99.32168334,	29.63628056;
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-99.26628143,	29.62601177;	-99.26479095,	29.62462769;	-99.27379022,	29.50741074;	-99.27311012,	29.50720563;
-99.26340730,	29.62316139;	-99.26213642,	29.62161916;	-99.27243240,	29.50699465;	-99.27175713,	29.5067778;
-99.26098374,	29.62000758;	-99.25995420,	29.61833359;	-99.27108438,	29.50655511;	-99.27041420,	29.50632659;
-99.25905220,	29.61660433;	-99.25852828,	29.61543549;	-99.26974668,	29.50609229;	-99.26908186,	29.50585220;
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-99.24762026,	29.58809037;	-99.24726155,	29.58621600;	-99.26450966,	29.50401204;	-99.26386891,	29.50372667;
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-99.24696813,	29.58242588;	-99.24703468,	29.58052636;	-99.26196668,	29.50283744;	-99.26133949,	29.50253009;
-99.24724321,	29.57863471;	-99.24759282,	29.57675903;	-99.26071585,	29.50221732;	-99.26009582,	29.50189916;
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-99.38938485,	29.64415944;	-99.38857955,	29.64398765;	30.36548187;	-99.67926295,	30.36606391;	-99.67965467,
-99.38777626,	29.64380886;	-99.38697505,	29.64362308;	30.36671045;	-99.67976457,	30.36689341;	-99.68033394,
-99.38617600,	29.64343034;	-99.38537919,	29.64323065;	30.36784959;	-99.68069940,	30.36848209;	-99.68110363,
-99.38458469,	29.64302403;	-99.38379260,	29.64281052;	30.36923041;	-99.68115289,	30.36932508;	-99.68164128,
-99.38300298,	29.64259011;	-99.38221592,	29.64236285;	30.37031202;	-99.68186455,	30.37079984;	-99.68190773,
-99.38143149,	29.64212874;	-99.38064977,	29.64188782;	30.37089671;	-99.68244431,	30.37219105;	-99.68252473,
-99.37987084,	29.64164010;	-99.37909477,	29.64138562;	30.37240319;	-99.68256169,	30.37250197;	-99.68292311,
-99.37832165,	29.64112440;	-99.37755155,	29.64085646;	30.37353271;	-99.68339520,	30.37497459;	-99.68340763,
-99.37678455,	29.64058182;	-99.37602072,	29.64030053;	30.37501266;	-99.68385461,	30.37638495;	-99.68388655,
-99.37526014,	29.64001260;	-99.37450288,	29.63971807;	30.37648116;	-99.68392077,	30.37656326;	-99.68419882,
-99.37374902,	29.63941695;	-99.37299864,	29.63910930;	30.37725785;	-99.68482272,	30.37907928;	-99.68530791,
-99.3722518,	29.63879512;	-99.37150859,	29.63847446.	30.38093218;	-99.68565230,	30.38280863;	-99.68585441,

Figure: 4 TAC §40.6(b)(3)

[Figure: 4 TAC §40.6(b)(1)(C)]

(4) [(D)] Containment Zone 4. That portion of the state lying within the boundaries of a line beginning in Val Verde County at the International Bridge and proceeding northeast along Spur 239 to U.S. 90; thence north along U.S. 90 to the intersection of U.S. 277/377, thence north along U.S. 277/377 to the U.S. 277/377 bridge at Lake Amistad (29.496183°, -100.913355°), thence west along the southern shoreline of Lake Amistad to International Boundary at Lake Amistad dam, thence south along the Rio Grande River to the International Bridge on Spur 239.

Figure: 4 TAC §40.6(b)(4)

[Figure: 4 TAC §40.6(b)(1)(D)]

(5) [(E)] Containment Zone 5. That portion of the state within the boundaries of a line beginning in Lubbock County where County Road (C.R.) 3600 intersects with E. Division Street in Slaton; thence west along E. Division Street to S. New Mexico Street; thence northwest along S. New Mexico Street to Railroad Avenue; thence northwest along Railroad Avenue to Industrial Drive; thence northwest along Industrial Drive to U.S. Highway (U.S.) 84; thence northwest along U.S. 84 to State Highway (S.H.) Spur 331; thence northwest along S.H. 331 to S.H. Loop 289; thence north along S.H. Loop 289 to Farm to Market (F.M.) 40; thence east along F.M. 40 to C.R. 3650; thence south along C.R. 3650 to C.R. 6840; thence east along C.R. 6840 to C.R. 3700; thence south along C.R. 3700 to C.R. 3600; thence south along C.R. 3600 to E. Division Street.

Figure: 4 TAC §40.6(b)(5)

[Figure: 4 TAC §40.6(b)(1)(E)]

(6) [(F)] Containment Zone 6. That portion of Kimble County lying within the area described by the following latitude-longitude coordinate pairs: -99.64149621, 30.33874132; -99.64368510, 30.33881528; -99.64586373, 30.33901322; -99.64802279, 30.33933429; -99.65015303, 30.33977712; -99.65224534,

30.37849283;	-99.59124343,	30.37846076;	-99.59132974,	32.78373260;	-96.18808219,	32.78248065;	-96.18987136,
30.37656218;	-99.59155907,	30.37467255;	-99.59193044,	32.78132505;	-96.19174612,	32.78027075;	-96.19369846,
30.37279998;	-99.59244224,	30.37095248;	-99.59309227,	32.77932226;	-96.19572002,	32.77848364;	-96.19780214,
30.36913795;	-99.59387775,	30.36736417;	-99.59479530,	32.77775847;	-96.19993592,	32.77714986;	-96.20211222,
30.36563872;	-99.59584100,	30.36396900;	-99.59701035,	32.77666041;	-96.20432174,	32.77629221;	-96.20655502,
30.36236215;	-99.59829835,	30.36082505;	-99.59969948,	32.77604685;	-96.20880251,	32.77592537;	-96.21105458,
30.35936428;	-99.60120773,	30.35798608;	-99.60281665,	32.77592829;	-96.21330162,	32.77605560;	-96.21553400,
30.35669637;	-99.60451936,	30.35550064;	-99.60540738,	32.77630675;	-96.21774217,	32.77668067;	-96.21991668,
30.35493734;	-99.60543809,	30.35491852;	-99.60546294,	32.77717576;	-96.22204824,	32.77778990;	-96.22412772,
30.35489406;	-99.60555613,	30.35480273;	-99.60706423,	32.77852046;	-96.22614622,	32.77936432;	-96.22809511,
30.35342446;	-99.60867300,	30.35213467;	-99.61037555,	32.78031787;	-96.22996604,	32.78137702;	-96.23175100,
30.35093887;	-99.61216459,	30.34984218;	-99.61331695,	32.78253725;	-96.23344236,	32.78379359;	-96.23476600,
30.34922964;	-99.61385007,	30.34880216;	-99.61555250,	32.78490205;	-96.24067863,	32.79012861;	-96.24094553,
30.34760629;	-99.61734142,	30.34650953;	-99.61808901,	32.79036721;	-96.24242856,	32.79179918;	-96.24379758,
30.34609451;	-99.61915992,	30.34551721;	-99.62361034,	32.79330999;	-96.24504672,	32.79489318;	-96.24617063,
30.34311791;	-99.62473043,	30.34253993;	-99.62666892,	32.79654197;	-96.24716450,	32.79824931;	-96.24802406,
30.34165492;	-99.62866996,	30.34088175;	-99.63072498,	32.80000789;	-96.24874563,	32.80181017;	-96.24932611,
30.34022372;	-99.63282520,	30.33968364;	-99.63496163,	32.80364845;	-96.24976301,	32.80551485;	-96.25005444,
30.33926382;	-99.63712512,	30.33896608;	-99.63930642,	32.80740138;	-96.25019915,	32.80929997;	-96.25019711,
30.33879166;	-99.64149621,	30.33874132		32.81077494;	-96.25033341,	32.81086348;	-96.25202554,
				32.81211955;	-96.25361680,	32.81346637;	-96.25434916,
				32.81414956;	-96.25658430,	32.81630215;	-96.25733556,
				32.81705074;	-96.25870519,	32.81856138;	-96.25995492,
				32.82014440;	-96.26107940,	32.82179304;	-96.26207381,
				32.82350023;	-96.26293389,	32.82525868;	-96.26365594,
				32.82706085;	-96.26423687,	32.82889904;	-96.26467418,
				32.83076536;	-96.26496599,	32.83265182;	-96.26511104,
				32.83455037;	-96.26510871,	32.83645285;	-96.26495899,
				32.83835113;	-96.26466252,	32.84023707;	-96.26444577,
				32.84115198;	-96.26422055,	32.84210260;	-96.26363497,
				32.84393973;	-96.26290829,	32.84574060;	-96.26204360,
				32.84749748;	-96.26104460,	32.84920285;	-96.25991556,
				32.85084941;	-96.25866132,	32.85243010;	-96.25728724,
				32.85393815;	-96.25579920,	32.85536709;	-96.25420358,
				32.85671082;	-96.25389991,	32.85694746;	-96.25387225,
				32.8596876;	-96.25278879,	32.85796450;	-96.25253227,
				32.85819768;	-96.25093655,	32.85954136;	-96.24924008,
				32.86079406;	-96.24745012,	32.86195041;	-96.24722654,
				32.86207676;	-96.24715725,	32.86224836;	-96.24629211,
				32.86400511;	-96.24529264,	32.86571035;	-96.24416313,
				32.86735675;	-96.24290840,	32.86893727;	-96.24153382,
				32.87044514;	-96.24004528,	32.87187389;	-96.23844915,
				32.87321741;	-96.23767497,	32.87380943;	-96.23616189,
				32.87493168;	-96.23523916,	32.87559217;	-96.23394347,
				32.87644436;	-96.23248087,	32.87735984;	-96.23002989,
				32.87893002;	-96.22922725,	32.87942891;	-96.22755312,
				32.88037709;	-96.22598258,	32.88121137;	-96.22365500,
				32.88247551;	-96.22316025,	32.88273922;	-96.22120604,
				32.88368809;	-96.21918244,	32.88452705;	-96.21709810,
				32.88525251;	-96.21496196,	32.88586135;	-96.21307575,
				32.88628524.			

Figure: 4 TAC §40.6(b)(6)

[Figure: 4 TAC §40.6(b)(1)(F)]

(7) [(G)] Containment Zone 7. Those portions of Hunt County and Kaufman County lying within the area described by the following latitude-longitude coordinate pairs:

32.88628524;	-96.20878832,	32.88691497;	-96.20833517,
32.88696470;	-96.20608501,	32.88708617;	-96.20383025,
32.88708316;	-96.20319512,	32.88705982;	-96.20316015,
32.88705826;	-96.20312586,	32.88706427;	-96.20167339,
32.88729166;	-96.19943744,	32.88753692;	-96.19718725,
32.88765823;	-96.19493248,	32.88765507;	-96.19268278,
32.88752746;	-96.19044781,	32.88727594;	-96.18823713,
32.88690159;	-96.18606022,	32.88640601;	-96.18392642,
32.88579133;	-96.18184487,	32.88506018;	-96.17982448,
32.88421569;	-96.17787392,	32.88326149;	-96.17600154,
32.88220167;	-96.17421536,	32.88104075;	-96.17252304,
32.87978373;	-96.17216881,	32.87949870;	-96.16088265,
32.87028577;	-96.15964591,	32.86922294;	-96.15816292,
32.86779011;	-96.15679420,	32.86627848;	-96.15554560,
32.86469452;	-96.15442246,	32.86304502;	-96.15342960,
32.86133706;	-96.15257125,	32.85957793;	-96.15185109,
32.85777519;	-96.15127220,	32.85593654;	-96.15083704,
32.85406988;	-96.15054746,	32.85218318;	-96.15040471,
32.85028454;	-96.15040938,	32.84838208;	-96.15056145,
32.84648394;	-96.15086024,	32.84459827;	-96.15130449,
32.84273312;	-96.15189227,	32.84089649;	-96.15239458,
32.83965568;	-96.15262106,	32.83909624;	-96.15348773,
32.83734007;	-96.15448856,	32.83563550;	-96.15561927,
32.83398984;	-96.15687501,	32.83241012;	-96.15825039,
32.83090310;	-96.15874685,	32.83040588;	-96.16087124,
32.82832582;	-96.16291634,	32.82631939;	-96.16334363,
32.82588076;	-96.16336282,	32.82586108;	-96.16485180,
32.82443315;	-96.16644815,	32.82309048;	-96.16814505,
32.82183883;	-96.16993522,	32.82068353;	-96.17078717,
32.82020484;	-96.17022483,	32.81879732;	-96.16964582,
32.81695871;	-96.16921047,	32.81509206;	-96.16892065,
32.81320535;	-96.16877758,	32.81130668;	-96.16878187,
32.80940417;	-96.16893350,	32.80750596;	-96.16923180,
32.80562020;	-96.16967550,	32.80375494;	-96.17026267,
32.80191818;	-96.17099080,	32.80011778;	-96.17185676,
32.79836144;	-96.17285685,	32.79665670;	-96.17398676,
32.79501083;	-96.17524167,	32.79343089;	-96.17661618,
32.79192364;	-96.17810442,	32.79049554;	-96.17935193,
32.78943091;	-96.18603824,	32.78401084;	-96.18638627,

Figure: 4 TAC §40.6(b)(7)

[Figure: 4 TAC §40.6(b)(1)(G)]

(8) [(H)] Containment Zone 8. That portion of Bexar County lying within the area described by the following latitude-longitude coordinate pairs:

29.56606588;	-98.48498476,	29.56684328;	-98.48393953,
29.56809152;	-98.48676797,	29.56819223;	-98.48862363,
29.56962616;	-98.49016542,	29.57085278;	-98.49076754,
29.57133180;	-98.49105903,	29.57156002;	-98.49169201,
29.57206281;	-98.49315085,	29.57320870;	-98.49460960,
29.57436269;	-98.49629788,	29.57568988;	-98.49779348,
29.57686863;	-98.49984953,	29.57844371;	-98.50084086,
29.57920238;	-98.50259445,	29.58052215;	-98.50303480,

29.58087646;	-98.50331076;	29.58105022;	-98.50360566;	29.57905956;	-98.50975412;	29.57882839;	-98.50996415;
29.58119985;	-98.50386406;	29.58130845;	-98.50416926;	29.57873380;	-98.51026252;	29.57863192;	-98.51056027;
29.58139324;	-98.50449341;	29.58145391;	-98.50485534;	29.57857057;	-98.51095037;	29.57853462;	-98.51127480;
29.58147442;	-98.50515251;	29.58147793;	-98.50552485;	29.57854655;	-98.51162632;	29.57860743;	-98.51206004;
29.58142550;	-98.50588841;	29.58134048;	-98.50630818;	29.57875036;	-98.51248374;	29.57894180;	-98.51283413;
29.58122365;	-98.50690553;	29.58103585;	-98.50716731;	29.57907564;	-98.51329680;	29.57914594;	-98.51375095;
29.58092527;	-98.50743888;	29.58078234;	-98.50774846;	29.57916748;	-98.51424965;	29.57916260;	-98.51546696;
29.58058303;	-98.50800270;	29.58035870;	-98.50841782;	29.58162759;	-98.51557807;	29.58191278;	-98.51569233;
29.57994142;	-98.50905919;	29.57930759;	-98.50936952;	29.58228120;	-98.51583065;	29.58294914;	-98.51587396;
29.57905956;	-98.50975412;	29.57882839;	-98.50996415;	29.58347911;	-98.51587050;	29.58389975;	-98.51585566;
29.57873380;	-98.51026252;	29.57863192;	-98.51056027;	29.58420478;	-98.51546908;	29.58648023;	-98.51539099;
29.57857057;	-98.51095037;	29.57853462;	-98.51127480;	29.58671783;	-98.51530634;	29.58697536;	-98.51508775;
29.57854655;	-98.51162632;	29.57860743;	-98.51206004;	29.58741596;	-98.51510774;	29.58750273;	-98.51491708;
29.57875036;	-98.51248374;	29.57894180;	-98.51283413;	29.58778183;	-98.51469520;	29.58805512;	-98.51286349;
29.57907564;	-98.51329680;	29.57914594;	-98.51375095;	29.59007744;	-98.51252474;	29.59050125;	-98.51229674;
29.57916748;	-98.51424965;	29.57916260;	-98.51546696;	29.59085650;	-98.51202502;	29.59137885;	-98.51183467;
29.58162759;	-98.51557807;	29.58191278;	-98.51569233;	29.59192384;	-98.51091007;	29.59587738;	-98.51076166;
29.58228120;	-98.51583065;	29.58294914;	-98.51587396;	29.59636738;	-98.51060915;	29.59677628;	-98.51042469;
29.58347911;	-98.51587050;	29.58389975;	-98.51585566;	29.59719366;	-98.51012433;	29.59774282;	-98.50983781;
29.58420478;	-98.51546908;	29.58648023;	-98.51539099;	29.59818962;	-98.50871029;	29.59977970;	-98.50854575;
29.58671783;	-98.51530634;	29.58697536;	-98.51508775;	29.60006194;	-98.50825728;	29.60065186;	-98.50812453;
29.58741596;	-98.51510774;	29.58750273;	-98.51491708;	29.60111120;	-98.50806353;	29.60139823;	-98.50800890;
29.58778183;	-98.51469520;	29.58805512;	-98.51286349;	29.60182881;	-98.50799361;	29.60226519;	-98.50803305;
29.59007744;	-98.51252474;	29.59050125;	-98.51229674;	29.60275321;	-98.50835906;	29.60439126;	-98.50842592;
29.59085650;	-98.51202502;	29.59137885;	-98.51183467;	29.60490728;	-98.50846246;	29.60560624;	-98.50844301;
29.59192384;	-98.51091007;	29.59587738;	-98.51076166;	29.60592513;	-98.50842119;	29.60645240;	-98.50835023;
29.59636738;	-98.51060915;	29.59677628;	-98.51042469;	29.60750376;	-98.50832736;	29.60898614;	-98.50417219;
29.59719366;	-98.51012433;	29.59774282;	-98.50983781;	29.60869797;	-98.50045111;	29.60865395;	-98.49820678;
29.59818962;	-98.50871029;	29.59977970;	-98.50854575;	29.60867517;	-98.49475485;	29.60892113;	-98.49278337;
29.60006194;	-98.50825728;	29.60065186;	-98.50812453;	29.60899333;	-98.48757807;	29.60936170;	-98.48105488;
29.60111120;	-98.50806353;	29.60139823;	-98.50800890;	29.61000101;	-98.47836671;	29.61039917;	-98.47105488;
29.60182881;	-98.50799361;	29.60226519;	-98.50803305;	29.61040682;	-98.47218836;	29.60998997;	-98.46848013;
29.60275321;	-98.50835906;	29.60439126;	-98.50842592;	29.60913209;	-98.47061907;	29.60193601;	and -98.47599804,
29.60490728;	-98.50846246;	29.60560624;	-98.50844301;	29.58358740			
29.60592513;	-98.50842119;	29.60645240;	-98.50835023;				
29.60750376;	-98.50832736;	29.60898614;	-98.50417219;	Figure: 4 TAC §40.6(b)(8)			
29.60869797;	-98.50825728;	29.60865395;	-98.49820678;	[Figure: 4 TAC §40.6(b)(1)(H)]			
29.60867517;	-98.49475485;	29.60892113;	-98.49278337;	(9) Containment Zone 9. That portion of Coleman			
29.60899333;	-98.48757807;	29.60936170;	-98.48105488;	County lying within the area described by the following latitude-longitude coordinate pairs:	-99.20401183,	31.85221427,	
29.61000101;	-98.47836671;	29.61039917;	-98.47502788;		-99.2053151,	31.85224412,	-99.20726846,
29.61040682;	-98.47218836;	29.60998997;	-98.46848013;		-99.20742385,	31.85226011,	-99.20756522,
29.60913209;	-98.47061907;	29.60193601;	-98.47599804;		-99.20769509,	31.85221449,	-99.20781472,
29.58358740;	-98.48393953;	29.56606588;	-98.48498476;		-99.20792172,	31.85211987,	-99.20801371,
29.56684328;	-98.48663764;	29.56809152;	-98.48676797;		-99.20808584,	31.85199262,	-99.20811024,
29.56819223;	-98.48862363;	29.56962616;	-98.49016542;		-99.20813859,	31.85191749,	-99.2081786,
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Figure: 4 TAC §40.6(b)(9)

(10) Containment Zone 10. That portion of Collingsworth County lying within the area described by the following latitude-longitude coordinate pairs: -100.1120835, 35.4445485, -100.0522569, 35.44457504, -100.0516528, 35.44456291, -100.0509881, 35.44450961, -100.0503336, 35.44441922, -100.043642, 35.44335035, -100.0428465, 35.4432064, -100.0421718, 35.44305006, -100.0415072, 35.44284426, -100.0408928, 35.44260962, -100.0297009, 35.43766677, -100.02911, 35.43741735, -100.0283476, 35.43716274, -100.0276233, 35.43697053, -100.0269753, 35.43684068, -100.0113674, 35.4340393, -100.0108647, 35.43393536, -100.0103344, 35.43379073, -100.009782, 35.433628, -100.0093069,

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 -100.2451369, 35.25966402, -100.2417542, 35.26489889,
 -100.2415166, 35.26525792, -100.2403876, 35.26674725,
 -100.238157, 35.27018106, -100.23725, 35.27160766, -100.2370311,
 35.27200974, -100.2368368, 35.27242128, -100.2366264,
 35.27298155, -100.2365047, 35.27340474, -100.2364112,
 35.27382698, -100.2363381, 35.27425068, -100.2363178,
 35.27453918, -100.2362899, 35.27567223, -100.236255,
 35.28782378, -100.2361672, 35.29921415, -100.2361837,
 35.31378332, -100.2362591, 35.32229046, -100.2362653,
 35.3314289, -100.2363068, 35.33562946, -100.2363135,
 35.36201049, -100.2363502, 35.37189859, -100.2363885,
 35.38154602, -100.2364125, 35.3926468, -100.2364374,
 35.39363673, -100.2364919, 35.3940944, -100.2365814,
 35.39455639, -100.2367187, 35.39505745, -100.2368982,
 35.39556349, -100.2371084, 35.3960352, -100.2373498,
 35.3964855, -100.2376783, 35.39700329, -100.2379589,
 35.39738007, -100.2382559, 35.39773049, -100.238734,
 35.39822617, -100.2426442, 35.40166745, -100.2676521,
 35.42352862, -100.269524, 35.42518116, -100.2698196,
 35.42545308, -100.2700934, 35.4257329, -100.2703738,
 35.42604306, -100.2707014, 35.42645645, -100.2711178,
 35.42708123, -100.2714807, 35.42776772, -100.2717213,
 35.42836871, -100.2719172, 35.42902082, -100.2720147,
 35.42948856, -100.2720827, 35.43027243, -100.2721971,
 35.43800943, -100.2721633, 35.44515792, -100.2721632,
 35.44517454, -100.2700691, 35.44516285, -100.2695234,
 35.44512208, -100.2689998, 35.44503161, -100.2684914,
 35.44491488, -100.2678943, 35.44476959, -100.2674167,
 35.44467985, -100.2669733, 35.44462491, -100.26653, 35.44460488,
 -100.1120835, and 35.4445485

Figure: 4 TAC §40.6(b)(10)

[(2) Surveillance Zone Boundaries:]

[(A) Surveillance Zone 1. That portion of the state within the boundaries of a line beginning where U.S. 285 enters from the State of New Mexico in Reeves County; thence southeast along U.S. 285 to R.M. 652; thence west along R.M. 652 to Rustler Springs Rd./FM 3541 in Culberson County; thence south along Rustler Springs Rd./F.M. 3541 to F.M. 2185; thence south along F.M. 2185 to Nevel Road; thence west along Nevel Road to County Road 501; thence south along County Road 501 to Weatherby Road; thence south along Weatherby Road to F.M. 2185; thence southwest along F.M. 2185 to S.H. 54; thence south on S.H. 54 to U.S. 90; thence south along U.S. 90 to the Culberson County line; thence southwest along the Culberson County line to the Rio Grande River in Hudspeth County; thence north along the Rio Grande River to F.M. 1088; thence northeast along F.M. 1088 to S.H. 20; thence southeast along S.H. 20 to I.H. 10; thence southeast along I.H. 10 to F.M. 1111; thence north on F.M. 1111 to U.S. 62/180; thence east and north along U.S. 62/180 to the New Mexico state line in Culberson County.]

[Figure: 4 TAC §40.6(b)(2)(A)]

[(B) Surveillance Zone 2. That portion of the state lying within a line beginning at the New Mexico state line where U.S. 60 enters Texas; thence northeast along U.S. 60 to U.S. 87 in Randall County; thence south along U.S. 87 to S.H. 217 in Canyon; thence east along S.H. 217 to F.M. 1541; thence north along F.M. 1541 to Loop 335; thence east and north along Loop 335 to S.H. 136; thence northwest along S.H. 136 to N. Lakeside Dr.; thence north along N. Lakeside Dr. to E. Willow Creek Dr.; thence west along E. Willow Creek Dr. to Denton St.; thence north along Denton St. to E. Cherry; thence west along E. Cherry to N. Eastern St.; thence south along N. Eastern St. to E. Willow Creek Dr.; thence west along E. Willow Creek Dr. to U.S. 87; thence north along U.S. 87 to the City of Dumas; thence along the city limits of Dumas to U.S. 287 in Moore County; thence north along U.S. 287 to the Oklahoma state line.]

[Figure: 4 TAC §40.6(b)(2)(B)]

[(C) Surveillance Zone 3. That portion of the state not within the CZ described in §65.81(1)(C) of this title (relating to Containment Zones; Restrictions) lying within a line beginning at the intersection of F.M. 1250 and U.S. Highway 90 in Hondo in Medina County; thence west along U.S. Highway 90 to the Sabinal River in Uvalde County; thence north along the Sabinal River to F.M. 187; thence north along F.M. 187 to F.M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to 18th Street in Hondo; thence east along 18th Street to State Highway 173; thence south along State Highway 173 to U.S. Highway 90; thence west along U.S. Highway 90 to Avenue E (F.M. 462); thence south along Avenue E (F.M. 462) to F.M. 1250; thence west along F.M. 1250 to U.S. Highway 90.]

[Figure: 4 TAC §40.6(b)(2)(C)]

[(D) Surveillance Zone 4. That portion of the state lying within a line beginning in Val Verde County at the confluence of Sycamore Creek and the Rio Grande River (29.242341°, -100.793906°); thence northeast along Sycamore Creek to U.S. 277; thence northwest on U.S. 277 to Loop 79; thence north along Loop 79 to the Union Pacific Railroad; thence east along the Union Pacific Railroad to Liberty Drive (north entrance to Laughlin Air Force Base); thence north along Liberty Drive to U.S. 90; thence west along U.S. 90 to Loop 79; thence north along Loop 79 to the American Electric Power (AEP) Ft. Lancaster-to-Hamilton Road 138kV transmission line (29.415542°, -100.847993°); thence north along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to a point where the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line turns northwest (29.528552°, -100.871618°); thence northwest along the

AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to the AEP Ft. Lancaster-to-Hamilton Road maintenance road (29.569259°, -100.984758°); thence along the AEP Ft. Lancaster-to-Hamilton Road maintenance road to Spur 406; thence northwest along Spur 406 to U.S. 90; thence south along U.S. 90 to Box Canyon Drive; thence west along Box Canyon Drive to Bluebonnet Drive; thence southwest along Bluebonnet Drive to Lake Drive; thence south along Lake Drive to Lake Amistad (29.513298°, -101.172454°); thence southeast along the International Boundary to the International Boundary at the Lake Amistad dam; thence southeast along the Rio Grande River to the confluence of Sycamore Creek (29.242341°, -100.793906°).]

[Figure: 4 TAC §40.6(b)(2)(D)]

[(E) Surveillance Zone 5. That portion of the state lying within the boundaries of a line beginning on U.S. 83 at the Kerr/Kimble County line; thence north along U.S. 83 to I.H. 10; thence northwest along I.H. 10 to South State Loop 481; thence west along South State Loop 481 to the city limit of Junction in Kimble County; thence following the Junction city limit so as to circumscribe the city of Junction before intersecting with F.M. 2169; thence east along F.M. 2169 to County Road (C.R.) 410; thence east along C.R. 410 to C.R. 412; thence south along C.R. 412 to C.R. 470; thence east along C.R. 470 to C.R. 420; thence south along C.R. 420 to F.M. 479; thence east along F.M. 479 to C.R. 443; thence south along C.R. 443 to U.S. 290; thence west along U.S. 290 to I.H. 10; thence southeast along I.H. 10 to the Kerr/Kimble County line; thence west along the Kerr/Kimble County line to U.S. 83.]

[Figure: 4 TAC §40.6(b)(2)(E)]

[(F) Surveillance Zone 6. That portion of the state within the boundaries of a line beginning at the intersection of State Highway (S.H.) 207 and Farm to Market (F.M.) 211 in Garza County; thence west along F.M. 211 to U.S. Highway (U.S.) 87 in Lynn County; thence north along U.S. 87 to F.M. 41 in Lubbock County; thence west along FM 41 to F.M. 179; thence north along F.M. 179 to F.M. 264; thence east along F.M. 264 to U.S. 62/82; thence east along U.S. 62/82 to S.H. 207 in Crosby County; thence south along S.H. 207 to F.M. 211 in Garza County.]

[Figure: 4 TAC §40.6(b)(2)(F)]

[(G) Surveillance Zone 7. That portion of the state lying within the boundaries of a line beginning at the intersection of S.H. 205 and U.S. Hwy. 80 in Kaufman County; thence east along U.S. 80 to North 4th Street in Wills Point in Van Zandt County; thence north along North 4th Street to F.M. 751; thence north along F.M. 751 to the south shoreline of Lake Tawakoni in Hunt County; thence west and north along the Lake Tawakoni shoreline to the confluence of Caddo Creek; thence northwest along Caddo Creek to West Caddo Creek; thence northwest along West Caddo Creek to I.H. 30; thence southwest along I.H. 30 to F.M. 548 in Rockwall County; thence southeast along F.M. 548 to S.H. 205 in Kaufman County; thence southeast along S.H. 205 to U.S. Hwy. 80.]

[Figure: 4 TAC §40.6(b)(2)(G)]

[(H) Surveillance Zone 8. Those portions of Duval County and Jim Wells County lying within the area described by the following latitude-longitude coordinate pairs:

27.95642982;	-98.27388850,	27.95652171;	-98.27601634,
27.95673759;	-98.27812373,	27.95707655;	-98.28020167,
27.95753714;	-98.28224125,	27.95811738;	-98.28423375,
27.95881480;	-98.28617065,	27.95962640;	-98.28804366,
27.96054872;	-98.28984475,	27.96157780;	-98.29156623,
27.96270926;	-98.29320071,	27.96393824;	-98.29424069,
27.96481102;	-98.30642859,	27.97549504;	-98.30692922,
27.97594346;	-98.30836947,	27.97735119;	-98.30970297,
27.97883952;	-98.31092400,	27.98040208;	-98.31202734,

27.98203218;	-98.31300826;	27.98372285;	-98.31386255;	30.41792590;	-99.22480835;	30.41796173;	-99.22658493;
27.98546684;	-98.31458655;	27.98725670;	-98.31517715;	30.41908146;	-99.22827325;	30.42029948;	-99.22986608;
27.98908476;	-98.31563181;	27.99094320;	-98.31594859;	30.42161056;	-99.23135659;	30.42300911;	-99.23273842;
27.99282405;	-98.31612611;	27.99471927;	-98.31616361;	30.42448913;	-99.23347804;	30.42537038;	-99.23426139;
27.99662074;	-98.31606092;	27.99852032;	-98.31581848;	30.42634143;	-99.23478899;	30.42701534;	-99.23593618;
28.00040988;	-98.31543730;	28.00228132;	-98.31491902;	30.42863897;	-99.23695842;	30.43032414;	-99.23785132;
28.00412662;	-98.31426585;	28.00593788;	-98.31348058;	30.43206364;	-99.23861105;	30.43385001;	-99.23923434;
28.00770735;	-98.31256657;	28.00942745;	-98.31152772;	30.43567561;	-99.23971853;	30.43753262;	-99.24006154;
28.01109080;	-98.31036848;	28.01269028;	-98.30909381;	30.43941310;	-99.24026188;	30.44130899;	-99.24031869;
28.01421904;	-98.30770916;	28.01567053;	-98.30652297;	30.44321217;	-99.24031523;	30.44347513;	-99.24022536;
28.01677477;	-98.29476414;	28.02715940;	-98.29446157;	30.44837009;	-99.24014184;	30.45000946;	-99.23991143;
28.02742312;	-98.29287489;	28.02870162;	-98.29119733;	30.45190279;	-99.23953858;	30.45377901;	-99.23902487;
28.02988528;	-98.28943607;	28.03096903;	-98.28759867;	30.45563008;	-99.23837249;	30.45744807;	-99.23758424;
28.03194821;	-98.28569300;	28.03281864;	-98.28372721;	30.45922521;	-99.23666347;	30.46095387;	-99.23561413;
28.03357658;	-98.28216193;	28.03408628;	-98.28212907;	30.46262666;	-99.23444070;	30.46423640;	-99.23314821;
28.03409614;	-98.28209993;	28.03411285;	-98.28209629;	30.46577620;	-99.23174219;	30.46723946;	-99.23022865;
28.03411493;	-98.28025876;	28.03509401;	-98.27835296;	30.46861991;	-99.22861409;	30.46991164;	-99.22690541;
28.03596433;	-98.27638706;	28.03672216;	-98.27436947;	30.47110911;	-99.22510992;	30.47220719;	-99.22323534;
28.03736425;	-98.27230886;	28.03788785;	-98.27021404;	30.47320118;	-99.22128967;	30.47408681;	-99.21928127;
28.03829072;	-98.26809400;	28.03857112;	-98.26595782;	30.47486029;	-99.21721873;	30.47551830;	-99.21511090;
28.03872786;	-98.26381465;	28.03876027;	-98.26167369;	30.47605803;	-99.21296680;	30.47647716;	-99.21079563;
28.03866820;	-98.25954411;	28.03845206;	-98.25743503;	30.47677389;	-99.21067633;	30.47678656;	-99.21066064;
28.03811276;	-98.25535550;	28.03765176;	-98.25331442;	30.47678820;	-99.21064812;	30.47679654;	-99.21044462;
28.03707105;	-98.25132055;	28.03637309;	-98.24938243;	30.47693086;	-99.20864884;	30.47802871;	-99.20677396;
28.03556090;	-98.24750835;	28.03463794;	-98.24570636;	30.47902245;	-99.20558508;	30.47958005;	-99.20247846;
28.03360818;	-98.24398417;	28.03247603;	-98.24234916;	30.48096772;	-99.20228691;	30.48105261;	-99.19918067;
28.03124634;	-98.24113443;	28.03021887;	-98.23083476;	30.48241824;	-99.19861515;	30.48266110;	-99.19660638;
28.02104737;	-98.23050872;	28.02075285;	-98.22906895;	30.48343422;	-99.19454350;	30.48409187;	-99.19243535;
28.01934417;	-98.22773613;	28.01785493;	-98.22651595;	30.48463123;	-99.19029097;	30.48504998;	-99.18811953;
28.01629151;	-98.22541364;	28.01466061;	-98.22443393;	30.48534633;	-99.18593036;	30.48551900;	-99.18373284;
28.01296921;	-98.22358099;	28.01122456;	-98.22285847;	30.48556727;	-99.18153637;	30.48549093;	-99.17935038;
28.00943414;	-98.22226947;	28.00760562;	-98.22181649;	30.48529029;	-99.17718424;	30.48496622;	-99.17504722;
28.00574682;	-98.22150148;	28.00386570;	-98.22132577;	30.48452011;	-99.17294849;	30.48395387;	-99.17089705;
28.00197033;	-98.22129010;	28.00006883;	-98.22139462;	30.48326993;	-99.16890168;	30.48247122;	-99.16697093;
27.99816932;	-98.22163888;	27.99627996;	-98.22202182;	30.48156116;	-99.16511307;	30.48054365;	-99.16383762;
27.99440882;	-98.22254179;	27.99256392;	-98.22319656;	30.47975512;	-99.16050915;	30.47759396;	-99.16032575;
27.99075315;	-98.22398333;	27.98898427;	-98.22489870;	30.47747402;	-99.15703384;	30.47530578;	-99.15671573;
27.98726486;	-98.22593877;	27.98560226;	-98.22709906;	30.47509363;	-99.15502735;	30.47387466;	-99.15343468;
27.98400360;	-98.22837462;	27.98247572;	-98.22975997;	30.47256264;	-99.15194453;	30.47116318;	-99.15056328;
27.98102515;	-98.23106012;	27.97982198;	-98.24826906;	30.46968228;	-99.14929685;	30.46812629;	-99.14815065;
27.96478131;	-98.24845806;	27.96461741;	-98.25004429;	30.46650187;	-99.14790445;	30.46611914;	-99.14788832;
27.96333954;	-98.25172121;	27.96215650;	-98.25348165;	30.46609362;	-99.14786512;	30.46607258;	-99.14672695;
27.96107335;	-98.25531806;	27.96009472;	-98.25722260;	30.46453587;	-99.14534587;	30.46350629;	-99.14407960;
27.95922481;	-98.25918710;	27.95846733;	-98.26120316;	30.46195024;	-99.14293356;	30.46032578;	-99.14191266;
27.95782553;	-98.26326215;	27.95730215;	-98.26535527;	30.45863985;	-99.14102126;	30.45689968;	-99.14026317;
27.95689942;	-98.26747356;	27.95661908;	-98.26960795;	30.45511273;	-99.13964163;	30.45328664;	-99.13915930;
27.95646232;	-98.27174932;	27.95642982.]		30.45142925;	-99.13881823;	30.44954850;	-99.13861988;
[Figure: 4 FAC §40.6(b)(2)(H)]				30.44765245;	-99.13856414;	30.44603638;	-99.13855946;
				30.44408936;	-99.13856041;	30.44380220;	-99.13856403;
				30.44354532;	-99.13859898;	30.44172303;	-99.13864758;
				30.43800445;	-99.13864953;	30.43787930;	-99.13878669;
				30.43027346;	-99.13887258;	30.42859929;	-99.13910492;
				30.42670615;	-99.13947964;	30.42483023;	-99.13996436;
				30.42308994;	-99.14003556;	30.42250974;	-99.14041024;
				30.42063382;	-99.14092566;	30.41878315;	-99.14157962;
				30.41696566;	-99.14236931;	30.41518912;	-99.14329134;
				30.41346114;	-99.14434175;	30.41178912;	-99.14551605;
				30.41018022;	-99.14680920;	30.40864131;	-99.14821565;
				30.40717899;	-99.14972940;	30.40579952;	-99.15134395;
				30.40450879;	-99.15305239;	30.40331234;	-99.15484740;
				30.40221528;	-99.15672131;	30.40122230;	-99.15866610;
				30.40033766;	-99.16067343;	30.39956514;	-99.16273472;
				30.39890804;	-99.16484115;	30.39836918;	-99.16698371;

[(I) Surveillance Zone 9. That portion of Gillespie County lying within the area described by the following latitude-longitude coordinate pairs: -99.17353594, 30.39743442; -99.17375688, 30.39743649; -99.18452956, 30.39756726; -99.18650307, 30.39764152; -99.18868707, 30.39784204; -99.19085129, 30.39816591; -99.19298645, 30.39861175; -99.19508343, 30.39917766; -99.19713325, 30.39986120; -99.19912714, 30.40065947; -99.20105657, 30.40156904; -99.20291327, 30.40258602; -99.20468931, 30.40370605; -99.20637708, 30.40492436; -99.20796935, 30.40623571; -99.20893862, 30.40713625; -99.20896777, 30.40712459; -99.20895081, 30.40713625; -99.20896777, 30.40714184; -99.21010720, 30.40753808; -99.21210135, 30.40833615; -99.21403106, 30.40924552; -99.21588805, 30.41026231; -99.21766438, 30.41138217; -99.21935245, 30.411391150; -99.22094503, 30.411391150; -99.22243530, 30.41531015; -99.22381687, 30.41679026; -99.22474341,

30.39795086; -99.16915323, 30.39765487; -99.17134042,
30.39748248; -99.17353594, 30.39743442.]
[Figure: 4 TAC §40.6(b)(2)(I)]

[(J) Surveillance Zone 10. That portion of Limestone County lying within the area described by the following latitude-longitude coordinate pairs: -96.65881805, 31.73430087; -96.66104091, 31.73442055; -96.66324986, 31.73466419; -96.66543545, 31.73503074; -96.66758833, 31.73551864; -96.66969929, 31.73612579; -96.67175930, 31.73684960; -96.67375954, 31.73768698; -96.67569145, 31.73863434; -96.67754676, 31.73968762; -96.67931753, 31.74084232; -96.68099619, 31.74209350; -96.68257554, 31.74343580; -96.68404882, 31.74486349; -96.68462217, 31.74547369; -96.69651116, 31.75847900; -96.69729894, 31.75937568; -96.69854200, 31.76095533; -96.69966152, 31.76260105; -96.70065270, 31.76430580; -96.70151130, 31.76606228; -96.70223362, 31.76786296; -96.70281656, 31.76970015; -96.70325763, 31.77156597; -96.70355493, 31.77345244; -96.70370717, 31.77535148; -96.70371370, 31.77725496; -96.70357448, 31.77915473; -96.70329009, 31.78104265; -96.70286174, 31.78291064; -96.70229126, 31.78475069; -96.70158110, 31.78655493; -96.70073427, 31.78831563; -96.69975440, 31.79002524; -96.69864568, 31.79167645; -96.69741285, 31.79326217; -96.69606120, 31.79477561; -96.69459649, 31.79621030; -96.69302502, 31.79756007; -96.69135350, 31.79881916; -96.68958909, 31.79998216; -96.68773936, 31.80104409; -96.68741119, 31.80121725; -96.68017876, 31.80498498; -96.67857967, 31.80576803; -96.67658324, 31.80661451; -96.67452622, 31.80734764; -96.67241743, 31.80796427; -96.67026590, 31.80846177; -96.66808086, 31.80883800; -96.66587167, 31.80909135; -96.66364780, 31.80922074; -96.66141877, 31.80922561; -96.65919415, 31.80940594; -96.65698347, 31.80886223; -96.65479621, 31.80849555; -96.65264173, 31.80800745; -96.65052927, 31.80740003; -96.64846789, 31.80667590; -96.64646642, 31.80583815; -96.64453342, 31.80489038; -96.64267720, 31.80383665; -96.64090569, 31.80268147; -96.63922649, 31.80142980; -96.63764679, 31.80008699; -96.63617335, 31.79865880; -96.63514114, 31.79753453; -96.63512907, 31.79752070; -96.63511133, 31.79751247; -96.63344919, 31.79668870; -96.63159325, 31.79563481; -96.62982203, 31.79447948; -96.62814312, 31.79322765; -96.62656372, 31.79188471; -96.62509057, 31.79045639; -96.62372999, 31.78894883; -96.62248781, 31.78736847; -96.62219923, 31.78696681; -96.61946414, 31.78308965; -96.61863432, 31.78184492; -96.61764443, 31.78013956; -96.61678727, 31.77838254; -96.61606650, 31.77658138; -96.61548520, 31.77474381; -96.61504584, 31.77287769; -96.61475032, 31.77099101; -96.61459987, 31.76909186; -96.61459514, 31.76718838; -96.61473613, 31.76528870; -96.61502224, 31.76340096; -96.61545224, 31.76153325; -96.61602426, 31.75969357; -96.61673586, 31.75788978; -96.61758398, 31.75612962; -96.61856499, 31.75442061; -96.61967467, 31.75277007; -96.62090827, 31.75118507; -96.62226051, 31.74967239; -96.62372558, 31.74823850; -96.62529723, 31.74688954; -96.62696871, 31.74563128; -96.62873287, 31.74446912; -96.63058216, 31.74340801; -96.63111304, 31.74313021; -96.64027392, 31.73843371; -96.64166941, 31.73775591; -96.64366469, 31.73690995; -96.64572042, 31.73617730; -96.64782778, 31.73556108; -96.64997777, 31.73506394; -96.65216118, 31.73468801; -96.65436867, 31.73443488; -96.65659079, 31.73430565; -96.65881805,

[(K) Surveillance Zone 11. That portion of Uvalde County lying within the area described by the following latitude-longitude coordinate pairs: -99.65125893, 29.37997244; -99.64901352, 29.37941401; -99.64845147, 29.37926298; -99.64642007, 29.37858685; -99.64444354, 29.37779578; -99.64253035, 29.37689314; -99.64068870, 29.37588282; -99.63892647, 29.37476913; -99.63725122, 29.37355686; -99.63567012, 29.37225119; -99.63418993, 29.37085772; -99.63281701, 29.36938243; -99.63155722, 29.36783163; -99.63041596, 29.36621197; -99.62939812, 29.36453038; -99.62890580, 29.36359183; -99.62806121, 29.36305790; -99.62638630, 29.36184549; -99.62480553, 29.36053969; -99.62429303, 29.36021197; -99.62405653, 29.35985950; -99.62381874, 29.35964254; -99.62273208, 29.35860164; -99.62135950, 29.35712623; -99.62010006, 29.35557532; -99.61895913, 29.35395557; -99.61873659, 29.35360973; -99.61862150, 29.35342799; -99.61782653, 29.35209215; -99.61693677, 29.35035578; -99.61617856, 29.34857213; -99.61555516, 29.34674886; -99.61506922, 29.34489377; -99.61503821, 29.34475276; -99.61494625, 29.34432911; -99.61463087, 29.34259115; -99.61442548, 29.34069635; -99.61436197, 29.33879385; -99.61444061, 29.33689178; -99.61466105, 29.33499830; -99.61487321, 29.33380912; -99.61491150, 29.33362019; -99.61506063, 29.33293257; -99.61556121, 29.33108049; -99.61619893, 29.32926107; -99.61697106, 29.32748209; -99.61732421, 29.32676913; -99.61746691, 29.32649127; -99.61801697, 29.32547330; -99.61904741, 29.32379784; -99.61962571, 29.32295978; -99.61999501, 29.32244439; -99.62056993, 29.32166963; -99.62184101, 29.32012634; -99.62322451, 29.31865920; -99.62471449, 29.31727448; -99.62532991, 29.31675242; -99.62539908, 29.31671616; -99.62601185, 29.31568933; -99.62716487, 29.31407645; -99.62843575, 29.31253310; -99.62981903, 29.31106589; -99.63130880, 29.30968110; -99.63289868, 29.30838465; -99.63458185, 29.30718209; -99.63635112, 29.30607857; -99.63819890, 29.30507881; -99.64011729, 29.30418708; -99.64209808, 29.30340721; -99.64413280, 29.30274253; -99.64621273, 29.30219588; -99.64832897, 29.30176960; -99.65047248, 29.30146552; -99.65263408, 29.30128493; -99.65480452, 29.30122861; -99.65487588, 29.30122887; -99.65900847, 29.30124789; -99.66110711, 29.30131575; -99.66326739, 29.30150809; -99.66540871, 29.30182382; -99.66752190, 29.30226160; -99.66959792, 29.30281955; -99.67162789, 29.30349528; -99.67360313, 29.30428591; -99.67551517, 29.30518805; -99.67735585, 29.30619784; -99.67911727, 29.30731096; -99.67954559, 29.30760570; -99.67956313, 29.30761798; -99.67958463, 29.30762363; -99.68080892, 29.30796826; -99.68283908, 29.30864382; -99.68481451, 29.30943427; -99.68672676, 29.31033624; -99.68856765, 29.31134587; -99.69032929, 29.31245884; -99.69200416, 29.31367038; -99.69358506, 29.31497531; -99.69506524, 29.31636805; -99.69643836, 29.31784263; -99.69769854, 29.31939275; -99.69884037, 29.32101177; -99.69985897, 29.32269277; -99.70074996, 29.32442854; -99.70150953, 29.32621166; -99.70213441, 29.32803449; -99.70262193, 29.32988924; -99.70296999, 29.33176795; -99.70316259, 29.33347054; -99.70358952, 29.33885328; -99.70360402, 29.33904533; -99.70366928, 29.34094779; -99.70359239, 29.34284991; -99.70337367, 29.34474356; -99.70306776, 29.34634027; -99.70321387, 29.35078288; -99.70322752, 29.35169864; -99.70315061, 29.35360078; -99.70293186, 29.35549443; -99.70257219, 29.35737150; -99.70207314, 29.35922394; -99.70143683, 29.36104382; -99.70066598,

29.36282334;	-99.69976390;	29.36455489;	-99.69873443;	29.33354762;	-99.74380237;	29.33166901;	-99.74359448;
29.36623103;	-99.69758198;	29.36784460;	-99.69631148;	29.32977444;	-99.74352845;	29.32787201;	-99.74360454;
29.36938868;	-99.69492837;	29.37085666;	-99.69343856;	29.32596988;	-99.74382244;	29.32407617;	-99.74418118;
29.37224223;	-99.69184845;	29.37353948;	-99.69016484;	29.32219902;	-99.74442828;	29.32121228;	-99.74475468;
29.37474283;	-99.68839493;	29.37584714;	-99.68654632;	29.32000902;	-99.74500564;	29.31914318;	-99.74564085;
29.37684766;	-99.68462691;	29.37774012;	-99.68264494;	29.31732311;	-99.74641051;	29.31554335;	-99.74731130;
29.37852068;	-99.68060890;	29.37918601;	-99.67852751;	29.31381150;	-99.74833938;	29.31213500;	-99.74949032;
29.37973324;	-99.67640970;	29.38016004;	-99.67426453;	29.31052100;	-99.75075920;	29.30897642;	-99.75214059;
29.38046457;	-99.67210121;	29.38064554;	-99.66992900;	29.30750787;	-99.75285890;	29.30681597;	-99.75290419;
29.38070216;	-99.66982079;	29.38070172;	-99.66706723;	29.30677372;	-99.75294287;	29.30672669;	-99.75358175;
29.38068663;	-99.65998003;	29.38082841;	-99.65912069;	29.30597556;	-99.75496305;	29.30450698;	-99.75645093;
29.38083583;	-99.65694891;	29.38076768;	-99.65478688;	29.30312072;	-99.75803903;	29.30182270;	-99.75972054;
29.38057523;	-99.65264386;	29.38025930;	-99.65125893;	29.30061847;	-99.76148826;	29.29951320;	-99.76333462;
29.37997244.]				29.29851161;	-99.76525173;	29.29761799;	-99.76723138;
[Figure: 4 TAC §40.6(b)(2)(K)]				29.29683616;	-99.76926510;	29.29616946;	-99.77134418;
				29.29562075;	-99.77345973;	29.29519237;	-99.77560270;
				29.29488616;	-99.77776392;	29.29470343;	-99.77993414;
				29.29464496.]			

[(L) Surveillance Zone 12. That portion of Uvalde County lying within the area described by the following latitude-longitude coordinate pairs: -99.77993414, 29.29464496; -99.77999035,

29.29464510;	-99.78359396;	29.29465668;	-99.78570769;
29.29472252;	-99.78786807;	29.29491273;	-99.79000964;
29.29522635;	-99.79212325;	29.29566204;	-99.79419984;
29.29621793;	-99.79623054;	29.29689166;	-99.79820666;
29.29768034;	-99.80011973;	29.29858058;	-99.80196158;
29.29958855;	-99.80372431;	29.30069993;	-99.80540038;
29.30190996;	-99.80698262;	29.30321346;	-99.80846425;
29.30460486;	-99.80983893;	29.30607821;	-99.81110077;
29.30762719;	-99.81224435;	29.30924517;	-99.81326479;
29.31092524;	-99.81415770;	29.31266021;	-99.81491926;
29.31444263;	-99.81554621;	29.31626490;	-99.81603584;
29.31811919;	-99.81619440;	29.31887664;	-99.81620950;
29.31895454;	-99.81623278;	29.31903087;	-99.81624122;
29.31905863;	-99.81673088;	29.32091293;	-99.81708112;
29.32279132;	-99.81729043;	29.32468576;	-99.81735791;
29.32658815;	-99.81728326;	29.32849033;	-99.81706679;
29.33038416;	-99.81670943;	29.33226154;	-99.81621268;
29.33411441;	-99.81557868;	29.33593484;	-99.81481014;
29.33771504;	-99.81391032;	29.33944738;	-99.81288309;
29.34112444;	-99.81173284;	29.34273904;	-99.81046449;
29.34428425;	-99.80908347;	29.34575346;	-99.80850270;
29.34629485;	-99.80851508;	29.34630490;	-99.80678762;
29.34793866;	-99.80657186;	29.34814077;	-99.80657138;
29.34814121;	-99.80655435;	29.34815700;	-99.80597613;
29.34869270;	-99.80536412;	29.34927474;	-99.80510058;
29.34952246;	-99.80509533;	29.34952734;	-99.80437562;
29.35017550;	-99.80278735;	29.35147413;	-99.80110550;
29.35267896;	-99.79933726;	29.35378481;	-99.79749021;
29.35478694;	-99.79557227;	29.35568108;	-99.79359165;
29.35646338;	-99.79155683;	29.35713048;	-99.78947655;
29.35767954;	-99.78735970;	29.35810820;	-99.78521537;
29.35841461;	-99.78305275;	29.35859747;	-99.78088110;
29.35865600;	-99.77870973;	29.35858994;	-99.77654795;
29.35839957;	-99.77440502;	29.35808572;	-99.77229014;
29.35764972;	-99.77208135;	29.35759383;	-99.77161615;
29.35752568;	-99.76950128;	29.35708963;	-99.76742352;
29.35653331;	-99.76539177;	29.35585911;	-99.76341474;
29.35506990;	-99.76150089;	29.35416907;	-99.75965843;
29.35316049;	-99.75789525;	29.35204848;	-99.75621890;
29.35083779;	-99.75602128;	29.35068405;	-99.75590514;
29.35059297;	-99.75578418;	29.35050683;	-99.75477992;
29.34976222;	-99.75319762;	29.34845804;	-99.75171611;
29.34706596;	-99.75034174;	29.34559196;	-99.74908038;
29.34404235;	-99.74793744;	29.34242377;	-99.74691780;
29.34074315;	-99.74602583;	29.33900769;	-99.74526534;
29.33722483;	-99.74463959;	29.33540220;	-99.74415124;

[Figure: 4 TAC §40.6(b)(2)(L)]

[(M) Surveillance Zone 13. That portion of Zavala County lying within the area described by the following latitude-longitude coordinate pairs: -99.51049107, 28.95090385; -99.51265316,

28.95097451;	-99.51480536;	28.95116936;	-99.51693849;
28.95148756;	-99.51904340;	28.95192775;	-99.52111110;
28.95248804;	-99.52313273;	28.95316605;	-99.52509964;
28.95395887;	-99.52700343;	28.95486311;	-99.52883593;
28.95587490;	-99.53058931;	28.95698991;	-99.53225606;
28.95820337;	-99.53382905;	28.95951008;	-99.53530154;
28.96090446;	-99.53666722;	28.96238053;	-99.53792024;
28.96393199;	-99.53905524;	28.96555219;	-99.54006736;
28.96723419;	-99.54095224;	28.96897081;	-99.54170611;
28.97075459;	-99.54232572;	28.97257791;	-99.54280841;
28.97443297;	-99.54315211;	28.97631181;	-99.54335534;
28.97820640;	-99.54341747;	28.97994914;	-99.54343982;
28.99442460;	-99.54343982;	28.99442464;	-99.54344056;
28.99490529;	-99.54344056;	28.99490532;	-99.54346253;
29.00913749;	-99.54346228;	29.00929698;	-99.54338252;
29.01119871;	-99.54316142;	29.01309180;	-99.54279994;
29.01496812;	-99.54229960;	29.01681964;	-99.54166254;
29.01863843;	-99.54089149;	29.02041670;	-99.53998973;
29.02214683;	-99.53896114;	29.02382142;	-99.53781009;
29.02543328;	-99.53654153;	29.02697551;	-99.53516088;
29.02844151;	-99.53367405;	29.02982499;	-99.53208741;
29.03112002;	-99.53040774;	29.03232106;	-99.52864226;
29.03342296;	-99.52679851;	29.03442099;	-99.52488441;
29.03531089;	-99.52290814;	29.03608882;	-99.52087818;
29.03675147;	-99.51880322;	29.03729599;	-99.51669217;
29.03772004;	-99.51455406;	29.03802182;	-99.51239806;
29.03820002;	-99.51072237;	29.03825261;	-99.50919519;
29.03826650;	-99.50904828;	29.03826755;	-99.50752105;
29.03827545;	-99.50737410;	29.03827593;	-99.50594924;
29.03827773;	-99.49566970;	29.03834613;	-99.49566962;
29.03834613;	-99.49473223;	29.03835233;	-99.49296109;
29.03836402;	-99.49267467;	29.03836600;	-99.49226342;
29.03836658;	-99.49009941;	29.03829557;	-99.48794532;
29.03810029;	-99.48581040;	29.03778159;	-99.48370377;
29.03734082;	-99.48163449;	29.03677988;	-99.47961141;
29.03610118;	-99.47764320;	29.03530761;	-99.47573830;
29.03440259;	-99.47390487;	29.03338999;	-99.47215076;
29.03227415;	-99.47048349;	29.03105985;	-99.46891020;
29.02975230;	-99.46743762;	29.02835709;	-99.46607207;
29.02688021;	-99.46481938;	29.02532799;	-99.46368491;
29.02370707;	-99.46267354;	29.02202441;	-99.46178957;
29.02028720;	-99.46103678;	29.01850289;	-99.46041841;

29.71467640;	-97.30914586;	29.71277290;	-97.30927019;	31.50786570;	-98.26149634;	31.50607376;	-98.26125159;
29.71087243;	-97.30953663;	29.70898313;	-97.30994404;	31.50539420;	-98.26103721;	31.50477207;	-98.26067049;
29.70711309;	-97.31049066;	29.70527031;	-97.31117414;	31.50362151;	-98.26022400;	31.50187220;	-98.26019758;
29.70346269;	-97.31199155;	29.70169796;	-97.31217595;	31.50175089;	-98.26016347;	31.50163099;	-98.25975004;
29.70135935;	-97.31222358;	29.70078121;	-97.31248994;	31.49996785;	-98.25959479;	31.49917802;	-98.25948771;
29.69889191;	-97.31289724;	29.69702187;	-97.31344375;	31.49858334;	-98.25946172;	31.49843651;	-98.25934394;
29.69517908;	-97.31412710;	29.69337145;	-97.31494437;	31.49775950;	-98.25919780;	31.49681330;	-98.25918143;
29.69160670;	-97.31589205;	29.68989240;	-97.31696608;	31.49668976;	-98.25908514;	31.49594870;	-98.25891856;
29.68823587;	-97.31816186;	29.68664422;	-97.31947425;	31.49417507;	-98.25888083;	31.49227170;	-98.25898845;
29.68512425;	-97.32089764;	29.68368247;	-97.32242593;	31.49037029;	-98.25924095;	31.48847898;	-98.25963726;
29.68232504;	-97.32405258;	29.68105779;	-97.32577063;	31.48660587;	-98.26017566;	31.48475897;	-98.26085383;
29.67988612;	-97.32757271;	29.67881506;	-97.32945111;	31.48294621;	-98.26166887;	31.48117533;	-98.26261729;
29.67784918;	-97.33139780;	29.67699262;	-97.33340444;	31.47945392;	-98.26369501;	31.47778934;	-98.26489741;
29.67624905;	-97.33546245;	29.67562164;	-97.33756301;	31.47618873;	-98.26621934;	31.47465892;	-98.26679534;
29.67511308;	-97.33969715;	29.67472555;	-97.34185574;	31.47405293;	-98.26681607;	31.47403171;	-98.26682930;
29.67446070;	-97.34402952;	29.67431967;	-97.34541018;	31.47400646;	-98.26759061;	31.47264847;	-98.26866816;
29.67429469;	-97.34658982;	29.67429469;	-97.34738886;	31.47098385;	-98.26987040;	31.46938319;	-98.27119216;
29.67430305.]				31.46785333;	-98.27262778;	31.46640083;	-98.27417112;

[Figure: 4 TAC §40.6(b)(2)(N)]

[(O) Surveillance Zone 15. Those portions of Hamilton County and Mills County lying within the area described by the following latitude-longitude coordinate pairs:

31.45683101;	-98.30053822;	31.45692253;	-98.30274468;
31.45713818;	-98.30492997;	31.45747704;	-98.30708475;
31.45793765;	-98.30919980;	31.45851805;	-98.31038658;
31.45890239;	-98.31669362;	31.46106098;	-98.31757314;
31.46137430;	-98.31958188;	31.46218621;	-98.32152441;
31.46310897;	-98.32339241;	31.46413863;	-98.32517789;
31.46527078;	-98.32687319;	31.46650058;	-98.32847108;
31.46782275;	-98.32996470;	31.46923166;	-98.33134765;
31.47072126;	-98.33261402;	31.47228518;	-98.33375838;
31.47391673;	-98.33477582;	31.47560893;	-98.33566198;
31.47735452;	-98.33641306;	31.47914604;	-98.33665926;
31.47982828;	-98.33754324;	31.48238871;	-98.33827257;
31.48389251;	-98.33842953;	31.48417633;	-98.33930782;
31.48590739;	-98.34005903;	31.48769889;	-98.34067194;
31.48952865;	-98.34114389;	31.49138885;	-98.34147287;
31.49327150;	-98.34160905;	31.49463708;	-98.34170158;
31.49532212;	-98.34188349;	31.49719938;	-98.34192290;
31.49910272;	-98.34181693;	31.50100420;	-98.34156604;
31.50289566;	-98.34117128;	31.50476902;	-98.34063435;
31.50661624;	-98.33995753;	31.50842941;	-98.33914372;
31.51020077;	-98.33819639;	31.51192273;	-98.33711959;
31.51358792;	-98.33591793;	31.51518919;	-98.33459656;
31.51671969;	-98.33316112;	31.51817287;	-98.33161777;
31.51954249;	-98.32997310;	31.52082268;	-98.32823418;
31.52200797;	-98.32640843;	31.52309328;	-98.32450370;
31.52407394;	-98.32252812;	31.52494576;	-98.32082827;
31.52558836;	-98.31529088;	31.52752825;	-98.31495278;
31.52764488;	-98.31286112;	31.52828820;	-98.31072479;
31.52881293;	-98.30855295;	31.52921682;	-98.30635491;
31.52949815;	-98.30414008;	31.52965569;	-98.30191796;
31.52968879;	-98.29969808;	31.52959729;	-98.29748994;
31.52938159;	-98.29530301;	31.52904261;	-98.29314668;
31.52858181;	-98.29103016;	31.52800116;	-98.28896255;
31.52730315;	-98.28774691;	31.52682831;	-98.28364524;
31.52514181;	-98.28322840;	31.52502741;	-98.28116091;
31.52432928;	-98.27915118;	31.52351678;	-98.27720783;
31.52259339;	-98.27569722;	31.52177212;	-98.27487099;
31.52129631;	-98.27451295;	31.52108726;	-98.27272703;
31.51995446;	-98.27103146;	31.51872393;	-98.26943352;
31.51740102;	-98.26794004;	31.51599147;	-98.26655743;
31.51450121;	-98.26529158;	31.51293666;	-98.26414793;
31.51130452;	-98.26313137;	31.50961178;	-98.26224625;

[Figure: 4 TAC §40.6(b)(2)(O)]

[(P) Surveillance Zone 16. That portion of Washington County lying within the area described by the following latitude-longitude coordinate pairs:

-96.37818601;	30.18191727;	-96.38037261;	30.18204179;
-96.38126142;	30.18214344;	-96.38183665;	30.18217619;
-96.38400921;	30.18242463;	-96.38615844;	30.18279594;
-96.38827512;	30.18328855;	-96.39035022;	30.18390033;
-96.39237485;	30.18462869;	-96.39434034;	30.18547049;
-96.39623829;	30.18642214;	-96.39677558;	30.18671848;
-96.39737631;	30.18705681;	-96.39866130;	30.18781788;
-96.40040012;	30.18897655;	-96.40204804;	30.19023151;
-96.40359798;	30.19157740;	-96.40504332;	30.19300845;
-96.40637787;	30.19451853;	-96.40759591;	30.19610120;
-96.40869221;	30.19774966;	-96.40966209;	30.19945688;
-96.41050131;	30.20121553;	-96.41120647;	30.20301809;
-96.41177436;	30.20485685;	-96.41220260;	30.20672393;
-96.41248933;	30.20861134;	-96.41263334;	30.21051100;
-96.41263400;	30.21241478;	-96.41249128;	30.21431451;
-96.41220581;	30.21620207;	-96.41177878;	30.22042153;
-96.41121202;	30.21990842;	-96.41101164;	30.22237431;
-96.41096546;	30.22057140;	-96.41026138;	30.22584103;
-96.40942300;	30.22413337;	-96.40845391;	30.22907319;
-96.40735824;	30.22749000;	-96.40614068;	30.23201544;
-96.40480645;	30.23058383;	-96.40336125;	30.23461742;
-96.40181128;	30.23336189;	-96.40016316;	30.23683457;
-96.40181128;	30.23577663;	-96.39660114;	30.23862893;
-96.39842397;	30.23778670;	-96.39273616;	30.23996978;
-96.39470249;	30.23935767;	-96.38863437;	30.24050872;
-96.39071056;	30.24043453;	-96.38629455;	30.24090835;
-96.38665406;	30.24053684;	-96.38400651;	30.24135891;
-96.38615699;	30.24114560;	-96.37956349;	30.24194969;
-96.38196210;	30.24137020;	-96.37724607;	30.24137002;
-96.37943403;	30.24149463;	-96.37286548;	30.24074981;
-96.37505342;	30.24112139;	-96.36854115;	30.23964469;
-96.37069161;	30.24025688;	-96.36434713;	30.23807359;
-96.36642330;	30.23891589;	-96.36035526;	30.23606340;
-96.36232156;	30.23712140;	-96.35663386;	30.23364854;
-96.35845664;	30.23490412;	-96.35324665;	
-96.35489471;	30.23230204;	-96.35025159;	

30.23087038;	-96.34891742;	30.22935969;	-96.34769993;	-99.43520278;	29.11295058;	-99.43361347;	29.11424443;
30.22777646;	-96.34660433;	30.22612746;	-96.34563531;	-99.43193115;	29.11544420;	-99.43016304;	29.11654476;
30.22441976;	-96.34479700;	30.22266068;	-96.34409301;	-99.42831670;	29.11754139;	-99.42640006;	29.11842982;
30.22085774;	-96.34389251;	30.22026011;	-96.34343697;	-99.42442131;	29.11920624;	-99.42238894;	29.11986733;
30.21884608;	-96.34307079;	30.21760465;	-96.34264385;	-99.42031166;	29.12041025;	-99.41819837;	29.12083267;
30.21573733;	-96.34235847;	30.21384976;	-96.34221584;	-99.41605812;	29.12113278;	-99.41390010;	29.12130930;
30.21195002;	-96.34221658;	30.21004625;	-96.34236068;	-99.41173354;	29.12136147;	-99.40956774;	29.12128907;
30.20814660;	-96.34264751;	30.20625920;	-96.34307582;	-99.40741198;	29.12109241;	-99.40734269;	29.12108400;
30.20439213;	-96.34364379;	30.20255339;	-96.34434897;	-99.40258844;	29.12050256;	-99.40251013;	29.12049289;
30.20075085;	-96.34518834;	30.19899223;	-96.34615829;	-99.40022873;	29.12020893;	-99.39720636;	29.11986781;
30.19728505;	-96.34725467;	30.19563662;	-96.34847277;	-99.39692727;	29.11983525;	-99.39479084;	29.11951498;
30.19405400;	-96.34980738;	30.19254396;	-96.35125278;	-99.39268286;	29.11907268;	-99.39208583;	29.11891917;
30.19111296;	-96.35280278;	30.18976713;	-96.35445074;	-99.39061689;	29.11878496;	-99.39045904;	29.11876559;
30.18851223;	-96.35618961;	30.18735362;	-96.35801194;	-99.39030879;	29.11874684;	-99.38833026;	29.11844583;
30.18629627;	-96.35990994;	30.18534470;	-96.36187547;	-99.38622233;	29.11800342;	-99.38415189;	29.11744086;
30.18450297;	-96.36390014;	30.18377470;	-96.36597526;	-99.38212782;	29.11676056;	-99.38015877;	29.11596544;
30.18316299;	-96.36809197;	30.18267047;	-96.37024121;	-99.37825320;	29.11505890;	-99.37641926;	29.11404484;
30.18229924;	-96.37241378;	30.18205089;	-96.37460039;	-99.37466482;	29.11292760;	-99.37299738;	29.11171196;
30.18192649;	-96.37543875;	30.18191180;	-96.37683307;	-99.37142410;	29.11040314;	-99.36995170;	29.10900674;
30.18190253;	-96.37818601;	30.18191727;		-99.36858649;	29.10752875;	-99.36733432;	29.10597549;

[Figure: 4 TAC §40.6(b)(2)(P)]

[(Q) Surveillance Zone 17. Those portions of Uvalde County, Medina County, Zavala County, and Frio County lying within the area described by the following latitude-longitude coordinate pairs:

-99.36629570;	28.98651966;	-99.36840629;	28.98609813;	-99.36211788;	29.09358758;	-99.36191794;	29.09169259;
-99.37054371;	28.98579885;	-99.37269881;	28.98562308;	-99.36185899;	29.08994923;	-99.36185979;	29.08759978;
-99.37457901;	28.98557124;	-99.39771126;	28.98550985;	-99.36185468;	29.08021473;	-99.36179777;	29.07578925;
-99.39799462;	28.98551014;	-99.40015739;	28.9855273;	-99.36179620;	29.07529296;	-99.36181412;	29.07448936;
-99.40231013;	28.98577951;	-99.40444365;	28.98609962;	-99.36183449;	29.07395395;	-99.36175088;	29.05314345;
-99.40565242;	28.98635347;	-99.41151732;	28.98633887;	-99.35996291;	29.05242064;	-99.35805877;	29.05151383;
-99.41178778;	28.98633916;	-99.41395058;	28.98641152;	-99.35622624;	29.05049951;	-99.35447317;	29.04938202;
-99.41610337;	28.98660806;	-99.41823694;	28.98692794;	-99.35280708;	29.04816615;	-99.35123509;	29.04685712;
-99.42034218;	28.98736979;	-99.42241006;	28.98793172;	-99.34976395;	29.04546053;	-99.34839994;	29.04398236;
-99.42443174;	28.98861133;	-99.42639856;	28.98940570;	-99.34714891;	29.04242896;	-99.34601621;	29.04080696;
-99.42830212;	28.99031145;	-99.43013427;	28.99132470;	-99.34500669;	29.03912334;	-99.34412467;	29.03738529;
-99.43188715;	28.99244110;	-99.43355328;	28.99365589;	-99.34337391;	29.03560026;	-99.34275764;	29.03377591;
-99.43512552;	28.99496386;	-99.43659712;	28.99635942;	-99.34227847;	29.03192003;	-99.34193845;	29.03004059;
-99.43796180;	28.99783659;	-99.43921371;	28.99938906;	-99.34173904;	29.02814563;	-99.34168123;	29.02661115;
-99.44034748;	29.00101018;	-99.44135825;	29.00269301;	-99.34159160;	29.01485148;	-99.34159144;	29.01448360;
-99.44224170;	29.00443034;	-99.44299403;	29.00621475;	-99.34167515;	29.01258199;	-99.34190017;	29.01068926;
-99.44361201;	29.00803859;	-99.44409300;	29.00989406;	-99.34226551;	29.00881353;	-99.34276962;	29.00696281;
-99.44443492;	29.01177320;	-99.44449215;	29.01219557;	-99.34341032;	29.00514504;	-99.34418486;	29.00336800;
-99.44450034;	29.01225994;	-99.44451689;	29.01232306;	-99.34508992;	29.00163929;	-99.34612162;	28.99996631;
-99.44475929;	29.01332772;	-99.44510124;	29.01520687;	-99.34727554;	28.99835622;	-99.34854672;	28.99681592;
-99.44530264;	29.01710165;	-99.44536304;	29.01884947;	-99.34992974;	28.99535199;	-99.35141865;	28.99397071;
-99.44536322;	29.01937485;	-99.44536281;	29.01952935;	-99.35300709;	28.99267798;	-99.35468826;	28.99147933;
-99.44528112;	29.02143103;	-99.44505809;	29.02332395;	-99.35645495;	28.99037990;	-99.35829961;	28.98938439;
-99.44475642;	29.02488126;	-99.44476655;	29.03161243;	-99.36021433;	28.98849705;	-99.36219093;	28.98772168;
-99.44476617;	29.03179688;	-99.44468445;	29.03369858;	-99.36422095;	28.98706161;	-99.36629570;	28.98651966.]

[Figure: 4 TAC §40.6(b)(2)(Q)]

[(R) Surveillance Zone 18. That portion of Bexar County lying within the area described by the following latitude-longitude coordinate pairs:

-98.41854190;	29.60199171;	-98.41827532;	29.60036441;	-98.41820173;	29.59946325;	-98.41935723;	29.59934829;
-98.42007975;	29.59930339;	-98.42022196;	29.59928360;	-98.42033977;	29.59924733;	-98.42065142;	29.59905174;
-98.42202496;	29.59804750;	-98.42236018;	29.5990192;	-98.42276917;	29.5975691;	-98.42378914;	29.59568809;
-98.42409289;	29.59454344;	-98.42429120;	29.59510019;	-98.42409289;	29.59454344;	-98.42429120;	29.5910019;
-98.42435498;	29.59385557;	-98.42421065;	29.59410349;	-98.42435498;	29.59385557;	-98.42421065;	29.5910349;
-98.42403694;	29.59149198;	-98.42359397;	29.59263608;	-98.42403694;	29.59149198;	-98.42359397;	29.59263608;
-98.42353507;	29.58796200;	-98.42359840;	29.58835539;	-98.42353507;	29.58796200;	-98.42359840;	29.58835539;
-98.42353773;	29.58606800;	-98.42347607;	29.58659898;	-98.42353773;	29.58606800;	-98.42347607;	29.58659898;
-98.42336292;	29.58509626;	-98.42335201;	29.58559760;	-98.42336292;	29.58509626;	-98.42335201;	29.58559760;
-98.42323663;	29.58433722;	-98.42284944;	29.58470224;	-98.42323663;	29.58433722;	-98.42284944;	29.58470224;

29.58363552;	-98.42194833;	29.58256384;	-98.42164384;	29.57123289;	-98.54313658;	29.57268820;	-98.54345042;
29.58210555;	-98.42140767;	29.58170873;	-98.42122424;	29.57322058;	-98.54392499;	29.57395127;	-98.54432185;
29.58126711;	-98.42088955;	29.58053576;	-98.42037267;	29.57453700;	-98.54466018;	29.57503504;	-98.54414186;
29.57928706;	-98.42017216;	29.57883008;	-98.41963723;	29.57539420;	-98.54102062;	29.57845360;	-98.54058866;
29.57762660;	-98.41900256;	29.57616433;	-98.41851816;	29.57894640;	-98.54031185;	29.57945005;	-98.54014754;
29.57505238;	-98.41828869;	29.57451270;	-98.41816393;	29.58004550;	-98.53998516;	29.58051427;	-98.53973082;
29.57408326;	-98.41811464;	29.57364380;	-98.41811312;	29.58090052;	-98.53936205;	29.58132164;	-98.53892095;
29.57335305;	-98.41813580;	29.57311746;	-98.41817130;	29.58173288;	-98.53461964;	29.58474230;	-98.53405509;
29.57286556;	-98.41822562;	29.57261390;	-98.41828558;	29.58509778;	-98.53354353;	29.58537243;	-98.53267736;
29.57240072;	-98.41900922;	29.57097946;	-98.41939967;	29.58581493;	-98.53164512;	29.58628265;	-98.53091476;
29.57015092;	-98.41958715;	29.56953305;	-98.41963876;	29.58664525;	-98.53037006;	29.58705526;	-98.52992808;
29.56908791;	-98.41960615;	29.56837038;	-98.41950418;	29.58752076;	-98.52968403;	29.58790711;	-98.52945780;
29.56782642;	-98.41927746;	29.56677697;	-98.41908810;	29.58848373;	-98.52923918;	29.58924146;	-98.52897789;
29.56615439;	-98.41901084;	29.56545568;	-98.41908462;	29.59008014;	-98.52795026;	29.59338014;	-98.52750103;
29.56501082;	-98.41918007;	29.56479118;	-98.41926892;	29.59457929;	-98.52710718;	29.59528067;	-98.52660826;
29.56458673;	-98.41983604;	29.56379917;	-98.42175866;	29.59608038;	-98.52615338;	29.59670864;	-98.52573023;
29.56145859;	-98.42902286;	29.55268827;	-98.43074139;	29.59729201;	-98.52498375;	29.59802548;	-98.52382570;
29.55072216;	-98.43213227;	29.54931344;	-98.43357650;	29.59926099;	-98.52309700;	29.60018471;	-98.52260796;
29.54787449;	-98.43582561;	29.54622488;	-98.44892509;	29.60101168;	-98.52223255;	29.60185807;	-98.52196798;
29.53755560;	-98.45141126;	29.53593596;	-98.45203902;	29.60290488;	-98.52189298;	29.60374573;	-98.52190055;
29.53552516;	-98.45283089;	29.53492322;	-98.45357662;	29.60460564;	-98.52198392;	29.60524922;	-98.52212018;
29.53432875;	-98.45438957;	29.53355805;	-98.45539005;	29.60582101;	-98.52241686;	29.60673860;	-98.52282360;
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29.64750643;	-98.42675435;	29.64740431;	-98.42607481;	30.55641731;	-100.3690076;	30.55616761;	-100.3690024;
29.64739586;	-98.42547751;	29.64744823;	-98.42544092;	30.55615835;	-100.3689916;	30.55615400;	-100.3684000;
29.64735200;	-98.42523894;	29.64670281;	-98.42512271;	30.55590980;	-100.3664565;	30.55501792;	-100.3645846;
29.64577157;	-98.42490548;	29.64383389;	-98.42482443;	30.55401792;	-100.3627923;	30.55291407;	-100.3610873;
29.64257293;	-98.42482964;	29.64158200;	-98.42485039;	30.55171111;	-100.3594769;	30.55041420;	-100.3579680;
29.64057786;	-98.42483495;	29.64031557;	-98.42475873;	30.54902889;	-100.3565670;	30.54756112;	-100.3552800;
29.63988608;	-98.42467085;	29.63950045;	-98.42444894;	30.54601717;	-100.3541125;	30.54440366;	-100.3530694;
29.63860425;	-98.42434763;	29.63810176;	-98.42400385;	30.54272751;	-100.3521553;	30.54099590;	-100.3513740;
29.63563145;	-98.42384346;	29.63438831;	-98.42366449;	30.53921623;	-100.3507289;	30.53739614;	-100.3502226;
29.63327767;	-98.42344810;	29.63194416;	-98.42328156;	30.53554342;	-100.3498575;	30.53366601;	-100.3496350;
29.63057539;	-98.42317802;	29.62987462;	-98.42309376;	30.53177195;	-100.3495625;	30.53035268;	-100.3495093;
29.62944033;	-98.42310828;	29.62904783;	-98.42332287;	30.52802466;	-100.3495029;	30.52754133;	-100.3495178;
29.62829451;	-98.42358918;	29.62732213;	-98.42378645;	30.52657937;	-100.3495506;	30.52563085;	-100.3495879;
29.62650349;	-98.42381674;	29.62628478;	-98.42380056;	30.52191022;	-100.3494917;	30.51758390;	-100.3494868;
29.62583571;	-98.42363426;	29.62460210;	-98.42343286;	30.51728228;	-100.3494655;	30.51521228;	-100.3494643;
29.62310800;	-98.42323998;	29.62167707;	-98.42304744;	30.51504532;	-100.3495293;	30.51314233;	-100.3497372;
29.62024866;	-98.42281113;	29.61849536;	-98.42257146;	30.51125373;	-100.3496837;	30.50474358;	-100.3496830;
29.61684670;	-98.42239573;	29.61610529;	-98.42175266;	30.50462838;	-100.3496829;	30.50448128;	-100.3497078;
29.61418356;	-98.42106886;	29.61214005;	-98.42082895;	30.49307201;	-100.3497264;	30.47148975;	-100.3497915;
29.61141778;	-98.42067934;	29.61099427;	-98.42057381;	30.46970040;	-100.3500000;	30.46780516;	-100.3503512;
29.61072527;	-98.42043375;	29.61046781;	-98.42017439;	30.46592579;	-100.3508434;	30.46407034;	-100.3514747;
29.60999770;	-98.41984131;	29.60941852;	-98.41948431;	30.46224675;	-100.3522423;	30.46046283;	-100.3531429;
29.60879775;	-98.41910205;	29.60807342;	-98.41876818;	30.45872621;	-100.3541727;	30.45704433;	-100.3553271;
29.60740186;	-98.41842028;	29.60670202;	-98.41830716;	30.45542439;	-100.3566014;	30.45387331;	-100.3579900;
29.60628188;	-98.41828853;	29.60587454;	-98.41839652;	30.45239774;	-100.3594869;	30.45100400;	-100.3610858;
29.60530666;	-98.41858739;	29.60449833;	-98.41873681;	30.44969805;	-100.3627799;	30.44848547;	-100.3645618;
29.60381022;	-98.41876389;	29.60336208;	-98.41869538;	30.44737145;	-100.3664239;	30.44636077;	-100.3683584;
29.60272300;	-98.41856769;	29.60208317;		30.44545774;	-100.3703568;	30.44466624;	-100.3724106;
				30.44398964;	-100.3745111;	30.44343084;	-100.3766493;
				30.44299224;	-100.3788159;	30.44267570;	-100.3810019;
				30.44248259;	-100.3831977;	30.44241373;	-100.3833054;
				30.44241356;	-100.4211769;	30.44239956;	-100.4232655;
				30.44245480;	-100.4254530;	30.44263413;	-100.4276222;
				30.44293701;	-100.4297640;	30.44336214;	-100.4318691;
				30.44390769;	-100.4339286;	30.44457133;	-100.4359336;
				30.44535023;	-100.4378756;	30.44624104;	-100.4397461;
				30.44723997;	-100.4415373;	30.44834273;	-100.4432415;
				30.44954461;	-100.4448513;	30.45084046;	-100.4463600;
				30.45222473;	-100.4477609;	30.45369151;	-100.4490481;
				30.45523452;	-100.4502161;	30.45684715;	-100.4512600;
				30.45852250;	-100.4521751;	30.46025340;	-100.4529577;
				30.46203244;	-100.4536042;	30.46385201;	-100.4541121;
				30.46570431;	-100.4544790;	30.46758141;	-100.4547034;
				30.46947528;	-100.4547843;	30.47137782;	-100.4547215;
				30.47328086;	-100.4545275;	30.47509013;	-100.4539130;

[Figure: 4 TAC §40.6(b)(2)(R)]

[(S) Surveillance Zone 19. That portion of Sutton County lying within the area described by the following latitude-longitude coordinate pairs: -100.4812107, 30.62351294; -100.4766784, 30.62401893; -100.4747603, 30.62408038; -100.4747226, 30.62408050; -100.4449845, 30.62415852; -100.4428218, 30.62410376; -100.4406301, 30.62392471; -100.4384567, 30.62362205; -100.4363109, 30.62319707; -100.4342018, 30.62265159; -100.4321385, 30.62198794; -100.4301298, 30.62120898; -100.4281844, 30.62031804; -100.4263105, 30.61931894; -100.4245163, 30.61821596; -100.4228094, 30.61701382; -100.4211970, 30.61571768; -100.4196862, 30.61433310; -100.4182834, 30.61286600; -100.4169945, 30.61132267; -100.4158251, 30.60970972; -100.4147803, 30.60803407; -100.4138644, 30.60630289; -100.4130814, 30.60452360; -100.4124346, 30.60270382; -100.4119269, 30.60085134; -100.4115603, 30.59897410; -100.4113364,

30.47936729;	-100.4539005;	30.47945343;	-100.4538376;	28.99313659;	-99.55798029;	28.99475664;	-99.55899303;
30.47985820;	-100.4535052;	30.48188829;	-100.4532190;	28.99643852;	-99.55987852;	28.99817502;	-99.56063296;
30.48336317;	-100.4530995;	30.48387047;	-100.4525533;	28.99995872;	-99.56125311;	29.00178198;	-99.56133034;
30.48608961;	-100.4521823;	30.48743815;	-100.4515528;	29.00204440;	-99.56133273;	29.00205269;	-99.56134113;
30.48926224;	-100.4507868;	30.49104677;	-100.4502451;	29.00205700;	-99.56316032;	29.00306085;	-99.56491495;
30.49209451;	-100.4505488;	30.49222515;	-100.4509297;	29.00417540;	-99.56658293;	29.00538843;	-99.56815715;
30.49239158;	-100.4553328;	30.49434605;	-100.4566410;	29.00669475;	-99.56963084;	29.00808876;	-99.57099770;
30.49495876;	-100.4609753;	30.49709719;	-100.4610213;	29.00956450;	-99.57225188;	29.01111565;	-99.57338801;
30.49711994;	-100.4610497;	30.49713402;	-100.4642991;	29.01273558;	-99.57440121;	29.01441735;	-99.57528713;
30.49874659;	-100.4643307;	30.49876226;	-100.4674004;	29.01615376;	-99.57604199;	29.01793738;	-99.57666255;
30.50028934;	-100.4705812;	30.50183564;	-100.4708096;	29.01976058;	-99.57714613;	29.02161554;	-99.57749066;
30.50194766;	-100.4709103;	30.50199773;	-100.4730119;	29.02349434;	-99.57769466;	29.02538892;	-99.57775724;
30.50304645;	-100.4747832;	30.50399480;	-100.4765759;	29.02729117;	-99.57772470;	29.02847436;	-99.57699091;
30.50509707;	-100.4782815;	30.50629849;	-100.4798928;	29.04294972;	-99.57694433;	29.04366831;	-99.57672382;
30.50759390;	-100.4802048;	30.50786526;	-100.4811328;	29.04556148;	-99.57636286;	29.04743793;	-99.57586299;
30.50868309;	-100.4823308;	30.50979558;	-100.4837332;	29.04928961;	-99.57522635;	29.05110860;	-99.57445565;
30.51126197;	-100.4850217;	30.51280462;	-100.4861911;	29.05288711;	-99.57355420;	29.05461751;	-99.57252583;
30.51441693;	-100.4862772;	30.51454559;	-100.4866978;	29.05629240;	-99.57137496;	29.05790459;	-99.57010651;
30.51517737;	-100.4881254;	30.51648543;	-100.4895279;	29.05944719;	-99.56872590;	29.06091358;	-99.56723905;
30.51795176;	-100.4919436;	30.51949436;	-100.4919862;	29.06229748;	-99.56565233;	29.06359295;	-99.56397252;
30.52110661;	-100.4930315;	30.52278163;	-100.4939480;	29.06479446;	-99.56220683;	29.06589685;	-99.56036281;
30.52451223;	-100.4947318;	30.52629102;	-100.4953796;	29.06689539;	-99.55844837;	29.06778580;	-99.55647171;
30.52811038;	-100.4958886;	30.52996252;	-100.4962566;	29.06856428;	-99.55444130;	29.06922748;	-99.55236584;
30.53183951;	-100.4963389;	30.53240340;	-100.4963417;	29.06977256;	-99.55025422;	29.07019719;	-99.54811550;
30.53242464;	-100.4963529;	30.53244371;	-100.4964511;	29.07049954;	-99.54595885;	29.07067831;	-99.54379349;
30.53261281;	-100.4973678;	30.53434340;	-100.4981518;	29.07073276;	-99.54368348;	29.07073220;	-99.54367904;
30.53612217;	-100.4987997;	30.53794151;	-100.4993088;	29.07073217;	-99.54367064;	29.07073211;	-99.54160517;
30.53979364;	-100.4996769;	30.54167062;	-100.4998941;	29.07071812;	-99.54160515;	29.07071812;	-99.52332602;
30.54346535;	-100.4998954;	30.54348042;	-100.4999047;	29.07059281;	-99.52135033;	29.07057911;	-99.52004080;
30.54349321;	-100.5005000;	30.54434266;	-100.5015456;	29.07057001;	-99.51799446;	29.07050011;	-99.51583960;
30.54601761;	-100.5024625;	30.54774816;	-100.5032467;	29.07030531;	-99.51370387;	29.06998707;	-99.51159643;
30.54952690;	-100.5038948;	30.55134622;	-100.5044041;	29.06954676;	-99.50952630;	29.06898628;	-99.50750235;
30.55319832;	-100.5047723;	30.55507529;	-100.5049980;	29.06830801;	-99.50553327;	29.06751487;	-99.50362748;
30.55696909;	-100.5050792;	30.55877167;	-100.5051018;	29.06661025;	-99.50179315;	29.06559804;	-99.50003814;
30.56121145;	-100.5056428;	30.56223238;	-100.5064272;	29.06448257;	-99.49836996;	29.06326862;	-99.49679578;
30.56401110;	-100.5070755;	30.56583041;	-100.5075849;	29.06196140;	-99.49532231;	29.06056650;	-99.49395588;
30.56768250;	-100.5079533;	30.56955946;	-100.5081790;	29.05908990;	-99.49270233;	29.05753793;	-99.49156702;
30.57145325;	-100.5082611;	30.57335576;	-100.5082612;	29.05591724;	-99.49055483;	29.05423477;	-99.48967007;
30.57338157;	-100.5082841;	30.57872056;	-100.5082827;	29.05249773;	-99.48891652;	29.05071356;	-99.48829742;
30.57911370;	-100.5082225;	30.58441892;	-100.5082469;	29.04888990;	-99.48781540;	29.04703457;	-99.48747252;
30.59493311;	-100.5081847;	30.59676084;	-100.5079790;	29.04515550;	-99.48727023;	29.04326076;	-99.48720909;
30.59865635;	-100.5076305;	30.60053616;	-100.5071406;	29.04153365;	-99.48714961;	29.00389591;	-99.48714993;
30.60239222;	-100.5065113;	30.60421659;	-100.5057455;	29.00372072;	-99.48723079;	29.00181902;	-99.48745294;
30.60600145;	-100.5048463;	30.60773915;	-100.5038175;	28.99992605;	-99.48781544;	28.99804990;	-99.48831672;
30.60942226;	-100.5026637;	30.61104356;	-100.5013897;	28.99619861;	-99.48895463;	28.99438011;	-99.48972642;
30.61259610;	-100.5000011;	30.61407324;	-100.4985036;	28.99260219;	-99.49062880;	28.99087244;	-99.49165788;
30.61546864;	-100.4969038;	30.61677632;	-100.4952085;	28.98919828;	-99.49280926;	28.98758687;	-99.49407800;
30.61799069;	-100.4934249;	30.61910653;	-100.4915607;	28.98604510;	-99.49545867;	28.98457959;	-99.49694535;
30.62011907;	-100.4896239;	30.62102397;	-100.4876228;	28.98319659;	-99.49853168;	28.98190203;	-99.50021086;
30.62181735;	-100.4855660;	30.62249581;	-100.4834622;	28.98070145;	-99.50114533;	28.98009924;	-99.50172517;
30.62305643; and	-100.4813205;	30.62349683;]		28.97973912;	-99.50255555;	28.97923985;	-99.50439850;

[Figure: 4 TAC §40.6(b)(2)(S)]

[(T) Surveillance Zone 20. That portion of Zavala County lying within the area described by the following latitude-longitude coordinate pairs: -99.52095362, 28.97441019; -99.52311623, 28.97448068; -99.52526898, 28.97467535; -99.52740265, 28.97499337; -99.52950812, 28.97543339; -99.53157637, 28.97599353; -99.53359857, 28.97667138; -99.53556604, 28.97746404; -99.53747039, 28.97836813; -99.53930344, 28.97937978; -99.54079805, 28.98031998; -99.54725024, 28.98462158; -99.54750957, 28.98479625; -99.54785821, 28.98503677; -99.54985880, 28.98643602; -99.55117764, 28.98740873; -99.55275135, 28.98871523; -99.55422455, 28.99010940; -99.55559093, 28.99158530; -99.55684463,

28.97824220; -99.50631167, 28.97657499; -99.51031567, 28.97536821; -99.51449908, 28.97464247; -99.51879039, 28.97441019;]

[Figure: 4 TAC §40.6(b)(2)(T)]

[(U) Surveillance Zone 21. That portion of Frio County lying within the area described by the following latitude-longitude coordinate pairs: -99.10947651, 28.69215145; -99.11163256, 28.69222899; -99.11377824, 28.69243067; -99.11590438, 28.69275562; -99.11800189, 28.69320245; -99.12006179, 28.69376926; -99.12207526, 28.69445361; -99.12403368, 28.69525258; -99.12592869, 28.69616275; -99.12659659,

28.69651843;	-99.12668014;	28.69656412;	-99.12676773;	28.69266429;	-99.10517025;	28.69236957;	-99.10731933;
28.696660349;	-99.12850325;	28.69744239;	-99.13032677;	28.69219837;	-99.10947651;	28.69215145.]	
28.69845983;	-99.13140943;	28.69914300;	-99.13209387;	[Figure: 4 TAC §40.6(b)(2)(U)]			
28.69945609;	-99.13322398;	28.69999795;	-99.13329078;				
28.70003149;	-99.13336135;	28.70005836;	-99.13510257;				
28.70077519;	-99.13699779;	28.70168519;	-99.13882148;	(c) (No change.)			
28.70270251;	-99.14003655;	28.70346643;	-99.14007660;	[(d) Surveillance Zone (SZ) Requirements:]			
28.70349283;	-99.14012119;	28.70351279;	-99.14190599;	[(1) Movement. Prior to the movement of an exotic CWD susceptible species outside an SZ or from one premises in the SZ to another premises within the SZ, the premises of origin shall have an epidemiological risk assessment conducted by the commission.]			
28.70437350;	-99.14372978;	28.70539075;	-99.14391923;	[(2) Released Animals. No exotic CWD susceptible species may be released within the SZ outside a high fence premises.]			
28.70551213;	-99.14539722;	28.70594455;	-99.14585189;	[(3) Testing. All exotic CWD susceptible species, 12 months of age or older, that are hunter harvested shall be tested for CWD within seven days using an official CWD test. Unless the whole head is submitted for testing, postmortem tissue samples must be collected and prepared by a state or federal animal health official, an accredited veterinarian, or a certified CWD postmortem sample collector. No part of a carcass of an exotic CWD susceptible species, either killed or found dead may be removed from the SZ unless postmortem tissue samples have been collected and tested using an official CWD test and it is transported in accordance with subsection (e) of this section. The results and laboratory report shall be provided to the commission within 14 days of receiving the test results by mail to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512) 719-0729; or by email to CWD_reports@tahe.texas.gov.]			
28.70608083;	-99.14786580;	28.70676477;	-99.14982468;	[(4) Carcass Movement Restrictions. No part of a carcass of a CWD susceptible species, either killed or found dead, within the SZ may be removed from the SZ unless it is in accordance with the requirements of subsection (e) of this section.]			
28.70756334;	-99.15172017;	28.70847313;	-99.15354414;	[(5) Escaped Animals. Any escaped exotic CWD susceptible species which originated or resided in an SZ shall be captured and returned to the high fence premises of origin.]			
28.70949024;	-99.15528879;	28.71061032;	-99.15694666;	[(6) Herd Plans. Facilities and associated properties in the SZ that have been issued a herd plan shall operate in accordance with the herd plan requirements as determined by the commission.]			
28.71182857;	-99.15851063;	28.71313979;	-99.15997403;	[(7) Identification. All exotic CWD susceptible species released in an SZ shall be identified with a visible official identification device, which may include an eartag that conforms to the USDA alphanumeric National Uniform Eartagging System or an animal identification number (AIN), which may include a RFID device. If a CWD susceptible species is released into a high fence premises, the animal shall retain the acceptable official identification.]			
28.71453837;	-99.16133057;	28.71601831;	-99.16257445;	(d) [(e)] Carcass Movement Restrictions:			
28.71757328;	-99.16370035;	28.71919663;	-99.16470342;	(1) No person shall transport or cause the transport of any part of a CWD susceptible species from a property within a CZ [or SZ] unless:			
28.72088142;	-99.16557939;	28.72262042;	-99.16632448;	(A) meat has been cut up and packaged (boned or filleted);			
28.72440620;	-99.16693550;	28.72623111;	-99.16740983;	(B) a carcass has been reduced to quarters with no brain or spinal tissue present;			
28.72808734;	-99.16774543;	28.72996695;	-99.16794085;	(C) a cleaned hide (skull and soft tissue must not be attached or present);			
28.73186187;	-99.16799525;	28.73376401;	-99.16790840;	(D) a whole skull (or skull plate) with antlers attached, provided the skull plate has been completely cleaned of all soft tissue;			
28.73566521;	-99.16768064;	28.73755734;	-99.16731295;	(E) finished taxidermy products;			
28.73943229;	-99.16680690;	28.74128203;	-99.16616464;				
28.74309864;	-99.16538893;	28.74487433;	-99.16448306;				
28.74660151;	-99.16345093;	28.74827276;	-99.16229694;				
28.74988094;	-99.16102603;	28.75141915;	-99.15964364;				
28.75288080;	-99.15843742;	28.75401215;	-99.14737087;				
28.76385008;	-99.13313233;	28.77650664;	-99.13284766;				
28.77675657;	-99.13125982;	28.77804637;	-99.12957959;				
28.77924189;	-99.12781417;	28.78033801;	-99.12597112;				
28.78133003;	-99.12405834;	28.78221370;	-99.12208401;				
28.78298524;	-99.12005661;	28.78364133;	-99.11798482;				
28.78417916;	-99.11587752;	28.78459644;	-99.11374373;				
28.78489136;	-99.11159261;	28.78506268;	-99.10943338;				
28.78510964;	-99.10727528;	28.78503206;	-99.10512757;				
28.78483026;	-99.10299946;	28.78450511;	-99.10090005;				
28.78405800;	-99.09883836;	28.78349085;	-99.09682322;				
28.78280609;	-99.09486325;	28.78200665;	-99.09296687;				
28.78109597;	-99.09149583;	28.78028691;	-99.09125380;				
28.78014587;	-99.09090016;	28.77993690;	-99.08929360;				
28.77891066;	-99.07971469;	28.77239504;	-99.07957611;				
28.77230024;	-99.07816804;	28.77127527;	-99.07498786;				
28.76882661;	-99.07453642;	28.76847900;	-99.07108466;				
28.76582097;	-99.07083483;	28.76562661;	-99.06927120;				
28.76431426;	-99.06780836;	28.76291459;	-99.06718210;				
28.76224126;	-99.06683123;	28.76197652;	-99.06632774;				
28.76158877;	-99.06476423;	28.76027637;	-99.06330151;				
28.75887665;	-99.06194586;	28.75739561;	-99.06070308;				
28.75583961;	-99.05957848;	28.75421530;	-99.05857687;				
28.75252964;	-99.05770255;	28.75078986;	-99.05695925;				
28.74900341;	-99.05635014;	28.74717794;	-99.05587784;				
28.74532127;	-99.05554434;	28.74344135;	-99.05535108;				
28.74154623;	-99.05529887;	28.73964404;	-99.05538793;				
28.73774291;	-99.05561786;	28.73585099;	-99.05598768;				
28.73397637;	-99.05649580;	28.73212709;	-99.05714003;				
28.73031105;	-99.05791760;	28.72853605;	-99.05882518;				
28.72680966;	-99.05985888;	28.72513928;	-99.06101426;				
28.72353207;	-99.06228639;	28.72199490;	-99.06366980;				
28.72053435;	-99.06483003;	28.71944545;	-99.08575213;				
28.70078859;	-99.08608054;	28.70049975;	-99.08766772;				
28.69921058;	-99.08934708;	28.69801568;	-99.09111144;				
28.69692015;	-99.09295325;	28.69592869;	-99.09486463;				
28.69504554;	-99.09683738;	28.69427447;	-99.09886308;				
28.69361879;	-99.10093306;	28.69308130;	-99.10303845;				

(F) cleaned teeth; or

(G) tissue prepared and packaged for delivery to and use by a diagnostic or research laboratory with results accessible to the commission.

(2) A CWD susceptible species harvested in a CZ [~~or SZ~~] may be transported from the CZ [~~or SZ~~], provided it is accompanied by a TPWD-issued check-station receipt, which is required during the operation of the mandatory TPWD check-stations in the CZ [~~or SZ~~], and that receipt shall remain with the CWD susceptible species until it reaches the possessor's permanent residence, a processing facility for final processing, or another location as permitted by the commission on a VS Form 1-27.

(3) The skinned or unskinned head of a CWD susceptible species from a CZ [~~or SZ~~] may be transported to a taxidermist for taxidermy purposes, provided all brain material, soft tissue, spinal column, and any unused portions of the head are disposed of by the taxidermist in a landfill permitted by the Texas Commission on Environmental Quality.

(e) [~~(f)~~] The executive director may authorize movement. If movement is necessary or desirable to promote the objectives of this chapter or to minimize the economic impact of the restricted CWD susceptible species without endangering those objectives or the health and safety of other CWD susceptible species within the state, the executive director may authorize movement in a manner that creates minimal risk to the other CWD susceptible species in the state.

(f) [~~(g)~~] A commission representative shall annually review the movement restriction zones and recommend to the commission whether to modify or rescind the zones.

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 August 12, 2024.

TRD-202403681

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: September 22, 2024

For further information, please call: (512) 839-0511



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.23; and Subchapter C, §60.33 and §60.34; proposes the repeal of existing rules at Subchapter C, §60.30 and §60.31; and Subchapter E, §§60.50 - 60.54; and proposes new rules at Subchapter C, §60.30, §60.31, and §60.37; and Subchapter E, §§60.50 - 60.56, regarding the Procedural Rules of the Commission and the Department. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department), and other laws applicable to the Commission and the Department. The Chapter 60 rules are the procedural rules of the Commission and the Department. These rules apply to all of the agency's programs and to all license applicants and licensees, except where there is a conflict with the statutes and rules of a specific program.

The proposed rules update multiple subchapters and sections under Chapter 60 and are part of a larger effort to update the entire chapter. The proposed rules make substantive and clean-up changes to the agency's procedural rules and include changes resulting from staff and strategic planning, the required four-year rule review, and the Department's Sunset legislation.

Staff and Strategic Planning Changes

The proposed rules include changes suggested by the General Counsel's Office and suggested during past strategic planning sessions. The changes include updates to the rules regarding license applications, renewals, and denials; criminal history background checks; foreign transcripts and degrees; temporary licenses; voluntary license surrender; examination rescheduling, accommodations, and results; and reexaminations. The changes also include reorganization of existing rules, and editorial changes to "Commission," "Department," and "Executive Director" to use lower case terminology to be consistent with the statutes and consistent across the Chapter 60 rule subchapters.

Four-Year Rule Review Changes

The proposed rules also include changes as a result of the required four-year rule review conducted under Texas Government Code §2001.039. The Department conducted the required rule review of the rules under 16 TAC Chapter 60, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Review, 46 TexReg 2589, April 16, 2021. Adopted Rule Review, 46 TexReg 4701, July 30, 2021).

In response to the Notice of Intent to Review that was published, the Department received public comments from six interested parties regarding Chapter 60, but none of those public comments relate to the rules in this proposal.

The proposed rules include changes identified by Department staff during the rule review process. The changes are reflected throughout the proposed rules and include updates to the rules regarding initial license applications; criminal history background checks; license renewals; late renewals; temporary licenses; substantially equivalent license requirements; and the examination-related requirements. The changes also include clarifying the rules, using plain talk language, and making the same editorial changes to use lower case terminology.

Sunset Bill Statutory Changes

The proposed rules incorporate and reflect the changes made to Texas Occupations Code, Chapter 51, as a result of House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Department's Sunset legislation. HB 1560, Article 1, Section 1.10, added §51.359, Refunds, to Chapter 51. The proposed rules add refunds into the list of possible disciplinary actions that may be imposed by the Commission or the Executive Director.

The proposed rules are necessary to: update the rules regarding the sanction authority of the Commission and the Executive Director; update and supplement the requirements and the procedures for initial and renewal license applications; clarify the temporary license authority and applicability; update and clarify the substantially equivalent license requirements and procedures; add procedures for the voluntary surrender of a license; update and supplement the requirements and procedures regarding license examinations; and reorganize and clean up existing rules where necessary.

SECTION-BY-SECTION SUMMARY

Subchapter B. Powers and Responsibilities.

The proposed rules amend §60.23, Commission and Executive Director--Imposing Sanctions and Penalties. The proposed rules amend subsection (a) to remove the inspection and investigation provision under paragraph (3). This provision implements Texas Occupations Code §Sec. 51.351, Inspections and Investigations, but more comprehensive rules have been added to Chapter 60, Subchapter H, under §60.203, Cooperation with Investigation of Complaints, and §60.222, Cooperation with Inspections. The provision under §60.23(a)(3) is no longer necessary and is being repealed. The subsequent paragraphs under subsection (a) have been renumbered.

The proposed rules amend subsection (b) to add new paragraph (7), which incorporates the statutory authority of the Commission and the Executive Director under Texas Occupations Code §51.359 to order refunds to consumers. This new statutory authority was added by HB 1560. The proposed rules renumber the subsequent paragraph and make technical changes to the provisions under paragraphs (6) and (8).

Subchapter C. License Applications and Renewals.

The proposed rules repeal existing §60.30, Initial License Applications. The provisions in this repealed rule have been updated and supplemented under new §60.30, Initial License Applications.

The proposed rules add new §60.30, Initial License Applications. This new rule includes provisions from existing §60.30, which is being repealed, and updates and supplements the current requirements and procedures for initial license applications. The proposed rules update the existing provision under subsection (a) regarding the items required to be submitted for an initial license application; update the existing provision under subsection (b) regarding an incomplete initial application that includes the right to request a hearing; and add a new provision under subsection (c) regarding an insufficient or not qualified initial application that includes the right to request a hearing. The proposed rules add a new provision under subsection (d) that reflects the current requirements and processes regarding criminal history background checks for initial licenses for individuals and businesses; and add a new provision under subsection (e) that standardizes the process and requirements regarding applicants with foreign transcripts or foreign degrees. The proposed rules add a new provision under subsection (f) regarding the denial of an initial license application or denial of the opportunity to take an examination that links the denial under Subchapter C to the contested case process and rules under Subchapter I. This provision reflects the requirements under Texas Government Code §2001.054, Licenses, and Texas Occupations Code §51.354, Right to Hearing; Administrative Procedure.

The proposed rules repeal existing §60.31, License Renewal Applications. The provisions in this repealed rule have been updated and supplemented under new §60.31, License Renewal Applications.

The proposed rules add new §60.31, License Renewal Applications. This new rule includes provisions from existing §60.31, which is being repealed, and updates and supplements the current requirements and procedures for license renewal applications. The proposed rules update the existing provisions under subsections (a) - (c) regarding the license renewal notice, the items required to be submitted for license renewal, and the requirements that must be completed before the license expires. The proposed rules add a new provision under subsection (d) that clarifies that if a person completes all the renewal requirements and pays the renewal fees as prescribed, the license will not expire. This provision addresses situations where the license holder has met all the requirements, but the renewal is still being processed by the Department. The proposed rules update the existing provisions under subsection (e) to reiterate that if a person does not complete all the renewal requirements and pay the required renewal fee as prescribed, the license will expire and the person may not perform any act that requires a license. The proposed rules add a new provision under subsection (f) that reflects the current requirements and processes regarding criminal history background checks for license renewals for individuals and businesses.

The proposed rules update and expand the existing late renewal provisions under subsection (g) to address late license renewals that fall within the late renewal deadlines established in Texas Occupations Code §51.401. This subsection includes references to the statutory late renewal deadlines; specifies the requirements for late renewing a license; explains that a person with a late renewal has a gap in licensure and may not perform tasks that require a license; and prohibits a person from obtaining a new license if the person is still eligible to late renew the existing license. A person may not apply for a new license to avoid paying the higher late renewal fees and completing any required continuing education.

The proposed rules update the existing provisions under subsection (h) to address the situation involving a person whose license has expired beyond the late renewal deadlines established in Texas Occupations Code §51.401. A person who does not meet these statutory deadlines must apply for a new license and comply with the requirements for obtaining an original license, including any examination requirements and the payment of fees. The proposed rules clarify that a person must retake any licensing examinations required to apply for a new license and that any previous licensing examination results will not be accepted. This provision implements the statutory provisions under Texas Occupations Code §51.401(d) and reflects the Department's interpretation of those provisions.

The proposed rules add a new provision under subsection (i) to address the situation involving a person who was previously licensed in Texas and is currently licensed and practicing in another state. Under this provision, a person who meets the specified eligibility conditions may obtain a new Texas license without reexamination. The person must pay a fee that is two times the required renewal fee for the license. This provision reflects the statutory provisions under Texas Occupations Code §51.401(e) and incorporates this situation into the rules with the other licensing situations.

The proposed rules add a new provision under subsection (j) regarding the denial of a license renewal application that links the denial under Subchapter C to the contested case process and rules under Subchapter I. This provision reflects the requirements under Texas Government Code §2001.054, Licenses, and Texas Occupations Code §51.354, Right to Hearing; Administrative Procedure.

The proposed rules amend existing §60.33, Temporary License. The proposed rules update and clarify the existing rule in accordance with Texas Occupations Code §51.407, Temporary License. The proposed rules change the title of the section from "Temporary License Applications" to "Temporary License." The proposed rules add new subsection (a), which includes statutory authority language and clarifying language regarding the applicability of this rule, and they add new subsection (f), which states that a temporary license holder is subject to the specified statutes and rules of the Department and the applicable program. The proposed rules also re-letter the subsections and update a cross-reference.

The proposed rules amend existing §60.34, Substantially Equivalent License Requirements. The proposed rules update and clarify the substantially equivalent license requirements and procedures. The proposed rules update the applicability provision under subsection (a)(1) to reflect the statutory provisions under Texas Occupations Code §51.4041, Alternative Qualifications for License; and update subsection (a)(2) to use parallel construction. The proposed rules add new subsection (b) to define "another jurisdiction" or "other jurisdiction" for purposes of this section; add new subsection (e) that allows the Department to request additional documents or information in order to evaluate the substantially equivalent criteria; and add new subsection (f) to clarify that the Department has the final authority to determine substantially equivalent. The proposed rules also re-letter the existing subsections as necessary and update the terminology throughout the section.

The proposed rules add new §60.37, Voluntary Surrender of a License. The proposed rules add new procedures for the voluntary surrender of a license in accordance with the guidance provided under Texas Attorney General Opinion KP-0080 (May 3, 2016). The proposed rules make the license surrender process a standardized, administrative process and separate the voluntary license surrender process from any enforcement or disciplinary actions or process. The proposed rules allow a license holder to voluntarily surrender a license; establish the conditions under which the surrender request will be granted; provide that surrendering the license is not a defense and does not affect any investigation or disciplinary action; and provide that a voluntarily-surrendered license may not be renewed and that any license fees paid will not be refunded.

Subchapter E. Examinations.

The proposed rules under Subchapter E update and supplement the requirements and procedures regarding license examinations and address all aspects of the examination process. The existing rules under §§60.50 - 60.54 are being repealed and replaced with new rules under §§60.50 - 60.56.

The proposed rules repeal existing §60.50, Examination Rescheduling. The provisions in this repealed rule have been incorporated into new §60.51, Examination Scheduling and Rescheduling.

The proposed rules add new §60.50, Examination Providers. The proposed rules explain the Department's delegation of its

statutory authority and responsibilities to provide or administer licensing examinations through a contracted third-party examination provider. The proposed rules state that the Department's examination provider must comply with all statutes and rules applicable to the Department regarding examinations and that the Department's examination provider serves as the point of contact for examination candidates. The proposed rules explain the applicability of the provisions in this subchapter.

The proposed rules repeal existing §60.51, Examination Fee Refund. The provisions in this repealed rule have been incorporated into new §60.52, Examination Fees and Refunds.

The proposed rules add new §60.51, Examination Scheduling and Rescheduling. The new rule includes provisions from existing §60.50, Examination Rescheduling, which is being repealed. The proposed rules under this section implement provisions under Texas Occupations Code §51.403, Examination Fee Refund, and Texas Occupations Code §54.002, Examination Scheduled on Religious Holy Day. The proposed rules under subsection (a) establish the requirements for scheduling an examination and direct the examination candidate to schedule the examination directly with the Department's examination provider, subject to the availability of examination appointments.

The proposed rules under subsection (b) establish the requirements for canceling and rescheduling an examination and direct the examination candidate to notify the Department's examination provider directly to cancel and reschedule an examination. The proposed rules provide that an examination candidate may cancel and reschedule an examination for any reason, which would include for religious holy days, as provided under Texas Occupations Code §54.002. The reason for canceling and rescheduling an examination does not need to be reviewed or approved by the Department or its examination provider. The proposed rules also provide the requirements for canceling and rescheduling an examination at no charge and define what "emergency" means for purposes of this section as required by Texas Occupations Code §51.403. The examination may be rescheduled subject to the availability of examination appointments.

The proposed rules repeal existing §60.52, Examination Security. The provisions in this repealed rule have been incorporated into new §60.54, Examination Security.

The proposed rules add new §60.52, Examination Fees and Refunds. This new rule includes provisions from existing §60.51, Examination Fee Refund, which is being repealed. The proposed rules under this section implement provisions under Texas Occupations Code §51.402, Examinations, and Texas Occupations Code §51.403, Examination Fee Refund. The proposed rules under subsection (a) require an examination candidate to pay the examination fee to the Department's examination provider and explain that information about the examination and the examination provider will be posted on the Department's website. The proposed rules under subsection (b) address an examination candidate who is unable to take the examination and who wants to obtain a refund of the examination fee. The proposed rules provide the requirements for requesting a refund and define what "reasonable notice" and "emergency" are for purposes of this section as required by Texas Occupations Code §51.403.

The proposed rules repeal existing §60.53, Access to Examinations. The provisions in this repealed rule have been incorporated into new §60.53, Examination Accommodations.

The proposed rules add new §60.53, Examination Accommodations. This new rule includes and expands the provisions under existing §60.53, Access to Examinations, which is being repealed. The proposed rules under this section include the procedures for requesting examination accommodations in accordance with the Americans with Disabilities Act (ADA) of 1990, its regulations, and any subsequent amendments; Texas Occupations Code §54.003, Examination Accommodations for Person with Dyslexia; and Texas Attorney General Opinion JC-0050 (May 17, 1999). Dyslexia is included and covered under the ADA, so the procedures in this rule implement both statutes and address any requests for examination accommodations.

The proposed rules update the existing provisions under subsection (a) to update the citation to the ADA and to clarify that the Department's examination provider will provide reasonable accommodations for an examination administered to an examination candidate with a disability. The proposed rules add new provisions under subsection (b) that provide the required procedures for requesting reasonable accommodations for an examination. The proposed rules update the existing provisions under subsection (c) to require that the written request for an examination in a foreign language be submitted before scheduling the examination.

The proposed rules repeal existing §60.54, Examination Results. The provisions in this repealed rule have been replaced with new §60.56, Validity and Acceptance of Examination Results; Reexamination.

The proposed rules add new §60.54, Examination Security. This new rule includes provisions from existing §60.52, Examination Security, which is being repealed. The proposed rules update existing provisions under subsection (a) to require an examination candidate to comply with all examination security requirements of any examination provider; update the existing provisions under subsection (b) to address the use of specified methods of assistance if available; update the existing provisions under subsection (c) to add activities to the list of conduct that violate the examination security rule; and update the existing provision under subsection (d) to provide that the contents of a license examination are confidential. The proposed rules add new provisions under subsection (e) to address the consequences if a person is caught during the examination violating the examination security rule; and add new provisions under subsection (f) to address the consequences if the person is found to have violated the examination security rule.

The proposed rules add new §60.55, Examination Results. This new rule implements Texas Occupation Code §51.402, Examinations. The proposed rules under subsections (a) - (b) require the Department's examination provider to notify a person regarding the person's examination results not later than 30 days after the examination, and to provide an explanation if the results will be delayed for longer than 90 days. The proposed rules under subsection (c) state that a person will receive an analysis of the person's performance on the examination from the examination provider. While the statute allows a person who fails a license examination the right to request in writing an analysis of the person's performance on the examination, in practice any person taking an examination automatically receives a diagnostic report from the examination provider, without the need to submit a written request to receive the analysis, and regardless of whether the person fails or passes the examination. The proposed rules under section (d) prohibit a person from presenting falsified or

fraudulent documents concerning the person's examination results. This provision has been relocated from existing §60.52, Examination Security, which is being repealed.

The proposed rules add new §60.56, Validity and Acceptance of Examination Results; Reexamination. This new rule replaces existing §60.54, Examination Results, which is being repealed, and which provides that examination results are valid for one year from the date of the examination, unless stated otherwise in specific program statutes or rules. New §60.56 extends the one year period for how long the examination results are valid for new license applicants who have never held a Texas license. New §60.56 makes a distinction between new license applicants who have never held a Texas license and license applicants who previously held a Texas license and are applying for a new license. The distinctions are necessary and required due to Occupation Code §51.401, License Expiration and Renewal, for expired licenses, and due to Occupations Code, Chapters 51 and 53, and Texas Attorney General Opinion GA-0064 (April 28, 2003) for revoked licenses.

The proposed rules under subsection (a) state the purpose and applicability of new §60.56, which addresses the validity and acceptance of licensing examination results and whether a person must retake a licensing examination.

The proposed rules under subsection (b) address examination results for a person who is applying for a new license issued by the Department and who has not previously held that license. The proposed rules extend the time period examination results are valid from one year to four or five years, depending on the term of the license sought. After this time period, a person must retake any examinations required to apply for a new license. Any previous licensing examination results will not be accepted. This change recognizes that the current one-year time limit is too restrictive, but it also recognizes that occupations and professions may change over the years and that an old examination may not be testing on today's issues. The examination serves as proof of competency, so the examination results cannot be valid indefinitely.

The proposed rules under subsection (c) address examination results for a person who previously held a Texas license and is applying for a new license. The proposed rules address previous examination results and whether the person has to take any required licensing examinations again. As explained under subsection (c)(1), the proposed rules group the different situations involving previous license holders into one subsection, and the specific situations are addressed in each paragraph. The proposed rules reflect the Department's interpretation of the statutory provisions under Texas Occupations Code, Chapters 51 and 53, and Texas Attorney General Opinion GA-0064. These provisions prevent the examination expiration dates under subsection (b) from applying to the situations under subsection (c).

The proposed rules under subsection (c)(2) address the situation involving a person whose license has expired beyond the late renewal deadlines established in Texas Occupations Code §51.401. A person who does not meet these statutory deadlines must apply for a new license and comply with the requirements for obtaining an original license, including any examination requirements and the payment of fees. The proposed rules clarify that a person must retake any licensing examinations required to apply for a new license and that any previous licensing examination results will not be accepted. This provision implements the statutory provisions under Texas Occupations Code §51.401(d).

The proposed rules under subsection (c)(3) address the situation involving a person who was previously licensed in Texas and is currently licensed and practicing in another state. Under this provision, a person who meets the specified eligibility conditions may obtain a new Texas license without reexamination. This provision reflects the statutory provisions under Texas Occupations Code §51.401(e).

The proposed rules under subsection (c)(4) address the situation involving a person whose license was revoked. This provision provides the general rule that a person whose license has been revoked must retake any examinations required to apply for a new license. Any previous licensing examination results will not be accepted. The provision also provides a limited exception for a person who reapplies for licensure after having a license revoked solely for failure to pay an administrative penalty or failure to pay an insufficient funds fee. Under this exception, the person will not be required to retake an examination required to apply for a new license, but only if the person's license has been in a revoked status for less than three years at the time of the new application. The proposed rules reflect the Department's interpretation of Texas Occupations Code, Chapters 51 and 53; Texas Attorney General Opinion GA-0064; the existing rule under §60.36; and the Department's policy regarding revocations and retaking an examination pursuant to Texas Occupations Code §51.355 and existing rule §60.36.

The proposed rules under subsection (c)(5) address the situation involving a person who was previously licensed in Texas but voluntarily surrendered the person's Texas license. Under this provision, the person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license. The person must retake any examinations required to apply for a new license. Any previous licensing examination results will not be accepted. This provision is tied to the new rule under §60.37.

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 the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon also 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 the state or local government 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, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state government or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas 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 rules that are more comprehensive and give applicants, license holders, and the public a better understand-

ing of their rights and responsibilities with the Department; the processes the Department currently uses when processing applications, administering examinations, and ordering restitution to consumers; and what to expect when interacting with the Department. The rules further explain the Department's authority and allow applicants and license holders to be better aware of the statutory requirements on them and on the Department.

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. Because 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, are 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 Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas 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 create a new regulation. The proposed rules create a new regulation by creating a process for the voluntary surrender of a license; explaining the Department's authority to delegate its statutory authority and responsibilities regarding examinations via contract to a third-party examination provider; and adding new statutory requirements where necessary.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand a regulation by adding the statutory authority of the Commission and Executive Director to order the payment of a refund to a consumer; adding specifics to the initial and renewal license application processes to match

and update current policies and procedures and match the authority and requirements of Texas Occupations Code, Chapter 51; clarifying the authority for temporary licenses; adding specifics to the policies, procedures, and requirements for issuing a license to the holder of a substantially equivalent license; adding specifics to the policies, procedures, and requirements of all aspects of the examination process.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' 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 Texas 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 Monica Nuñez, 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*.

SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.23

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code §51.308, §29.902, and Chapter 1001 (Driver Education and Safety); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax

Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); Transportation Code, Chapters 521 (Driver Education and Safety); 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety); and Utilities Code, Chapter 42 (Electric Vehicle Charging Stations).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules under Subchapter B, §60.23 are proposed to be adopted is House Bill (HB) 1560, 87th Legislature, Regular Session (2021).

§60.23. Commission and Executive Director--Imposing Sanctions and Penalties.

(a) The commission or executive director may sanction a license holder, applicant, or other person, if the person:

(1) obtains or attempts to obtain a license by fraud or false representation;

(2) falsifies any document submitted to the department or commission;

~~(3) refuses to permit or fails to cooperate in an inspection or investigation; interferes with an inspection or investigation conducted by an authorized representative of the commission or department; or threatens or intimidates an authorized representative of the commission or department in connection with an inspection or investigation;~~

(3) ~~(4)~~ permits the use or display of a license by a person not authorized by law to use that license;

(4) ~~(5)~~ has a conviction, a deferred adjudication, or other criminal history that affects license eligibility as prescribed under Subchapter D; or

(5) ~~(6)~~ violates Texas Occupations Code, Chapter 51, a law establishing a regulatory program administered by the department, or a rule or order of the commission or the executive director.

(b) The commission or executive director may:

(1) - (5) (No change.)

(6) impose administrative penalties against the person after considering the factors set forth in Texas Occupations Code §51.302(b); ~~or~~

(7) order the payment of a refund to a consumer as prescribed under Texas Occupations Code §51.359; or

(8) ~~(7)~~ take a [any] combination of actions under paragraphs (1) - ~~(7)~~ ~~(6)~~.

(c) - (d) (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.

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 475-4879



SUBCHAPTER C. LICENSE APPLICATIONS AND RENEWALS

16 TAC §60.30, §60.31

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the proposed repeals are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code §51.308, §29.902, and Chapter 1001 (Driver Education and Safety); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); Transportation Code, Chapters 521 (Driver Education and Safety); 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety); and Utilities Code, Chapter 42 (Electric Vehicle Charging Stations).

In addition, the statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005. No other statutes, articles, or codes are affected by the proposed repeals.

§60.30. *Initial License Applications.*

§60.31. *License Renewal Applications.*

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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16 TAC §§60.30, 60.31, 60.33, 60.34, 60.37

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code §51.308, §29.902, and Chapter 1001 (Driver Education and Safety); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402

(Transportation Network Companies); Transportation Code, Chapters 521 (Driver Education and Safety); 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety); and Utilities Code, Chapter 42 (Electric Vehicle Charging Stations).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005. No other statutes, articles, or codes are affected by the proposed rules.

§60.30. Initial License Applications.

(a) An applicant for an initial license must submit all required information, documents, and fees in a form and manner prescribed by the department. The department may request additional information as part of the application process, if necessary.

(b) Incomplete Initial Application. An applicant who submits an incomplete application has one year from the date the application is received by the department to submit any missing information, documents, and/or fees.

(1) If the applicant contends that the application is complete and meets the legal requirements for licensure, and the department disagrees, the department will provide the applicant with an opportunity to request a license determination based on the information and documents that have been submitted. If the department denies the application, the department will send a denial letter under subsection (f), and the applicant may request a hearing.

(2) After one year, an incomplete application shall expire. The applicant must start the license application process over and submit a new application with all required information, documents, and fees as prescribed under subsection (a).

(c) Insufficient or Not Qualified Initial Application. If an applicant provides a complete application that is determined insufficient in meeting the license requirements or if the applicant is determined not qualified to obtain the license, the department will send a denial letter under subsection (f) and the applicant may request a hearing.

(d) Criminal History Background Checks - Initial Applications.

(1) Individual license. An applicant is subject to a criminal history background check pursuant to Occupations Code, Chapters 51 and 53; Government Code, Chapter 411, Subchapter F; the statutes and rules of the specific program; and the department's criminal conviction guidelines. An applicant must submit fingerprints for a background check if required under the specific program statute.

(2) Business license. An individual associated with the business is subject to a criminal history background check, if required under the specific program statute.

(3) Failure to pass a criminal history background check under subsection (d)(1) or (d)(2) may result in denial and/or revocation of the license.

(e) Applicants with Foreign Transcripts or Foreign Degrees.

(1) An applicant with a transcript in a language other than English (foreign transcript) must submit a transcript and a certified translation when applying for licensure.

(A) The foreign transcript must be translated to English to determine if it meets the requirements for licensure for the particular license sought.

(B) The transcript must be translated by the issuing institution or a translator that is certified by the American Translators Association.

(C) The applicant must bear all expenses incurred during the translation process.

(2) An applicant with a degree that was earned at a university in a U.S. territory or a foreign country (foreign degree) must submit a foreign degree evaluation and verification when applying for licensure.

(A) The foreign degree must be evaluated on a course-by-course basis to determine if it meets the requirements for licensure for the particular license sought.

(B) The foreign degree evaluation must be conducted by a foreign degree evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or the Association of International Credential Evaluators, Inc. (AICE).

(C) The applicant must bear all expenses incurred during the evaluation process.

(3) The department retains the exclusive authority to determine whether or not to accept a foreign transcript or a foreign degree for licensure.

(f) Denial of Initial License Application or Examination. If the department proposes to deny an initial license application or proposes to deny an applicant the opportunity to take an examination, the denial is considered to be a contested case, and the rules under Subchapter I shall apply.

§60.31. License Renewal Applications.

(a) License Renewal Notices.

(1) The department will send a license renewal notice to the license holder at least 30 days before the license expiration date.

(2) Non-receipt of a license renewal notice does not exempt a person from any requirements of this chapter or the statute or rules governing the specific program. It is the responsibility of the license holder to timely renew the license.

(b) A license holder renewing a license must submit all required information, documentation, and fees in a form and manner prescribed by the department. The department may request additional information as part of the renewal process, if necessary.

(c) To renew and maintain continuous licensure, the license holder must complete the following requirements before the expiration date of the license:

(1) complete all the renewal requirements for the particular license, including any continuing education requirements, if applicable, as prescribed under this chapter and the statutes and rules governing a specific program; and

(2) pay the required renewal fee as prescribed in the rules for the specific program.

(d) If a license holder completes all the renewal requirements for the particular license and pays the required renewal fee as prescribed under subsection (c), the license will not expire, and there will not be a gap in licensure.

(e) If a license holder does not complete all the renewal requirements for the particular license and pay the required renewal fee as prescribed under subsection (c), the license will expire. A person with an expired license may not perform any act that requires a license under this chapter or the statute or rules governing the specific program.

(f) Criminal History Background Checks - Renewal Applications.

(1) Individual license. A license holder is subject to a criminal history background check pursuant to Occupations Code, Chapters 51 and 53; Government Code, Chapter 411, Subchapter F; the statutes and rules of the applicable program; and the department's criminal conviction guidelines.

(2) Business license. An individual associated with the business is subject to a criminal history background check if required under the specific program statute.

(3) Failure to pass a criminal history background check under (f)(1) or (f)(2) may result in denial and/or revocation of the license.

(g) Late Renewals.

(1) A person whose license has expired may late renew the license within the time periods set out in Texas Occupations Code §51.401.

(2) A person who late renews a license must:

(A) complete all the renewal requirements for the particular license, including any required continuing education, if applicable, as prescribed under this chapter and the statutes and rules governing a specific program; and

(B) pay the required late renewal fee as prescribed under §60.83, if the standard renewal fee for the particular license was not paid before the license expired.

(3) A late renewal means the person will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any act that requires a license under this chapter or the statutes and rules governing the specific program.

(4) A person may not apply for a new license of the same type if the expired license is still within the late renewal time periods set out in Texas Occupations Code §51.401. A person is not eligible for a new license if the existing license is still eligible to be late renewed.

(h) Expired License Beyond Late Renewal Deadlines. Except as provided by subsection (i), if a person does not meet the late renewal deadlines established in Texas Occupations Code §51.401, the person must apply for a new license by complying with the requirements and procedures for obtaining an original license, including any examination requirements and the payment of fees. For a license that requires an examination, the person must retake any licensing examinations required to apply for a new license. Any previous licensing examination results will not be accepted.

(i) Previously Licensed in Texas and Currently Licensed in Another State. Pursuant to Texas Occupations Code §51.401(e), a person who was previously licensed in Texas, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new Texas license without reexamination. The person must pay to the department a fee that is equal to two times the required renewal fee for the license as prescribed in the rules for the specific program.

(j) Denial of License Renewal Application. If the department proposes to deny a license renewal application, the denial is considered to be a contested case, and the rules under Subchapter I shall apply.

§60.33. Temporary License [Applications].

(a) This section implements Texas Occupations Code §51.407. It does not affect those programs that have temporary or provisional licenses in their specific program statutes or rules.

(b) [(a)] This section applies to an applicant who has met all the requirements for an initial license issued under a law administered by the department.

(c) [(b)] The department may issue a temporary license to an applicant described under subsection (b) [(a)] who:

(1) submits a completed application on a department-approved form; and

(2) pays the initial license application fees.

(d) [(e)] A temporary license expires upon an applicant's receipt of the initial license, but no later than 21 days after the date of issuance of the temporary license.

(e) [(d)] A temporary license is not renewable.

(f) A temporary license holder is subject to Texas Occupations Code, Chapter 51; the rules under this chapter; and the statutes and rules of the applicable program.

§60.34. Substantially Equivalent License Requirements.

(a) This section is applicable for:

(1) an applicant who holds a current license issued by another jurisdiction that is similar to a license issued by the department; or [programs that have statutory authority to review and consider "substantially equivalent" license requirements of other states or jurisdictions; or]

(2) an applicant who is a military service member, military veteran, or military spouse and who is [applicants who are military service members, military veterans, or military spouses and who are] applying for a license under Subchapter K.

(b) For purposes of this section, "another jurisdiction" or "other jurisdiction" means a U.S. state, the District of Columbia, a municipality or local jurisdiction, or a U.S. territory.

(c) [(b)] Based on the specific license, a license holder from another [state or] jurisdiction may be eligible for a Texas license if the other [state or] jurisdiction has licensing requirements that are substantially equivalent to the Texas licensing requirements.

(d) [(e)] The department will review and evaluate the following criteria in determining "substantially equivalent" as it relates to and is applicable to a specific license:

(1) Education requirements--including the amount of time (hours, months or years) or credits needed to complete the course/program/curriculum;

(2) Examination requirements--including whether the other [state or] jurisdiction requires an applicant to pass any examinations in order to obtain the license, the type of examinations (written, practical or both), and whether the applicant passed the required examinations in the other [state or] jurisdiction;

(3) Experience requirements--including the length of time that the applicant has held a license in another jurisdiction [state], and the amount of time (hours, months or years) the applicant has worked either independently or under the supervision of another license holder [Heensee] as defined by statute or rule for a specific license;

(4) Training requirements--including training through apprenticeship programs or on-the-job training, as those terms are defined by statute or rule for a specific license; and

(5) License requirements--including scope of work authorized to be performed under the license issued by the other [state or] jurisdiction, and the length of time that the applicant has held a license in another [state or] jurisdiction.

(e) The department may require an applicant under this section to provide additional supporting documentation and information in order for the department to evaluate the criteria under subsection (d) as it relates to and is applicable to a specific license.

(1) Any foreign transcripts or foreign degrees must be translated and evaluated as prescribed under §60.30. Any other documents in a language other than English must be translated in accordance with the provisions under §60.30.

(2) The applicant shall bear all expenses incurred under this section during the evaluation process.

(f) The department retains the exclusive authority to determine whether or not the licensing requirements for a license issued by another jurisdiction are substantially equivalent to the requirements for the Texas license sought.

§60.37. Voluntary Surrender of a License.

(a) A license holder may voluntarily surrender a license to the department by submitting a request in a form and manner prescribed by the department.

(b) The request will be granted if the license holder:

(1) holds a current, unexpired license that is not suspended or revoked;

(2) does not have a pending complaint or a pending enforcement case; and

(3) is not out of compliance with a disciplinary order.

(c) The surrender of a license to the department is not a defense to an alleged or actual violation of any statutes or rules committed by the license holder. In addition, surrendering a license to the department in no way affects the authority of the department to initiate or continue any investigation or disciplinary proceeding concerning the license holder.

(d) A license that has been voluntarily surrendered may not be renewed. A license holder who has voluntarily surrendered a license may apply for a new license.

(e) Any fees paid on the license will not be refunded upon surrender.

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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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 475-4879



SUBCHAPTER E. EXAMINATIONS

16 TAC §§60.50 - 60.54

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to

adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the proposed repeals are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code §51.308, §29.902, and Chapter 1001 (Driver Education and Safety); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); Transportation Code, Chapters 521 (Driver Education and Safety); 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety); and Utilities Code, Chapter 42 (Electric Vehicle Charging Stations).

In addition, the statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005. No other statutes, articles, or codes are affected by the proposed repeals

§60.50. Examination Rescheduling.

§60.51. Examination Fee Refund.

§60.52. Examination Security.

§60.53. Access to Examinations.

§60.54. Examination Results.

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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General Counsel

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16 TAC §§60.50 - 60.56

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code §51.308, §29.902, and Chapter 1001 (Driver Education and Safety); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); Transportation Code, Chapters 521 (Driver Education and Safety); 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety); and Utilities Code, Chapter 42 (Electric Vehicle Charging Stations).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 54, 55, and 108 (Subchapter B); and Texas Government Code, Chapters 411 (Subchapter F), 2001, and 2005. No other statutes, articles, or codes are affected by the proposed rules.

§60.50. Examination Providers.

(a) The department may delegate its statutory authority and responsibilities regarding examinations via contract to a third-party examination provider (department's examination provider). The department's examination provider, who is contracted to act on behalf of the department, must comply with all statutes and rules applicable to the department and to state agencies regarding examinations.

(b) The department's examination provider may administer an examination for those license types that require a person to pass an

examination in order to obtain a license. The statutes and rules for a specific program determine what examination, if any, is required.

(c) The department's examination provider is the point of contact regarding examination matters, including examination scheduling, rescheduling, refunds, accommodations, and results, as prescribed by the rules in this subchapter and the statutes and rules for a specific program.

(d) The provisions in this subchapter apply to all programs regulated by the department, except in the event of a conflict with the statute and rules of a specific program.

§60.51. Examination Scheduling and Rescheduling.

(a) Scheduling an Examination.

(1) Unless provided otherwise in the statute and rules of a specific program, a person who is eligible to take an examination (examination candidate) must schedule the examination with the department's examination provider.

(2) The examination may be scheduled subject to the availability of examination appointments.

(3) The department will provide information about the examination for a particular license type and the contact information for the department's examination provider on the department's website.

(b) Canceling and Rescheduling an Examination.

(1) Unless provided otherwise in the statutes and rules of a specific program, an examination candidate must notify the department's examination provider to cancel and reschedule an examination.

(2) Subject to this subsection, an examination candidate may cancel and reschedule an examination for any reason. The department's examination provider is not required to review or approve the reason for canceling and rescheduling an examination.

(3) An examination candidate may cancel and reschedule an examination at no charge if the examination candidate:

(A) notifies the department's examination provider at least two days prior to the date of the examination or in accordance with the timeframes and methods of notification prescribed by the department's examination provider; or

(B) provides the department's examination provider, as soon as possible, with acceptable documentation of the examination candidate's inability to take the examination because of an "emergency" as defined under §60.10.

(4) The examination may be rescheduled subject to the availability of examination appointments.

§60.52. Examination Fees and Refunds.

(a) Examination Fees.

(1) An examination candidate must pay the examination fee to the department's examination provider, unless provided otherwise in the statute and rules of a specific program.

(2) The department will provide information about the examination for a particular license type and the contact information for the department's examination provider on the department's website.

(b) Examination Fee Refunds.

(1) An examination candidate, who is unable to take the examination and who wants to obtain a refund of the examination fee, must:

(A) notify the department's examination provider in writing not less than 10 days before the date of the examination ("rea-

sonable notice") or in accordance with the timeframes and methods of notification prescribed by the department's examination provider; or

(B) provide the department's examination provider, as soon as possible, with acceptable documentation of the examination candidate's inability to take the examination because of an "emergency" as defined under §60.10.

(2) The department's examination provider, on behalf of the department, will determine whether to issue a refund of the examination fee.

§60.53. Examination Accommodations.

(a) The department's examination provider will provide reasonable accommodations for an examination administered to an examination candidate with a disability as required by the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Section 12101 et seq., its implementing regulations, and any subsequent amendments to the law and regulations.

(b) When requesting reasonable accommodations for an examination under this section, the examination candidate must comply with the following procedures:

(1) The examination candidate must submit a written request for accommodation and documentation regarding the examination candidate's disability and the specific accommodations requested.

(2) The written request and documentation under paragraph (1) must be submitted to the department's examination provider before scheduling the examination and must be submitted in the form and manner prescribed by the department's examination provider.

(3) The department's examination provider, on behalf of the department, will determine whether to grant the requested accommodation.

(c) Upon written request to the department's examination provider, examinations may be offered in a foreign language at the expense of the requestor. The request must be submitted before scheduling the examination.

§60.54. Examination Security.

(a) An examination candidate must comply with all examination security requirements for examinations administered by the department's examination provider or by any third-party provider of an examination that is required to obtain a license issued by the department.

(b) An examination candidate may only use the specified methods of assistance that are available and authorized for all persons taking the examination, except as authorized under §60.53.

(c) Conduct that violates this section includes, but is not limited to, the following:

(1) obtaining or attempting to obtain examination questions or answers from any person or source and for any use or purpose;

(2) providing or attempting to provide examination questions or answers to any person or source and for any use or purpose;

(3) presenting a falsified or fraudulent document to gain entry to an examination;

(4) taking an examination for another person;

(5) knowingly allowing another person to take an examination for the examination candidate;

(6) using or providing unauthorized assistance in connection with an examination;

(7) while taking an examination, using any materials not authorized by the department or testing service for use in the examination, including but not limited to notes or study aides;

(8) bringing to the examination site or leaving the examination site with examination questions or answers obtained from the current examination or from previous examinations;

(9) while taking an examination, communicating with any person, other than an authorized representative of the department or examination provider, about the examination;

(10) for open book examinations, bringing any materials into the examination, including handwritten notes in approved reference materials, other than those materials approved by the department or examination provider;

(11) any conduct or activities that violate the instructions or the examination procedures set out in the candidate information bulletin;

(12) any conduct that violates the instructions provided by the examination provider or administrator;

(13) for virtual examinations, any violations of the examination security requirements related to virtual practical examinations or remotely proctored written examinations;

(14) any conduct that violates the examination security provisions prescribed in the contract between the department and the department's examination provider; or

(15) any other conduct that violates examination security.

(d) The contents of any examination that is required for the issuance of a department license are confidential.

(e) An examination candidate who is seen violating the examination security provisions during the examination will not be allowed to complete the examination and will be removed from the examination site.

(f) An examination candidate who is found to have violated this section is subject to any and all of the following consequences:

(1) having the examination results invalidated;

(2) having to retake the examination and pay a new examination fee;

(3) being determined ineligible or not being allowed to retake the examination; or

(4) having administrative penalties and sanctions imposed and other enforcement actions taken.

§60.55. Examination Results.

(a) Not later than the 30th day after the date a person (former examination candidate) takes an examination, the department's examination provider will notify the person of the results of the examination.

(b) If notice of the examination results will be delayed for longer than 90 days after the examination date, the department's examination provider will notify the person of the reason for the delay before the 90th day.

(c) Following the examination, a person will receive an analysis of the person's performance on the examination from the examination provider.

(d) A person must not present falsified or fraudulent documents concerning the person's results from an examination.

§60.56. Validity and Acceptance of Examination Results; Reexamination.

(a) This section addresses the validity and acceptance of licensing examination results and whether a person must retake a licensing examination. This section applies to all examinations provided or administered by the department's examination provider or by another third-party examination provider who is not contracted with the department.

(b) Examination Results for New License Applicants With No Previous License.

(1) This subsection applies to a person who is applying for a new license issued by the department and who has not previously held that license.

(2) Examination results are valid for the length of the license term of the license being sought plus three years from the date of the examination.

(A) If the person is applying for a license with a one-year license term, then the examination results are valid for four years from the date of the examination.

(B) If the person is applying for a license with a two-year license term, then the examination results are valid for five years from the date of the examination.

(3) After the time periods specified in paragraph (2) expire, the person must retake any examinations required to apply for a new license. Any previous licensing examination results will not be accepted.

(c) Examination Results for Previous License Holders.

(1) This subsection applies to a person who previously held a license issued by the department and who is applying for a new license. Each paragraph addresses a separate situation involving a previous license holder.

(2) Expired License Beyond Late Renewal Deadlines. Pursuant to Texas Occupations Code §51.401(d), a person whose license has expired beyond the late renewal deadlines prescribed under §51.401 may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license. The person must retake any examinations required to apply for a new license. Any previous licensing examination results will not be accepted.

(3) Previously Licensed in Texas and Currently Licensed in Another State. Pursuant to Texas Occupations Code §51.401(e), a person who was previously licensed in Texas, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new Texas license without reexamination.

(4) Revoked License.

(A) Except as provided under paragraph (B), a person whose license has been revoked must retake any examinations required to apply for a new license. Any previous licensing examination results will not be accepted.

(B) Pursuant to Texas Occupations Code §51.355 and rule §60.36, a person who reapplies for licensure after having a license revoked solely for failure to pay an administrative penalty or failure to pay an insufficient funds fee will not be required to retake any examinations required to apply for a new license. This provision does not apply where the person's license has been in a revoked status for three years or more at the time of the new application.

(5) Voluntarily Surrendered License. A person who was previously licensed in Texas and who voluntarily surrendered the license under §60.37 may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license. The person must retake any examinations required to apply for a new license. Any previous licensing examination results will not be accepted.

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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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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CHAPTER 96. ELECTRIC VEHICLE SUPPLY EQUIPMENT

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC), Chapter 96, regarding the new Electric Vehicle Charging Stations (EVS) program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 96, implement Senate Bills (SB) 1001 and 1732, 88th Legislature, Regular Session (2023), and Texas Occupations Code, Chapter 2311, Electric Vehicle Charging Stations, and Electric Vehicle Supply Equipment (EVSE).

The proposed rules are necessary to introduce the Department's administrative rulemaking effort for the implementation of SB 1001 and 1732, and Texas Occupations Code, Chapter 2311 for the EVS program, which address rules relating to: (1) electric vehicle supply equipment definitions; (2) registration and EVSE provider statutory and rule compliance deadlines; (3) EVSE registration and renewal requirements; (4) investigation and inspection of EVSE; (5) EVSE provider duties and responsibilities; (6) program fees; (7) enforcement provisions; (8) general technical requirements for EVSE providers from supplemental rules and regulation publications; and (9) implementing the recommendations of the EVSE Stakeholder Workgroup (Workgroup), as authorized by SB 1001, Article 3, and public comment received by the Department from the "First Look" posting of a working draft version of the EVS proposed rules.

The Workgroup held two public meetings to discuss the statutory elements of SB 1001 and 1732 to address the new rule chapter. The proposed rules reflect their input and recommendations.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions

The proposed rules create new §96.1, Authority, to identify the statutory provisions under which the rule chapter derives its regulatory jurisdiction.

The proposed rules create new §96.10, Definitions, to establish the definitions to be used in the rule chapter.

The proposed rules create new §96.14, Effective Dates for Electric Vehicle Supply Equipment Compliance, to provide notice to EVSE providers of the deadlines for registration and operational standards for regulated electric vehicle charging units.

Subchapter B. Electric Vehicle Supply Equipment Registration

The proposed rules create new §96.20, Electric Vehicle Supply Equipment Registration Required, to require an EVSE provider to register each charging unit prior to making it available for commercial service to electric vehicle owners.

The proposed rules create new §96.21, Electric Vehicle Supply Equipment Registration Requirements, to: (1) identify the prerequisites for initial charging unit registration; (2) set the length of the registration term at one year; and (3) set forth the required procedures related to changes in provider ownership.

The proposed rules create new §96.22, Electric Vehicle Supply Equipment Registration Renewal Requirements, to detail the annual registration renewal procedures for electric vehicle charging units.

The proposed rules create new §96.23, Electric Vehicle Supply Equipment Registration Changes, to establish the registration procedures by which an EVSE provider may add to or reduce the number of charging units at an existing location.

The proposed rules create new §96.24, Certificate of Registration, to establish how an EVSE provider may provide a copy of the issued registration certificate to a member of the public upon request.

The proposed rules create new §96.30, Exemptions, which illustrate exceptions under which electric vehicle supply equipment will not be regulated by the Department.

Subchapter C. Inspections and Investigations

The proposed rules create new §96.60, EVSE Inspections and Investigations, to state the Department's authority to carry out inspections and investigations of EVSE providers and equipment.

Subchapter D. Responsibilities of the Provider

The proposed rules create new §96.70, Notification of Department Jurisdiction and Complaint Information, to require the EVSE provider to display a notice to consumers on its charging units that instruct consumers on how to file complaints about their vehicle charging experience with the Department.

The proposed rules create new §96.71, Consumer Information Sticker, to require EVSE providers to affix an adhesive notice on each registered electric vehicle charging unit that contains the specific information required in §96.70.

The proposed rules create new §96.72, Damaged or Recalled Electric Vehicle Supply Equipment, to instruct EVSE providers on how to address onsite nonfunctional electric vehicle charging units and publish status warnings to consumers.

The proposed rules create new §96.74, Recordkeeping Requirements, to require EVSE providers to maintain and make available specific types of electric vehicle supply equipment records to Department personnel upon request for three years.

Subchapter E. Fees

The proposed rules create new §96.80, EVSE Registration Fees, to establish the fees for the issuance and renewal of

EVSE charging unit registration and consumer information stickers.

The proposed rules create new §96.83, Fee Policy and Disclosures, to establish the required information to be disclosed to consumers regarding the determination of fees and surcharges associated with an electric vehicle charging transaction.

Subchapter F. Enforcement Provisions

The proposed rules create new §96.90, Administrative Penalties and Sanctions, 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 EVS program.

The proposed rules create new §96.91, Enforcement Authority, to establish the authority of the Commission and the Department to enforce the statutes and rules applicable to the EVS program.

Subchapter G. General Technical Requirements

The proposed rules create new §96.100, Adoption by Reference, to adopt selected publications and regulations into the rule chapter to supplement the administration and enforcement of the EVS program.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

The proposed rules establish the core program requirements to implement the new legislation for Electric Vehicle Supply Equipment created by SB 1001 and SB 1732, 88th Legislature, Regular Session (2023), specifically: (1) registration requirements and timeline; (2) a registration fee of \$30 per charging connector; (3) a renewal fee of \$25; and (4) a consumer information sticker purchase fee of \$1. The proposed rules also adopt standards for customer notification of charges and a transaction receipt, technical requirements for EV charging stations, and recordkeeping requirements.

Tony Couvillon, Policy Research and Budget Analyst, using information developed for the SB 1001 fiscal note during the legislative session, has determined that for each year of the first five years the proposed rules are in effect, the additional estimated costs to the State would be \$352,440 in the first fiscal year, \$300,569 in the second fiscal year, \$300,569 in the third fiscal year, \$327,374 in the fourth fiscal year, and \$327,374 in the fifth fiscal year. These costs will come from the addition of five employees at TDLR, and the corresponding equipment and supplies for those employees, as well as the cost for updating one of the agency's license systems with this new program.

Mr. Couvillon, using information developed for the SB 1001 fiscal note during the legislative session, has determined that for each year of the first five years the proposed rules are in effect, there will be an increase in estimated revenue to the State in the amount of \$354,900 in the first fiscal year, \$303,100 in the second fiscal year, \$311,590 in the third fiscal year, \$319,925 in the fourth fiscal year, and \$327,400 in the fifth fiscal year.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will be no estimated reductions in costs or loss in revenue to the State, since the proposed rules establish a new regulation which comes with costs to implement and administer the regulation, and they do not eliminate or decrease any fees assessed by the program, respectively.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administer-

ing the proposed rules does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas 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 will benefit from established safety standards for EV charger installations and maintenance. These standards will create a regulatory environment that promotes the safe charging of electric vehicles by consumers, ensures that a charging unit delivers the correct amount of charge and at the posted price, and allows consumers to submit complaints to the Department for EV charging station issues.

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 EVSE provider must pay a registration fee of \$30 per EV charging station plug/connector, \$1 for the consumer information sticker purchase for EV charger stations, and a renewal fee of \$25 per plug/connector. The fees, while minimal, are new to this regulated industry where before there were no registration requirements with the state, and the fees will result in a cost to registrants. These fees are required by law in Section 2311.0202 of the Texas Occupations Code.

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. Because 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 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 protect the health, safety, and welfare of the residents of this state, and are necessary to implement legislation, under Texas Government Code §2001.045(c)(6) and (c)(9), respectively. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas 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 require an increase or decrease in fees paid to the agency.

The proposed rules increase the fees paid to the agency by establishing a fee for an initial registration, a fee for a registration renewal, and a fee for the consumer information sticker purchase.

5. The proposed rules create a new regulation.

The proposed rules create a new regulation by creating the EVS program and its regulatory environment at TDLR, based on newly implemented legislation (SB1001 and SB 1732).

6. The proposed rules do not expand, limit, or repeal an existing regulation.
7. The proposed rules increase or decrease the number of individuals subject to the rules' applicability.

The proposed rules increase the number of individuals subject to the rule's applicability by requiring all electric vehicle supply providers to register all charging units with TDLR, unless exempted.

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 Texas 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 Shamica Mason, 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*.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§96.1, 96.10, 96.14

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, 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, Chapters 51, 1305 and

2311. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.1. Authority.

This chapter is promulgated under Texas Occupations Code, Chapters 51, 1305, and 2311.

§96.10. Definitions.

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

(1) Charging unit - an electric vehicle supply equipment device that directly delivers electrical energy to an electric vehicle through one or more charging connectors or plugs to the charging port of an electric vehicle.

(2) Code - Texas Occupations Code, Chapter 2311, Electric Vehicle Supply Equipment, as added by Senate Bill 1001, 88th Legislature, Regular Session (2023), and Electric Vehicle Charging Stations, as added by Senate Bill 1732, 88th Legislature, Regular Session (2023).

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

(4) Department - The Texas Department of Licensing and Regulation.

(5) Digital network - an online-enabled application, website, or system offered or used by an electric vehicle supply provider that allows a user to initiate a commercial transaction to dispense electrical energy from electric vehicle supply equipment to an electric vehicle.

(6) Electric vehicle supply equipment (EVSE) - a device or equipment used to dispense electrical energy to an electric vehicle.

(7) Electric vehicle supply provider (provider) - an owner or operator of electric vehicle supply equipment that is available and accessible to the public to provide electrical energy through a commercial transaction.

(8) Legacy charger - an electric vehicle supply device defined in §2311.0207 of the Code.

(9) NIST - The National Institute of Standards and Technology, a non-regulatory federal agency under the United States Department of Commerce which certifies and provides standard reference materials used to perform instrument calibrations, verifies the accuracy of specific measurements, and supports the development of new measurement methods.

(10) Texas Electrical Safety and Licensing Act - Texas Occupations Code, Chapter 1305.

§96.14. Effective Dates for Electric Vehicle Supply Equipment Compliance.

(a) Unless exempted by Code or this chapter, an electric vehicle supply provider must register all electric vehicle supply equipment charging units in operation in this state with the department by March 1, 2025.

(b) Except as provided in subsection (c), a charging unit installed in this state must be operated in compliance with manufacturer specifications, the Code, and this chapter:

(1) not later than March 1, 2028, if the charging unit is installed before June 18, 2023, or is a legacy charger;

(2) not later than March 1, 2025, if the charging unit is installed on or after June 18, 2023, and before March 1, 2025; or

(3) when the charging unit begins operating if the charging unit is installed on or after March 1, 2025.

(c) Unless exempted by the Code or this chapter, any public charging unit installed after December 1, 2024, for commercial use, and funded by a public grant or rebate program must be equipped with a charging connector or plug type that is widely compatible with as many types of electric vehicles as practicable. Providers are not required to comply with this subsection until January 1, 2030.

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 August 12, 2024.

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



SUBCHAPTER B. ELECTRIC VEHICLE SUPPLY EQUIPMENT REGISTRATION

16 TAC §§96.20 - 96.24, 96.30

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, 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, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.20. Electric Vehicle Supply Equipment - Registration Required.

Unless exempted by the Code or this chapter, an electric vehicle supply provider must register each charging unit with the department before making it available for use on a digital network for a commercial transaction.

§96.21. Electric Vehicle Supply Equipment Registration Requirements.

(a) To register a charging unit of electric vehicle supply equipment at a new location, an electric vehicle supply equipment provider must submit:

(1) an application completed in a manner prescribed by the department;

(2) a statement, affirmed by the provider that a licensed electrical contractor installed the charging unit, that the installation was performed in conformance with manufacturer specifications, and that

the charging unit was in proper working order at the time of installation; and

(3) the fee required under §96.80 of this chapter (relating to EVSE Registration Fees).

(b) A certificate of registration is valid for one year from the date of issuance and must be renewed prior to its expiration.

(c) If a change in provider ownership takes place, the new provider must submit a new application for registration within 30 days of the change.

(d) A provider must report a change to its name, contact information, federal identification number, or social security number to the department within 30 days of the change. A change in the provider's federal identification number or social security number constitutes a change of business identity and requires a new registration application under this section.

§96.22. Electric Vehicle Supply Equipment Registration Renewal Requirements.

(a) To renew registration of a charging unit of electric vehicle supply equipment, an electric vehicle supply provider must submit:

(1) a completed renewal application in a manner prescribed by the department; and

(2) the fee required under §96.80 of this chapter.

(b) A provider is responsible for renewing electric vehicle supply equipment registration before the expiration date. Lack of receipt of a renewal notice from the department shall not excuse failure to file for renewal or late renewal.

(c) If a provider adds additional charging units to a location after its previous registration but less than 90 days prior to that renewal, the provider will not be charged an additional fee for the newly installed charging units.

(d) A provider must include an accurate count of all active charging units with its submission of the renewal application and required fee to the department.

§96.23. Electric Vehicle Supply Equipment Registration Changes.

(a) If the number of registered charging units increases at an existing location, prior to operation of the added devices, the electric vehicle supply provider must submit:

(1) notice in a manner required by the department;

(2) a statement, affirmed by the provider that a licensed electrical contractor installed the charging unit, that the installation was performed in conformance with manufacturer specifications, and that the charging unit was in proper working order at the time of installation; and

(3) the fee required under §96.80 of this chapter.

(b) If a provider removes or retires a charging unit or units at a location, the provider must provide notice in a manner prescribed by the department.

§96.24. Certificate of Registration.

A registrant must make available a copy of the current certificate of registration to a member of the public upon request. The registrant may refer the requestor to an electronic link to its digital network for a copy of the certificate of registration, or provide a copy of the certificate to the requestor's email address or physical address, if the requestor has no electronic mail.

§96.30. Exemptions.

This chapter does not apply to electric vehicle supply equipment that is:

(1) installed in or adjacent to a private residence for non-commercial use;

(2) provided for the exclusive use of an individual, or a group of individuals, including employees, tenants, visitors, or residents of a multiunit housing or office development; or

(3) provided by a business for use at no charge.

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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Texas Department of Licensing and Regulation

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SUBCHAPTER C. INSPECTIONS AND INVESTIGATIONS

16 TAC §96.60

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, 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, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.60. EVSE Inspections and Investigations.

The department, or its authorized representative, shall be permitted to inspect and test all non-exempt EVSE operating at any location in Texas in accordance with the Code, Texas Occupations Code, Chapter 51, the inspection, and investigation rules under 16 Texas Administrative Code, Chapter 60, Subchapter H, this chapter, and all applicable state and federal laws and regulations.

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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SUBCHAPTER D. RESPONSIBILITIES OF THE PROVIDER

16 TAC §§96.70 - 96.72, 96.74

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, 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, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.70. Notification of Department Jurisdiction and Complaint Information.

(a) The electric vehicle supply provider must show a notice on the charging unit display or its digital network that the Texas Department of Licensing and Regulation regulates electric vehicle supply equipment.

(b) Consumers and providers must be notified by the provider of the name, e-mail address, website address, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding the Electric Vehicle Charging Program. The notification must also appear on the following:

(1) each electric vehicle supply equipment charging unit post-charging session receipt;

(2) the charging unit's visual display or the provider's digital network; and

(3) an information sticker affixed on the front of each charging unit owned or operated by a provider at the physical location of the charging unit that is regulated under this chapter.

(c) The notice described in subsection (b) must contain the following language: Unresolved complaints may be forwarded to the Texas Department of Licensing and Regulation, Electric Vehicle Charging Program, P.O. Box 12157, Austin, Texas 78711, or by telephone (512) 463-6599 or (800) 803-9202, TDD (800) 735-2989, or <https://www.tdlr.texas.gov/complaints>.

§96.71. Consumer Information Sticker.

(a) An electric vehicle supply provider must obtain a consumer information sticker containing the department's contact information shown in §96.70(c) of this subchapter (relating to Notification of Department Jurisdiction and Complaint Information) and place the sticker on the front of each charging unit operating at the provider's registered location.

(b) A consumer information sticker must not be placed in a manner that affects the accuracy, readability, or lawful operation of a device.

(c) If any part of the information on the sticker affixed to the charging unit is no longer fully legible and in plain sight of the consumer, the provider must replace the sticker within 30 days after the date the provider discovered the condition.

§96.72. Damaged or Recalled Electric Vehicle Supply Equipment.

Any damaged or recalled charging unit that poses a safety risk to the public must be removed from service by the electric vehicle supply provider in a manner:

(1) that prevents the use of the damaged or recalled charging unit by the public; and

(2) removes the damaged or recalled charging unit from the provider's digital network listing of available charging units.

§96.74. Recordkeeping Requirements.

(a) Each electric vehicle supply provider that owns or operates electrical vehicle supply equipment available and accessible to the public for electric vehicle commercial charging transactions must maintain and preserve all documents related to the installation, maintenance, inspection, and calibration of electric vehicle supply equipment for a period of three (3) years.

(b) All records applicable to this section must be provided to or made available for inspection or investigation to the department upon request in accordance with §96.60 of this chapter (relating to EVSE Inspections and Investigations).

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 August 12, 2024.

TRD-202403686

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: September 22, 2024

For further information, please call: (512) 463-7750

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SUBCHAPTER E. FEES

16 TAC §§96.80, §96.83

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, 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, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.80. EVSE Registration Fees.

(a) Initial Registration for Newly Registered Charging Units and Additional Units - \$30 per charging connector/plug

(b) Renewal of Registration - \$25 per charging connector/plug

(c) Consumer Information Sticker - \$1 per sticker

(d) A duplicate/replacement fee for any registration issued under this chapter is \$25.

(e) All fees paid to the department are non-refundable.

(f) Late renewal fees for registration issued under this chapter are provided under 16 TAC §60.83 (relating to Late Renewal Fees).

(g) A dishonored/returned check or payment fee is the fee prescribed under 16 TAC §60.82 (relating to Dishonored Payment Device).

§96.83. Fee Policy and Disclosures.

(a) Disclosure Requirements. An electric vehicle supply provider must disclose the following on the EVSE display or on the provider's digital network:

- (1) the fee calculation method or methods; and
- (2) all applicable surcharges.

(b) Prior to charging, the provider must disclose the following to the user:

- (1) the rate the user will be charged at the time of the transaction based on the available fee calculation method or methods; and
- (2) a list of applicable surcharges.

(c) A provider must show a notice to consumers on the EVSE display or on the provider's digital network that:

- (1) states that the department regulates electric vehicle supply equipment; and
- (2) provides information on filing a complaint with the department about the electric vehicle supply equipment as described in §96.70.

(d) Receipts. Upon completion of the commercial transaction for electric vehicle charging, the provider must transmit a summary of the transaction to the user that includes the requirements of §2311.0305 of the Code, §96.24 and §96.70 of this chapter and the EVSE Recorded Representations requirements contained in the most recent version of NIST Handbook 44.

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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SUBCHAPTER F. ENFORCEMENT PROVISIONS

16 TAC §96.90, §96.91

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, 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, Chapters 51, 1305 and

2311. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.90. Administrative Penalties and Sanctions.

If a person or entity violates any provision of the Code, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of the Code, and any associated rules.

§96.91. Enforcement Authority.

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

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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SUBCHAPTER G. GENERAL TECHNICAL REQUIREMENTS

16 TAC §96.100

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 1305 and 2311, which authorize the Texas Commission of Licensing and Regulation, 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, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bills 1001 and 1732, 88th Legislature, Regular Session (2023).

§96.100. Adoption by Reference.

In accordance with the Code, the department adopts the requirements of the most recent version of the following publications and rules for the purpose of administering and enforcing this chapter:

- (1) NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices."
- (2) NIST Handbook 130, "Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality."
- (3) Chapter 6, Special Equipment, Article 625: Electric Vehicle Power Transfer System, National Electric Code.

(4) 16 Texas Administration Code, Chapter 68, Subchapter I; Texas Government Code, Chapter 469; Texas Accessibility Standards (eff 3.15.12).

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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General Counsel

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

The Texas Lottery Commission (Commission) proposes the repeal of existing 16 TAC §401.315 ("Mega Millions" Draw Game Rule) and the proposal of new 16 TAC §401.315 ("Mega Millions" Draw Game Rule). The purpose of the proposed repeal and new rule is to conform the play of the Mega Millions game in Texas to game changes recently adopted by the Mega Millions Lotteries and the Multi-State Lottery Association (MUSL). These changes include (1) increasing the purchase price of a ticket from \$2 to \$5; (2) changing the game matrix from 5/70 plus 1/25 (selection of five numbers from a field of 70 numbers and then one number from a field of 25 numbers) to 5/70 plus 1/24 (selection of five numbers from a field of 70 numbers and then selection of one number from a field of 24 numbers); (3) removing Megaplier® and Just the Jackpot® features; (4) changing the play of the game to include a Multiplier automatically generated by the Lottery Gaming System (as defined in the new rule) as part of the cost of a Play, which will multiply the non-jackpot prizes by 2, 3, 4, 5 or 10 times; (5) revising certain game definitions and references; (6) updating grammar and/or sentence structure changes to provide clarity, including renaming the top prize as the Jackpot Prize instead of Grand Prize; and (7) adding that the Mega Millions Lotteries are removing the graduated percentage escalator for the thirty annual payment schedule. Mega Millions Lotteries will take responsibility for the schedule of prize payments for a thirty annual graduated payment schedule. The new Mega Millions game changes are expected to be implemented on April 5, 2025, with the first drawing expected to be on April 8, 2025. Accordingly, the current Mega Millions rule will remain in effect until the date the new rule is implemented, which currently is expected to be April 5, 2025.

The Commission is a member of MUSL and is authorized to conduct the Mega Millions game in Texas under the conditions of the Cross-Sell Agreement between MUSL and the Mega Millions Lotteries, MUSL rules, the laws of the State of Texas, this rule (16 TAC §401.315), and under such further instructions, directives, and procedures as the Commission executive director may issue in furtherance thereof. To be clear, the authority to participate in the Mega Millions game is provided to the Commission by

MUSL through the Cross-Sell Agreement and the conduct and play of the Mega Millions game in Texas must conform to the MUSL Product Group's Mega Millions game rules.

Robert Tironi, Lottery Operations Director, has determined that for each year of the first five years the proposed repeal and new rule will be in effect, the public benefit expected is providing Texas Lottery players notice of the changes to the Mega Millions game and to update the Texas Lottery Mega Millions draw game rule in conformance with MUSL rules. Further, the game changes are anticipated to generate increased interest by offering players the potential for larger jackpots, improved chances of winning through improved overall odds, improved chances of winning the Jackpot Prize through improved Jackpot Prize odds and a new embedded multiplier feature that offers players the chance to increase non-jackpot prizes up to ten times potentially resulting in increased ticket sales and revenue to the Foundation School Fund.

Sergio Rey, Controller, has determined that for each year of the first five years the proposed repeal and new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed repeal and new rule. 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 cost to persons required to comply with the proposed repeal and new rule, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal and new 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).

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed repeal and new rule. For each year of the first five years the proposed repeal and new rule will be in effect, Sergio Rey, Controller, has determined the following:

- (1) The proposed repeal and new rule do not create or eliminate a government program.
- (2) Implementation of the proposed repeal and new rule do not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed repeal and new rule do not require an increase or decrease in future legislative appropriations to the Commission.
- (4) The proposed repeal and new rule do not require an increase or decrease in fees paid to the Commission.
- (5) The proposed repeal and new rule do not create a new regulation.
- (6) The proposed repeal and new rule do not expand or limit an existing regulation.
- (7) The proposed repeal and new rule do not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed repeal and new rule do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed repeal and new rule from any interested person. Comments on the proposed repeal and new rule may be submitted to Deanne Rienstra, Special Counsel, by mail at Texas Lottery Commission, P.O.

Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* to be considered.

16 TAC §401.315

The repeal is proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The repeal is intended to implement Texas Government Code Chapter 466.

§401.315. "Mega Millions" Draw Game Rule.

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 August 9, 2024.

TRD-202403670

Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5324



16 TAC §401.315

The new rule is proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The new rule is intended to implement Texas Government Code Chapter 466.

§401.315. "Mega Millions" Draw Game Rule.

(a) Mega Millions®. The Multi-State Lottery Association (MUSL) has entered into an Agreement (Cross-Sell Agreement) with those U.S. lotteries operating under an agreement to sell a draw game known as Mega Millions (Mega Millions Lotteries) to permit the MUSL Party Lotteries who are members of the MUSL Mega Millions (M2G2) Product Group ("Product Group"), including the Texas Lottery Commission (commission), to sell the Mega Millions lottery game. The purpose of the Mega Millions game is the generation of revenue for Mega Millions Lotteries and Product Group members participating under the Cross-Sell Agreement, through the operation of a specially designed multi-jurisdiction lottery game that will award prizes to Ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings. The Mega Millions game is authorized to be conducted by the commission executive director (executive director) under the conditions of the Cross-Sell Agreement, MUSL rules, the laws of the State of Texas, this section, and under such further instructions, directives, and procedures as the executive director may issue in furtherance thereof. In this regard, the executive director is authorized to issue such further instructions and directives as may be necessary to conform the conduct and play of the Mega Millions game to the requirements of the MUSL rules and the Cross-Sell Agreement, if, in the opinion of the executive director, such instructions, directives, and procedures are in conformance with

state law. To be clear, the authority to participate in the Mega Millions game is provided to the commission by MUSL through the Cross-Sell Agreement. The conduct and play of the Mega Millions game in Texas must conform to the MUSL Mega Millions (M2G2) Product Group Rules ("MUSL MM Rules"). Further, if a conflict arises between this section and §401.304 of this subchapter (relating to Draw Game Rules (General)), this section shall have precedence. In addition to other applicable rules contained in Chapter 401, this section and definitions herein apply unless the context requires a different meaning or is otherwise inconsistent with the intent of the MUSL MM Rules adopted by the Product Group.

(b) Definitions. In addition to the definitions provided in §401.301 of this subchapter (relating to General Definitions), and unless the context in this section otherwise requires, the following definitions apply.

(1) "Agent", "Sales Agent" or "Retailer" means a person licensed under the State Lottery Act to sell Texas Lottery Tickets, which include Mega Millions game Plays.

(2) "Drawing" refers collectively to the formal draw event for randomly selecting the winning numbers that determine the number of winning Plays for each prize level of the Mega Millions game. Drawings will be held at the times and places established by the Mega Millions Lotteries.

(3) "Game Ticket" or "Ticket" means an acceptable evidence of Play, as defined in §401.301 (relating to General Definitions) "Draw game ticket", produced in a manner that meets the specifications defined in the MUSL MM Rules, and is a physical representation of the Play or Plays sold to the player as described in subsection (h) of this section (Ticket Validation).

(4) "Mega Millions Lotteries" refers to those lotteries that have reached a Cross-Sell Agreement with MUSL for the selling of the Mega Millions game. The Mega Millions Lotteries will determine the Mega Millions Advertised Jackpot Prize amount (cash value option and annuity).

(5) "Mega Millions Plays" (MM Plays) shall refer to Plays purchased for the Mega Millions game.

(6) "Multiplier" means a unique number that is automatically selected by the Lottery Gaming System according to the frequency set forth in subsection (f) of this section, for each Mega Millions Play.

(7) "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the MUSL Party Lotteries.

(8) "MUSL Board" means the governing body of the MUSL, which is comprised of the chief executive officer of each Party Lottery.

(9) "Party Lottery" means a state lottery or lottery of a political subdivision or entity that has joined MUSL and, in the context of the Product Group rules, has joined in selling the games offered by the Product Group. "Selling Lottery" or "Participating Lottery" shall mean a state lottery or lottery of a political subdivision or entity that is participating in selling the Mega Millions game and that may be a member of either the Product Group or the Mega Millions Lotteries.

(10) "Play" means a set of six (6) numbers, the first five (5) from a field of seventy (70) numbers and the last one (1) from a field of twenty-four (24) numbers, that appear on a Ticket and are to be played by a player in the game. As used in this section, unless otherwise indicated, "Play" means a Mega Millions Play ("MM Play").

(11) "Prize" means an amount paid to a person or entity holding a winning Ticket. The term "Jackpot Prize shall refer to the top prize in the Mega Millions game. "Advertised Jackpot Prize" shall mean the estimated annuitized Jackpot Prize amount as determined by the Mega Millions Lotteries. The Advertised Jackpot Prize is not a guaranteed prize amount and the actual Mega Millions Jackpot amount may vary from the advertised amount, except in circumstances where there is a guaranteed Mega Millions Jackpot Prize amount as described in subsection (g)(1) of this section.

(12) "Product Group" means the MUSL Party Lotteries who are members of the MUSL Mega Millions Product Group and who offer the Mega Millions game product pursuant to the terms of the Cross-Sell Agreement between MUSL and the Mega Millions Lotteries, and in accordance with the Multi-State Lottery Agreement and the MUSL MM Rules.

(13) "Set Prize" or "low-tier prize" means all other prizes, except the Jackpot Prize and, except in instances outlined in this section, or the MUSL MM Rules, will be equal to the prize amount established by the Mega Millions Lotteries.

(14) "Terminal" means a device authorized by the commission for the purpose of issuing Mega Millions game Tickets and as defined in §401.301 of this subchapter (relating to General Definitions).

(15) "Winning Numbers" means the indicia or numbers randomly selected during a Drawing event which shall be used to determine the winning Plays for the Mega Millions game contained on a Game Ticket.

(c) Game Description. Mega Millions is a five (5) out of seventy (70) plus one (1) out of twenty-four (24) lottery game drawn on the day(s), time(s) and location(s) as determined by the Mega Millions Lotteries. Each Mega Millions Play will include a Multiplier, which is a unique number that is automatically selected by the Lottery Gaming System according to the frequency set for in subsection (f) of this section and printed directly on the Mega Millions Ticket. The Multiplier increases non-Jackpot Prizes by two times, three times, four times, five times or ten times the prize won. The Jackpot Prize will be paid at the election of the player made in accordance with this section, or by a default election made in accordance with this section, either on a graduated annuitized annual pari-mutuel basis or as a cash value option using a rate determined by the Mega Millions Lotteries on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a single payment basis. During the Drawing event, five (5) numbers shall be drawn from the first set of seventy (70) numbers, and one (1) number shall be drawn from the second set of twenty-four (24) numbers, which shall constitute the Winning Numbers. The Multiplier for each Play will be automatically selected by the Lottery Gaming System and printed on the Ticket at time of purchase.

(1) Mega Millions Play. To play Mega Millions, a player shall select (or request a Quick Pick) five (5) different numbers, from a field of one (1) through seventy (70), and one (1) additional number from a second field of one (1) through twenty-four (24). The player selected (or the requested Quick Pick) number from the second field may be the same as one of the five numbers from the first field. The Lottery Gaming System will randomly generate the Multiplier, which will be included on each Mega Millions Play purchased and will multiply low-tier prizes only. The Multiplier is included in the price of a Play and is not an add-on. The Multiplier is further defined in subsection (b)(6) of this section. MM Plays can be purchased for five dollars (U.S. \$5.00), including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery Play. Plays may be purchased from a commission approved Sales Agent in a manner as approved by the commission and in accordance MUSL MM rules.

(2) Claims. A Ticket shall be the only proof of a game Play or Plays and is subject to the validation requirements set forth in subsection (h) of this section. The submission of a winning Ticket to the commission or its authorized Sales Agent shall be the sole method of claiming a prize or prizes. A playslip has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected. A terminal-produced paper receipt has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected.

(3) Cancellations Prohibited. In all instances, a Play recorded on the Lottery Gaming System may not be voided or cancelled by returning the Ticket to the Sales Agent or to the commission, including Tickets that are misprinted, illegible, printed in error, or for any reason not successfully transferred to an authorized selling entity or player. A Selling Lottery may develop an approved method of compensating retailers for Plays that are not transferred to a player for a reason acceptable to the Selling Lottery and not prohibited by the Mega Millions Product Group. No Play that is eligible for a prize can be returned to the commission for credit. Plays accepted by retailers as returned Plays and which cannot be re-sold shall be deemed owned by the bearer thereof.

(4) Maximum Purchase. The maximum number of consecutive drawings on a single Play purchase is ten (10).

(5) Subscription sales. A subscription sales program may be offered, at the discretion of the executive director.

(d) Mega Millions Prize Pool. The prize pool for all prize categories offered by the Party Lotteries shall consist of up to fifty-five percent (55%) of each Drawing period's sales, inclusive of any specific statutorily-mandated tax of a Party Lottery to be included in the price of a MM Play, and inclusive of contributions to the prize pool accounts and prize reserve accounts, but may be higher or lower based upon the number of winning Plays at each prize level, as well as the funding required to meet a guaranteed Annuity Jackpot Prize as may be required by subsection (g)(1) of this section.

(1) Mega Millions Prize Pool Accounts and Prize Reserve Accounts. The Product Group shall set the contribution rates to the Prize Pool and Prize Reserve Accounts established by this section.

(A) The following Prize Reserve Account for the Mega Millions game is hereby established: the Prize Reserve Account (PRA) which is used to guarantee the payment of valid, but unanticipated, Jackpot Prize claims that may result from a system error or other reason, to fund deficiencies in the Set-Aside Pool, and to fund pari-mutuel prize deficiencies as defined and limited in subsection (d)(3)(A) of this section.

(B) The following Prize Pool Accounts for the Mega Millions game are hereby established:

(i) The Jackpot Prize Pool (JPP), which is used to fund the current Jackpot Prize;

(ii) The Set Prize Pool (SPP), which is used the fund the Set Prizes. The SPP shall hold the temporary balances that may result from having fewer than expected winners in the Set Prize (aka low-tier prize) categories. The source of the SPP is the Party Lottery's weekly prize contributions less actual Set Prize liability; and

(iii) The Set-Aside Pool (SAP), which is used to fund the payment of the awarded minimum starting Annuity Jackpot Prizes and the minimum Annuity Jackpot Prize increase, if necessary (subject to the limitations in this section or the MUSL MM Rules), as may be set by the Product Group. The source of the SAP funding shall accumulate from the difference between the amount in the Jackpot

Prize Pool at the time of a Jackpot Prize win and the amount needed to fund Jackpot Prize payments as determined by the Mega Millions Lotteries.

(C) The maximum balance amounts and balance limit triggers are subject to review by the MUSL Board Finance Committee. The Finance Committee shall have two weeks to state objections, if any, to the approved maximum balance amounts or balance limiter triggers. Approved maximum balance amounts or balance limiter triggers shall become effective no sooner than two weeks after notice is given to the Finance Committee and no objection is stated or sooner if the Committee affirmatively approves the maximum balance amounts or balance limiter triggers. The Product Group may appeal the Committee's objections to the full Board. Group approved changes in the maximum balance amounts or balance limiter triggers set by the Product Group shall be effective only after the next Jackpot Prize win.

(D) The contribution rate to the JPP from MM Plays shall be 37.6509% of sales. An amount up to five percent (5%) of a Party Lottery's sales, including any specific statutorily mandated tax of a Party Lottery to be included in the price of a lottery play, shall be added to a Party Lottery's Mega Millions Prize Pool contribution and placed in trust in one or more prize pool and prize reserve accounts held by the Product Group at any time that the Party Lottery's share of the PRA is below the amounts designated by the Product Group.

(E) The Product Group may determine to expend all or a portion of the funds in the prize pools (except the JPP) and the prize reserve accounts:

(i) for the purpose of indemnifying the Party Lotteries in the payment of prizes to be made by the Selling Lotteries; and

(ii) for the payment of prizes or special prizes in the game, limited to prize pool and prize reserve contributions from lotteries participating in the special prize promotion, subject to the approval of the Board's Finance Committee or that Committee's failure to object after given two weeks' notice of the planned action, which actions may be appealed to the full Board by the Product Group.

(F) The prize reserve shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and sales percentage shares of the Party Lotteries.

(G) A Party Lottery may contribute to its sales percentage share of prize reserve accounts over time, but in the event of a draw down from a reserve account, a Party Lottery is responsible for payment of its full sales percentage share of the prize reserve account.

(H) Any amount remaining in the Mega Millions prize pool accounts or prize reserve accounts when the Product Group declares the end of the game shall be returned to the lotteries participating in the prize pool and prize reserve accounts after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game, or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

(2) Expected Prize Payout. The Jackpot Prize payout shall be determined on a pari-mutuel basis. Except as otherwise provided in this section, all other prizes awarded shall be paid as single payment prizes. All prize payouts are made with the prize payout percentages set out in Figure 16 TAC 401.315(e), which does not include an additional amount held in prize reserves, although the prize payout percentages per draw may vary.

(A) The Jackpot Prize amount shall be divided equally by the number of MM Plays winning the Jackpot Prize.

(B) The SPP (for payment of single payment prizes of one million dollars (\$1,000,000.00) or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

(3) Pari-mutuel Prize Determinations. Except as otherwise provided for in subparagraph (C) of this paragraph below:

(A) If the total of the Mega Millions Set Prizes (as multiplied by the respective Multiplier) awarded in a drawing exceeds the percentage of the prize pool allocated to the Mega Millions Set Prizes, then the amount needed to fund the Mega Millions Set Prizes awarded shall be drawn from the following sources, in the following order:

(i) the amount available in the SPP, if any;

(ii) an amount from the PRA, if available, not to exceed forty million dollars (\$40,000,000.00) per drawing.

(B) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes, then the highest Set Prize shall become a pari-mutuel prize. If the amount of the highest Set Prize when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize shall become a pari-mutuel prize. This procedure shall continue down through all Set Prize levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this section shall be divided among the winning MM Plays in proportion to their respective prize percentages. Mega Millions prizes will be reduced by the same percentage.

(C) By agreement with the Mega Millions Lotteries, the Mega Millions Lotteries shall independently calculate their set pari-mutuel prize amounts. The Party Lotteries and the Mega Millions Lotteries shall then agree to set the pari-mutuel prize amount for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(4) Except as may be required by subsection (g)(1) of this section, the official advertised Jackpot Prize annuity amount is subject to change based on sales forecasts and/or actual sales.

(5) Subject to the laws and rules governing each Party Lottery, the number of prize categories and the allocation of the prize fund among the prize categories may be changed at the discretion of the Mega Millions Lotteries, for promotional purposes. Such change shall be announced by Mega Millions Lotteries.

(e) Prize Structure. The matrix of 5/70 and 1/24 with an anticipated prize payout is shown below and applies to all Product Group members with respect to the Jackpot Prize, and will apply for all Product Group members for the second through ninth level prizes. The following table sets forth the odds of winning and the probable distribution of winning Plays in and among each prize category for MM Plays, based upon the total number of possible combinations in Mega Millions. All prize payouts are made with the following expected prize payout percentages, which does not include any additional amount contributed to or held in prize reserves, although the prize payout percentages per draw may vary:

Figure: 16 TAC §401.315(e)

(f) Multiplier Frequency and Odds. The Multiplier shall apply to all prize levels except the Jackpot Prize. The Multiplier increases non-Jackpot Prizes by two times, three times, four times, five times, or ten times the prize won. The Multiplier shall print directly on the Ticket for each Play. Multipliers may repeat on a printed Ticket due to the frequency and limited Multiplier levels as shown below. The Multiplier frequency and odds are as follows:

Figure 16 TAC §401.315(f)

(g) Mega Millions Prize Payment.

(1) Mega Millions Jackpot Prize. The prize money allocated from the current Mega Millions prize pool for the Jackpot Prize, will be divided equally among all Jackpot Prize winning MM Plays in all Participating Lotteries. The Annuity Jackpot Prize amount will be paid in thirty (30) graduated annual installments. Jackpot Prizes won shall be funded by the Selling Lotteries in accordance with the formula set by the Mega Millions Lotteries. The Mega Millions Lotteries may set a minimum guaranteed annuitized Jackpot Prize amount that shall be advertised by the Selling Lotteries as the starting guaranteed annuitized Jackpot Prize amount. At the time of Ticket purchase, a player must select a payment option of either a single cash value payment or annuitized payments of a share of the Jackpot Prize if the Play is a winning Play. A player's selection of the payment option at the time of purchase from the commission is final and cannot be revoked, withdrawn, or otherwise changed. If no selection is made, payment option will be as described in the chart below:

Figure: 16 TAC §401.315(g)(1)

(2) Mega Millions Prize Rollover. If in any Mega Millions Drawing there are no MM Plays that qualify for the Jackpot Prize category, the portion of the prize fund allocated to such Jackpot Prize category shall remain in the Jackpot Prize category and be added to the amount allocated for the Jackpot Prize category in the next consecutive Mega Millions Drawing.

(3) A player(s) who elects a cash value option payment shall be paid his/her share(s) in a single cash payment upon completion of validation procedures determined by the commission. The cash value option amount shall be determined by the Mega Millions Lotteries.

(4) All annuitized prizes shall be paid annually in thirty (30) consecutive graduated annual installments by the commission upon completion of validation procedures determined by the commission, with graduated annual installments as defined by the Mega Millions Lotteries in the Mega Millions Finance and Operations Procedures. The initial payment shall be paid upon completion of the validation procedures. The subsequent twenty-nine (29) payments shall be paid annually to coincide with the month of the federal auction date at which the bonds were purchased to fund the annuity. All such payments shall be made within seven (7) days of the anniversary of the annual auction date. The annuitized option prize shall be determined by multiplying the winning Play's share of the Jackpot Prize Pool by the annuity factor established in accordance with Texas law and the rules of the Texas Comptroller of Public Accounts.

(5) If individual shares of the Jackpot Prize Pool funds held to fund an annuity is less than \$250,000.00, the Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Jackpot Prize Pool.

(6) Funds for the initial payment of an annuitized prize or the lump sum cash value option payment shall be made available by MUSL for payment by the Party Lottery on a schedule approved by the Product Group. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full cash value option payment amount may be delayed pending receipt of funds from the Party Lotteries or other lotteries participating in the Mega Millions game. A Party Lottery may elect to make the initial payment from its own funds after validation, with notice to MUSL.

(7) Payment of Prize Payments upon the Death of a Prize Winner. In the event of the death of a prize winner, payments may

be made in accordance with §401.310 of this subchapter (relating to Payment of Prize Payments Upon Death of Prize Winner), otherwise, payment of prize payments will be made to the estate of a deceased prize winner in accordance with Texas Government Code §466.406.

(8) Prize Payments. All prizes shall be paid through the Selling Lottery that sold the winning Play(s). All low-tier cash prizes (all prizes except the Jackpot Prize) shall be paid in cash or warrants in accordance with Texas statutes and these rules. A Selling Lottery may begin paying low-tier cash prizes after receiving authorization to pay from the MUSL central office.

(9) Prizes Rounded. Annuitized payments of the Jackpot Prize or a share of the Jackpot Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Jackpot Prize win shall be added to the first payment to the winner or winners. Prizes other than the Jackpot Prize, which, under this section, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing.

(10) Limited to Highest Prize Won. The holder of a winning MM Play may win only one (1) prize per Play in connection with the Winning Numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category. All liabilities for a Mega Millions prize are discharged upon payment of a prize claim.

(11) Claim Period. Prizes must be claimed no later than 180 days after the draw date, or in accordance with Texas Government Code §466.408(e).

(h) Ticket Validation.

(1) To be a valid Play and eligible to receive a prize, a Play's Ticket shall satisfy all the requirements established by the commission for validation of winning Plays sold through the Lottery Gaming System, as well as any other validation requirements adopted by the Product Group, the MUSL Board and published as the Confidential MUSL Minimum Game Security Standards. The MUSL and the Party Lotteries shall not be responsible for Plays or Tickets that are altered in any manner.

(2) Under no circumstances will a claim for any prize be paid without an official Mega Millions Ticket issued as authorized by the commission and matching all game Play, serial number and other validation data residing in the commission's Lottery Gaming System and such Ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming such prize.

(3) In addition to the above, in order to be deemed a valid, winning Mega Millions Play, all of the following conditions must be met:

(A) The validation data must be present in its entirety and must correspond, using the computer validation file, to the number selections printed on the Ticket for the applicable drawing date(s);

(B) The Ticket must be intact;

(C) The Ticket must not be mutilated, altered, reconstituted, or tampered with in any manner;

(D) The Ticket must not be counterfeit or an exact duplicate of another winning Ticket;

(E) The Ticket must have been issued by an authorized Sales Agent on official Texas Lottery paper stock or, for third-party point-of-sale systems approved by the commission, printed on paper

stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game;

(F) The Ticket must not have been stolen, to the knowledge of the commission;

(G) The Ticket must be submitted for payment in accordance with the prize claim procedures of the commission as set out in §401.304 of this subchapter and any internal procedures used by the commission;

(H) The Play data on the Ticket must have been recorded on the Lottery Gaming System prior to the Drawing and the Play data must match this computer record in every respect. In the event of a contradiction between information as printed on the Ticket and as accepted by the commission's Lottery Gaming System, the wager accepted by the commission's Lottery Gaming System shall be the valid wager;

(I) The player or Quick Pick number selections, validation data and the drawing date(s) of an apparent winning Play must appear in the official file of winning Plays, and a Play with that exact data must not have been previously paid;

(J) The Play must not be misregistered, and the Play's Ticket must not be defectively printed or printed or produced in error to an extent that it cannot be processed by the commission;

(K) The Ticket must pass confidential validation tests in accordance with the MUSL MM Rules. In addition, the Ticket must pass all other confidential security checks of the commission;

(L) In submitting a Ticket for validation, the claimant agrees to abide by applicable laws, all rules and regulations, instructions, conditions and final decisions of the executive director of the commission;

(M) There must not be any other breach of the MUSL MM Rules, or this subchapter, in relation to the Play, which, in the sole and final opinion of the executive director of the commission, justifies invalidation; and

(N) The Ticket must be submitted to the commission, or the Selling Lottery that issued it.

(4) A Play submitted for validation that fails any of the preceding validation conditions shall be considered void, subject to the following determinations:

(A) In all cases of doubt, the determination of the commission shall be final and binding; however, the commission may, at its option, replace an invalid Play with a Mega Millions Play of equivalent sales price;

(B) In the event a defective Ticket is purchased or in the event the commission determines to adjust an error, the claimant's sole and exclusive remedy shall be the replacement of such defective or erroneous Ticket(s) with a Mega Millions Play of equivalent sales price; and

(C) In the event a Mega Millions Play is not paid by the commission and a dispute occurs as to whether the Play is a winning Play, the commission may, at its option, replace the Play as provided in subparagraph (A) of this paragraph. This shall be the sole and exclusive remedy of the claimant.

(i) Ticket Responsibility.

(1) Prize Claims. Prize claim procedures shall be governed by the rules of the commission. The MUSL and the Selling Lotteries shall not be responsible for prizes that are not claimed following the proper procedures as determined by the commission.

(2) Stolen Plays. The Product Group, the MUSL, the Party Lotteries and the commission shall not be responsible for lost or stolen Plays.

(3) The Party Lotteries shall not be responsible to a prize claimant for Mega Millions Plays redeemed in error by a Texas Lottery Sales Agent.

(4) Winning Plays are determined by the numbers drawn and certified by the independent auditor responsible for auditing the Mega Millions draw. MUSL, the Party Lotteries and the commission are not responsible for Mega Millions winning numbers reported in error.

(j) Ineligible Players.

(1) A Play, or share of a Play, for a MUSL game issued by the MUSL or any of its Party Lotteries shall not be purchased by, and a prize won by any such Play, or share of a Play, shall not be paid to:

(A) a MUSL employee, officer, or director;

(B) a contractor or consultant under agreement with the MUSL to review the MUSL audit and security procedures;

(C) an employee of an independent accounting firm under contract with MUSL to observe drawings or site operations and actually assigned to the MUSL account and all partners, shareholders, or owners in the local office of the firm; or

(D) an immediate family member (parent, stepparent, child, stepchild, spouse, or sibling) of an individual described in subsections (a), (b), and (c) of this section and residing in the same household.

(2) Those persons designated by the State Lottery Act, Texas Government Code, Chapter 466, as ineligible to play its games shall also be ineligible to play any MUSL lottery game sold in the state of Texas.

(3) A Play, or share of a Play, of the Mega Millions game may not be purchased in any lottery jurisdiction by any Party Lottery board member; commissioner; officer; employee; or spouse, child brother, sister or parent residing as a member of the same household in the principal place of residence of any such person. Prizes shall not be paid to any persons prohibited from playing Mega Millions in a particular jurisdiction by rules, governing law, or any contract executed by the Selling Lottery.

(k) Applicable Law.

(1) In purchasing a Play, or attempting to claim a prize, purchasers and prize claimants agree to comply with and abide by all applicable laws, rules, regulations, procedures, and decisions of the commission and by directives and determinations of the commission's executive director. Additionally, the player shall be bound to all applicable provisions in the MUSL MM Rules and the Mega Millions Finance and Operations Procedures as established by the Mega Millions Lotteries.

(2) A prize claimant agrees, as its sole and exclusive remedy, that claims arising out of a Play can only be pursued against the Party Lottery which issued the Play. Litigation, if any, shall only be maintained within the jurisdiction in which the Play was purchased and only against the Party Lottery that issued the Play. No claim shall be made against any other Party Lottery or against the MUSL.

(3) Nothing in this section or the MUSL MM Rules shall be construed as a waiver of any defense or claim the commission, which issued the Play, any other Party Lottery, or MUSL may have in any litigation, including in the event a player or prize claimant pursues lit-

igation against a Party Lottery or MUSL, or their respective officers, directors or employees.

(4) All decisions made by the commission, including the declaration of prizes and the payment thereof and the interpretation of MUSL MM Rules, shall be final and binding on all Play purchasers and on every person making a prize claim in respect thereof, but only in the jurisdiction where the Play was issued.

(5) Unless the laws, rules, regulations, procedures, and decisions of the commission, which issued the Play, provide otherwise, no prize shall be paid upon a Play purchased, claimed or sold in violation of this section, the MUSL MM Rules, or the laws, rules, regulations, procedures, and decisions of the commission; any such prize claimed but unpaid shall constitute an unclaimed prize under this section and the laws, rules, regulations, procedures, and decisions of the commission.

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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Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5324



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER F. PHARMACEUTICAL BENEFITS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes the following changes to 28 TAC Chapter 134, Subchapter F, concerning pharmaceutical benefits: repeal 28 TAC §134.506 and §134.510, and amend 28 TAC §§134.500 - 134.504, 134.520, 134.530, 134.540, and 134.550. Subchapter F implements Texas Labor Code §§408.028 and 413.011, and Texas Insurance Code Chapter 1305. The DWC medical advisor recommends the amendments to the commissioner of workers' compensation under Labor Code §413.0511(b).

EXPLANATION. The changes update and reorganize Subchapter F. Repealing §134.506 and §134.510, and amending §§134.500 - 134.504, 134.520, 134.530, 134.540, and 134.550 is necessary to remove obsolete provisions and to update references and language to be consistent with other rules. Labor Code §408.028 requires the commissioner by rule to adopt a closed formulary under §413.011, as well as a fee schedule, and provides requirements for prescribing prescription drugs,

generic pharmaceutical medications, and over-the-counter alternatives. Insurance Code Chapter 1305 authorizes the establishment of workers' compensation health care networks for providing workers' compensation medical benefits and provides standards for the certification, administration, evaluation, and enforcement of their delivery of health care services to injured employees. The proposed changes also include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

Section 134.500. The proposed changes delete the definition of "open formulary." The Texas workers' compensation system now uses a closed formulary, so the reference to an open formulary is unnecessary. The proposed changes correct a reference to the injured employee's Social Security number to specify only the last four digits of the number. The proposed changes also renumber the paragraphs where needed and make editorial and formatting updates for plain language and agency style. Amending §134.500 is necessary to enhance the rule's clarity and accuracy.

Section 134.501. The proposed changes correct obsolete references and make editorial and formatting updates for plain language and agency style. Amending §134.501 is necessary to enhance the rule's clarity and accuracy.

Section 134.502. The proposed changes make editorial and formatting updates for plain language and agency style. Amending §134.502 is necessary to enhance the rule's clarity.

Section 134.503. The proposed changes make editorial and formatting updates for plain language and agency style. Amending §134.503 is necessary to enhance the rule's clarity.

Section 134.504. The proposed changes correct a reference to the claimant's Social Security number to specify only the last four digits of the number. The proposed changes also correct obsolete references and make editorial and formatting updates for plain language and agency style. Amending §134.504 is necessary to enhance the rule's clarity and accuracy.

Section 134.506. Section 134.506 is repealed because it is an obsolete transitional provision. Repealing §134.506 is necessary to ensure that the published rules are current.

Section 134.510. Section 134.510 is repealed because it is an obsolete transitional provision. Repealing §134.510 is necessary to ensure that the published rules are current.

Section 134.520. The proposed changes update the section title to remove an unnecessary reference to the 2011 transition to a closed formulary, add the sentence, "The closed formulary applies to all drugs that are prescribed and dispensed for outpatient use," to be consistent with §134.530 and §134.540, and make editorial and formatting updates for plain language and agency style. Amending §134.520 is necessary to enhance the rule's clarity and accuracy.

Section 134.530. The proposed changes remove unnecessary references, correct obsolete references, and make editorial and formatting updates for plain language and agency style. Amending §134.530 is necessary to enhance the rule's clarity and accuracy.

Section 134.540. The proposed changes remove unnecessary references, correct obsolete references, and make editorial and formatting updates for plain language and agency style. Amending §134.540 is necessary to enhance the rule's clarity and accuracy.

Section 134.550. The proposed changes correct obsolete references, update DWC's website address, clarify text, and make editorial and formatting updates for plain language and agency style. Amending §134.550 is necessary to enhance the rule's clarity and accuracy.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health and Safety Mary Landrum has determined that during each year of the first five years the proposed changes are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed changes do not add to or decrease state revenues or expenditures, and because local and state government entities are only involved in enforcing or complying with the proposed changes when acting in the capacity of a workers' compensation insurance carrier. Those entities will be impacted in the same way as an insurance carrier and will realize the same benefits from the proposed changes.

Deputy Commissioner Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed changes are in effect, Deputy Commissioner Landrum expects that enforcing and administering the proposed changes will have the public benefits of ensuring that DWC's rules are clear, organized, current, and accurate, as well as ensuring that they conform to Labor Code §§408.028 and 413.011, and Insurance Code Chapter 1305, which promotes transparent and efficient regulation.

Deputy Commissioner Landrum expects that the proposed changes will not increase the cost to comply with Labor Code §§408.028 and 413.011, or with Insurance Code Chapter 1305, because they do not impose requirements beyond those in the statutes or create obligations beyond those in the current rules. Labor Code §408.028 requires the commissioner by rule to adopt a closed formulary under §413.011, as well as a fee schedule, and provides requirements for prescribing prescription drugs, generic pharmaceutical medications, and over-the-counter alternatives. Insurance Code Chapter 1305 authorizes the establishment of workers' compensation health care networks for providing workers' compensation medical benefits and provides standards for the certification, administration, evaluation, and enforcement of their delivery of health care services to injured employees. As a result, any cost associated with implementing the changes does not result from the enforcement or administration of the proposed changes.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed changes will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed changes remove obsolete provisions; update references; and revise the text for consistency, plain language, and agency style only. They do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no

additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed rule enhances efficiency and clarity; conforms the language to current agency structure, practice, and related rules; repeals obsolete provisions; and makes editorial changes for plain language and agency style. The proposed changes do not change the people the rule affects or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on September 23, 2024. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for a public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

28 TAC §§134.500 - 134.504, 134.520, 134.530, 134.540, 134.550

STATUTORY AUTHORITY. DWC proposes amendments to §§134.500 - 134.504, 134.520, 134.530, 134.540, and 134.550 under Labor Code §§408.028, 408.0281, 413.011, 413.0141, 413.0511, 402.00111, 402.00116, and 402.061, and Insurance Code Chapter 1305, including §§1305.003, 1305.101, and 1305.153.

Labor Code §408.028 governs pharmaceutical services. It requires the commissioner by rule to adopt a closed formulary under §413.011, and provides requirements for prescribing pre-

scription drugs, generic pharmaceutical medications, and over-the-counter alternatives. It requires the commissioner by rule to allow an employee to buy over-the-counter alternatives to prescribed or ordered medications, and to get reimbursement from the insurance carrier for those medications. It also requires the commissioner by rule to allow an employee to buy a brand-name drug instead of a generic pharmaceutical medication or over-the-counter alternative to a prescription medication if a health care provider prescribes a generic pharmaceutical medication or an over-the-counter alternative to a prescription medication. Section 408.028(f) requires the commissioner by rule to adopt a fee schedule for pharmacy and pharmaceutical services that will: (1) provide reimbursement rates that are fair and reasonable; (2) assure adequate access to medications and services for injured workers; (3) minimize costs to employees and insurance carriers; and (4) take into consideration the increased security of payment that Labor Code Title 5, Subtitle A, affords.

Labor Code §408.0281 provides requirements for the reimbursement of pharmaceutical services.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. To achieve standardization, it requires the commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting. It also requires the commissioner to develop one or more conversion factors or other payment adjustment factors, taking into account economic indicators and the requirements of §413.011(d), which requires that fee guidelines be fair and reasonable, and designed to ensure the quality of medical care and to achieve effective medical cost control. It requires the commissioner to consider the increased security of payment that Labor Code, Title 5, Subtitle A, provides in establishing the fee guidelines.

Labor Code §413.0141 allows the commissioner by rule to require an insurance carrier to pay for specified pharmaceutical services sufficient for the first seven days following the date of injury if the health care provider requests and receives verification of insurance coverage and a verbal confirmation of an injury from the employer or from the insurance carrier as provided by §413.014. The rules must provide that an insurance carrier is eligible for reimbursement for pharmaceuticals paid under §413.0141 from the subsequent injury fund if the injury is determined not to be compensable.

Labor Code §413.0511 requires DWC to employ or contract with a medical advisor. The medical advisor must be a doctor, as defined in §401.011. The medical advisor's duties include making recommendations about the adoption of rules and policies to: develop, maintain, and review guidelines as provided by §413.011, including rules about impairment ratings; reviewing compliance with those guidelines; regulating or performing other acts related to medical benefits as required by the commissioner; and determining minimal modifications to the reimbursement methodology and model used by the Medicare system as needed to meet occupational injury requirements.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Insurance Code Chapter 1305 authorizes the establishment of workers' compensation health care networks for providing workers' compensation medical benefits and provides standards for the certification, administration, evaluation, and enforcement of their delivery of health care services to injured employees.

Insurance Code §1305.003(b) provides that Chapter 1305 controls if there is a conflict between Title 5, Labor Code, and Chapter 1305 as to the provision of medical benefits for injured employees, the establishment and regulation of fees for medical treatments and services, the time frames for payment of medical bills, the operation and regulation of workers' compensation health care networks, the regulation of health care providers who contract with those networks, or the resolution of disputes regarding medical benefits provided through those networks.

Insurance Code §1305.101(c) requires in part that prescription medication and services be reimbursed as provided by Labor Code §408.0281, other provisions of Title 5, Labor Code, and applicable rules of the commissioner of workers' compensation.

Insurance Code §1305.153 governs provider reimbursement. Subsection (a) states that the amount of reimbursement for services provided by a network provider is determined by the contract between the network and the provider or group of providers. Subsection (c) requires that out-of-network providers who provide care as described by §1305.006 be reimbursed as provided by Title 5, Labor Code, and applicable rules of the commissioner of workers' compensation. Subsection (d) subjects billing by, and reimbursement to, contracted and out-of-network providers to Title 5, Labor Code, and applicable rules of the commissioner of workers' compensation, as consistent with Chapter 1305. But applying those rules may not negate reimbursement amounts negotiated by the network.

CROSS-REFERENCE TO STATUTE. Subchapter F implements Labor Code §§408.028 and 413.011. Section 408.028, formerly V.A.C.S. Art 8308-4.69, was recodified as §408.028 by House Bill 752, 73rd Legislature, Regular Session (1993), and last amended in 2011. Section 413.011 was enacted by House Bill 2600, 77th Legislature, Regular Session (2001), and last amended in 2007.

§134.500. Definitions.

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

(1) **Brand-name** [**Brand name**] drug--A drug marketed under a proprietary, trademark-protected name.

(2) **Certified workers' compensation health care network** (certified network)--An organization that is certified under [in accordance with] Insurance Code Chapter 1305 and department rules.

(3) **Closed formulary**--All available Food and Drug Administration (FDA) approved prescription and nonprescription drugs prescribed and dispensed for outpatient use, but excludes:

(A) drugs identified with a status of "N" in the current edition of the *Official Disability Guidelines Treatment in Workers'*

Comp (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates;

(B) any prescription drug created through compounding prescribed before July 1, 2018, that contains a drug identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary*, and any updates;

(C) any prescription drug created through compounding prescribed and dispensed on or after July 1, 2018; and

(D) any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

(4) Compounding--As defined under Occupations Code §551.003(9), the preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of a prescription drug order based on a routine, regularly observed prescribing pattern; or

(D) for or as an incident to research, teaching, or chemical analysis and not for selling or dispensing, except as allowed under Occupations Code §562.154 or Occupations Code Chapter 563.

(5) Generic--See generically equivalent in definition of paragraph (6) of this section.

(6) Generically equivalent--As defined under Occupations Code §562.001, a drug that, when compared to the prescribed drug, is:

(A) pharmaceutically equivalent--Drug products that have identical amounts of the same active chemical ingredients in the same dosage form and that meet the identical compendia or other applicable standards of strength, quality, and purity according to the United States Pharmacopoeia or another nationally recognized compendium; and

(B) therapeutically equivalent--Pharmaceutically equivalent drug products that, if administered in the same amounts, will provide the same therapeutic effect, identical in duration and intensity.

(7) Medical emergency--The sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain that, in the absence of immediate medical attention, could reasonably be expected to result in:

(A) placing the patient's health or bodily functions in serious jeopardy; or

(B) serious dysfunction of any body organ or part.

(8) Nonprescription drug or over-the-counter medication--A non-narcotic drug that may be sold without a prescription and that is labeled and packaged in compliance with state or federal law.

~~[(9) Open formulary--Includes all available Food and Drug Administration (FDA) approved prescription and nonprescription drugs prescribed and dispensed for outpatient use, but does not include drugs that lack FDA approval, or non-drug items.]~~

~~(9) [(10)] Prescribing doctor--A physician or dentist who prescribes prescription drugs or over-the-counter [over the counter] medications in accordance with the physician's or dentist's license and state and federal laws and rules. For purposes of this chapter, prescribing doctor includes an advanced practice nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders, under Occupations Code Chapter 157, who prescribes prescription drugs or over-the-counter [over the counter] medication under the physician's supervision and in accordance with the health care practitioner's license and state and federal laws and rules.~~

~~(10) [(11)] Prescription--An order for a prescription or non-prescription drug to be dispensed.~~

~~(11) [(12)] Prescription drug--~~

~~(A) A substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;~~

~~(B) A drug that under federal law is required, before being dispensed or delivered, to be labeled with the statement: "Caution: federal law prohibits dispensing without prescription;" "Rx only;" or another legend that complies with federal law; or~~

~~(C) A drug that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a prescribing doctor only.~~

~~(12) [(13)] Statement of medical necessity--A written statement from the prescribing doctor to establish the need for treatments or services, or prescriptions, including the need for a brand-name [brand name] drug where applicable. A statement of medical necessity must [shall] include:~~

~~(A) the injured employee's full name;~~

~~(B) the date of injury;~~

~~(C) the last four digits of the injured employee's Social Security [social security] number;~~

~~(D) the diagnosis code or codes [code(s)];~~

~~(E) whether the drug has previously been prescribed and dispensed, if known, and whether the inability to obtain the drug poses an unreasonable risk of a medical emergency; and~~

~~(F) how the prescription treats the diagnosis, promotes recovery, or enhances the ability of the injured employee to return to or retain employment.~~

~~(13) [(14)] Substitution--As defined under Occupations Code §551.003(41), the dispensing of a drug or a brand of drug other than the drug or brand of drug ordered or prescribed.~~

§134.501. Initial Pharmaceutical Coverage.

(a) For injuries that [which] occur on or after December 1, 2002, the insurance carrier must [(carrier) shall] pay for specified pharmaceutical services sufficient for the first seven days following the date of injury, regardless of issues of liability for or compensability of the injury that the insurance carrier may have, if, before [prior to] providing the pharmaceutical services, the health care provider [(HCP)] obtains both a verification of insurance coverage~~[,]~~ and an oral or written confirmation that an injury has been reported.

(1) For purposes of this rule, specified pharmaceutical services are prescription drugs and over-the-counter medications prescribed by a doctor that cure or relieve the effects naturally resulting from the compensable injury, promote recovery, or enhance the ability of the injured employee to return to or retain employment.

(2) [(4)] In determining the first seven days following the injury, the date of the injury is not counted. The first day after the date of injury is [shall be counted as] "day one." The last day of the seven-day period is [shall be known as] "day seven."

(3) [(2)] If the pharmaceutical services are provided after day one, the insurance carrier's reimbursement under this section is limited to the date the pharmaceutical services were actually provided through day seven. (Example: The pharmaceutical services were provided on day four. The insurance carrier's liability for payment under this section would be for pharmaceutical services in an amount prescribed that would be the quantity sufficient for days four, five, six, and seven.)

(4) [(3)] Payment for the specified pharmaceutical services for the first seven days following the date of injury must comply with [shall be in accordance with] §134.503 of this title (Pharmacy Fee Guideline [relating to Reimbursement Methodology]). The insurance carrier must not deny, prorate, or reduce the dispensing fee for the initial prescription [shall not be denied, prorated, or reduced] even if the health care provider [HCP] provided pharmaceutical services beyond the first seven days following the date of injury, and the insurance carrier disputes or denies the pharmaceutical services beyond the first seven days following the date of injury.

(b) The insurance carrier may be eligible for reimbursement from the subsequent injury fund (SIF) for payments made under subsection (a) as provided in Chapter 116 of this title.

(c) The health care provider [HCP] can verify insurance coverage and confirm the existence of a report of an injury by calling the employer or the insurance carrier. On [Upon] request, the employer or [and/or] the insurance carrier must [shall] verify coverage and confirm any report of an injury. For verifying insurance coverage, the health care provider [HCP] can also review the division's [commission's] internet-based coverage verification system.

(1) The health care provider must [HCP shall] document verifications and confirmations not obtained in writing by indicating how the verification or confirmation was obtained (date obtained, from whom, etc.).

(2) The health care provider must [HCP shall] affirm on the bill for the pharmaceutical services, in the form and manner prescribed by the division [commission], that the health care provider [HCP] verified that there is insurance coverage and confirmed that an injury has been reported.

(d) Notwithstanding any other provision of this section, the health care provider [HCP] may dispense prescription or nonprescription medications in the amount ordered by the prescribing doctor under [in accordance with] applicable state and federal law (not to exceed the limits imposed by §134.502 of this title ([relating to] Pharmaceutical Services)).

(e) The health care provider [HCP] and insurance carrier may voluntarily discuss approval of pharmaceutical services beyond the seven days following the date of injury as provided in Texas Labor Code §413.014(e) and §134.600 of this title ([relating to] Preauthorization, Concurrent Utilization Review, and Voluntary Certification of Health Care).

(f) Communication is important to ensure prompt delivery of pharmaceutical services.

(1) Injured employees [(employees)] are encouraged to immediately report their injury to their employer.

(2) Injured employees [Employees] are encouraged to ask for, and employers to provide, a written statement that confirms an in-

jury was reported to the employer and identifies the date of injury (as reported by the injured employee) and the employer's insurance carrier. Verifying that there is insurance coverage or [and/or] confirming that an injury was reported does not waive the employer's right to contest compensability under Texas Labor Code §409.011 should the insurance carrier accept liability for the payment of benefits.

(3) The insurance carrier's verification of coverage or [and/or] confirmation of a reported injury does not waive the insurance carrier's right to further review the claim under Texas Labor Code §409.021 and §124.3 of this title ([relating to] Investigation of an Injury and Notice of Denial or Dispute [Denial/Dispute]).

§134.502. *Pharmaceutical Services.*

(a) A doctor providing care to an injured employee must [shall] prescribe for the employee medically necessary prescription drugs and over-the-counter medication [(OTC)] alternatives as clinically appropriate and applicable in accordance with applicable state law and as provided by this section.

(1) The doctor must indicate [It shall be indicated] on the prescription that the prescription is related to a workers' compensation claim.

(2) When prescribing an over-the-counter [(OTC)] medication alternative to a prescription drug, the doctor must [shall] indicate on the prescription the appropriate strength of the medication and the approximate quantity of the over-the-counter [(OTC)] medication that is reasonably required by the nature of the compensable injury.

(3) The doctor must [shall] prescribe generic prescription drugs when available and clinically appropriate. If in the medical judgment of the prescribing doctor a brand-name drug is necessary, the doctor must specify on the prescription that brand-name drugs be dispensed in accordance with applicable state and federal law, and must maintain documentation justifying the use of the brand-name drug, in the patient's medical record.

(4) The doctor must [shall] prescribe over-the-counter [(OTC)] medications instead [in lieu] of a prescription drug when clinically appropriate.

(b) When prescribing, the doctor must [shall] prescribe in accordance with §134.530 and §134.540 of this title ([relating to Requirements for Use of the] Closed Formulary for Claims Not Subject to Certified Networks and [Requirements for Use of the] Closed Formulary for Claims Subject to Certified Networks, respectively).

(c) The pharmacist must [shall] dispense no more than a 90-day supply of a prescription drug.

(d) Pharmacies and pharmacy processing agents must [shall] submit bills for pharmacy services in accordance with Chapter 133 ([relating to] General Medical Provisions) and Chapter 134 ([relating to] Benefits--Guidelines for Medical Services, Charges, and Payments).

(1) Health care providers must [shall] bill using national drug codes (NDC) when billing for prescription drugs.

(2) Compound drugs must [shall] be billed by listing each drug included in the compound and calculating the charge for each drug separately.

(3) A pharmacy may contract with a separate person or entity to process bills and payments for a medical service. However, [; however,] these entities are subject to the direction of the pharmacy, and the pharmacy is responsible for the acts and omissions of the person or entity.

(4) Except as allowed by Labor Code §413.042, the injured employee must ~~[shall]~~ not be billed for pharmacy services.

(e) The insurance carrier, injured employee, or pharmacist may request a statement of medical necessity from the prescribing doctor.

(1) If an insurance carrier requests a statement of medical necessity, the insurance carrier must ~~[shall]~~ provide the sender of the bill a copy of the request at the time the request is made.

(2) An insurance carrier must ~~[shall]~~ not request a statement of medical necessity unless in the absence of such a statement the insurance carrier could reasonably support a denial based on ~~[upon]~~ extent of, or relatedness to, the compensable injury_; or based on ~~[upon]~~ an adverse determination.

(f) The prescribing doctor must ~~[shall]~~ provide a statement of medical necessity to the requesting party no later than the 14th day after receiving the ~~[receipt of]~~ request. The prescribing doctor must ~~[shall]~~ not bill for, and ~~[nor shall]~~ the insurance carrier must not reimburse for, the statement of medical necessity.

(g) In addition to the requirements of §133.240 of this title (~~[relating to]~~ Medical Payments and Denials) regarding explanation of benefits (EOB), at the time an insurance carrier denies payment for medications for any reason related to compensability of, liability for, extent of, or relatedness to the compensable injury, or for reasons related to an adverse determination, the insurance carrier must ~~[shall]~~ also send the EOB to the injured employee_; and the prescribing doctor.

§134.503. Pharmacy Fee Guideline.

(a) Applicability of this section is as follows:

(1) This section applies to the reimbursement of prescription drugs and nonprescription drugs or over-the-counter medications as those terms are defined in §134.500 of this title (~~[relating to]~~ Definitions) for outpatient use in the Texas workers' compensation system, which includes claims:

(A) subject to a certified workers' compensation health care network as defined in §134.500 of this title;

(B) not subject to a certified workers' compensation health care network; and

(C) subject to Labor Code §504.053(b)(2).

(2) This section does not apply to parenteral drugs.

(b) For coding, billing, reporting, and reimbursement of prescription drugs and nonprescription drugs or over-the-counter medications, Texas workers' compensation system participants must comply with ~~[shall apply the provisions of]~~ Chapters 133 and 134 of this title (~~[relating to]~~ General Medical Provisions and Benefits--Guidelines for Medical Services, Charges, and Payments, respectively).

(c) The insurance carrier must ~~[shall]~~ reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:

(1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:

(A) Generic drugs: ((AWP per unit) x (number of units) x 1.25) + \$4.00 dispensing fee per prescription = reimbursement amount;

(B) Brand-name ~~[Brand name]~~ drugs: ((AWP per unit) x (number of units) x 1.09) + \$4.00 dispensing fee per prescription = reimbursement amount;

(C) When compounding, a single compounding fee of \$15 per prescription must ~~[shall]~~ be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or

(2) notwithstanding §133.20(e)(1) of this title (~~[relating to]~~ Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:

(A) health care provider; or

(B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug, and the pharmacy processing agent is billing on behalf of the health care provider.

(d) Reimbursement for nonprescription drugs or over-the-counter medications must ~~[shall]~~ be the retail price of the lowest package quantity reasonably available that will fill the prescription.

(e) Except as provided by subsection (f) of this section, if an amount cannot be determined under ~~[in accordance with]~~ subsections (c)(1) or (d) of this section, reimbursement must ~~[shall]~~ be an amount that is consistent with the criteria listed in Labor Code §408.028(f), including providing for reimbursement rates that are fair and reasonable. The insurance carrier must ~~[shall]~~:

(1) develop one or more ~~[a]~~ reimbursement methodologies ~~[methodology(ies)]~~ for determining reimbursement under this subsection;

(2) maintain in reproducible format documentation of the insurance carrier's methodologies ~~[methodology(ies)]~~ for establishing an amount;

(3) apply the reimbursement methodologies ~~[methodology(ies)]~~ consistently among health care providers in determining reimbursements under this subsection; and

(4) on the division's request ~~[upon request by the division]~~, provide to the division copies of such documentation.

(f) Notwithstanding the provisions of this section, the insurance carrier may reimburse prescription medication or services, as defined by Labor Code §401.011(19)(E), ~~[may be reimbursed]~~ at a contract rate that is inconsistent with the fee guideline as long as the contract complies with the provisions of Labor Code §408.0281 and applicable division rules.

(g) When the prescribing doctor has written a prescription for a generic drug or a prescription that does not require the use of a brand-name ~~[brand name]~~ drug under ~~[in accordance with]~~ §134.502(a)(3) of this title (~~[relating to]~~ Pharmaceutical Services), reimbursement must ~~[shall]~~ be as follows:

(1) the health care provider must ~~[shall]~~ dispense the generic drug as prescribed, and the insurance carrier must reimburse ~~[shall be reimbursed]~~ the fee established for the generic drug, under ~~[in accordance with]~~ subsection (c) or (f) of this section; or

(2) when an injured employee chooses to receive a brand-name ~~[brand name]~~ drug instead of the prescribed generic drug, the health care provider must ~~[shall]~~ dispense the brand-name ~~[brand name]~~ drug as requested and must ~~[shall]~~ be reimbursed:

(A) by the insurance carrier, the fee established for the prescribed generic drug under ~~[in accordance with]~~ subsection (c) or (f) of this section; and

(B) by the injured employee, the cost difference between the fee established for the generic drug in subsection (c) or (f) of this section and the fee established for the brand-name [brand name] drug under [in accordance with] subsection (c) or (f) of this section.

(h) When the prescribing doctor has written a prescription for a brand-name [brand name] drug under [in accordance with] §134.502(a)(3) of this title, reimbursement must [shall] be under [in accordance with] subsection (c) or (f) of this section.

(i) On [Upon] request by the health care provider or the division, the insurance carrier must [shall] disclose the source of the nationally recognized pricing reference used to calculate the reimbursement.

(j) Where any provision of this section is determined by a court of competent jurisdiction to be inconsistent with any statutes of this state, or to be unconstitutional, the remaining provisions of this section [shall] remain in effect.

§134.504. *Pharmaceutical Expenses Incurred by the Injured Employee.*

(a) If [It may become necessary for] an injured employee needs to purchase prescription drugs or over-the-counter alternatives to prescription drugs prescribed or ordered by the treating doctor or referral health care provider, [in such instances] the injured employee may request reimbursement from the insurance carrier as follows:

(1) The injured employee must [shall] submit to the insurance carrier a letter requesting reimbursement along with a receipt indicating the amount paid and documentation concerning the prescription.

(A) The letter should include information to clearly identify the claimant such as the claimant's name, address, date of injury, and last four digits of the claimant's Social Security [social security] number.

(B) Documentation for prescription drugs submitted with the letter from the employee must include the prescribing health care provider's name, the date the prescription was filled, the name of the drug, employee's name, and dollar amount paid by the employee. As examples, this information may be [provided] on an information sheet provided by the pharmacy, or the employee can ask the pharmacist for a printout [print out] of work-related [work related] prescriptions for a particular time period. Cash register receipts alone are not acceptable.

(2) The insurance carrier must pay [shall make appropriate payment to] the injured employee under [in accordance with] §134.503 of this title (Pharmacy Fee Guideline), or notify the injured employee of a reduction or denial of the payment within 45 days of receiving [receipt of] the request for reimbursement from the injured employee.

(A) If the insurance carrier does not reimburse the full amount requested, or denies payment, the insurance carrier must [shall] include a full and complete explanation of the reasons [reason(s)] the insurance carrier reduced or denied the payment and must [shall] inform the injured employee of his or her right to request medical dispute resolution under [in accordance with] §133.305 of this title (MDR--General [relating to Medical Dispute Resolution]).

(B) The statement must [shall] include sufficient claim-specific substantive information to enable the employee to understand the insurance carrier's position or [and/or] action on the claim. A general statement that simply states the insurance carrier's position with a phrase such as, "not entitled to reimbursement" or a similar phrase with no further description of the factual basis does not satisfy the requirements of this section.

(b) An injured employee may choose to receive a brand-name [brand name] drug rather than a generic drug or over-the-counter alter-

native to a prescription medication that is prescribed by a health care provider. In such instances, the injured employee must [shall] pay the difference in cost between the generic drug [drugs] and the brand-name drug [brand name drugs]. The transaction between the employee and the pharmacist is considered final and is not subject to medical dispute resolution by the division. In addition, the employee is not entitled to reimbursement from the insurance carrier for the difference in cost between generic and brand-name [brand name] drugs.

(1) The injured employee must [shall] notify the pharmacist of their choice to pay the cost difference between the generic and brand-name [brand name] drugs. An employee's payment of the cost difference is [constitutes] an acceptance of the responsibility for the cost difference and an agreement not to seek reimbursement from the insurance carrier for the cost difference.

(2) The pharmacist must [shall]:

(A) determine the costs of both the brand-name [brand name] and generic drugs under §134.503 of this title, and notify the injured employee of the cost difference amount;

(B) collect the cost difference amount from the injured employee in a form and manner that is acceptable to both parties;

(C) submit a bill to the insurance carrier for the generic drug that was prescribed by the doctor; and

(D) not bill the injured employee for the cost of the generic drug if the insurance carrier reduces or denies the bill.

(3) The insurance carrier must [shall] review and process the bill from the pharmacist under Chapters [in accordance with] Chapter 133 and 134 ([pertaining to] General Medical Provisions and Benefits--Guidelines for Medical Services, Charges, and Payments [Payment], respectively).

§134.520. *Outpatient Closed Formulary [for Dates of Injury On or After September 1, 2011].*

The commissioner of workers' compensation [Commissioner of Workers' Compensation hereby] adopts a closed formulary as defined in §134.500(3) of this title ([relating to] Definitions) [for claims with dates of injury on or after September 1, 2011]. The closed formulary applies to all drugs that are prescribed and dispensed for outpatient use.

§134.530. *[Requirements for Use of the] Closed Formulary for Claims Not Subject to Certified Networks.*

(a) Applicability. The closed formulary applies to all drugs that are prescribed and dispensed for outpatient use for claims not subject to a certified network [on or after September 1, 2011 when the date of injury occurred on or after September 1, 2011].

(b) Preauthorization for claims subject to the division's [Division's] closed formulary.

(1) Preauthorization is only required for:

(A) drugs identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates;

(B) any prescription drug created through compounding [prescribed before July 1, 2018 that contains a drug identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates;]

[(C)] [any prescription drug created through compounding prescribed and dispensed on or after July 1, 2018]; and

(C) [(D)] any investigational or experimental drug for which there is early, developing scientific or clinical evidence demon-

strating the potential efficacy of the treatment, but ~~that~~ ~~[which]~~ is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

(2) When §134.600(p)(12) of this title (~~[relating to]~~ Preauthorization, Concurrent Utilization Review, and Voluntary Certification of Health Care) conflicts with this section, this section prevails.

(c) Preauthorization of intrathecal drug delivery systems.

(1) An intrathecal drug delivery system requires preauthorization ~~under~~ ~~[in accordance with]~~ §134.600 of this title, and the preauthorization request must include the prescribing doctor's drug ~~regimen~~ ~~[regime]~~ plan of care~~;~~ and the anticipated dosage or range of dosages for the administration of pain medication.

(2) Refills of an intrathecal drug delivery system with drugs excluded from the closed formulary, which are billed using Healthcare Common Procedure Coding System (HCPCS) Level II J codes, and submitted on a CMS-1500 or UB-04 billing form, require preauthorization on an annual basis. Preauthorization for these refills is also required whenever:

(A) the medications, dosage or range of dosages, or the drug ~~regimen~~ ~~[regime]~~ proposed by the prescribing doctor differs from the medications, dosage or range of dosages, or drug ~~regimen~~ ~~[regime]~~ previously preauthorized by that prescribing doctor; or

(B) there is a change in prescribing doctor.

(d) Treatment guidelines. Except as provided by this subsection, the prescribing of drugs must ~~[shall]~~ be in accordance with §137.100 of this title (~~[relating to]~~ Treatment Guidelines), the division's adopted treatment guidelines.

(1) Prescription and nonprescription drugs included in the division's closed formulary and recommended by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization.

(2) Prescription and nonprescription drugs included in the division's closed formulary that exceed or are not addressed by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization.

(3) Drugs included in the closed formulary that are prescribed and dispensed without preauthorization are subject to retrospective review of medical necessity and reasonableness of health care by the insurance carrier ~~under~~ ~~[in accordance with]~~ subsection (g) of this section.

(e) Appeals process for drugs excluded from the closed formulary.

(1) ~~When~~ ~~[For situations in which]~~ the prescribing doctor determines and documents that a drug excluded from the closed formulary is necessary to treat an injured employee's compensable injury and has prescribed the drug, the prescribing doctor, other ~~requester~~ ~~[requestor]~~, or injured employee must request approval of the drug by requesting preauthorization, including reconsideration, ~~under~~ ~~[in accordance with]~~ §134.600 of this title and applicable provisions of Chapter 19 of this title (Licensing and Regulation of Insurance Professionals ~~[relating to Agents' Licensing]~~).

(2) If ~~[preauthorization is being requested by]~~ an injured employee or a ~~requester~~ ~~[requestor]~~ other than the prescribing doctor ~~requests preauthorization~~~~;~~ and ~~[the injured employee or other requester requests]~~ a statement of medical necessity, the prescribing doctor must ~~[shall]~~ provide a statement of medical necessity to facilitate the preauthorization submission ~~under~~ ~~[as set forth in]~~ §134.502 of this title (~~[relating to]~~ Pharmaceutical Services).

(3) If preauthorization for a drug excluded from the closed formulary is denied, the ~~requester~~ ~~[requestor]~~ may submit a request for medical dispute resolution ~~under~~ ~~[in accordance with]~~ §133.308 of this title (~~[relating to]~~ MDR of Medical Necessity Disputes ~~[by Independent Review Organizations]~~).

(4) In the event of an unreasonable risk of a medical emergency, the ~~prescribing doctor or pharmacy~~ can request an interlocutory order ~~under~~ ~~[may be obtained in accordance with]~~ §133.306 of this title (~~[relating to]~~ Interlocutory Orders for Medical Benefits) or §134.550 of this title (~~[relating to]~~ Medical Interlocutory Order).

(f) Initial pharmaceutical coverage.

(1) Drugs included in the closed formulary ~~that~~ ~~[which]~~ are prescribed for initial pharmaceutical coverage ~~under~~~~;~~ ~~[in accordance with]~~ Labor Code §413.0141~~;~~ may be dispensed without preauthorization and are not subject to retrospective review of medical necessity.

(2) Drugs excluded from the closed formulary ~~that~~ ~~[which]~~ are prescribed for initial pharmaceutical coverage ~~under~~ ~~[in accordance with]~~ Labor Code §413.0141~~;~~ may be dispensed without preauthorization~~;~~ ~~except as referenced in subsection (b)(1)(C) of this section;~~ and are subject to retrospective review of medical necessity.

(g) Retrospective review. Except as provided in subsection (f)(1) of this section, drugs that do not require preauthorization are subject to retrospective review for medical necessity ~~under~~ ~~[in accordance with]~~ §133.230 of this title (~~[relating to]~~ Insurance Carrier Audit of a Medical Bill) and §133.240 of this title (~~[relating to]~~ Medical Payments and Denials), and applicable provisions of Chapter 19 of this title.

(1) Health care, including a prescription for a drug, provided ~~under~~ ~~[in accordance with]~~ §137.100 of this title is presumed reasonable as ~~[specified in]~~ Labor Code §413.017 ~~specifies~~, and is also presumed to be health care reasonably required as defined by Labor Code §401.011(22-a).

(2) ~~For~~ ~~[In order for]~~ an insurance carrier to deny payment subject to a retrospective review for pharmaceutical services that are recommended by the division's adopted treatment guidelines ~~in~~~~;~~ §137.100 of this title, the denial must be supported by documentation of evidence-based medicine that outweighs the presumption of reasonableness established under Labor Code §413.017.

(3) A prescribing doctor who prescribes pharmaceutical services that exceed, are not recommended, or are not addressed by §137.100 of this title must ~~;~~ ~~[is required to]~~ provide documentation on ~~[upon]~~ request ~~under~~ ~~[in accordance with]~~ §134.500(13) of this title (~~[relating to]~~ Definitions) and §134.502(e) and (f) of this title.

§134.540. [Requirements for Use of the] Closed Formulary for Claims Subject to Certified Networks.

(a) Applicability. The closed formulary applies to all drugs that are prescribed and dispensed for outpatient use for claims subject to a certified network ~~[on or after September 1, 2011 when the date of injury occurred on or after September 1, 2011].~~

(b) Preauthorization for claims subject to the ~~division's~~ ~~[Division's]~~ closed formulary. Preauthorization is only required for:

(1) drugs identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates;

(2) any prescription drug created through compounding; and ~~[prescribed before July 1, 2018 that contains a drug identified with a status of "N" in the current edition of the~~ *ODG Treatment in Work-*

ers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary, and any updates;]

(3) any prescription drug created through compounding prescribed and dispensed on or after July 1, 2018; and]

(3) [(4)] any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but that [which] is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

(c) Preauthorization of intrathecal drug delivery systems.

(1) An intrathecal drug delivery system requires preauthorization under [in accordance with] the certified network's treatment guidelines and preauthorization requirements in [pursuant to] Insurance Code Chapter 1305 and Chapter 10 of this title ([relating to] Workers' Compensation Health Care Networks).

(2) Refills of an intrathecal drug delivery system with drugs excluded from the closed formulary, which are billed using Healthcare Common Procedure Coding System (HCPCS) Level II J codes, and submitted on a CMS-1500 or UB-04 billing form, require preauthorization on an annual basis. Preauthorization for these refills is also required whenever:

(A) the medications, dosage or range of dosages, or the drug regimen [regime] proposed by the prescribing doctor differs from the medications, dosage or range of dosages, or drug regimen [regime] previously preauthorized by that prescribing doctor; or

(B) there is a change in prescribing doctor.

(d) Treatment guidelines. The prescribing of drugs must [shall] be under [in accordance with] the certified network's treatment guidelines and preauthorization requirements in [pursuant to] Insurance Code Chapter 1305 and Chapter 10 of this title. Drugs included in the closed formulary that are prescribed and dispensed without preauthorization are subject to retrospective review of medical necessity and reasonableness of health care by the insurance carrier under [in accordance with] subsection (g) [(f)] of this section.

(e) Appeals process for drugs excluded from the closed formulary.

(1) When [For situations in which] the prescribing doctor determines and documents that a drug excluded from the closed formulary is necessary to treat an injured employee's compensable injury and has prescribed the drug, the prescribing doctor, other requester [requestor], or injured employee must request approval of the drug in a specific instance by requesting preauthorization under [in accordance with] the certified network's preauthorization process established in [pursuant to] Chapter 10, Subchapter F of this title ([relating to] Utilization Review and Retrospective Review) and applicable provisions of Chapter 19 of this title (Licensing and Regulation of Insurance Professionals [relating to Agents' Licensing]).

(2) If [preauthorization is pursued by] an injured employee or a requester [requestor] other than the prescribing doctor requests preauthorization[;] and [the injured employee or other requester requests] a statement of medical necessity, the prescribing doctor must [shall] provide a statement of medical necessity to facilitate the preauthorization submission under [as set forth in] §134.502 of this title ([relating to] Pharmaceutical Services).

(3) If preauthorization for a drug excluded from the closed formulary is denied, the requester [requestor] may submit a request for medical dispute resolution under [in accordance with] §133.308 of this

title ([relating to] MDR of Medical Necessity Disputes [by Independent Review Organizations]).

(4) In the event of an unreasonable risk of a medical emergency, the prescribing doctor or pharmacy can request an interlocutory order under [may be obtained in accordance with] §133.306 of this title ([relating to] Interlocutory Orders for Medical Benefits) or §134.550 of this title ([relating to] Medical Interlocutory Order).

(f) Initial pharmaceutical coverage.

(1) Drugs included in the closed formulary that [which] are prescribed for initial pharmaceutical coverage under [; in accordance with] Labor Code §413.0141[;] may be dispensed without preauthorization and are not subject to retrospective review of medical necessity.

(2) Drugs excluded from the closed formulary that [which] are prescribed for initial pharmaceutical coverage under [; in accordance with] Labor Code §413.0141[;] may be dispensed without preauthorization and are subject to retrospective review of medical necessity.

(g) Retrospective review. Except as provided in subsection (f)(1) of this section, drugs that do not require preauthorization are subject to retrospective review for medical necessity under [in accordance with] §133.230 of this title ([relating to] Insurance Carrier Audit of a Medical Bill), §133.240 of this title ([relating to] Medical Payments and Denials), [the] Insurance Code[;] Chapter 1305, and applicable provisions of Chapters 10 and 19 of this title.

(1) For [In order for] an insurance carrier to deny payment subject to a retrospective review for pharmaceutical services that fall within the treatment parameters of the certified network's treatment guidelines, the denial must be supported by documentation of evidence-based medicine that outweighs the evidence-basis of the certified network's treatment guidelines.

(2) A prescribing doctor who prescribes pharmaceutical services that exceed, are not recommended, or are not addressed by the certified network's treatment guidelines[;] is required to provide documentation on [upon] request under [in accordance with] §134.500(13) of this title ([relating to] Definitions) and §134.502(e) and (f) of this title.

§134.550. Medical Interlocutory Order.

(a) The purpose of this section is to provide a prescribing doctor or pharmacy an ability to obtain a [an] medical interlocutory order when [(MIO) in instances where] preauthorization denials of [a] previously prescribed and dispensed drugs [drug(s)] excluded from the closed formulary pose [poses] an unreasonable risk of a medical emergency as defined in §134.500(7) of this title ([relating to] Definitions) and Insurance Code §1305.004(a)(13).

(b) A prescribing doctor or pharmacy may still submit a request for an interlocutory order that does not meet the criteria described by this section under [may still be requested pursuant to] §133.306 of this title ([relating to] Interlocutory Orders [Order] for Medical Benefits).

(c) A [An MIO will be issued if the] request for a medical interlocutory order must contain [an MIO contains] the following information:

- (1) injured employee name;
- (2) date of birth of injured employee;
- (3) prescribing doctor's name;
- (4) name of drug and dosage;

(5) requester's [MIO requestor's] name (pharmacy or prescribing doctor);

(6) requester's [MIO requestor's] contact information;

(7) a statement that a preauthorization request for a previously prescribed and dispensed drug [drug(s)], which is excluded from the closed formulary, has been denied by the insurance carrier;

(8) a statement that an independent review request has already been submitted to the insurance carrier or the insurance carrier's utilization review agent under [in accordance with] §133.308 of this title ([relating to] MDR of Medical Necessity Disputes [by Independent Review Organizations]);

(9) a statement that the preauthorization denial poses an unreasonable risk of a medical emergency as defined in §134.500(7) of this title;

(10) a statement that the potential medical emergency has been documented in the preauthorization process;

(11) a statement that the insurance carrier has been notified that a request for a medical interlocutory order [an MIO] is being submitted to the division; and

(12) a signature and the following certification by the medical interlocutory order requester [MIO requestor] for paragraphs (7) - (12) of this subsection, "I hereby certify under penalty of law that the previously listed conditions have been met."

(d) The division will process and approve a [A] complete request for a medical interlocutory order [an MIO] under [this section shall be processed and approved by the division in accordance with] this section. At its discretion, [the discretion of] the division may consider[;] an incomplete request for a medical interlocutory order [an MIO under this section may be considered in accordance with this section].

(e) The request for a medical interlocutory order must be in writing and [an MIO may be submitted on the designated division form available on the Texas Department of Insurance's website, <http://www.tdi.state.tx.us/we/indexwe.html>. In the event the division form is not available, the written request] must contain the information in [provisions of] subsection (c) of this section. A convenient form that contains the required information is on the division's website at <https://www.tdi.texas.gov/forms/form20numeric.html>.

(f) The requester must [MIO requestor shall] provide a copy of the [MIO] request to the insurance carrier, prescribing doctor, injured employee, and dispensing pharmacy, if known, on the date the requester submits the request [for MIO is submitted] to the division.

(g) An approved medical interlocutory order is [MIO shall be] effective retroactively to the date the division received the complete request for the medical interlocutory order [an MIO is received by the division].

(h) Notwithstanding §133.308 of this title:

(1) The requester has 15 days from the date the preauthorization was denied to request either reconsideration or a medical interlocutory order. [A request for reconsideration of a preauthorization denial is not required prior to a request for independent review when pursuing an MIO under this section. If a request for reconsideration or an MIO request is not initiated within 15 days from the initial preauthorization denial, then the opportunity to request an MIO under this section does not apply.]

(2) The requester does not have to request reconsideration before requesting a medical interlocutory order. [If pursuing an MIO

after denial of a reconsideration request, a complete MIO request shall be submitted within five working days of the reconsideration denial.]

(3) If the requester submitted a request for reconsideration and it was denied, the requester has five working days after that denial to request a medical interlocutory order.

(i) An appeal of the independent review organization (IRO) decision relating to the medical necessity and reasonableness of the drugs contained in the medical interlocutory order must [MIO shall] be submitted under [in accordance with] §133.308(t) of this title.

(j) The medical interlocutory order continues [MIO shall continue] in effect until the later of:

(1) final adjudication of a medical dispute about [regarding] the medical necessity and reasonableness of the drug contained in the medical interlocutory order [MIO];

(2) expiration of the period for a timely appeal; or

(3) agreement of the parties.

(k) If a requester withdraws [Withdrawal by the requestor of] a request for medical necessity dispute resolution, the requester accepts [constitutes acceptance of] the preauthorization denial.

(l) A party must [shall] comply with a medical interlocutory order [an MIO] entered under [in accordance with] this section, and the insurance carrier must [shall] reimburse the pharmacy for prescriptions dispensed under a medical interlocutory order [in accordance with an MIO].

(m) The insurance carrier must [shall] notify the prescribing doctor, injured employee, and the dispensing pharmacy once reimbursement is no longer required under [in accordance with] subsection (j) of this section.

(n) Payments made by insurance carriers under [pursuant to] this section may be eligible for reimbursement from the subsequent injury fund under [Subsequent Injury Fund in accordance with] Labor Code §§410.209 and 413.055 [[§410.209 and §413.055](#)], and applicable rules.

(o) A decision issued by an IRO is not an agency or commissioner decision.

(p) A party may seek to reverse or modify a medical interlocutory order [an MIO] issued under this section if:

(1) a final determination of medical necessity has been rendered; and

(2) the party requests a benefit contested case hearing (CCH) from the division's chief clerk no later than 20 days after the date the IRO decision is sent to the party. A benefit review conference is not a prerequisite to a division CCH under this subsection. Except as provided by this subsection, a division CCH must [shall] be conducted under [in accordance with] Chapters 140 and 142 of this title ([relating to] Dispute Resolution--General Provisions and Dispute Resolution--Benefit Contested Case Hearing).

(q) The insurance carrier may dispute an interlocutory order entered under this title by filing a written request for a hearing under [in accordance with] Labor Code §413.055 and §148.3 of this title ([relating to] Requesting a 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.

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Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703



28 TAC §134.506, §134.510

STATUTORY AUTHORITY. DWC proposes repealing §134.506 and §134.510 under Labor Code §§408.028, 413.0511, 402.00111, 402.00116, and 402.061, and Insurance Code Chapter 1305.

Labor Code §408.028 governs pharmaceutical services. It requires the commissioner by rule to adopt a closed formulary under §413.011, and provides requirements for prescribing prescription drugs, generic pharmaceutical medications, and over-the-counter alternatives. It requires the commissioner by rule to allow an employee to buy over-the-counter alternatives to prescribed or ordered medications, and to get reimbursement from the insurance carrier for those medications. It also requires the commissioner by rule to allow an employee to buy a brand-name drug instead of a generic pharmaceutical medication or over-the-counter alternative to a prescription medication if a health care provider prescribes a generic pharmaceutical medication or an over-the-counter alternative to a prescription medication. Section 408.028(f) requires the commissioner by rule to adopt a fee schedule for pharmacy and pharmaceutical services that will: (1) provide reimbursement rates that are fair and reasonable; (2) assure adequate access to medications and services for injured workers; (3) minimize costs to employees and insurance carriers; and (4) take into consideration the increased security of payment that Labor Code Title 5, Subtitle A, affords.

Labor Code §413.0511 requires DWC to employ or contract with a medical advisor. The medical advisor must be a doctor, as defined in §401.011. The medical advisor's duties include making recommendations about the adoption of rules and policies to: develop, maintain, and review guidelines as provided by §413.011, including rules about impairment ratings; reviewing compliance with those guidelines; regulating or performing other acts related to medical benefits as required by the commissioner; and determining minimal modifications to the reimbursement methodology and model used by the Medicare system as needed to meet occupational injury requirements.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Insurance Code Chapter 1305 authorizes the establishment of workers' compensation health care networks for providing workers' compensation medical benefits and provides standards for the certification, administration, evaluation, and enforcement of their delivery of health care services to injured employees.

CROSS-REFERENCE TO STATUTE. Subchapter F implements Labor Code §§408.028 and 413.011. Section 408.028, formerly V.A.C.S. Art 8308-4.69, was recodified as §408.028 by House Bill 752, 73rd Legislature, Regular Session (1993), and last amended in 2011. Section 413.011 was enacted by House Bill 2600, 77th Legislature, Regular Session (2001), and last amended in 2007.

§134.506. *Outpatient Open Formulary for Claims with Dates of Injury Prior to September 1, 2011.*

§134.510. *Transition to the Use of the Closed Formulary for Claims with Dates of Injury Prior to September 1, 2011.*

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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CHAPTER 147. DISPUTE RESOLUTION- -AGREEMENTS, SETTLEMENTS, COMMUTATIONS

28 TAC §147.10

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend the title of 28 TAC §147.10, concerning commutation of impairment income benefits. Section 147.10 implements Labor Code §408.128.

EXPLANATION. The amendment corrects an inadvertent duplication in the title of §147.10. The recent proposal amending Chapter 147, which was published in the April 5, 2024, issue of the *Texas Register* (49 TexReg 2165) reorganized the chapter to make it easier to understand and use. In that proposal, the title of §147.10 was inadvertently renamed to duplicate the title of §147.11. Amending §147.10 is necessary to correct the title of §147.10 to Commutation of Impairment Income Benefits to better describe its purpose.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner Allen Craddock has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment.

Dr. Craddock does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Dr. Craddock expects that enforcing and administering the proposed amendment will have the public benefit of having a section title that better describes the purpose of §147.10.

Dr. Craddock expects that the proposed amendment will not increase the cost to comply with Labor Code §408.128 because it does not impose requirements beyond those in the statute and does not create obligations beyond those in the current rule. Labor Code §408.128 allows an employee to elect to commute the remainder of their entitled impairment income benefits if the employee has returned to work for at least three months, earning at least 80% of the employee's average weekly wage. Section 147.10 prescribes the form and manner in which an employee may request to commute their impairment income benefits, and an insurance carrier may respond. Correcting the name of the section to better describe its purpose increases efficiency and clarity, and does not impose any additional cost.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendment will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendment corrects the title of §147.10 only. The proposed amendment does not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendment is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendment simply changes the title of §147.10 to better describe its purpose. The proposed amendment does not change the people the rule affects or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on September 23, 2024. Send

your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for a public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes §147.10 under Labor Code §§408.128, 402.00111, 402.00116, and 402.061.

Labor Code §408.128 allows an employee to elect to commute the remainder of their entitled impairment income benefits if the employee has returned to work for at least three months, earning at least 80% of the employee's average weekly wage.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Section 147.10 implements Labor Code §408.128, enacted by House Bill 752, 73rd Legislature, Regular Session (1993).

§147.10. Commutation of Impairment Income Benefits [Notification to the Division of Proposed Judgments and Settlements].

(a) - (c) (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 August 7, 2024.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.415

The Comptroller of Public Accounts proposes amendments to §9.415, concerning applications for property tax exemptions. The comptroller proposes the amendments due to changes to Tax Code, §11.43 (Application for Exemption) made by Senate Bill 1381, 88th Legislature, R.S., 2023.

Because Tax Code, §11.43 was amended to require the chief appraiser to allow the surviving spouse of a qualified individual age 65 or older or disabled to continue claiming the residence homestead exemption without requiring the surviving spouse to file a new application under certain circumstances, the amendment removes subsection (b) as unnecessary.

Subsequent subsections are relettered.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §5.03 (Powers and Duties Generally), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to establishing minimum standards for the administration and operation of an appraisal district.

The amendments implement Tax Code §11.43 (Application for Exemption).

§9.415. *Applications for Property Tax Exemptions.*

(a) With the application for exemption for residence homesteads, the appraisal office shall:

(1) provide a list of taxing units served by the appraisal district, together with all residential homestead exemptions each offers; or

(2) provide the appraisal district's name and appraisal district's phone number on the form, with an instruction that the property owner may call the appraisal district to determine what homestead exemptions are offered by the property owner's taxing units.

[(b) If the chief appraiser learns of the death of a person qualified for over-65 or disabled homestead exemptions (Tax Code, §11.13) and it appears that the person's spouse has acquired ownership of the homestead, the chief appraiser should require the surviving spouse to

file a new homestead exemption application. Based on the information provided in the new application, the chief appraiser shall determine whether the surviving spouse qualifies for homestead exemptions, including over-65 or disabled exemptions, and whether the surviving spouse may retain the tax ceiling for school tax purposes established on the homestead by the decedent.]

(b) [(e)] The comptroller may prescribe forms for use in the administration of the ad valorem tax exemptions. The prescribed forms will not be adopted by rule unless required by statute. If a form is prescribed for a particular purpose, the content of a form used by the appraisal district must comply with the most recently prescribed form as of the date specified.

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 August 9, 2024.

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Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3006

The Comptroller of Public Accounts proposes amendments to §9.3006, concerning notice of estimated taxes required to be delivered by county appraisal districts.

The amendments reflect the changes to Tax Code, §26.04 (Submission of Roll to Governing Body; No-New-Revenue and Voter-Approval Tax Rates) made by House Bill 3273, 88th Legislature, R.S., 2023, which changed the method of delivery from mail and email to posting online and publication, and added the assessor collector of each of the taxing units to the process.

The amendments update the title of the section to conform to the changes made by House Bill 3273.

The amendments to subsection (a), as required by House Bill 3273, subject the assessor collector for each taxing unit participating in the appraisal district to the requirement to post notice; add information in new paragraph (4) that House Bill 3273 requires to be included in the notice; and correct a typo.

The amendment to subsection (b) adds the assessor collector for each taxing unit participating in the appraisal district to the subsection, which allows them to use the comptroller prescribed model form or a different form that sets out the information listed in subsection (a).

The amendments to subsection (c) add the assessor collector for each taxing unit participating in the appraisal district and replace delivery with posting and publication, as required by House Bill 3273.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions;

will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The comptroller proposes the amendments under Tax Code, §26.04 (Submission of Roll to Governing Body; No-New-Revenue and Voter-Approval Tax Rates), which authorizes the comptroller to, with advice of the property tax administration advisory board, adopt rules prescribing the form of notice required by subsection (e-2), and authorizes the comptroller to adopt rules regarding the format, posting and publication of the notice.

The amendments implement Tax Code, §26.04 (Submission of Roll to Governing Body; No-New Revenue and Voter-Approval Tax Rates).

§9.3006. Notice of Estimated Taxes Required to be Posted [Delivered] by County Appraisal Districts and Taxing Unit Assessors.

(a) The chief appraiser and assessor collector for each taxing unit participating in the appraisal district shall include the following information in a notice of estimated taxes required under Tax Code, §26.04(e-2):

(1) A statement directing the property owner to an Internet website from which the owner may access information related to the actions taken ~~[take]~~ or proposed to be taken by each taxing unit in which the property is located that may affect the taxes imposed on the owner's property. The statement must include a heading that is in bold, capital letters in type larger than that used in the other provisions of the notice;

(2) A statement that the property owner may request from the county assessor-collector for the county in which the property is located, or if the county assessor-collector does not assess taxes for the county, the person who assess taxes for the county under Tax Code, §6.24(b), contact information for the assessor for each taxing unit which the property is located who must provide the information described in this subsection to the owner on request; ~~[and]~~

(3) The name, address, and telephone number of the county assessor-collector for the county in which the property is located or, if the county assessor-collector does not assess taxes for the county, the person who assesses taxes for the county under Tax Code, §6.24(b); and

(4) Instructions describing how a property owner may register on the appraisal district's Internet website to have notifications regarding updates to the property tax database delivered to the owner by e-mail.

(b) The chief appraiser and assessor collector for each taxing unit participating in the appraisal district may use the comptroller prescribed model form applicable to this section or use a different form that sets out the information listed in subsection (a) of this section.

(c) The chief appraiser of each appraisal district and the assessor collector for each taxing unit participating in the appraisal district may determine the format, posting, and publication ~~[and delivery]~~ of notice under this section, as long as the format, posting, and publication ~~[delivery]~~ comply with Tax Code, §26.04(e-2), ~~[and]~~ (e-3), and (e-6).

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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Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 218. MOTOR CARRIERS

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend sections in 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §218.2; Subchapter B, Motor Carrier Registration, 43 TAC §§218.10, 218.11, 218.13, 218.14, 218.16, and 218.18; Subchapter C, Records and Inspections, 43 TAC §218.31 and §218.32; Subchapter D, Motor Transportation Brokers, 43 TAC §218.41; Subchapter E, Consumer Protection, 43 TAC §§218.53, 218.54, 218.56, 218.57, 218.61, 218.62, 218.64, and 218.65; Subchapter F, Administrative Penalties and Sanctions, 43 TAC §218.72; and Subchapter G, Financial Responsibility for Foreign Commercial Motor Vehicles, 43 TAC §218.80 and §218.82. These amendments are necessary to require the applicants for operating authority under Chapter 218 and Transportation Code, Chapter 643 to provide the department with more information and documents, so the department can detect and prevent chameleon carriers; make the rules consistent with the department's current processes; make the rules consistent with current law (both Texas law and applicable federal law) by amending or deleting rule text; delete language for which the department does not have rulemaking authority; clarify language; delete unnecessary language; and otherwise clean up the rule text. In conjunction with this proposal, the department is proposing the repeal of §218.58, concerning options for household goods carrier limitation of liability in the moving services contract, which is also published in this issue of the *Texas Register*

EXPLANATION.

Subchapter A. General Provisions.

A proposed amendment to §218.2 would add a new subsection (a) and create a new subsection (b) for the defined terms. Proposed new subsection (a) would add language stating that the

definitions contained in Transportation Code, Chapter 643 apply to Chapter 218 and that the definitions contained in Chapter 643 govern in the event of a conflict with Chapter 218, except for the definition of the word "director" in §218.2. To the extent that the terms used in Chapter 218 are already defined in Transportation Code, Chapter 643, there is no need to duplicate the definitions in Chapter 218. As a result, proposed amendments to §218.2 would delete the following definitions because the terms are already defined in Transportation Code, Chapter 643: "commercial school bus," which is defined in Transportation Code, §643.1015; "department"; "household goods"; and "insurer."

However, the definition for the word "director" presents an exception: Transportation Code, §643.001(2) defines "director" as the executive director of the department or an employee of the department who is a division or special office director or holds a higher rank and is designated by the director, but the department's executive director designated the director of the department's Motor Carrier Division to perform the functions of the director under Chapter 218 and Transportation Code, Chapter 643. Therefore, a separate definition for "director" is necessary in §218.2. A proposed amendment to the word "director" would clarify that the department's executive director designated the director of the Motor Carrier Division as the director under Transportation Code, §643.001(2).

A proposed amendment to the definition for "advertisement" in proposed §218.2(b)(1) would replace the word "on-line" with the word "online" to be consistent with current terminology. A proposed amendment to the definition for "binding proposal" in proposed §218.2(b)(3) would delete the word "formal" because the word is not clear and is not necessary for the definition. Proposed amendments to the definition for "commercial motor vehicle" in proposed §218.2(b)(8) would incorporate the definition of the term in Transportation Code, §548.001 and would delete the current definition, including the language regarding a commercial enterprise. This proposed amendment is necessary to align with statute: neither Transportation Code, §548.001 nor Transportation Code, §643.051(a) define a commercial motor vehicle to require the vehicle to be used in furtherance of a commercial enterprise. Only Transportation Code, §643.051(b) refers to compensation; however, that requirement only applies to household goods carriers that transport household goods, regardless of the size of the vehicle. Transportation Code, §643.051(a) states that the term "commercial motor vehicle" is defined in Transportation Code, §548.001.

Proposed amendments to the definition for "commercial motor vehicle" in proposed §218.2(b)(8) would also delete the letter for subparagraph (B) due to the proposed deletion of subparagraph (A), add language to create a full sentence regarding the exclusions from the definition for "commercial motor vehicle," and replace existing clause numbers (i) through (vi) with subparagraph letters (A) through (F) to provide the correct rule structure under 1 TAC §91.33. In addition, a proposed amendment to the definition for "commercial motor vehicle" in proposed §218.2(b)(8)(A) would change the word "and" to "or" regarding a farm vehicle to be consistent with Transportation Code, §548.001. Although a proposed amendment to the definition for "commercial motor vehicle" in proposed §218.2(b)(8) would refer to the definition found in Transportation Code, §548.001, it is helpful to clarify the language regarding a farm vehicle because the language in §548.001 has caused confusion in the past. A proposed amendment to the definition for "commercial motor vehicle" in proposed §218.2(b)(8)(B) would reword the exception to apply to a single cotton vehicle to be consistent with Transportation Code,

§643.002(2) and proposed §218.2(b)(8), which contain the exemptions from Transportation Code, Chapter 643. A proposed amendment to the definition for "commercial motor vehicle" in proposed §218.2(b)(8)(F) would delete language that requires a tow truck to be permitted under Occupations Code, Chapter 2308, Subchapter C to be consistent with the language in Transportation Code, §643.002(7) regarding exemptions from Transportation Code, Chapter 643.

A proposed amendment to the definition for the word "conversion" in proposed §218.2(b)(10) would delete the word "and" in the title to the Business Organizations Code because the word "and" does not appear in the name of this code. A proposed amendment to current §218.2(14) would delete the definition for the word "division" because the definition is not necessary. A proposed amendment to §218.14 would change the word "division's" to "Motor Carrier Division's," so the word "division" would not be used in Chapter 218, except for references that indicate a particular division. These amendments provide clarity because Chapter 218 contains references to the department's Motor Carrier Division and the department's Enforcement Division.

Proposed amendments to the definition for "farmer" and "farm vehicle" in proposed §218.2(b)(13) and (14) would make the definitions consistent with the definitions in 49 C.F.R. §390.5T because Transportation Code, §548.001 says the term "farm vehicle" has the meaning assigned by the federal motor carrier safety regulations assigned by Transportation Code, §644.001. The term "farm vehicle" appears in the definition of "commercial motor vehicle," and Transportation Code, §643.051(a) says that the term "commercial motor vehicle" is defined in Transportation Code, §548.001. For this reason, the term "farm vehicle," which is found and defined in Transportation Code, §548.001, appears in the definition for "commercial motor vehicle" in proposed §218.2(b), in addition to the definition for "farmer" from 49 C.F.R. §390.5T to help define the term "farm vehicle."

A proposed amendment to the definition for "foreign commercial motor vehicle" in proposed §218.2(b)(16) would replace the definition with a reference to the definition found in Transportation Code, §648.001, which contains the complete definition. A proposed amendment to the definition for "household goods carrier" in proposed §218.2(b)(19) would delete the clause regarding a commercial enterprise to align with statute because that clause does not appear in Transportation Code, §643.051(b).

Although Transportation Code, §643.001 defines the term "motor carrier," §643.001 does not define the term "carrier." Current §218.2(28) includes the same definition for the terms "motor carrier" and "carrier." For this reason, a proposed amendment would modify the definition for "motor carrier or carrier" in proposed §218.2(b)(23) to refer to the definition in Transportation Code, §643.001(6), rather than deleting the defined terms. A proposed amendment to the definition for "motor transportation broker" in proposed §218.2(b)(24) would refer to the definition in Transportation Code, §646.001 because it is not necessary to duplicate statutory language in a rule.

A proposed amendment to proposed §218.2(b)(28) would change the term "principal place of business" to "principal business address" to use the same term that is used in Transportation Code, §643.052(1). A proposed amendment to current §218.2(36) would delete the definition for "reasonable dispatch" because the term only appears in §218.58, which is proposed to be repealed. A proposed amendment to current §218.2(41) would delete the definition for "SOAH" because the acronym does not appear in Chapter 218. Proposed amendments to

§218.2 would renumber the definitions due to proposed amendments that would delete definitions.

Subchapter B. Motor Carrier Registration.

A proposed amendment to §218.10 would delete the first sentence because it is not necessary to repeat language from Transportation Code, §643.051 and §643.002. A proposed amendment to §218.10 would also modify the language regarding a household goods carrier because "household goods carrier" is a defined term under §218.2. In addition, a proposed amendment to §218.10 would clarify the language to state that a motor carrier, leasing business, or household goods carrier registers with the department. Lastly, a proposed amendment to §218.10 would delete the reference to workers' compensation because Subchapter B of Chapter 218 does not set out the minimum workers' compensation insurance requirements.

Proposed amendments to §218.11 would replace the term "the public roads or highways" with "a public highway," which is a defined term in §218.2.

Many of the proposed amendments to §218.13 and §218.14 were presented to the Motor Carrier Regulation Advisory Committee (MCRAC) for review and feedback at the MCRAC meeting in December 2023. The focus of the MCRAC meeting was to discuss the proposed amendments to §218.13 and §218.14 to detect and prevent chameleon motor carriers (chameleon carriers). A chameleon carrier is a motor carrier that attempts to continue operating under a certificate of registration without addressing a previous penalty, violation of a legal requirement, or order regarding violation of a legal requirement under a different certificate of registration. There are two types of chameleon carriers: 1) a motor carrier that applies to the department for a new certificate of registration to continue to operate as a motor carrier under a different person's name or a different legal entity; and 2) a motor carrier that already has more than one certificate of registration under different names or legal entities. Under this second type of chameleon carrier, the motor carrier continues to operate under a different certificate of registration when it incurs a penalty, is found to be in violation of a legal requirement, or receives an order regarding a violation of a legal requirement under one of its current certificates of registration.

At the December 2023 MCRAC meeting, the MCRAC members made informal suggestions and approved two motions requesting changes to the proposed amendments to §218.13. The department made changes consistent with MCRAC's informal suggestions and one of its motions. Although MCRAC recommended the deletion of proposed new §218.13(a)(3)(E), the department modified the language to strike a balance between addressing the concerns of MCRAC and enabling the department to request necessary information to help detect and prevent chameleon carriers.

The department also met with staff from the Federal Motor Carrier Safety Administration (FMCSA) to learn how FMCSA detects chameleon carriers and prevents them from obtaining operating authority for interstate transportation. In addition, the department reviewed the applicable federal laws and forms to inform the department regarding the proposed amendments to §218.13. Further, the department reviewed materials from International Registration Plan, Inc. regarding another state's procedures to identify a possible chameleon carrier.

Many of the draft amendments to §218.13 are designed to require new applicants for intrastate operating authority to provide the department with the information it needs to detect and pre-

vent chameleon carriers. The department's primary goal is to prevent chameleon carriers. However, the additional information and documents addressed in the draft amendments to §218.13 would also help the department detect any current chameleon carriers. The Texas Legislature passed laws to authorize the department to deny intrastate operating authority to chameleon carriers and to revoke a chameleon carrier's intrastate operating authority, such as Transportation Code, §643.054(a-2) and §643.252(a)(7).

A proposed amendment to the introductory sentence in §218.13(a) would clarify and modernize the rule by stating that an application for motor carrier registration must be filed electronically in the department's designated registration system and that the applicant must provide both information and documents. A proposed amendment to §218.13(a)(1) would clarify that the applicant must provide a valid United States Department of Transportation (USDOT) number that was issued to the applicant, to prevent applicants from attempting to use others' USDOT numbers.

Proposed amendments to §218.13(a)(2) would require the applicants to provide additional information and documents, which would help the department to detect, prevent, and revoke chameleon carriers. The department currently requires applicants to provide most of the information in proposed new §218.13(a)(2)(A) and (B) regarding the applicant, including contact and identifying information. Proposed new §218.13(a)(A) would also make the rule text consistent with the department's current process, which requires that the applicant's name and email address match the information the applicant provided to FMCSA to obtain the USDOT number that the applicant provided to the department in the application. Proposed new §218.13(a)(2)(C) would add a new requirement for a legible and accurate electronic image of the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, as well as the existing requirement for an applicant to provide each assumed named certificate on file with the Secretary of State or county clerk, if applicable.

Proposed new §218.13(a)(3)(A) through (F) would require applicants to provide information and documents on the applicant's owners, managers, representatives, and affiliates, as applicable. A proposed amendment to §218.13(a)(3)(A) puts authorized representatives of an applicant on notice that they may be required to provide written proof of authority to act on behalf of the applicant. Many of these requirements are new requirements that would provide the department with additional information and documents that are necessary to detect and prevent chameleon carriers.

At the MCRAC meeting in December 2023, members of MCRAC expressed concerns regarding a prior draft of proposed new §218.13(a)(3)(E) because the language could have required applicants to provide information on many employees who do not direct the operations of the motor carrier, and to update the information frequently due to frequent staff turnover in lower-ranking positions. Although the MCRAC members voted to strike new §218.13(a)(3)(E), the department instead further defined the positions to which this application requirement applies to obtain relevant information to help the department detect and prevent chameleon carriers by focusing on the applicant's representatives who have or exercise authority to direct some or all of the applicant's operational policy regarding compliance with applicable laws regarding a motor carrier. Examples of applicable laws regarding a motor carrier are the motor carrier

safety regulations that are administered by the Texas Department of Public Safety under Transportation Code, Chapter 644 and 37 TAC Chapter 4 (Commercial Vehicle Regulations and Enforcement Procedures).

Proposed amendments to §218.13(a)(4) would clarify the language and replace the term "principal place of business" with the term "principal business address" to be consistent with the terminology used in Transportation Code, §643.052(1). Proposed amendments to §218.13(a)(6) would delete the word "commercial" from the term "commercial motor vehicle" because Transportation Code, §643.051(b) requires a household goods carrier to obtain operating authority under Transportation Code, Chapter 643, even if their motor vehicles do not fall within the definition of a "commercial motor vehicle" as defined by Transportation Code, §548.001. A proposed amendment to §218.13(a)(6) would also remove the word "motor" from the term "vehicle identification number" to make the term consistent with current terminology.

A proposed amendment to §218.13(a)(7) regarding the type of motor carrier operations would delete the language that requires the applicant to state if the applicant is domiciled in a foreign country, and a proposed amendment to proposed new §218.13(a)(12)(E) would add this requirement because this requirement does not deal with a type of motor carrier operation. Proposed amendments to §218.13(a)(11)(A)(ii) and §218.13(a)(14) would replace the references to §218.2(8)(A)(ii) with references to Transportation Code, §548.001(1)(B) to specify the portion of the definition for "commercial motor vehicle" that deals with a vehicle designed or used to transport more than 15 passengers. These proposed amendments are necessary because a proposed amendment to §218.2 would remove the specific language from the definition of "commercial motor vehicle" and instead refer broadly to Transportation Code, §548.001.

Proposed amendments to §218.13(a) and §218.13(a)(12) would clarify that the requirements apply to an original application. A proposed amendment to §218.13(a)(12)(C) would add the word "the" to improve the wording of the sentence.

A proposed amendment to §218.13(a)(12) would delete the language in subparagraph (D) because the language is proposed to be moved to proposed new §218.13(a)(2)(A), and subsequent subparagraphs are proposed to be re-lettered accordingly. Proposed amendments to new §218.13(a)(12)(D) would incorporate the language from the New Applicant Questionnaire into rule text, with certain amendments, such as to provide a three-year timeframe for certain responses. The New Applicant Questionnaire was designed to obtain relevant information to help the department detect, prevent, and revoke chameleon carriers.

Proposed amendments to proposed new §218.13(a)(12)(F) would include the current application certification in rule text. A proposed amendment to proposed new §218.13(a)(12)(G) would clarify that an application must be accompanied by any other information and documents the department requires to evaluate the application under current law, to allow the department the latitude to request additional required information and documentation in order to prevent chameleon carriers and ensure the applicant is eligible for a certificate of registration under Chapter 218 and Transportation Code, Chapter 643.

Proposed amendments to §218.13(a) would also delete current language because the current language was modified and incorporated into proposed amendments to §218.13(a) in addition

to new requirements. In addition, proposed amendments to §218.13(a) would renumber or re-letter subdivisions due to deletions and additions.

A proposed amendment to §218.13(a)(14)(B) would replace the word "vehicles" with the word "vehicle" to correct a grammatical error and to clarify that the requirement applies to each commercial motor vehicle.

Proposed amendments throughout §218.13(c), (d), (g) and (i) would change the word "will" to "shall" for clarity and consistency. Government Code, §311.016 defines the word "shall" to impose a duty, which is the intended meaning in §218.13(c), (d), (g) and (i). A proposed amendment to §218.13(c)(2) would change the term "registrant's" to "motor carrier's" because the term "motor carrier" is defined in §218.2. A proposed amendment to §218.13(c)(2) would also change the term "principal place of business" to "principal business address" to be consistent with terminology in Transportation Code, §643.052(1). A proposed amendment to §218.13(c)(2)(C) would delete the word "commercial" from the term "commercial motor vehicle" because Transportation Code, §643.051(b) applies to household goods carriers, even if their motor vehicles do not fall within the definition of a "commercial motor vehicle" as defined by Transportation Code, §548.001.

A proposed amendment to §218.13(c)(2)(F) would replace the word "information" with "cab card" for consistency. In addition, a proposed amendment to §218.13(c)(2) would delete language in subparagraph (G), which says the display of an image that includes the insurance cab card or the display of insurance information via a wireless communication device does not constitute effective consent for a law enforcement officer or any other person to access any other content of the wireless communication device, because the department does not have the statutory authority for this language. However, the person who chooses to display an image that includes the insurance cab card or the display of insurance information via a wireless communication device can verbally specify the extent of their consent to having the law enforcement officer or any other person access the device prior to displaying the image.

A proposed amendment to the introductory sentence in §218.13(e) would modernize the rule text by adding language that says a motor carrier shall electronically file a supplement to an original application in the department's designated registration system. A proposed amendment to §218.13(e)(7) would replace the word "re-register" with the word "reregister" because the word does not have a hyphen in Transportation Code, §643.0585. A proposed amendment to §217.13(e)(7)(B) would replace the word "facts" with the word "issue" for clarity.

A proposed amendment to §218.13(g) would delete the word "commercial" from the term "commercial motor vehicle" because Transportation Code, §643.051(b) applies to household goods carriers, even if their motor vehicles do not fall within the definition of a "commercial motor vehicle" under Transportation Code, §548.001. Proposed amendments to §218.13(i) would require a motor carrier with a certificate of registration to update their principal business address, mailing address, and email address in the department's online system within 30 days of a change to the information. This amendment to §218.13(i) would replace a requirement for the motor carrier to review this information in the department's online system every six months and to update such information if it was no longer correct. The requirement for the motor carrier to update information within 30 days is intended to provide the department with updated information sooner and to

eliminate an unnecessary requirement for a motor carrier to review this information every six months even if there is no change to the information.

A proposed amendment to the title to §218.14 would delete the word "commercial" from the term "commercial motor vehicle" because Transportation Code, §643.051(b) applies to household goods carriers, even if their motor vehicles do not fall within the definition of a "commercial motor vehicle" under Transportation Code, §548.001. Proposed amendments throughout §218.14 would change the word "will" to "shall." Government Code, §311.016 defines the word "shall" to impose a duty, which is the intended meaning in §218.14. Proposed amendments throughout §218.14 would add a hyphen to the words "90-day" and "seven-day" as a grammatical correction because the words are compound modifiers of the word "certificates."

A proposed amendment to §218.14(b)(1) would change the first sentence to say that the department shall provide the renewal notice to each registered motor carrier at least 30 days before the expiration to be consistent with Transportation Code, §643.058(b). A proposed amendment to §218.14(b)(1) would also replace the word "division's" with the term "Motor Carrier Division's" due to the proposed amendment that would delete the definition for the word "division" in §218.2. In addition, a proposed amendment to §218.13(b)(1) would change the word "mailed" to "sent" because the department may send the notice electronically. Further, a proposed amendment to §218.14(b)(1) would remove the requirement for the motor carrier to submit its renewal application to the department at least 15 days prior to the renewal date because motor carriers now submit their renewals online in the department's designated registration system in which the renewal is automated if there are no issues with the renewal application.

A proposed amendment to §218.14(b)(1) would add language that says a motor carrier shall electronically file a renewal application in the department's designated registration system to modernize the rule. Also, proposed amendments to §218.14(b)(1)(A) would require the applicant to provide the department with any new information and documents required under §218.13(e) if the information or documents have not previously been provided to the department. The department needs updated information and documents to ensure the motor carrier still qualifies to be a motor carrier, as well as to prevent and detect chameleon carriers.

Proposed amendments to §218.14(b)(5) would make the language consistent with Transportation Code, §643.058(d), which prohibits a motor carrier from renewing a registration that has been expired for more than 180 days. Also, proposed amendments to §218.14(b)(5) would add language that says a motor carrier shall electronically file a supplemental application in the department's designated registration system to modernize the rule. In addition, proposed amendments to §218.13(b)(5) would make the language easier to read by breaking the language into multiple subparagraphs and improving the language. A proposed amendment to new §218.14(b)(5)(C) would clarify the language by adding a reference to evidence of financial responsibility as authorized by Transportation Code, §643.102. Proposed amendments to new §218.14(b)(5)(C) would replace a reference to the "division" with a reference to the "department."

A proposed amendment to §218.14(c)(2) would replace the word "re-register" with the word "reregister" because the word does not have a hyphen in Transportation Code, §643.0585. Proposed amendments to §218.14(c)(2) would replace the term

"public streets and highways" with "a public highway," which is a defined term in §218.2. Proposed amendments throughout §218.14(c) and §218.16 would change the word "will" to "shall." Government Code, §311.016 defines the word "shall" to impose a duty, which is the intended meaning in §218.14(c) and §218.16.

Proposed amendments to §218.16(a) would delete the word "commercial" in the term "commercial automobile liability insurance" because Transportation Code, §643.101 does not use the word "commercial" to describe the amount of liability insurance that is required under Transportation Code, Chapter 643. A proposed amendment to §218.16(a) would clarify the coverage required under an automobile liability insurance policy, which must cover bodily injury to or death of an individual, as well as loss or damage to property.

A proposed amendment to §218.16(a) would also clarify the financial responsibility requirements of a motor carrier that operates a foreign commercial motor vehicle in intrastate transportation in Texas if the motor carrier is required to register with the department under Transportation Code, Chapter 643. Although Transportation Code, §643.101(b) authorizes the department to set the amount of required liability insurance at an amount that does not exceed the amount required for a motor carrier under a federal regulation adopted under 49 U.S.C. §13906(a)(1), Transportation Code, §648.102 requires the department to adopt rules that conform with 49 C.F.R. Part 387 requiring motor carriers that operate foreign commercial motor vehicles in Texas to maintain financial responsibility. Also, Transportation Code, §648.102(b) states that Transportation Code, Chapter 648 prevails over any other requirement of state law relating to financial responsibility for operation of foreign commercial motor vehicles in Texas. The department must comply with both Transportation Code, §643.101 and §648.102 regarding the required amount of financial responsibility for a motor carrier that is required to register with the department under Transportation Code, Chapter 643 that operates a foreign commercial motor vehicle in intrastate transportation in Texas. The financial responsibility requirements under 49 C.F.R. §387.9 regarding minimum levels of financial responsibility for motor carriers of property, and 49 C.F.R. §387.33T regarding minimum levels of financial responsibility for motor carriers of passengers are higher than the minimum levels of financial responsibility for certain motor carriers under §218.16 that do not operate a foreign commercial motor vehicle.

In addition, proposed amendments to §218.16(a) would adopt by reference the required level of financial responsibility under 49 C.F.R. Part 387, including any amendments that became effective through July 1, 2024, for a motor carrier operating a foreign commercial motor vehicle in this state pursuant to the department's rulemaking authority under both Transportation Code, §643.101(b) and §648.102. Lastly, a proposed amendment would delete reference to the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015, because FMCSA amended 49 C.F.R. Part 387 since October 23, 2015.

Proposed amendments to the second and third categories in Figure 43 TAC §218.16(a) would modify the language to be consistent with Transportation Code, §548.001(1)(B) regarding vehicles, including buses, designed or used to transport more than 15 passengers, including the driver. Proposed amendments to the seventh and eighth categories in Figure 43 TAC §218.16(a) would modify the language to be consistent with language in 49 C.F.R. §387.9(3) and (2), respectively, because

federal law provides the minimum levels of financial responsibility for intrastate transportation for these categories under 49 U.S.C. §31139(d). Proposed amendments to the ninth category in Figure 43 TAC §218.16(a) would modify the language to be consistent with language in 49 C.F.R. §387.9(4) because Transportation Code, §643.101(b) requires the department to set the amount of required liability insurance at an amount that does not exceed the amount required for a motor carrier under a federal regulation adopted under 49 U.S.C. §13906(a)(1), which cites to §31139 regarding the minimum financial responsibility requirements for transporting property. The statutory authority listed for 49 C.F.R. §387.9 regarding minimum levels of financial responsibility for motor carriers of property includes 49 U.S.C. §13906 and §31139.

Proposed amendments to §218.16(b) would remove the words "for hire" because the term "household goods carrier" is a defined term that already includes the language "for compensation." A proposed amendment to §218.16(b) would also change the word "shipper" to a plural possessive "shippers" because the language deals with damage to multiple shippers' cargo. Proposed amendments to §218.16(c) would make the language consistent with the language in Transportation Code, §643.106 regarding insurance for employees. Proposed amendments to §218.16(c) would also add letters for new subparagraphs (C) and (D) to break the paragraph into additional subdivisions to help make the language consistent with the language in Transportation Code, §643.106.

Proposed amendments throughout §218.16(d) would add the term "motor carrier" after the term "self-insured" for clarity. Proposed amendments to §218.16(d)(1) would clarify that an applicant for self-insured status under Transportation Code, §643.102 is authorized to request self-insured status for cargo liability, as well as for bodily injury and property damage liability. A proposed amendment to §218.16(d)(2) would change the word "allow" to "enable" for clarity because the department is allowed to determine whether the applicant should be granted self-insured status; however, the department needs information and documents to enable the department to make the determination. A proposed amendment to §218.16(d)(2) would replace the word "materials" with the term "information and documents" for clarity. A proposed amendment to §218.16(d)(2)(B) would replace the term "security limits" with the term "insurance levels" for clarity. A proposed amendment to §218.16(d)(2)(C) would make the language consistent with the Texas Department of Public Safety's "satisfactory safety rating" under Transportation Code, Chapter 644 and 37 TAC §4.15. Also, a proposed amendment would authorize an applicant to provide evidence of a "satisfactory" safety rating from FMCSA because a safety rating from FMCSA is relevant evidence of the motor carrier's safety program. Another proposed amendment to §218.16(d)(2)(C) would state that an application by a motor carrier with less than a "satisfactory" safety rating or no safety rating will be summarily denied. Transportation Code, §643.102 requires the department to provide a responsible system of self-insurance for a motor carrier, and safety is an integral component of such a system.

Proposed amendments to §218.16(d)(4) would replace the word "applicant" with the words "approved self-insured motor carrier" or "motor carrier" for clarity. Proposed amendments to §218.16(d)(4) would also update the language to reflect current procedures regarding the filing of annual statements and any reports with the department.

Proposed amendments to §218.16(d)(5) would replace the word "applicant" with the term "motor carrier" for clarity. A proposed amendment to §218.16(d)(5) would also clarify the department's current practice of including limitations, restrictions, and requirements in the department's letter to approve self-insured status under Transportation Code, §643.102.

Proposed amendments to §218.16(d)(6) update the language to reflect current procedures, to clarify the language, and to remove unnecessary language.

A proposed amendment to §218.16(e)(2)(A) adds the word "a" to correct a grammatical error. A proposed amendment to §218.16(e)(3) would change the word "shall" to "must" because it a condition precedent for an applicant to pay the required filing fee of \$100 to obtain a certificate of registration. Government Code, §311.016 states that the word "must" creates or recognizes a condition precedent. A proposed amendment to §218.16(e)(3) would also combine the two sentences into one sentence to clarify that the applicant is only required to pay the \$100 filing fee when the applicant submits an original application and when the applicant submits a supplemental application when retaining a revoked certificate of registration number. Transportation Code, §643.103(a) and (c) only authorize the department to charge the \$100 filing fee in certain circumstances, which are more limited than the circumstances under which a motor carrier's insurer is required to file proof of insurance with the department under §218.16(e)(2).

A proposed amendment to §218.16(f) would make the language consistent with Transportation Code, §643.104(a) by modifying the language and replacing the word "shall" with "may not." Government Code, §311.016 defines the word "may not" as imposing a prohibition, and the language in §218.16(f) is intended to be a prohibition. Transportation Code, §643.104(a) prohibits an insurer from terminating insurance coverage to a motor carrier that is registered under Subchapter B of Transportation Code, Chapter 643 unless the insurer provides the department with notice at least 30 days before the date the termination of insurance takes effect. Proposed amendments to §218.16(f) would also add a hyphen to the words "90-day" and "seven-day" as a grammatical correction because the words are compound modifiers of the word "certificates." Proposed amendments to §218.16(h) would make the language consistent with Transportation Code, §643.105 and would specify the people who are authorized to sign the affidavit for the motor carrier if an insurer for a motor carrier becomes insolvent, is placed in receivership, or has its certificate of authority suspended or revoked, and the motor carrier no longer has insurance coverage as required by Transportation Code, Chapter 643, Subchapter C.

A proposed amendment to §218.18(d) would clarify that a motor carrier is not required to carry proof of registration in a vehicle leased from a registered leasing business under a short-term lease. Transportation Code, §643.063(a)(2) defines a "short-term lease" as a lease of 30 days or less.

Subchapter C. Records and Inspections.

A proposed amendment to §218.31(b)(3) would change the word "will" to "shall" for consistency and clarity. Government Code, §311.016 defines the word "shall" to impose a duty, and that is the intended meaning in §218.31. Proposed amendments to §218.31(c)(1) and §218.32(c) would change the term "principal place of business" to "principal business address" for consistency, to use the same term that is defined in §218.2 and used in Transportation Code, §643.052. A proposed amendment to

§218.32(c) would also decapitalize the word "department" because the word is not capitalized in Transportation Code, Chapter 643. In addition, a proposed amendment to §218.32(c)(3) would delete a reference to 49 C.F.R. §390.29 because the inspection of documents for motor carriers that are required to register under Transportation Code, Chapter 643 is governed by Transportation Code, §643.254.

Subchapter D. Motor Transportation Brokers.

A proposed amendment to §218.41(b)(3) would replace the word "shipper" with a reference to the person to whom the motor transportation broker provides services to clarify that this language is not limited to a shipper of a household goods motor carrier. A proposed amendment to §218.41(b)(3) would also change the word "it" to "the person" to conform with the proposed amendment to replace the reference to the word "shipper." A proposed amendment to §218.41 would delete subsection (d), regarding the amount of recovery, because the department does not have the statutory authority for this language.

Subchapter E. Consumer Protection.

Proposed amendments to §218.53 would replace the mandatory standard for uniform cargo liability with a voluntary standard for uniform cargo liability for a household goods carrier as authorized by Transportation Code, §643.152. The proposed amendments to §218.53 are consistent with 49 C.F.R. §375.201, which is a federal regulation adopted under Subtitle IV, Title 49, United States Code. The language in Transportation Code, §643.152 is based on language in 49 U.S.C. §14501(c)(1) and (3)(A) and (B), which is a federal preemption statute. Even though 49 U.S.C. §14501(c)(2)(B) says that the restrictions in subsection (c)(1) do not apply to the intrastate transportation of household goods, Transportation Code, §643.152 does not provide an exemption for the intrastate transportation of household goods. The department therefore does not have statutory authority to set a mandatory standard for uniform cargo liability for the intrastate transportation of household goods in Texas. In the absence of a mandatory standard, household goods carriers and shippers are authorized to agree to limits of liability for each intrastate shipment of household goods. A proposed amendment to §218.53 would also adopt by reference 49 C.F.R. §375.201, including any amendments that became effective through July 1, 2024.

Proposed amendments to §218.54(a) would replace the word "carrier" with the possessive word "carrier's" to fix a grammatical error, include a reference to the moving service contract between the parties (including a pre-existing transportation contract as described by §218.57(d)) to replace a reference to §218.53 regarding the amount of the household goods carrier's liability, and clarify that the parties could agree that the household goods carrier would have no liability for loss or damage regarding the shipper's property. A proposed amendment to §218.54(d) would replace the catch line for the subsection because the word "penalty" is a confusing term. The department is authorized to assess administrative penalties, which is something different than the liability referenced in §218.54(d).

A proposed amendment to §218.56(a)(5) would delete language regarding the mandatory uniform cargo liability that the department proposes to delete under current §218.53. A proposed amendment to §218.56(a)(5) would also reword the sentence due to the deletion and clarify that the proposal may state that the household goods carrier would have no liability for loss or damage regarding the shipper's property. A proposed amendment to §218.56(e)(3) would delete language regarding a portion

of a uniform bill of lading under §218.58, which the department proposes to repeal. A proposed amendment to §218.56(e)(3) would also insert a reference to the moving services contract.

Proposed amendments to §218.57(a)(6) would delete a reference to the mandatory uniform cargo liability under current §218.53 and would replace the language with text that is similar to the language in 49 C.F.R. §375.201 regarding the disclosure of the limits of the household goods carrier's liability for loss or damage to a shipper's household goods; however, the proposed amendment would also clarify that the moving services contract must expressly state if the household goods carrier's liability is \$0.00 for loss or damage to a shipper's household goods.

Proposed amendments to §218.57(a)(7) would delete a reference to the mandatory uniform cargo liability under current §218.53 and would replace the language with text that requires the household goods carrier to clearly and concisely disclose any costs associated with the household goods carrier's increased liability for loss or damage to a shipper's household goods. A proposed amendment to §218.57(a)(9) would replace a mandatory clause with an explanation of the clause that a household goods carrier must include in its contract with a shipper to put the shipper on notice regarding the documents that constitute the contract. The mandatory clause in current §218.57(a)(9) appears to be written for a hard copy of the moving services contract because it refers to the front and back of this document; however, the parties may use an electronic version of the moving services contract. Also, the mandatory clause in current §218.57(a)(9) refers to an addendum; however, the average shipper may not know what an addendum is. The proposed amendment to §218.57(a)(9) would give the household goods carrier the flexibility to draft a clause that works for its moving services contract.

Proposed new §218.57(a)(13) would add a new clause to require the household goods carrier to include certain language in the moving services contract regarding the claims process for a shipper who wants to file a claim against the household goods carrier. This language is designed to protect a consumer using the services of a household goods carrier, as authorized by Transportation Code, §643.153(a) and (b). Although the department is prohibited from establishing a uniform bill of lading under Transportation Code, §643.152, the prohibitions under §643.152 are intended to prohibit the economic regulation of motor carriers regarding the prices, routes, or services as stated in Transportation Code, §643.151 and the title to Transportation Code, Chapter 643, Subtitle D (Economic Regulation). The proposed new §218.57(a)(13) is not an economic regulation regarding the household goods carrier's prices, routes, or services. Unlike the language the department proposes to delete from §218.53 and §218.58, the language in proposed new §218.57(a)(13) does not directly or indirectly impact a household goods carrier's price or service because it does not limit a household goods carrier's discretion to limit or qualify its liability for services. The proposed new §218.57(a)(13) deals with the claims process under §218.61, which is part of the department's formal process for resolving a dispute over a fee or damage under Transportation Code, §643.153(b)(1). Due to the proposed new §218.57(a)(13), proposed amendments to §218.57(a) would delete the word "and" in §218.57(a)(11) and would add the word "and" at the end of §218.57(a)(12).

The department proposes the repeal of §218.58 because Transportation Code, §643.152 says that the department is only authorized to establish a voluntary standard for "uniform bills of lad-

ing or receipts for cargo being transported" and that any voluntary standard that the department establishes must be consistent with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law. The language in Transportation Code, §643.152 is based on language in 49 U.S.C. §14501(c)(1) and (3)(A) and (B), which is a federal preemption statute. Section 14501(3)(A) uses the terms "uniform cargo liability" and "uniform bills of lading or receipts for property being transported" that also appear in Transportation Code, §643.152. The federal laws on household goods movers are therefore relevant sources to determine what the Texas Legislature intended the term "bill of lading" to mean in Transportation Code, §643.152. Federal law, such as 49 C.F.R. §375.103, and Appendix A to 49 C.F.R. Part 375 (Your Rights and Responsibilities When You Move), Definitions and Common Terms, and the language in the department's rules, such as the definition for "moving services contract" in §218.2 and the language in §218.58, state that a bill of lading is a moving services contract. As a result, a "moving services contract" in §218.58 is a "bill of lading" under state and federal law. The language in current §218.58 therefore is a mandatory standard for a portion of a "uniform bill of lading" regarding limitation of liability, that is impermissible under Transportation Code, §643.152. To the extent the household goods carrier seeks to alter or expand on the limitation of liability language that is set forth in §218.57, §218.58 requires the household goods carrier to include one of two sets of legal terms and conditions verbatim in their moving services contract with the shipper, which means the language in current §218.58 is a mandatory standard for a portion of a "uniform bill of lading" regarding limitation of liability. As stated above, current §218.57(a)(6) and (7) include uniform cargo liability language, which is the language that says a household goods carrier's liability for loss or damage to any shipment is \$0.60 per pound per article, unless the carrier and shipper agree, in writing, to a greater level of liability. These are mandatory standards, which the department lacks legal authority to create through rule under Transportation Code, §643.152.

Moreover, the department is not authorized to amend §218.58 to say that it is a voluntary standard because Transportation Code, §643.152 says that the department is only authorized to establish a voluntary standard for "uniform bills of lading or receipts for cargo being transported" and that any voluntary standard that the department establishes must be consistent with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law. The language in §218.58 is not entirely consistent with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law, such as 49 C.F.R. Part 375 (Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations).

A proposed amendment to §218.61(b)(1) would provide a clear deadline of 23 days for a household goods carrier to issue the acknowledgment letter to the claimant, and a proposed amendment to §218.61(b)(1)(B) would make a conforming amendment due to the proposed amendment to §218.61(b)(1). The current 20-day deadline for a household goods carrier to send an acknowledgment of the claim to the claimant excludes Sundays and nationally-recognized holidays, which makes it harder for a household goods carrier to calculate the deadline.

Proposed amendments to §218.61(b)(1)(A) and (2) would also provide a clear deadline of 35 days for a shipper to submit a request for mediation to the department. The current 30-day deadline excludes Sundays and nationally recognized holidays, which makes it harder for a shipper to calculate the deadline.

Section 218.62 describes the mediation process, which is part of the department's formal process for resolving a dispute over a fee or damage under Transportation Code, §643.153(b)(1) to protect a shipper of a household goods carrier from deceptive or unfair practices and unreasonably hazardous activities. Proposed amendments to §218.62(a) would clarify that a claimant may only make a written request to the department for mediation regarding a dispute over a fee or damage to a shipper's household goods because Transportation Code, §643.153(b)(1) authorizes the department to establish a formal process for resolving a dispute over a fee or damage. There are other potential claims that a claimant may have against a household goods carrier, such as a personal injury claim, that are outside the scope of the department's mediation program. The claimant may have the right to seek damages against the household goods carrier or the responsible individuals in a court of law.

A proposed amendment to §218.62(c) would provide a clear deadline of 35 days for a shipper to submit a request for mediation to the department. The current 30-day deadline excludes Sundays and nationally recognized holidays, which makes it harder for a shipper to calculate the deadline. A proposed amendment to §218.62(d) would make a conforming amendment to increase the number of days after which the department shall deny a request for mediation due to the proposed amendment to §218.62(c). The proposed amendment to §218.62(d) would substitute "125 days" for "120 days (excluding Sundays and nationally recognized holidays)." The current 90-day deadline in §218.61(a)(1) does not include the clause "(excluding Sundays and nationally recognized holidays)," so 90 days plus the proposed new 35-day deadline under the proposed amendment to §218.62(c) would equal 125 days. A proposed amendment to §218.62(f) would make a conforming amendment to increase the 30-day deadline to a 35-day deadline for a shipper to submit a request for mediation to the department, due to the proposed amendment to §218.62(c).

A proposed amendment to §218.62(c)(3) would fix a grammatical error by changing the word "has" to "have." Proposed amendments to §218.62(d) would change the word "will" to "shall" for consistency and clarity. Government Code, §311.016 defines the word "shall" to impose a duty, which is the intended meaning in §218.62(d). A proposed amendment to §218.62(f) would modernize the rule by authorizing the calculation of the 30-day deadline for requesting mediation to be based on the date the claim denial or settlement offer letter is emailed to the claimant.

Proposed amendments to §218.62(i) would add a new paragraph (1) and modify the requirement for a household goods carrier to participate in the mediation process due to the amendments to §218.53 to change the mandatory uniform cargo liability to a new voluntary standard. The draft amendments to §218.62(i) would strike a balance between protecting a shipper and not forcing the household goods carrier to mediate a shipper's claim for loss or damage regarding the shipper's property that conflicts with the terms of the moving services contract regarding the household goods carrier's liability. Because there would no longer be a mandatory standard for uniform cargo liability under the proposed amendments to §218.53, the household goods carrier and the shipper could agree in their moving services contract that the household goods carrier will have \$0.00 liability for loss or damage to the shipper's property, which may reduce the contract costs for the shipper. If the parties agree that there will be \$0.00 liability or if a pre-existing transportation contract states the household goods carrier will have \$0.00 liability, there is nothing to mediate regarding liability for loss or dam-

ages to the shipper's property. However, there could still be a need for a mediation regarding a possible claim on the fee under the moving services contract, or a claim if the shipper purchases insurance from the household goods carrier and the household goods carrier does not obtain the insurance policy or other appropriate evidence of purchased insurance for the shipper under §218.54. Proposed amendments to §218.62(i) would also add a new paragraph (2) to separate the new language in new paragraph (1) from the current language in §218.62(i) regarding the department's authority to impose administrative penalties on a household goods carrier who refuses to participate in mediation as required by §218.62. In addition, a proposed amendment to new §218.62(i)(2) would substitute the word "penalties" for the word "sanctions" because §218.71 deals with penalties, rather than sanctions.

Proposed amendments to §218.64(a) and (b) would delete references to "two incorporated cities" to be consistent with the language in Transportation Code, §643.153 regarding the tariff that a household goods carrier shall file with the department regarding the maximum charges for all transportation services. A proposed amendment to §218.64(c)(3)(B) would replace the word "applicant" with the word "association" because the language refers to the association. A proposed amendment to §218.64(c)(6)(B) would make the language consistent with the language in Transportation Code, §643.154(e) regarding the approval of a collective ratemaking agreement. A proposed amendment to §218.64(c)(9) would change the word "of" to "by" to correct a grammatical error.

Proposed new §218.64(d) would exempt a household goods carrier that is required to register under Transportation Code, Chapter 643 from Chapter 15, Business and Commerce Code, for an activity relating to the establishment of a joint line rate, route, classification, or mileage guide, as authorized by Transportation Code, §643.154(c).

Proposed amendments to §218.64 and §218.65 would change the word "will" to "shall" for consistency and clarity. Government Code, §311.016 defines the word "shall" to impose a duty, which is the intended meaning in §218.64 and §218.65.

A proposed amendment to §218.65(a)(1)(E) would delete language contained within parentheses because paragraph (1) is supposed to list the contents of the tariff; however, the deleted language would be moved to the appropriate location in §218.65 under proposed amendments referenced below. A proposed amendment to §218.65(a)(3)(B) would replace the term "principal office" with the term "principal business address," which is the term used in Transportation Code, §643.052 and a defined term in §218.2. A proposed amendment to §218.65(a)(3)(C) would add the words "certificate of" for clarity because the transmittal letter must include the household goods carrier's certificate of registration number. Proposed new §218.65(a)(4)(D) would add the first sentence from the language that would be removed from the parentheses in §218.65(a)(1)(E) regarding the requirement to file the mileage guide as an addendum to the tariff because §218.65(a)(4) is the correct location for this language. Another proposed amendment to §218.65 would delete subsection (b) as outdated and unnecessary because the oldest tariff that is on file with the department is dated 2018. All tariffs must now comply with §218.65. Proposed new §218.65(b) would contain the second sentence from the language that would be removed from the parentheses in §218.65(a)(1)(E) regarding the requirement to allow department personnel free access to a computer data-

base used as a mileage guide in the household goods carrier's tariff.

Subchapter F. Administrative Penalties and Sanctions.

Proposed amendments to §218.72 would add the word "Texas" to clarify that the references are to the Texas Department of Public Safety. Proposed amendments to §218.72(c) would replace the word "motor" with "household goods" for clarity and consistency because the term "household goods carrier" is a defined term in §218.2. Proposed amendments to §218.72(c) would also replace the words "mover's" and "mover" with the terms "goods carrier's" and "goods carrier" for clarity and consistency because "household goods carrier" is a defined term in §218.2.

Subchapter G. Financial Responsibility for Foreign Commercial Motor Vehicles.

A proposed amendment to §218.80 would clarify that for the purposes of Subchapter G of Chapter 218, the term "motor carrier" is defined by Transportation Code, §648.001, which defines the term "motor carrier" to include a foreign motor carrier and a foreign motor private carrier, as defined in 49 U.S.C. §13102(6) and (7). Also, proposed amendments to §218.80 would clarify that Subchapter G does not apply to a motor carrier that is required to register with the department under Transportation Code, Chapter 643 because the financial responsibility requirements for such a motor carrier are addressed in §218.16. In addition, a proposed amendment to §218.80 would clarify that Subchapter G does not apply to a motor carrier that is required to register with FMCSA for interstate transportation and is not operating in intrastate transportation within this state. FMCSA has the authority to regulate motor carriers regarding interstate transportation.

A proposed amendment to §218.82(a) would delete the second sentence regarding a motor carrier that is required to register with the department under Transportation Code, Chapter 643 due to the proposed amendments to §218.80, including the amendment that would move most of this second sentence to §218.80 with some changes. A proposed amendment to §218.82(a) would also change the term "public road or highway" to "public highway," which is a defined term in §218.2.

Proposed amendments to §218.82(b) would adopt by reference the required level of financial responsibility under 49 C.F.R. Part 387, including any amendments that became effective through July 1, 2024. Also, a proposed amendment to §218.82(b) would delete reference to the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015, because FMCSA amended 49 C.F.R. Part 387 since October 23, 2015.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposed amendments and repeal will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division, has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Archer has also determined that, for each year of the first five years the amended sections and repealed section are in effect, there are several public benefits anticipated.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include rules, which will be consistent with

applicable law and provide the public with information regarding the department's current processes.

Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be costs to comply with these rules because the applicants will be required to gather and provide more information and documents to the department in applications under §218.13; however, it is hard to estimate these costs.

There may be one-time costs for household goods carriers to modify their proposals and estimates for moving services, as well as their moving services contracts and their template acknowledgment to a claim from the shipper, due to the proposed amendments to §§218.53, 218.56, 218.57, and 218.61; however, it would be difficult to estimate these costs, if any, because the costs will vary based on the hard-copy or electronic method that the carriers use to create their proposals, estimates, acknowledgments, and moving services contracts.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments will have an adverse economic effect on small businesses and micro-businesses. The department does not collect the kind of information on the motor carriers under Chapter 218 that is necessary to determine whether the motor carriers fall within the definition of a small business or a micro-business under Government Code, Chapter 2006; however, it is likely that a majority of the motor carriers fall within the definition of a small business or a micro-business under Government Code, Chapter 2006. The proposed amendments will not have an adverse economic effect on rural communities as defined by Government Code, Chapter 2006 because Transportation Code, §643.002(6) exempts vehicles operated by a governmental entity from the requirements under Chapter 218 and Transportation Code, Chapter 643. Any adverse economic impact on motor carriers from the requirement to provide additional information and documents in their applications to the department and any adverse economic impact on household goods carriers from having to update their forms are not likely to cause an adverse economic effect on any rural communities in which these motor carriers might be located.

There will be costs for motor carriers to comply with the amendments to §218.13 because the applicants will be required to gather and provide more information and documents to the department in applications. Although it is hard to estimate these costs, the information and documents are necessary to detect and prevent chameleon carriers as described in the explanation of the amendments to §218.13. These amendments are necessary to protect the public from chameleon carriers; therefore, the department is not required to consider alternatives because alternatives would not protect the health and safety of the public under Government Code, §2006.002(c-1).

There may be costs for household goods carriers to modify their proposals and estimates for moving services, as well as their moving services contracts and their template acknowledgment to a claim from the shipper, due to the amendments to §§218.53, 218.56, 218.57, and 218.61. It is difficult to estimate these costs, if any, and the costs will vary based on whether the carriers use electronic or hard-copy documents. However, these amendments are designed to protect consumers of household goods carriers from deceptive or unfair practices and unreasonably hazardous activities under Transportation Code, §643.153(a) and (b). Therefore, the department is not required to consider alternatives because alternatives would not protect

the health and safety of the public under Government Code, §2006.002(c-1).

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments and repeal are in effect, no government program would be created or eliminated. Implementation of the proposed amendments and repeal would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department. The proposed amendments and repeal do not create a new regulation, but they do expand existing regulations regarding applications for motor carrier operating authority, primarily to detect and prevent chameleon carriers. The proposed amendments would limit and repeal regulations by removing the requirement for a motor carrier to submit its renewal application at least 15 days prior to the renewal date under §218.14(b)(1), and removing the mandatory requirements for limitations of liability and bills of lading under §218.53, §218.57 and §218.58. Lastly, the proposed amendments and repeal do not affect the number of individuals subject to each rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on September 23, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §218.2

STATUTORY AUTHORITY. The department proposes the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.051, which states that a motor carrier may not operate a commercial motor vehicle, as defined by Transportation Code, §548.001, on a road or highway in Texas, and may not operate a vehicle, regardless of size, to transport household goods for compensation on a road or highway in Texas unless the motor carrier registers with the department under Subchapter B of Transportation Code, Chapter 643; Transportation Code, §548.001, which defines the term "commercial motor vehicle" and "farm vehicle" under Transportation Code, Chapter 548; Transportation Code, §643.153, which authorizes the department to adopt rules that are necessary to ensure that a customer of a motor carrier transporting household goods is protected from deceptive or unfair practices and unreasonably hazardous activities, including rules that require the motor carrier to indicate clearly to a customer whether an estimate is binding or nonbinding and to disclose the maximum price a customer could be required to pay, and rules that require a motor carrier transporting household goods to list

a place of business with a street address in Texas and the motor carrier's registration number issued under Transportation Code, Chapter 643 in any print advertising published in Texas; Transportation Code, §648.102, which authorizes the department to adopt rules that conform with 49 C.F.R. Part 387 requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed amendments implement Transportation Code, Chapter 643; and Government Code, Chapter 2001.

§218.2. *Definitions.*

(a) The definitions contained in Transportation Code, Chapter 643 apply to this chapter. In the event of a conflict with this chapter, the definitions contained in Transportation Code, Chapter 643 control; however, the definition of the word "director" in this section controls over the definition in Transportation Code, Chapter 643.

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

(1) Advertisement--An oral, written, graphic, or pictorial statement or representation made in the course of soliciting intrastate household goods transportation services, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio, the Internet, or via an online [on-line] service, or on television. The term does not include direct communication between a household goods carrier or carrier's representative and a prospective shipper, and does not include the following:

- (A) promotional items of nominal value such as ball caps, tee shirts, and pens;
- (B) business cards;
- (C) listings not paid for by the household goods carrier or its household goods carrier's agent; and
- (D) listings of a household goods carrier's business name or assumed name as it appears on the motor carrier certificate of registration, and the household goods carrier's address, and contact information in a directory or similar publication.

(2) Approved association--A group of household goods carriers, its agents, or both, that has an approved collective ratemaking agreement on file with the department under §218.64 of this title (relating to Rates).

(3) Binding proposal--A [formal] written offer stating the exact price for the transportation of specified household goods and any related services.

(4) Board--Board of the Texas Department of Motor Vehicles.

(5) Certificate of insurance--A certificate prescribed by and filed with the department in which an insurance carrier or surety company warrants that a motor carrier for whom the certificate is filed has

the minimum coverage as required by §218.16 of this title (relating to Insurance Requirements).

(6) Certificate of registration--A certificate issued by the department to a motor carrier and containing a unique number.

(7) Certified scale--Any scale designed for weighing motor vehicles, including trailers or semitrailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform-type or warehouse-type scale properly inspected and certified.

(8) Commercial motor vehicle--As defined in Transportation Code, §548.001.

[(A) Includes:]

[(i) any motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds, that is designed or used for the transportation of cargo in furtherance of any commercial enterprise;]

[(ii) any vehicle, including buses, designed or used to transport more than 15 passengers, including the driver; and]

[(iii) any vehicle used in the transportation of hazardous materials in a quantity requiring placarding under the regulations issued under the federal Hazardous Materials Transportation Act (49 U.S.C. §§5101-5128).]

[(B) The definition for commercial motor vehicle does [Does] not include:

(A) [(i)] a farm vehicle with a gross weight, registered weight, or [and] gross weight rating of less than 48,000 pounds;

(B) [(ii)] a cotton vehicle [vehiele] registered under Transportation Code, §504.505;

(C) [(iii)] a vehicle registered with the Railroad Commission under Natural Resources Code, §113.131 and §116.072;

(D) [(iv)] a vehicle operated by a governmental entity;

(E) [(v)] a motor vehicle exempt from registration by the Unified Carrier Registration Act of 2005; and

(F) [(vi)] a tow truck, as defined by Occupations Code, §2308.002 [and permitted under Occupations Code, Chapter 2308, Subchapter C].

[(9) Commercial school bus--A motor vehicle owned by a motor carrier that is:]

[(A) registered under Transportation Code, Chapter 643, Subchapter B;]

[(B) operated exclusively within the boundaries of a municipality and used to transport preprimary, primary, or secondary school students on a route between the students' residences and a public, private, or parochial school or daycare facility;]

[(C) operated by a person who holds a driver's license or commercial driver's license of the appropriate class for the operation of a school bus;]

[(D) complies with Transportation Code, Chapter 548; and]

[(E) complies with Transportation Code, §521.022.]

(9) [(10)] Conspicuous--Written in a size, color, and contrast so as to be readily noticed and understood.

(10) [(14)] Conversion--A change in an entity's organization that is implemented with a Certificate of Conversion issued by the Texas Secretary of State under Business [and] Organizations Code, §10.154.

~~[(12) Department--Texas Department of Motor Vehicles (TxDMV).]~~

(11) [(13)] Director--The director of the department's Motor Carrier Division, whom the executive director of the department designated as the director under Transportation Code, §643.001(2) [Texas Department of Motor Vehicles].

~~[(14) Division--The Motor Carrier Division.]~~

(12) [(15)] Estimate--An informal oral calculation of the approximate price of transporting household goods.

(13) [(16)] Farmer--A person who operates a farm or is directly involved in cultivating land, [or in raising] crops, or livestock that are owned by or are under the direct control of that person.

(14) [(17)] Farm vehicle--A commercial motor vehicle that is: [Any vehicle or combination of vehicles controlled or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch.]

(A) controlled and operated by a farmer to transport either:

(i) agricultural products; or

(ii) farm machinery, farm supplies, or both, to and from a farm;

(B) not being used in the operation of a for-hire motor carrier;

(C) not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with 49 C.F.R. §177.823; and

(D) being used within 150 air-miles of the farmer's farm.

(15) [(18)] FMCSA--Federal Motor Carrier Safety Administration.

(16) [(19)] Foreign commercial motor vehicle--As defined in Transportation Code, §648.001. [A commercial motor vehicle that is owned by a person or entity that is domiciled in or a citizen of a country other than the United States.]

(17) [(20)] Gross weight rating--The maximum loaded weight of any combination of truck, tractor, and trailer equipment as specified by the manufacturer of the equipment. If the manufacturer's rating is unknown, the gross weight rating is the greater of:

(A) the actual weight of the equipment and its lading; or

(B) the maximum lawful weight of the equipment and its lading.

~~[(21) Household goods--Personal property intended ultimately to be used in a dwelling when the transportation of that property is arranged and paid for by the householder or the householder's representative. The term does not include personal property to be used in a dwelling when the property is transported from a manufacturing, retail, or similar company to a dwelling if the transportation is arranged by a manufacturing, retail, or similar company.]~~

(18) [(22)] Household goods agent--A motor carrier who transports household goods on behalf of another motor carrier.

(19) [(23)] Household goods carrier--A motor carrier who transports household goods for compensation [or hire in furtherance of a commercial enterprise], regardless of the size of the vehicle.

~~[(24) Insurer--A person, including a surety, authorized in this state to write lines of insurance coverage required by Subchapter B of this chapter.]~~

(20) [(25)] Inventory--A list of the items in a household goods shipment and the condition of the items.

(21) [(26)] Leasing business--A person that leases vehicles requiring registration under Subchapter B of this chapter to a motor carrier that must be registered.

(22) [(27)] Mediation--A non-adversarial form of alternative dispute resolution in which an impartial person, the mediator, facilitates communication between two parties to promote reconciliation, settlement, or understanding.

(23) [(28)] Motor Carrier or carrier--As defined in Transportation Code, §643.001(6). [A person who controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state.]

(24) [(29)] Motor transportation broker--As defined in Transportation Code, §646.001. [A person who sells, offers for sale, or negotiates for the transportation of cargo by a motor carrier operated by another person or a person who aids and abets another person in selling, offering for sale, or negotiating for the transportation of cargo by a motor carrier operated by another person.]

(25) [(30)] Moving services contract--A contract between a household goods carrier and shipper, such as a bill of lading, receipt, order for service, or work order, that sets out the terms of the services to be provided.

(26) [(31)] Multiple user--An individual or business who has a contract with a household goods carrier and who used the carrier's services more than 50 times within the preceding 12 months.

(27) [(32)] Not-to-exceed proposal--A formal written offer stating the maximum price a shipper can be required to pay for the transportation of specified household goods and any related services. The offer may also state the non-binding approximate price. Any offer based on hourly rates must state the maximum number of hours required for the transportation and related services unless there is an acknowledgment from the shipper that the number of hours is not necessary.

(28) [(33)] Principal [place of] business address--A single location that serves as a motor carrier's headquarters and where it maintains its operational records or can make them available.

(29) [(34)] Print advertisement--A written, graphic, or pictorial statement or representation made in the course of soliciting intrastate household goods transportation services, including, without limitation, a statement or representation made in or contained in a newspaper, magazine, circular, or other publication. The term does not include direct communication between a household goods carrier or carrier's representative and a prospective shipper, and does not include the following:

(A) promotional items of nominal value such as ball caps, tee shirts, and pens;

(B) business cards;

(C) Internet websites;

(D) listings not paid for by the household goods carrier or its household goods carrier's agent; and

(E) listings of a household goods carrier's business name or assumed name as it appears on the motor carrier certificate of registration, and the household goods carrier's address, and contact information in a directory or similar publication.

(30) [(35)] Public highway--Any publicly owned and maintained street, road, or highway in this state.

[(36) Reasonable dispatch--The performance of transportation, other than transportation provided under guaranteed service dates, during the period of time agreed on by the carrier and the shipper and shown on the shipment documentation. This definition does not affect the availability to the carrier of the defense of force majeure.]

(31) [(37)] Replacement vehicle--A vehicle that takes the place of another vehicle that has been removed from service.

(32) [(38)] Revocation--The withdrawal of registration and privileges by the department or a registration state.

(33) [(39)] Shipper--The owner of household goods or the owner's representative.

(34) [(40)] Short-term lease--A lease of 30 days or less.

[(41) SOAH--The State Office of Administrative Hearings.]

(35) [(42)] Substitute vehicle--A vehicle that is leased from a leasing business and that is used as a temporary replacement for a vehicle that has been taken out of service for maintenance, repair, or any other reason causing the temporary unavailability of the permanent vehicle.

(36) [(43)] Suspension--Temporary removal of privileges granted to a registrant by the department or a registration state.

(37) [(44)] Unified Carrier Registration System or UCR--A motor vehicle registration system established under 49 U.S.C. §14504a or a successor federal registration program.

(38) [(45)] USDOT--United States Department of Transportation.

(39) [(46)] USDOT number--An identification number issued by or under the authority of the FMCSA or its successor.

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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SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §§218.10, 218.11, 218.13, 218.14, 218.16, 218.18

STATUTORY AUTHORITY. The department proposes the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.051, which states that a motor carrier may not operate a commercial

motor vehicle, as defined by Transportation Code, §548.001, on a road or highway in Texas, and may not operate a vehicle, regardless of size, to transport household goods for compensation on a road or highway in Texas unless the motor carrier registers with the department under Subchapter B of Transportation Code, Chapter 643; Transportation Code, §643.052, which requires a motor carrier to submit to the department an application on a form prescribed by the department to register under Subchapter B of Transportation Code, Chapter 643, as well as the required components of the application, which include information the department by rule determines is necessary for the safe operation of a motor carrier under Transportation Code, Chapter 643; Transportation Code, §643.053, which provides additional requirements for an application filed with the department under Transportation Code, §643.052; Transportation Code, §643.054, which authorizes the department to deny an application for registration under certain circumstances, in addition to authorizing the department to adopt simplified procedures for the registration of motor carriers transporting household goods as agents for carriers required to register under Transportation Code, Chapter 643; Transportation Code, §643.056, which requires a motor carrier that is required to register under Subchapter B of Transportation Code, Chapter 643, to supplement the motor carrier's application for registration under certain circumstances; Transportation Code, §643.058, which specifies the requirements for a motor carrier to apply for renewal of registration issued under Subchapter B of Transportation Code, Chapter 643, as well as the authority for the department to deny an application for renewal of registration; Transportation Code, §643.0585, which specifies the requirements for a motor carrier to apply for reregistration after its registration has been revoked, as well as the authority for the department to deny an application for reregistration; Transportation Code, §643.061, which authorizes the department to adopt rules to vary the registration period under Subchapter B of Transportation Code, Chapter 643; Transportation Code, §643.062, which states that a foreign-based international motor carrier that is required to register under Transportation Code, Chapter 643 or that is registered under Transportation Code, Chapter 645 may not transport persons or cargo in intrastate commerce in Texas; Transportation Code, §643.063, which authorizes the department to adopt rules that provide for the operation of vehicles under a short-term lease under flexible procedures, which are designed to avoid requiring a vehicle to be registered more than once in a calendar year and which allow a leasing business to register a vehicle on behalf of a lessee; Transportation Code, §643.101(b), which authorizes the department to adopt rules to set the amount of liability insurance that a motor carrier that is required to register under Subchapter B of Transportation Code, Chapter 643 must maintain, at an amount that does not exceed the amount required for a motor carrier under a federal regulation adopted under 49 U.S.C. §13906(a)(1); Transportation Code, §643.102, which authorizes the department to adopt rules to provide for a responsible system of self-insurance for a motor carrier; Transportation Code, §643.103, which authorizes the department to charge a fee of \$100 when a motor carrier that is required to register under Subchapter B of Transportation Code, Chapter 643 files evidence of insurance in the amounts required by Transportation Code, §643.101 or §643.1015, or evidence of financial responsibility as described by Transportation Code, §643.102, in a form prescribed by the department; Transportation Code, §643.252, which authorizes the department to deny a registration issued under Transportation Code, Chapter 643 under

certain circumstances; Transportation Code, §648.102, which authorizes the department to adopt rules that conform with 49 C.F.R. Part 387 requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed amendments implement Transportation Code, Chapter 643; and Government Code, Chapter 2001.

§218.10. Purpose.

[Transportation Code, Chapter 643, provides that a motor carrier may not operate a commercial motor vehicle or transport household goods on a for-hire basis on a road or highway of this state unless the carrier registers with the department or is exempt from registration under Transportation Code, §643.002.] This subchapter prescribes the procedures by which a motor carrier, leasing business, or [~~for-hire transporter of~~] household goods carrier may register with the department, and sets out minimum insurance requirements and minimum [~~workers' compensation or~~] accidental insurance requirements.

§218.11. Motor Carrier Registration.

(a) A motor carrier may not operate a commercial motor vehicle upon a public highway [~~the public roads or highways~~] of this state without first obtaining a certificate of registration issued by the department as prescribed in this subchapter and a valid USDOT number.

(b) A household goods carrier may not operate a vehicle upon a public highway [~~the public roads or highways~~] of this state without first obtaining a certificate of registration issued by the department as prescribed in this subchapter and a valid USDOT number.

(c) For the purposes of this subchapter, a valid USDOT number is an active USDOT number.

§218.13. Application for Motor Carrier Registration.

(a) Form of original application. An original application for motor carrier registration must be filed electronically in the department's designated motor carrier registration system, [~~with the department's Motor Carrier Division and~~] must be in the form prescribed by the director and must contain, at a minimum, the following information and documents.

(1) USDOT number. A valid USDOT number issued to the applicant.

(2) Applicant information and documents. All applications must include the following information and documents:

(A) The applicant's name, business type (e.g., sole proprietor, corporation, or limited liability company), telephone number, email address, and Secretary of State file number, as applicable. The applicant's name and email address must match the information the applicant provided to FMCSA to obtain the USDOT number that the applicant provided in its application to the department.

(B) An application submitted by an entity, such as a corporation, general partnership, limited liability company, limited liability

ity corporation, limited partnership, or partnership, must include the entity's Texas Comptroller's Taxpayer Number or the entity's Federal Employer Identification Number.

(C) A legible and accurate electronic image of each applicable required document:

(i) The certificate of filing, certificate of incorporation, or certificate of registration on file with the Texas Secretary of State; and

(ii) each assumed name certificate on file with the Secretary of State or county clerk.

(3) Information and documents regarding applicant's owners, representatives, and affiliates. All applications must include the following information and documents on the applicant's owners, representatives, and affiliates, as applicable:

(A) The contact name, email address, and telephone number of the person submitting the application. An authorized representative of the applicant who files an application with the department on behalf of an applicant may be required to provide written proof of authority to act on behalf of the applicant.

(B) The name, social security number or Individual Taxpayer Identification Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of birth, business address, and ownership percentage for each owner, partner, member, or principal if the applicant is not a publicly traded company.

(C) The name, social security number or Individual Taxpayer Identification Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of birth, and business address for the following if the applicant is owned in full or in part by a legal entity:

(i) each officer, director, or trustee authorized to act on behalf of the applicant; and

(ii) each manager or representative who has or exercises authority to direct some or all of the applicant's operational policy regarding compliance with applicable laws regarding a motor carrier, excluding sales functions, on behalf of the applicant.

(D) The name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part.

(E) The name, social security number or Individual Taxpayer Identification Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of birth, and business address for each person who serves or will serve as the applicant's manager, operator, or representative who has or exercises authority to direct some or all of the applicant's operational policy regarding compliance with applicable laws regarding a motor carrier, excluding sales functions.

(F) A legible and accurate electronic image of at least one of the following unexpired identity documents for each natural person identified in the application:

(i) a driver license issued by a state or territory of the United States. If the driver license was issued by the Texas Department of Public Safety, the image must also include the audit number listed on the Texas driver license;

(ii) Texas identification Card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E, or an identification certificate issued by a state or territory of the United States;

(iii) license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(iv) United States passport; or

(v) United States military identification.

~~[(2) Business or trade name. The applicant must designate the business or trade name of the motor carrier.]~~

~~[(3) Owner name. If the motor carrier is a sole proprietorship, the owner must indicate the name and social security number of the owner. A partnership must indicate the partners' names, and a corporation or other entity must indicate principal officers and titles.]~~

(4) Principal business address and mailing address. The applicant must provide the applicant's ~~[Physical address of principal place of business. A motor carrier must disclose the motor carrier's]~~ principal business address, which must be a physical address. If the mailing address is different from the principal business address, the applicant must also provide the applicant's mailing address ~~[must also be disclosed].~~

(5) Legal agent.

(A) A Texas-domiciled motor carrier must provide the name, telephone number, and address of a legal agent for service of process if the agent is different from the motor carrier.

(B) A motor carrier domiciled outside Texas must provide the name, telephone number, and Texas address of the legal agent for service of process.

(C) A legal agent for service of process shall be a Texas resident, a domestic corporation, or a foreign corporation authorized to transact business in Texas with a Texas physical address, rather than a post office box, for service of process.

(6) Description of vehicles. An application must include a motor carrier equipment report identifying each ~~[commercial]~~ motor vehicle that requires registration and that the carrier proposes to operate. Each ~~[commercial]~~ motor vehicle must be identified by its ~~[motor]~~ vehicle identification number, make, model year, and type of cargo and by the unit number assigned to the ~~[commercial]~~ motor vehicle by the motor carrier. Any subsequent registration of vehicles must be made under subsection (e) of this section.

(7) Type of motor carrier operations. An applicant must state if the applicant proposes to transport passengers, household goods, or hazardous materials. ~~[.]~~

~~[(A) proposes to transport passengers, household goods, or hazardous materials; or]~~

~~[(B) is domiciled in a foreign country.]~~

(8) Insurance coverage. An applicant must indicate insurance coverage as required by §218.16 of this title (relating to Insurance Requirements).

(9) Safety certification. Each motor carrier must complete, as part of the application, a certification stating that the motor carrier knows and will conduct operations in accordance with all federal and state safety regulations.

(10) Drug-testing certification. Each motor carrier must certify, as part of the application, that the motor carrier is in compliance with the drug-testing requirements of 49 C.F.R. Part 382. If the motor carrier belongs to a consortium, as defined by 49 C.F.R. Part 382, the applicant must provide the names of the persons operating the consortium.

(11) Duration of registration.

(A) An applicant must indicate the duration of the desired registration. Except as provided otherwise in this section, registration may be for seven calendar days, 90 calendar days, one year, or two years. The duration of registration chosen by the applicant will be applied to all vehicles.

(i) Household goods carriers may not obtain seven-day or 90-day certificates of registration.

(ii) Motor carriers that transport passengers in a commercial motor vehicle as defined by Transportation Code, §548.001(1)(B) [§218.2(8)(A)(ii) of this title (relating to Definitions)] may not obtain seven-day or 90-day certificates of registration, unless approved by the director.

(B) Interstate motor carriers that operate in intrastate commerce and meet the requirements under §218.14(c) of this title (relating to Expiration and Renewal of Commercial Motor Vehicles Registration) are not required to renew a certificate of registration issued under this section.

(12) Additional requirements. The following fees, documents, and information must be submitted with the application. ~~[all applications.]~~

(A) An application must be accompanied by an application fee of:

(i) \$100 for annual and biennial registrations;

(ii) \$25 for 90-day registrations; or

(iii) \$5 for seven-day registrations.

(B) An application must be accompanied by a vehicle registration fee of:

(i) \$10 for each vehicle that the motor carrier proposes to operate under a seven-day, 90-day, or annual registration; or

(ii) \$20 for each vehicle that the motor carrier proposes to operate under a biennial registration.

(C) An application must be accompanied by proof of insurance or financial responsibility and the insurance filing fee as required by §218.16.

~~[(D) An application must include the applicant's business telephone number, email address, and any cell phone number.]~~

(D) ~~[(E)]~~ An application must include the completed New Applicant Questionnaire (Applicant Questionnaire), which consists of questions and requirements, such as the following:

(i) Have you ever had another motor carrier certificate of registration number issued by the department in the three years prior to the date of this application? If your answer is yes, provide the certificate of registration number for the motor carrier(s). In the Applicant Questionnaire, the word "you" means the applicant or any business that is operated, managed, or otherwise controlled by or affiliated with the applicant or a family member, corporate officer, manager, operator, or owner (if the business is not a publicly traded company) of the applicant. In the Applicant Questionnaire, the word "manager" means a person who has or exercises authority to direct some or all of the applicant's operational policy regarding compliance with applicable laws regarding a motor carrier, excluding sales functions.

(ii) Have you had a Compliance Review or a New Entrant Audit by the Texas Department of Public Safety that resulted in an Unsatisfactory Safety Rating in the three years prior to the date of

your application? If your answer is yes, provide the USDOT number(s) and the certificate of registration number(s) issued by the department.

(iii) Are you currently under an Order to Cease from the Texas Department of Public Safety? If your answer is yes, provide the motor carrier's USDOT number(s) and the Carrier Profile Number(s). The Texas Department of Public Safety assigns a Carrier Profile Number (CP#) when they perform a compliance review on a motor carrier's operations to determine whether the motor carrier meets the safety fitness standards.

(iv) Are you related to another motor carrier, or have you been related to another motor carrier within the three years prior to the date of your application? The relationship may be through a person (including a family member), corporate officer, or partner who also operates or has operated as a motor carrier in Texas. If your answer is yes, state how you are related and provide the motor carrier's name and the motor carrier's USDOT number, or the certificate of registration number issued by the department for each related motor carrier.

(v) Do you currently owe any administrative penalties to the department, regardless of when the final order was issued to assess the administrative penalties? If your answer is yes, provide the following information under which the administrative penalties were assessed:

(I) department's notice number(s); and

(II) the motor carrier's USDOT number and certificate of registration number issued by the department;

(vi) Name and title of person completing the Applicant Questionnaire; and

(vii) Is the person completing the Applicant Questionnaire an authorized representative of the applicant? If your answer is yes, please add the person's name, job title, phone number, and address.

(E) An applicant must state if the applicant is domiciled in a foreign country.

(F) An application must include a certification that the information and documents provided in the application are true and correct and that the applicant complied with the application requirements under Chapter 218 of this title (relating to Motor Carriers) and Transportation Code, Chapter 643.

~~{(F) An application submitted by an individual must include the number from one of the following forms of identification, as well as a copy of the identification document:}~~

~~{(i) an unexpired driver's license issued by a state or territory of the United States. If the driver's license was issued by the Department of Public Safety, the application must also include the audit number listed on the driver's license;}~~

~~{(ii) an unexpired identification certificate issued by a state or territory of the United States; or}~~

~~{(iii) an unexpired concealed handgun license or license to carry a handgun issued by the Department of Public Safety under Government Code, Chapter 411, Subchapter H.}~~

~~{(G) An application submitted by an individual or entity with an assumed name must be accompanied by supporting documents regarding the assumed name, such as an assumed name filing in the county of proposed operation.}~~

~~{(H) An application submitted by an entity, such as a corporation, general partnership, limited liability company, limited liability corporation, limited partnership, or partnership, must include the~~

~~entity's Texas Comptroller's Taxpayer Number or the entity's Federal Employer Identification Number.}~~

~~(G) [(H)] An application must be accompanied by any other information and documents required by the department to evaluate the application under current law, including board rules.~~

(13) Additional requirements for household goods carriers. The following information, documents, and certification must be submitted with all applications by household goods carriers:

(A) A copy of the tariff that sets out the maximum charges for transportation of household goods, or a copy of the tariff governing interstate transportation services. If an applicant is governed by a tariff that its association has already filed with the department under §218.65 of this title (relating to Tariff Registration), the applicant complies with the requirement in this subparagraph by checking the applicable box on the application to identify the association's tariff.

(B) If the motor vehicle is not titled in the name of the household goods carrier, the following lease information and documentation, notwithstanding §218.18(a) of this title (relating to Short-term Lease and Substitute Vehicles):

(i) a copy of a valid lease agreement for each motor vehicle that the household goods carrier will operate; and

(ii) the name of the lessor and their USDOT number for each motor vehicle leased to the household goods carrier under a short-term lease.

(C) A certification that the household goods carrier has procedures that comply with Code of Criminal Procedure, Article 62.063(b)(3), which prohibits certain people who are required to register as a sex offender from providing moving services in the residence of another person without supervision.

(14) Additional requirements for passenger carriers. The following information and documents must be submitted with all applications for motor carriers that transport passengers in a commercial motor vehicle as defined by Transportation Code, §548.001(1)(B) [§218.2(8)(A)(ii) of this title]:

(A) If the commercial motor vehicle is titled in the name of the motor carrier, a copy of the International Registration Plan registration receipt or a copy of the front and back of the title for each commercial motor vehicle; or

(B) If the commercial motor vehicle is not titled in the name of the motor carrier, the following lease information and documentation, notwithstanding §218.18(a) of this title:

(i) A copy of a valid lease agreement for each commercial motor vehicle; and

(ii) The name of the lessor and their USDOT number for each commercial motor vehicle [vehicles] leased to the motor carrier under a short-term lease.

(b) Conditional acceptance of application. If an application has been conditionally accepted by the director pursuant to Transportation Code, §643.055, the applicant may not operate the following until the department has issued a certificate under Transportation Code, §643.054:

(1) a commercial motor vehicle or any other motor vehicle to transport household goods for compensation, or

(2) a commercial motor vehicle to transport persons or cargo.

(c) Approved application. An applicant meeting the requirements of this section and whose registration is approved shall [will] be issued the following documents:

(1) Certificate of registration. The department shall [will] issue a certificate of registration. The certificate of registration shall [will] contain the name and address of the motor carrier and a single registration number, regardless of the number of vehicles requiring registration that the carrier operates.

(2) Insurance cab card. The department shall [will] issue an insurance cab card listing all vehicles to be operated under the carrier's certificate of registration. The insurance cab card shall be continuously maintained at the motor carrier's [registrant's] principal [place of] business address. The insurance cab card shall [will] be valid for the same period as the motor carrier's certificate of registration and shall [will] contain information regarding each vehicle registered by the motor carrier.

(A) A current copy of the page of the insurance cab card on which the vehicle is shown shall be maintained in each vehicle listed, unless the motor carrier chooses to maintain a legible and accurate image of the insurance cab card on a wireless communication device in the vehicle or chooses to display such information on a wireless communication device by accessing the department's online system from the vehicle. The appropriate information concerning that vehicle shall be highlighted if the motor carrier chooses to maintain a hard copy of the insurance cab card or chooses to display an image of the insurance cab card on a wireless communication device in the vehicle. The insurance cab card or the display of such information on a wireless communications device shall [will] serve as proof of insurance as long as the motor carrier has continuous insurance or financial responsibility on file with the department.

(B) On demand by a department investigator or any other authorized government personnel, the driver shall present the highlighted page of the insurance cab card that is maintained in the vehicle or that is displayed on a wireless communication device in the vehicle. If the motor carrier chooses to display the information on a wireless communication device by accessing the department's online system, the driver shall [must] locate the vehicle in the department's online system upon request by the department-certified inspector or other authorized government personnel.

(C) The motor carrier shall notify the department in writing if it discontinues use of a registered [~~commercial~~] motor vehicle before the expiration of its insurance cab card.

(D) Any erasure or alteration of an insurance cab card that the department printed out for the motor carrier renders it void.

(E) If an insurance cab card is lost, stolen, destroyed, or mutilated; if it becomes illegible; or if it otherwise needs to be replaced, the department shall [will] print out a new insurance cab card at the request of the motor carrier. Motor carriers are authorized to print out a copy of a new insurance cab card using the department's online system.

(F) The department is not responsible for a motor carrier's inability to access the insurance cab card [~~information~~] using the department's online system.

~~[(G) The display of an image of the insurance cab card or the display of insurance information from the department's online system via a wireless communication device by the motor carrier does not constitute effective consent for a law enforcement officer, the department investigator, or any other person to access any other content of the wireless communication device.]~~

(d) Additional and replacement vehicles. A motor carrier required to obtain a certificate of registration under this section shall not operate additional vehicles unless the carrier identifies the vehicles on a form prescribed by the director and pays applicable fees as described in this subsection.

(1) Additional vehicles. To add a vehicle, a motor carrier must pay a fee of \$10 for each additional vehicle that the motor carrier proposes to operate under a seven-day, 90-day, or annual registration. To add a vehicle during the first year of a biennial registration, a motor carrier must pay a fee of \$20 for each vehicle. To add a vehicle during the second year of a biennial registration, a motor carrier must pay a fee of \$10 for each vehicle.

(2) Replacement vehicles. No fee is required for a vehicle that is replacing a vehicle for which the fee was previously paid. Before the replacement vehicle is put into operation, the motor carrier must [shall] notify the department, identify the vehicle being taken out of service, and identify the replacement vehicle on a form prescribed by the department. A motor carrier registered under seven-day registration may not replace vehicles.

(e) Supplement to original application. A motor carrier required to register under this section shall electronically file in the department's designated motor carrier registration system [submit] a supplemental application under the following circumstances.

(1) Change of cargo. A registered motor carrier may not begin transporting household goods or hazardous materials unless the carrier submits a supplemental application to the department and shows the department evidence of insurance or financial responsibility in the amounts specified by §218.16.

(2) Change of name. A motor carrier that changes its name shall file a supplemental application for registration no later than the effective date of the change. The motor carrier shall include evidence of insurance or financial responsibility in the new name and in the amounts specified by §218.16. A motor carrier that is a corporation must have its name change approved by the Texas Secretary of State before filing a supplemental application. A motor carrier incorporated outside the state of Texas must complete the name change under the law of its state of incorporation before filing a supplemental application.

(3) Change of address or legal agent for service of process. A motor carrier shall file a supplemental application for any change of address or any change of its legal agent for service of process no later than the effective date of the change. The address most recently filed will be presumed conclusively to be the current address.

(4) Change in principal officers and titles. A motor carrier that is a corporation shall file a supplemental application for any change in the principal officers and titles no later than the effective date of the change.

(5) Conversion of corporate structure. A motor carrier that has successfully completed a corporate conversion involving a change in the name of the corporation shall file a supplemental application for registration and evidence of insurance or financial responsibility reflecting the new company name. The conversion must be approved by the Office of the Secretary of State before the supplemental application is filed.

(6) Change in drug-testing consortium status. A motor carrier that changes consortium status shall file a supplemental application that includes the names of the persons operating the consortium.

(7) Retaining a revoked or suspended certificate of registration number. A motor carrier may retain a prior certificate of registration number by:

(A) filing a supplemental application to reregister [~~re-register~~] instead of filing an original application; and

(B) providing adequate evidence that the carrier has satisfactorily resolved the issue [~~facts~~] that gave rise to the suspension or revocation.

(f) Change of ownership. A motor carrier must file an original application for registration when there is a corporate merger or a change in the ownership of a sole proprietorship or of a partnership.

(g) Alternative vehicle registration for household goods agents. To avoid multiple registrations of a [~~commercial~~] motor vehicle, a household goods agent's vehicles may be registered under the motor carrier's certificate of registration under this subsection.

(1) The carrier must notify the department on a form approved by the director of its intent to register its agent's vehicles under this subsection.

(2) When a carrier registers vehicles under this subsection, the carrier's certificate shall [~~will~~] include all vehicles registered under its agent's certificates of registration. The carrier must register under its certificate of registration all vehicles operated on its behalf that do not appear on its agent's certificate of registration.

(3) The department may send the carrier a copy of any notification sent to the agent concerning circumstances that could lead to denial, suspension, or revocation of the agent's certificate.

(h) Substitute vehicles leased from leasing businesses. A registered motor carrier is not required to comply with the provisions of subsection (e) of this section for a substitute vehicle leased from a business registered under §218.18 of this title (relating to Short-term Lease and Substitute Vehicles). A motor carrier is not required to carry proof of registration as described in subsection (d) of this section if a copy of the lease agreement for the originally leased vehicle is carried in the cab of the temporary replacement vehicle.

(i) Once the motor carrier obtains a certificate of registration, the motor carrier shall update [~~must review~~] its principal business address, mailing address, and email address in the department's online system within 30 days of a change to the information. [~~every six months and shall update such information if it is no longer correct.~~]

§218.14. Expiration and Renewal of [~~Commercial~~] Motor Vehicle Registration.

(a) Expiration and renewal dates.

(1) A motor carrier with annual or biennial registration shall [~~will~~] be assigned a date for the expiration and renewal of its motor carrier registration according to the last digit of the carrier's certificate of registration number, as outlined in the following chart: Figure: 43 TAC §218.14(a)(1) (No change.)

(2) 90-day [~~90 day~~] certificates of registration are valid for 90 calendar days from the effective date.

(3) Seven-day [~~Seven day~~] certificates of registration are valid for seven calendar days from the effective date.

(b) Registration renewal.

(1) At least 30 [~~Approximately 60~~] days before the expiration of registration, the department shall [~~will~~] mail or send electronically a renewal notice to each registered motor carrier with annual or biennial registration. The notice shall [~~will~~] be sent [~~mailed~~] to the

carrier's last known address according to the Motor Carrier Division's [~~division's~~] records. Failure to receive the notice does not relieve the registrant of the responsibility to renew. [~~A motor carrier must ensure that the department receives the renewal at least 15 days prior to the renewal date specified in subsection (a) of this section.~~] A supplement to an application for motor carrier registration renewal must be filed electronically in the department's designated motor carrier registration system and must:

(A) supply any new information and documents required under §218.13(e) of this title (relating to Application for Motor Carrier Registration) if the information or documents have [~~has~~] not previously been provided [~~supplied~~] to the department; and

(B) include a \$10 fee for each vehicle that the carrier operates under an annual certificate of registration and a \$20 fee for each vehicle that the carrier operates under a biennial certificate of registration.

(2) Seven-day [~~Seven day~~] and 90-day [~~90 day~~] registrations may not be renewed.

(3) A motor carrier shall maintain continuous insurance or evidence of financial responsibility in an amount at least equal to the amount prescribed under §218.16 of this title (relating to Insurance Requirements).

(4) The insurance cab card issued to a motor carrier is valid for the same period as the motor carrier's certificate of registration.

(5) To renew registration after it has expired, a motor carrier must file a supplemental application electronically in the department's designated motor carrier registration system within 180 days after the registration expiration and must include the following information, documents, and fees:

(A) identify its vehicles on a form prescribed by the director; [~~;~~]

(B) pay all vehicle fees; [~~;~~] and

(C) if current proof of insurance or evidence of financial responsibility is not on file with the department, comply with [~~division, meet~~] all insurance requirements.

(c) Interstate motor carrier operating in intrastate commerce.

(1) An interstate motor carrier registered under §218.17 of this title (relating to Unified Carrier Registration System) is not required to renew a certificate of registration issued under §218.11 of this title (relating to Motor Carrier Registration) except when the motor carrier is operating as a

(A) non-charter bus carrier;

(B) household goods carrier; or

(C) recyclable materials or waste carrier.

(2) If a motor carrier that registered under §218.17 does not maintain continuous motor carrier registration under §218.11, the motor carrier must file a supplemental application to reregister [~~re-register~~] under §218.13 to operate on a public highway [~~public streets and highways~~] in this state.

(3) The motor carrier must notify the department if the motor carrier is registered under UCR. The notification must be filed with the department on a form prescribed by the department. Once the department receives the notification, the department shall [~~will~~] convert the motor carrier's certificate of registration to a non-expiring certificate of registration if the motor carrier qualifies for a non-expiring certificate of registration.

(4) If the department issues the motor carrier a non-expiring certificate of registration, the motor carrier shall ~~[must]~~ notify the department if the motor carrier is no longer registered under UCR or if the motor carrier operates as a non-charter bus carrier, household goods carrier, or recyclable materials or waste carrier. The notification shall ~~[must]~~ be filed with the department on a form prescribed by the department.

§218.16. *Insurance Requirements.*

(a) Automobile liability insurance requirements. A motor carrier must file proof of ~~[commercial]~~ automobile liability insurance with the department on a form acceptable to the director for each vehicle required to be registered under this subchapter. The motor carrier shall ~~[must]~~ carry and maintain automobile liability insurance that is combined single limit liability for bodily injury to or death of an individual per occurrence, and loss or damage to property (excluding cargo) per occurrence~~;~~ ~~or both~~. Extraneous information will not be considered acceptable, and the department may reject proof of ~~[commercial]~~ automobile liability insurance if it is provided in a format that includes information beyond what is required. Minimum insurance levels are indicated in the following table. However, a motor carrier that is required to register with the department under Transportation Code, Chapter 643 that operates a foreign commercial motor vehicle must comply with the minimum level of financial responsibility in 49 C.F.R. Part 387 to the extent Part 387 prescribes a higher level of financial responsibility than the following table. The department adopts by reference 49 C.F.R. Part 387 regarding the required level of financial responsibility, including any amendments that became effective through July 1, 2024. ~~[Effective October 23, 2015, the department adopts by reference the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015.]~~

Figure: 43 TAC §218.16(a)
~~[Figure: 43 TAC §218.16(a)]~~

(b) Cargo insurance. Household goods carriers shall file and maintain with the department proof of financial responsibility.

(1) The minimum limits of financial responsibility for a household goods carrier ~~[for hire]~~ is \$5,000 for loss or damage to a single shipper's cargo carried on any one motor vehicle.

(2) The minimum limits of financial responsibility for a household goods carrier ~~[for hire]~~ is \$10,000 for aggregate loss or damage to multiple shippers' ~~[shipper]~~ cargo carried on any one motor vehicle. In cases in which multiple shippers sustain damage and the aggregate amount of cargo damage is greater than the cargo insurance in force, the insurance company shall prorate the benefits among the shippers in relationship to the damage incurred by each shipper.

(c) Workers' compensation or accidental insurance coverage.

(1) A motor carrier that is required to register under this subchapter and whose primary business is transportation for compensation or hire between two or more municipalities ~~[incorporated cities, towns, or villages]~~ shall provide workers' compensation for all its employees or accidental insurance coverage in the amounts prescribed in paragraph (2) of this subsection.

(2) Accidental insurance coverage required by paragraph (1) of this subsection shall be at least in the following amounts:

(A) \$300,000 for medical expenses ~~[and coverage]~~ for at least 104 weeks;

(B) \$100,000 for accidental death and dismemberment;

(C) ~~[, including]~~ 70 percent of the employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and

(D) ~~[(€)]~~ \$500 for the maximum weekly benefit.

(d) Qualification of motor carrier as self-insured motor carrier.

(1) General qualifications. A motor carrier may meet the insurance requirements of subsections (a) and (b) of this section by filing an application, in a form prescribed by the department, to qualify as a self-insured motor carrier. The application must include a true and accurate statement of the motor carrier's financial condition and other evidence that establishes its ability to satisfy obligations for bodily injury and property damage liability, or cargo liability, if applicable, without affecting the stability or permanency of its business. The department may accept USDOT evidence of the motor carrier's qualifications as a self-insured motor carrier.

(2) Applicant guidelines. In addition to filing an application as prescribed by the department, an applicant for self-insured status must submit information and documents ~~[materials]~~ that will enable ~~[allow]~~ the department to determine the following information.

(A) Applicant's net worth. An applicant's net worth must be adequate in relation to the size of its operations and the extent of its request for self-insurance authority. The applicant must demonstrate that it can and will maintain an adequate net worth.

(B) Self-insurance program. An applicant must demonstrate that it has established and shall ~~[will]~~ maintain a sound insurance program that will protect the public against all claims involving motor vehicles to the same extent as the minimum insurance levels ~~[security limits]~~ applicable under this section. In determining whether an applicant is maintaining a sound insurance program, the department shall ~~[will]~~ consider:

- (i) reserves;
- (ii) sinking funds;
- (iii) third-party financial guarantees;
- (iv) parent company or affiliate sureties;
- (v) excess insurance coverage; and
- (vi) other appropriate aspects of the applicant's program.

(C) Safety program. An applicant must submit evidence of a current "satisfactory" safety rating from the Texas Department of Public Safety under Transportation Code, Chapter 644 and administrative rules adopted under ~~[substantial compliance with the federal motor carrier safety regulations as adopted by the Texas Department of Public Safety and with]~~ Transportation Code, Chapter 644 or a "satisfactory" safety rating from FMCSA under federal law. An application by a motor carrier with less than a current "satisfactory" safety rating or no safety rating will be summarily denied.

(3) Other securities or agreements. The department may accept an application for approval of a security or agreement if satisfied that the security or agreement offered will adequately protect the public.

(4) Periodic reports. An approved self-insured motor carrier ~~[applicant]~~ shall file with the department annual statements~~;~~ ~~semi-annual and quarterly reports;~~ and any ~~[other]~~ reports required by the department reflecting the motor carrier's ~~[applicant's]~~ financial condition and the status of its self-insurance program while the motor carrier is self-insured.

(5) Duration and coverage of self-insured status. The department may approve an applicant as a self-insured motor carrier for any specific time or for an indefinite time. An approved self-insured status only applies to the type of cargo that the motor carrier ~~[applicant]~~ reported to the department in the application for self-insured status, and

is subject to any limitations, restrictions, or requirements that the department includes in any letter to approve self-insured status.

(6) Revocation of self-insured status. On receiving evidence that a self-insured motor carrier's financial condition has changed, that its safety program or record is inadequate, or that it is otherwise not in compliance with this subchapter, the department may at any time require the self-insured motor carrier to provide additional information and documents. On 10 days' notice from the department, the self-insured motor carrier shall provide the department with information and documents, as applicable, that [appear and] demonstrate that it [continues to have adequate financial resources to pay all claims involving motor vehicles for bodily injury and property damage liability. The self-insured shall also demonstrate that it] remains in compliance with the requirements of this section and of any active self-insurance requirements included in the department's approval letter. If a motor carrier [an applicant] fails to comply with the applicable requirements under this section, its self-insured status may be revoked. The revocation of self-insured status will be governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapter 643.

(7) Appeal of denial of application for self-insured status. An applicant may appeal a denial of self-insured status by filing an appeal in accordance with §224.126 of this title (relating to Appeal of a Denial of Self-Insured Status).

(e) Filing proof of insurance with the department.

(1) Forms.

(A) A motor carrier shall file and maintain proof of automobile liability insurance for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a form acceptable to the director.

(B) A household goods carrier shall also file and maintain proof of cargo insurance for its cargo at all times. This proof shall be on a form acceptable to the director.

(2) Filing proof of insurance. A motor carrier's insurer shall file and maintain proof of insurance on a form acceptable to the director:

(A) at the time of the original application for a motor carrier certificate of registration;

(B) on or before the cancellation date of the insurance coverage as described in subsection (f) of this section;

(C) when the motor carrier changes insurers;

(D) when the motor carrier asks to retain the certificate number of a revoked certificate of registration;

(E) when the motor carrier changes its name under §218.13(e)(2) of this title (relating to Application for Motor Carrier Registration);

(F) when the motor carrier, under subsection (a) of this section, changes the classification of the cargo being transported; and

(G) when replacing another active insurance filing.

(3) Filing fee. Each certificate of insurance or proof of financial responsibility filed with the department for the coverage required under this section must [shall] be accompanied by a nonrefundable filing fee of \$100[. This fee applies both] when the carrier submits an original application and when the carrier submits a supplemental application when retaining a revoked certificate of registration number.

(4) Acceptable filings. The motor carrier's insurer must file proof of insurance with the department in a form prescribed by the department and approved by an authorized agent of the insurer.

(f) Cancellation of insurance coverage. Except when replaced by another acceptable form of insurance coverage or proof of financial responsibility approved by the department, ~~[no]~~ insurance coverage may not [shall] be canceled or withdrawn until 30 days after notice has been given to the department by the insurer in a form approved by the department. Nonetheless, proof of insurance coverage for a seven-day [seven day] or 90-day [90 day] certificate of registration may be canceled by the insurer without 30 days' notice if the certificate of registration is expired, suspended, or revoked, and the insurer provides a cancellation date on the proof of insurance coverage.

(g) Replacement insurance filing. The department shall ~~[will]~~ consider a new insurance filing as the current record of financial responsibility required by this section if:

(1) the new insurance filing is received by the department; and

(2) a cancellation notice has not been received for previous insurance filings.

(h) Insolvency of insurance carrier. An affidavit required by Transportation Code, §643.105 must be executed by an owner, partner, or officer of the motor carrier. [If the insurer of a motor carrier becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the motor carrier must file an affidavit with the department. The affidavit must be executed by an owner, partner, or officer of the motor carrier and show that:]

~~[(1) no collisions have occurred and no claims have arisen during the insolvency of the insurance carrier; or]~~

~~[(2) all claims have been satisfied.]~~

§218.18. *Short-term Lease and Substitute Vehicles.*

(a) Registration. A short-term lease vehicle registered under this section is exempt from the registration requirements described in §218.13 of this title (relating to Application for Motor Carrier Registration) while leased to a registered motor carrier.

(1) Application. A leasing business registering vehicles under this section shall file an application on a form prescribed by the director.

(2) Annual report. The operation of a short-term lease vehicle shall be reported to the department on a form prescribed by the director not later than April 1 of each calendar year for the previous calendar year's operations. The report must identify the number of short-term lease vehicles that would otherwise be subject to the registration requirements of this subchapter.

(3) Fees. An annual registration fee of \$10 per vehicle operated must be paid at the time the report is filed under paragraph (2) of this subsection.

(4) Cancellation, expiration, and revocation.

(A) A leasing business must make a written request for cancellation of registration.

(B) A leasing business registration expires on April 30 of each year unless the leasing business reports by April 1 the actual number of vehicles requiring registration operated in the previous calendar year.

(C) The department may suspend or revoke a leasing business registration under §218.72 of this title (relating to Administrative Sanctions).

(b) Proof of contingency liability insurance. A leasing business registering a vehicle under this section must file and maintain proof of liability insurance on a form prescribed by the director as required by §218.16 of this title (relating to Insurance Requirements).

(1) Filings. A leasing business shall file proof of insurance at the time of its initial registration and whenever it changes insurance carriers in accordance with §218.16.

(2) Filing fee. Each proof of insurance filing under this section shall be accompanied by a nonrefundable \$100 filing fee.

(3) Cancellation of insurance coverage. Any cancellation of insurance filed under this section must comply with the requirements set out in §218.16.

(c) Substitute vehicles. A registered motor carrier is not required to comply with the provisions of §218.13(d) for a vehicle that is leased from a leasing business and that is used as a temporary replacement for a vehicle that has been taken out of service for maintenance, repair, or any other reason causing the temporary unavailability of the permanent vehicle.

(d) Identification. A registered motor carrier is not required to carry proof of registration, as required by §218.13(c)(2), in a vehicle leased from a registered leasing business under a short-term lease. A copy of the lease agreement or of the lease for the originally leased vehicle, in the case of a temporary replacement vehicle, must be carried in the cab of the vehicle.

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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SUBCHAPTER C. RECORDS AND INSPECTIONS

43 TAC §218.31, §218.32

STATUTORY AUTHORITY. The department proposes the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.051, which states that a motor carrier may not operate a commercial motor vehicle, as defined by Transportation Code, §548.001, on a road or highway in Texas, and may not operate a vehicle, regardless of size, to transport household goods for compensation on a road or highway in Texas unless the motor carrier registers with the department under Subchapter B of Transportation Code, Chapter 643; Transportation Code, §643.254, which authorizes the department to investigate an alleged violation of Transportation Code, Chapter 643 or a rule or order adopted under Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires

state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed amendments implement Transportation Code, Chapter 643; and Government Code, Chapter 2001.

§218.31. *Investigations and Inspections of Motor Carrier Records.*

(a) Certification of department investigators. In accordance with Transportation Code, Chapter 643, the executive director or designee will designate department employees as certified for the purpose of entering the premises of a motor carrier to copy or verify documents the motor carrier is required to maintain according to this chapter. The executive director or designee shall provide credentials to department investigators identifying them as department employees and as certified to conduct investigations and inspect records on behalf of the department.

(b) Investigations and Inspections.

(1) A motor carrier shall grant a department investigator certified under this section access to the carrier's premises to conduct inspections or investigations of alleged violations of this chapter and of Transportation Code, Chapters 643 and 645. The motor carrier shall provide adequate work space with reasonable working conditions and allow the department investigators to copy and verify records and documents the motor carrier is required to maintain according to this chapter.

(2) The department investigator may conduct inspections and investigations during normal business hours unless mutual arrangements have been made otherwise.

(3) The department investigator shall [will] present his or her credentials to the motor carrier prior to conducting an investigation or inspection.

(c) Access. A motor carrier shall provide access to requested records and documents at:

(1) the motor carrier's principal [place of] business address;

(2) a location agreed to by the department and the motor carrier.

(d) Designation of meeting time. If the motor carrier's normal business hours do not provide the access necessary for the investigator to conduct the investigation and the parties cannot reach an agreement as to a time to meet to access the records, the department shall designate the time of the meeting and provide written notice via the business address, facsimile number, or email address on file with the department.

§218.32. *Motor Carrier Records.*

(a) General records to be maintained. Every motor carrier shall prepare and maintain in a complete and accurate manner:

(1) operational logs, insurance certificates, documents to verify the carrier's operations, and proof of registration fee payments;

(2) records of services performed;

(3) all certificate of title documents, weight tickets, permits for oversize or overweight vehicles and loads, dispatch records, or any other document that would verify the operations of the vehicle to determine the actual weight, insurance coverage, size, and/or capacity of the vehicle; and

(4) the original certificate of registration and registration listing, if applicable.

(b) Proof of motor carrier registration.

(1) Except as provided in paragraph (2) of this subsection and in §218.13(c)(2) of this title (relating to Application for Motor Carrier Registration), every motor carrier shall maintain a copy of its current registration listing in the cab of each registered vehicle at all times. A motor carrier shall make available to a department investigator or any law enforcement officer a copy of the current registration listing upon request.

(2) A registered motor carrier is not required to carry proof of registration in a vehicle leased from a leasing business that is registered under §218.18 of this title (relating to Short-term Lease and Substitute Vehicles), when leased as a temporary replacement due to maintenance, repair, or other unavailability of the originally leased vehicle. A copy of the lease agreement, or the lease for the originally leased vehicle, in the case of a substitute vehicle, must be carried in the cab of the vehicle.

(3) A motor carrier is not required to carry proof of compliance with UCR or the UCR plan or agreement in its vehicle.

(c) Location of files. Except as provided in this subsection, every motor carrier shall maintain at a principal [place of] business address in Texas all records and information required by the department.

(1) Texas motor carriers. If a motor carrier wishes to maintain records at a specific location other than its principal [place of] business address in Texas, the motor carrier shall make a written request to the director. A motor carrier may not begin maintaining records at an alternate location until the request is approved by the director.

(2) Out-of-state motor carriers. A motor carrier whose principal business address is located outside the state of Texas shall maintain records required under this section at its business location in Texas. Alternatively, a motor carrier may maintain such records at a specific out-of-state facility if the carrier reimburses the department for necessary travel expenses and per diem for any inspections or investigations conducted in accordance with §218.31 of this title (relating to Investigations and Inspections of Motor Carrier Records).

(3) Regional office or driver work-reporting location. All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location, whether or not maintained in compliance with paragraphs (1) and (2) of this subsection, shall be made available for inspection upon request at the motor carrier's principal [place of] business address or other location specified by the department [Department] within 48 hours after a request is made. Saturdays, Sundays, and federal and state holidays are excluded from the computation of the 48-hour period of time [in accordance with 49 C.F.R. §390.29].

(d) Preservation and destruction of records. All books and records generated by a motor carrier, except driver's time cards and logs, must be maintained for not less than two years at the motor carrier's principal business address. A motor carrier must maintain driver's time cards and logs for not less than six months at the carrier's principal business address.

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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SUBCHAPTER D. MOTOR TRANSPORTATION BROKERS

43 TAC §218.41

STATUTORY AUTHORITY. The department proposes the amendments under Transportation Code, §646.003, which prohibits a person from acting as a motor transportation broker unless the person provides a bond to the department; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed amendments implement Transportation Code, Chapter 646; and Government Code, Chapter 2001.

§218.41. Bond.

(a) Filing. A motor transportation broker shall file a bond with the department before it may act as a motor transportation broker.

(b) Conditions of bond.

(1) The bond shall be:

(A) in an amount of at least \$10,000;

(B) executed by a bonding company authorized to do business in the state of Texas; and

(C) payable to the State of Texas or a person to whom the motor transportation broker provides services.

(2) The bond shall be conditioned upon:

(A) the faithful performance of the contracts or agreements of transportation by the motor carrier or motor carriers for whom the motor transportation broker is acting, and which were negotiated by the broker; and

(B) the honest and faithful performance by the motor transportation broker in that capacity.

(3) The bond shall provide that all defenses available to the motor carrier shall be available to the principal and surety, but no condition or provision of the bond shall otherwise affect the right of the person to whom the motor transportation broker provides services [shipper] to collect all damages to which the person [it] may be entitled at law.

(c) Expiration or cancellation of bond. The bond shall not expire or be subject to cancellation until the 30th day after written notice of expiration or cancellation has been served on the principal and the department, either personally or by certified mail. Unless the principal files a new bond in compliance with the requirements of this section on or before the expiration of the 30-day period, the person may not act as a motor transportation broker.

[(d) Amount of recovery. In no event shall the total of all recoveries under a bond exceed the penal amount.]

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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SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §§218.53, 218.54, 218.56, 218.57, 218.61, 218.62, 218.64, 218.65

STATUTORY AUTHORITY. The department proposes the amendments under Transportation Code, §643.152, which authorizes the department to establish voluntary standards for uniform cargo liability and uniform bills of lading or receipts for cargo, which standards must be consistent with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law; Transportation Code, §643.153, which authorizes the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation; and authorizes the department to adopt rules that are necessary to ensure that a customer of a household goods carrier is protected from deceptive or unfair practices and unreasonably hazardous activities; Transportation Code, §643.153(d), which requires a household goods carrier that is required to register under Subchapter B of Transportation Code, Chapter 643 to file a tariff with the department that establishes the maximum charges for all transportation services; Transportation Code, §643.154(c), which authorizes the department to adopt a rule to exempt a motor carrier that is required to register under Subchapter B of Transportation Code, Chapter 643, from Chapter 15, Business and Commerce Code, for an activity relating to the establishment of a joint line rate, route, classification, or mileage guide; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.051, which states that a motor carrier may not operate a vehicle, regardless of size, to transport household goods for compensation on a road or highway in Texas unless the motor carrier registers with the department under Subchapter B of Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed amendments implement Transportation Code, Chapter 643; and Government Code, Chapter 2001.

§218.53. *Household Goods Carrier Cargo Liability.*

Pursuant to Transportation Code, §643.152, the voluntary standard for uniform cargo liability for a household goods carrier can be found in 49 C.F.R. §375.201, which the department adopts by reference, including any amendments that became effective through July 1, 2024.

[(a) Unless the carrier and shipper agree in writing to a higher limit of carrier liability, a household goods carrier's liability for loss or damage of property shall be \$.60 per pound per article. Claims for loss or damage of property may be settled based on the weight of the article multiplied by \$.60.]

[(b) If the carrier and shipper have agreed in writing to a higher limit of liability, the carrier may charge the shipper for this higher limit of liability. If the agreement between the carrier and shipper to a higher limit of liability provides for a deductible, the carrier's liability to pay for loss or damage of property will be reduced by the amount of the deductible.]

§218.54. *Selling Insurance to Shippers.*

(a) Type of insurance. A household goods carrier and its representatives may sell, or offer to sell, or procure insurance for a shipper for transported or stored property. The insurance policy must cover loss or damage in excess of the household goods carrier's ~~carrier~~ liability, if any, to which the parties agree in the moving services contract, including a pre-existing transportation contract described by §218.57(d) of this title (Relating to Moving Services Contract). ~~[as specified in §218.53 of this title (relating to Household Goods Carrier Cargo Liability).]~~

(b) Policy issuance. A copy of the policy or other appropriate evidence of purchased insurance must be issued to the shipper before the shipment is loaded.

(c) Policy language. Policies or other appropriate evidence of purchased insurance must be written in a clear and concise manner, specifying the nature and extent of coverage including any deductibles. The policies or other appropriate evidence of purchased insurance must also clearly indicate:

- (1) the name, address, and telephone number of the insurance company;
- (2) the policy number; and
- (3) a statement of whether claims are to be filed with the insurance company or with the household goods carrier.

(d) Subject to Full Liability. ~~[Penalty.]~~ If the shipper purchased insurance from the household goods carrier and the household goods carrier does not obtain the insurance policy or other appropriate evidence of purchased insurance for the shipper, the household goods carrier shall be subject to full liability for all of the loss or damage caused by the household goods carrier.

§218.56. *Proposals and Estimates for Moving Services.*

(a) Written proposals. Prior to loading, a household goods carrier shall provide a written proposal, such as a bid or quote, to the shipper. A proposal shall state the maximum amount the shipper could be required to pay for the listed transportation and listed related services. This section does not apply if a pre-existing transportation contract sets out the maximum amount the shipper could be required to pay for the transportation services. Pre-existing transportation contracts include, but are not limited to, corporate contracts for the relocation of multiple employees.

(1) A proposal must contain the name and registration number of the household goods carrier as they appear on the motor carrier certificate of registration. If a proposal is prepared by the household goods carrier's agent, it shall include the name of the agent

as listed on the carrier's agent filing with the department. A proposal shall also include the street address of the household goods carrier or its agent.

(2) A proposal must clearly and conspicuously state whether it is a binding or not-to-exceed proposal.

(3) A proposal must completely describe the shipment and all services to be provided. A proposal must state, "This proposal is for listed items and services only. Additional items and services may result in additional costs."

(4) A proposal must specifically state when the shipper will be required to pay the transportation charges, such as if payment must be made before unloading at the final destination. A proposal must also state what form of payment is acceptable, such as a cashier's check.

(5) A proposal must conspicuously state the [that a] household goods carrier's liability, if any, for loss or damage to cargo [is limited to \$.60 per pound per article unless the household goods carrier and shipper agree, in writing, to a higher limit of carrier liability].

(b) Hourly rates. If a proposal is based on an hourly rate, then it is not required to provide the number of hours necessary to perform the transportation and related services. However, if the number of hours is not included in a proposal, then the carrier must secure a written acknowledgment from the shipper indicating the proposal is complete without the number of hours. Also, the proposal shall state the maximum amount the shipper could be required to pay for the listed transportation and listed related services.

(c) Proposal as addendum. If a proposal is accepted by the shipper and the carrier transports the shipment, then the proposal is considered an addendum to the moving services contract.

(d) Additional items and services. If the household goods carrier determines additional items are to be transported and/or additional services are required to load, transport, or deliver the shipment, then before the carrier transports the additional items or performs the additional services the carrier and shipper must agree, in writing, to:

- (1) allow the original proposal to remain in effect;
- (2) amend the original proposal or moving services contract; or
- (3) substitute a new proposal for the original.

(e) Amendments and storage.

(1) An amendment to an original proposal or moving services contract, as allowed in subsection (d) of this section, must:

(A) be signed and dated by the household goods carrier and shipper; and

(B) clearly and specifically state the amended maximum price for the transportation of the household goods.

(2) If the household goods carrier fails to amend or substitute an original proposal as required by this subsection and subsection (d) of this section, only the charges stated on the original proposal for moving services may be assessed on the moving services contract. The carrier shall not attempt to amend or substitute the proposal to add items or services after the items or services have been provided or performed.

(3) If through no fault of the carrier, the shipment cannot be delivered during the agreed delivery period, then the household goods carrier may place the shipment in storage and assess fees relating to storage to the extent authorized in the moving services contract, [according to the terms in §218.58 of this title (relating to Moving Services Contract - Options for Carrier Limitation of Liability),] without a

written agreement with the shipper to amend or substitute the original proposal.

(f) Combination document. A proposal required by subsection (a) of this section may be combined with other shipping documents, such as the moving services contract, into a single document. If a proposal is combined with other shipping documents, the purpose of each signature line on the combination document must be clearly indicated. Each signature is independent and shall not be construed as an agreement to all portions and terms of the combination document.

(g) Telephone estimates. A household goods carrier may provide an estimate for the transportation services by telephone. If the household goods carrier provides the estimate by telephone, then the carrier must also furnish a written proposal for the transportation services to the shipper prior to loading the shipment.

(h) Written document. To the extent this section requires a document or communication to be in writing, the document or communication may be in a printed or electronic format.

(i) Signatures. The signatures of the shipper and household goods carrier, as required by this section, may be transmitted by facsimile or other electronic means.

§218.57. *Moving Services Contract.*

(a) Requirements. A household goods carrier must give a copy of the moving services contract to the shipper prior to the loading of the shipment. This copy must include:

(1) the name and motor carrier registration number of the household goods carrier as they appear on the motor carrier certificate of registration, and the address and telephone number of the household goods carrier or the household goods agent that prepared the moving services contract;

(2) the date the shipment is loaded and a description of the shipment as household goods;

(3) the name and address of the shipper;

(4) the addresses of the:

(A) origin;

(B) destination, if known; and

(C) any stops in transit, if known;

(5) the moving services to be performed;

(6) a clear and concise disclosure of the limits of the household goods carrier's liability for loss or damage to a shipper's household goods; however, the moving services contract must expressly state if the household goods carrier's liability is \$0.00 for loss or damage to a shipper's household goods;

(7) a clear and concise disclosure of any costs associated with an agreement regarding the liability of the household goods carrier for loss or damage to a shipper's household goods, and a statement that any agreement regarding the household goods carrier's liability is something different than an insurance policy;

[(6) the conspicuous statement, "A household goods carrier's liability for loss or damage to any shipment is \$.60 per pound per article, unless the carrier and shipper agree, in writing, to a greater level of liability.";]

[(7) a conspicuous explanation of any agreement for increased carrier liability limit, the amount of increased carrier liability, the cost of the increased limit, any deductible above the carrier's \$.60 per pound per article liability, and the statement, "This is not insurance.";]

(8) a clear notice of the amount of any insurance for property that is transported or stored, the amount of insurance premiums, and the insurance policy number, if insurance for the shipment was purchased from or through the household goods carrier;

(9) a clear and conspicuous statement that this document is a contract for moving services and is subject to the terms and conditions throughout the document, including any attachments;

~~[(9) the conspicuous statement, "This is a contract for moving services and is subject to the terms and conditions on the front and back of this document and any addendum.";~~

(10) a description of whether the proposal is a binding or not-to-exceed proposal, and the maximum price the shipper could be required to pay for the services listed;

(11) a statement authorizing performance of the listed services, signed and dated by the household goods carrier and the shipper; ~~[and]~~

(12) a statement signed and dated by the shipper authorizing delivery of household goods at a destination where the shipper is not present if the shipper intends for the household goods carrier to deliver to a site where the shipper will not be present; and

(13) the following language regarding claims: "The process for filing a claim against a household goods carrier and the claims procedures are provided on the website of the Texas Department of Motor Vehicles (department), as well as in the department's administrative rule, 43 Texas Administrative Code §218.61 (relating to Claims). A shipper must file any claims against a household goods carrier within 90 days of the delivery of the shipment to the final destination, or after a reasonable time for delivery has elapsed in the case of failure to make delivery."

(b) Delivery. A household goods carrier must give a completed copy of the moving services contract to the shipper upon delivery of the shipment. The household goods carrier must release the household goods to the shipper at destination if the shipper pays the maximum price listed on the moving services contract. Except as provided by subsection (c) of this section, the moving services contract shall be signed and dated by the household goods carrier and the shipper confirming the shipment has been delivered. This signature only confirms delivery of the shipment. Except as provided in subsection (e) of this section, this copy must include the information listed in subsection (a) of this section and:

(1) the total charges for the shipment and the specific nature of each charge, including the method used to calculate the minimum and total charges if the shipment was not transported based on a binding proposal;

(2) an explanation of all additional moving services provided in accordance with §218.56(d) of this title (relating to Proposals and Estimates for Moving Services); and

(3) the addresses of the origin, destination, and any stops in transit if not previously provided on the moving services contract at the origin.

(c) Delivery to a destination where the shipper is not present. If a shipper authorizes the household goods carrier to deliver household goods to a destination where the shipper is not present, as allowed in subsection (a)(12) of this section, the moving services contract need not be signed and dated by the shipper at the time of delivery.

(d) Pre-existing transportation contracts. A household goods carrier is not required to comply with subsection (b)(1) and (2) of this section if a pre-existing transportation contract sets out the maximum

amount the shipper could be required to pay for the transportation services. Pre-existing transportation contracts include, but are not limited to, corporate contracts for the relocation of multiple employees.

(e) Copies. To the extent this section requires a copy of a document or a written document, the document may be in a printed or electronic format.

(f) Signatures. The signatures of the shipper and the household goods carrier, as required by this section, may be transmitted by facsimile or other electronic means. These signatures must be separate from any signatures required by the household goods carrier such as the acknowledgment of the statement of value of the shipment.

§218.61. Claims.

(a) Filing of claims. A household goods carrier must act on all claims filed by a shipper on shipments of household goods according to this section.

(1) A claim must be filed in writing or by electronic format with the household goods carrier or the household goods carrier's agent whose name appears on the moving services contract. A claim is considered filed on the date the claim is received by the household goods carrier or its agent. A shipper must file a claim either in writing or by electronic format within 90 days:

(A) of delivery of the shipment to the final destination;

or

(B) after a reasonable time for delivery has elapsed in the case of failure to make delivery.

(2) The claim must include enough facts to identify the shipment. The claim must also describe the type of claim and request a specific type of remedy.

(3) Shipping documents may be used as evidence to support a claim, but cannot be substituted for a written claim.

(4) A claim submitted by someone other than the owner of the household goods must be accompanied by a written explanation of the claimant's interest in the claim.

(b) Acknowledgment and disposition of filed claims.

(1) A household goods carrier shall send an acknowledgment of the claim either in writing or by electronic format to the claimant within 23 days ~~[20 days (excluding Sundays and nationally recognized holidays)]~~ after receipt of the claim by the carrier or its agent.

(A) The claim acknowledgment shall include the statement, "Household goods carriers have 90 days from receipt of a claim to pay, decline to pay, or make a firm settlement offer, in writing, to a claimant. Questions or complaints concerning the household goods carrier's claims handling should be directed to the Texas Department of Motor Vehicles (TxDMV), Enforcement Division, via the toll-free consumer helpline as listed on the department's website. Additionally, a claimant has the right to request mediation from TxDMV within 35 days ~~[30 days (excluding Sundays and nationally recognized holidays)]~~ after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(B) The household goods carrier is not required to issue the acknowledgment letter prescribed in this subsection if the claim has been resolved within 23 days ~~[20 days (excluding Sundays and nationally recognized holidays)]~~ after receipt of the claim. However, the household goods carrier has the burden of proof regarding the resolution of the claim.

(2) After a thorough investigation of the facts, the household goods carrier shall pay, decline to pay, or make a firm settlement offer in writing to the claimant within 90 days after receipt of the claim by the household goods carrier or its household goods agent. The settlement offer or denial shall state, "A claimant has the right to seek mediation through the Texas Department of Motor Vehicles (TxDMV) within 35 days [~~30 days (excluding Sundays and nationally recognized holidays)~~] after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(3) A household goods carrier must provide a copy of the shipping documents to the shipper's insurance company upon request. The carrier may assess a reasonable fee for this service.

(c) Documenting loss or damage to household goods.

(1) Inspection. If a loss or damage claim is filed and the household goods carrier wishes to inspect the items, the carrier must complete any inspection as soon as possible, but no later than 30 calendar days, after receipt of the claim.

(2) Payment of shipping charges. Payment of shipping charges and payment of claims shall be handled separately, and one shall not be used to offset the other unless otherwise agreed upon by both the household goods carrier and claimant.

(d) Claim records. A household goods carrier shall maintain a record of every claim filed. Claim records shall be retained for two years as required by §218.32 of this title (relating to Motor Carrier Records). At a minimum, the following information on each claim shall be maintained in a systematic, orderly and easily retrievable manner:

- (1) claim number (if assigned), date received, and amount of money or the requested remedy;
- (2) number (if assigned) and date of the moving services contract;
- (3) name of the claimant;
- (4) date the carrier issued its claim acknowledgment letter;
- (5) date and total amount paid on the claim or date and reasons for disallowing the claim; and
- (6) dates, time, and results of any mediation coordinated by the department.

§218.62. *Mediation by the Department.*

(a) The claimant may make a written request to the department for mediation regarding a dispute over a fee, or damage to the shipper's household goods.

(b) The claimant must attempt to resolve the claim with the household goods carrier by making a reasonable effort to follow the household goods carrier's claim process before requesting mediation by the department.

(c) Requests for mediation must be made within 35 days [~~30 days (excluding Sundays and nationally recognized holidays)~~] after the earliest of the following events:

- (1) any portion of the claim is denied by the carrier;
- (2) the carrier makes a firm settlement offer that is not acceptable to the claimant; or
- (3) 90 days have [~~has~~] elapsed since the carrier received the claim and the carrier has not responded to the claimant as prescribed in §218.61(b)(2) of this title (relating to Claims).

(d) Except as provided in subsection (e) of this section, the department shall [~~will~~] deny a request for mediation made more than 125 days [~~120 days (excluding Sundays and nationally recognized holidays)~~] after the carrier received the claim. Additionally, the department shall [~~will~~] deny a request for mediation if the carrier did not receive the claim within 90 days after the delivery of the shipment to the final destination or within 90 days after a reasonable time for delivery has elapsed in the case of failure to make delivery.

(e) The department may grant a mediation request if the claimant and the carrier agree to participate in the mediation process and:

(1) the claimant was not advised in writing at least one time of the right to mediation as required by §218.61(b)(1)(A) or (2); or

(2) the claimant does not receive the written denial or settlement offer letter required by §218.61(b)(2).

(f) For purposes of subsection (c)(1) and (2) of this section, the 35-day [~~30 day~~] deadline for requesting mediation is calculated from the latter of:

- (1) the date of the claim denial or settlement offer letter; or
- (2) the date the claim denial or settlement offer letter is mailed, emailed, or faxed to the claimant.

(g) The department will not grant more than one mediation request to a claimant for one shipment of household goods.

(h) The department will coordinate the selection of a mediator. The mediation will be conducted by written submissions, telephone conferences, or mediation sessions held at the department's facilities in Austin. The department will establish the time, date, and form of the mediation session.

(i) Participation in this mediation process by a household goods carrier.

(1) A household goods carrier shall participate in this mediation process if the department grants a mediation request under this section regarding the following:

(A) a fee under the moving services contract; or

(B) the household goods carrier's liability for loss or damage to the shipper's household goods to the extent the following occurs:

(i) the shipper and household goods carrier agreed in the moving services contract that the household goods carrier's cargo liability would exceed \$0.00;

(ii) a pre-existing transportation contract described by §218.57(d) of this title (Relating to Moving Services Contract) states that the household goods carrier's cargo liability would exceed \$0.00;
or

(iii) if the shipper purchases insurance from the household goods carrier and the household goods carrier does not obtain the insurance policy or other appropriate evidence of purchased insurance for the shipper under §218.54 of this title (Relating to Selling Insurance to Shippers).

(2) [~~Household goods carriers must participate in this mediation process.~~] The department may impose administrative penalties, [~~sanctions~~], under §218.71 of this title (relating to Administrative Penalties), on a household goods carrier who refuses to participate in the mediation process or otherwise fails to comply with the requirements of this section.

(j) If the claimant fails to appear at the mediation after due notice or, if the mediator determines the claimant has not cooperated in the mediation process, the department's mediation process shall be considered concluded. The claimant may consider pursuing the claim through an appropriate court of law.

(k) The mediator shall preside and have discretion over the mediation procedures, including the ability to require the claimant and the household goods carrier to provide information and documents in a timely fashion.

(l) If the household goods carrier makes a written report of the results of the inspection documenting the lost or damaged household goods and uses the report during the department's mediation, then the carrier shall provide the original or a legible copy of the report to the claimant.

§218.64. Rates.

(a) **Rate-making.** A household goods carrier and/or its household goods agent shall set maximum rates and charges for services in its applicable tariff. The household goods carrier and/or its household goods agent shall disclose the maximum rates and charges to prospective shippers before transporting a shipment [~~between two incorporated cities~~].

(b) **Prohibited charges and allowances.** A household goods carrier and/or its household goods agent shall not charge more than the maximum charges published in its tariff on file with the department for services associated with transportation [~~between two incorporated cities~~].

(c) **Collective ratemaking agreements.**

(1) **Eligibility.** In accordance with Transportation Code, §643.154, a household goods carrier and/or its household goods agent may enter into collective ratemaking agreements between one or more other household goods carriers or household goods agents concerning the establishment and filing of maximum rates and charges, classifications, rules, or procedures.

(2) **Designation of collective ratemaking associations.** An approved association may be designated by a member household goods carrier as its collective ratemaking association for the purpose of filing a tariff containing maximum rates and charges required by §218.65 of this title (relating to Tariff Registration).

(3) **Submission.** In accordance with Transportation Code, §643.154, a collective ratemaking agreement shall be filed with the department for approval. The agreement shall include the following information:

(A) full and correct name, business address (street and number, city, state and zip code), and phone number of the association;

(B) whether the association is a corporation or partnership; and

(i) if a corporation, the government, state, or territory under the laws of which the association [~~applicant~~] was organized and received its present charter; and

(ii) if an association or a partnership, the names of the officers or partners and date of formation;

(C) full and correct name and business address (city and state) of each household goods carrier on whose behalf the agreement is filed and whether it is an association, a corporation, an individual, or a partnership;

(D) the name, title, and mailing address of counsel, officer, or other person to whom correspondence in regard to the agreement should be addressed; and

(E) a copy of the constitution, bylaws, or other documents or writings, specifying the organization's powers, duties, and procedures.

(4) **Signature.** The collective ratemaking agreement shall be signed by all parties subject to the agreement or the association's executive officer.

(5) **Incomplete agreement.** If the department receives an agreement which does not comply with this subsection, the department shall [~~will~~] send a letter to the individual submitting the agreement. The letter shall identify the information that is missing and advise the association that the agreement shall [~~will~~] not be processed until the information is received.

(6) **Approval.** In accordance with Transportation Code, §643.154, the director or designee shall [~~will~~] approve a collective ratemaking agreement if the agreement provides that:

(A) all meetings are open to the public; and

(B) notice of meetings shall be sent to shippers who are multiple users of the services of a household good carrier that is a party to the agreement. [~~carriers~~.]

(7) **Noncompliance.** If the director or the director's designee determines that an agreement does not comply with paragraph (6) of this subsection, the matter will be governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapter 643.

(8) **New parties to an agreement.** An updated agreement shall be filed with the department as new parties are added.

(9) **Amendments to approved agreements.** Amendments to approved agreements (other than as to new parties) may become effective only after approval by [~~of~~] the department.

(d) Pursuant to Transportation Code, §643.154(c), a household goods carrier required to register under Transportation Code, Chapter 643 is exempt from Chapter 15, Business and Commerce Code, for an activity relating to the establishment of a joint line rate, route, classification, or mileage guide under Transportation Code, §643.154(a) and (d).

§218.65. Tariff Registration.

(a) **Submission.** In accordance with Transportation Code, §643.153, a household goods carrier and/or its household goods agent shall file a tariff with the department. A household goods carrier who is not a member of an approved association under §218.64 of this title (relating to Rates) shall file a tariff individually. In lieu of filing individually, a household goods carrier or its household goods agent, that is a member of an approved association in accordance with §218.64, may designate a collective association as its ratemaking association. The association may file a tariff, as required by this subsection, for member carriers.

(1) **Contents.** The tariff:

(A) shall set out all rates, charges, rules, regulations, or other provisions, in clear and concise terms, used to determine total transportation charges;

(B) may provide for the offering, selling, or procuring of insurance as provided in §218.54 of this title (relating to Selling Insurance to Shippers);

(C) may provide for the base transportation charge to include assumption by the household goods carrier for the full value of the shipment in the event a policy or other appropriate evidence of the insurance purchased by the shipper from the household goods carrier is not issued to the shipper at the time of purchase;

(D) shall describe the procedure for determining charges that are below the maximum rate for each service performed; and

(E) shall reference a specific mileage guide or source, if information on rates and charges based on mileage is included in the tariff [(The referenced mileage guide shall be filed with the department as an addendum to the tariff. If the household goods carrier utilizes a computer database as a mileage guide, the household goods carrier shall allow department personnel free access to the system when conducting an inquiry regarding a specific movement performed by the household goods carrier)].

(2) Interstate tariff. In accordance with Transportation Code, §643.153, a household goods carrier may satisfy the requirements of this subsection by filing a copy of its tariff governing interstate household goods transportation services.

(3) Transmittal letter. A transmittal letter shall accompany a tariff being filed. The transmittal letter shall provide:

(A) the name of the household goods carrier;

(B) the Texas mailing address and street address of the household goods carrier's principal business address [office];

(C) the household goods carrier's certificate of registration number, if any;

(D) the name and title of the household goods carrier's representative authorizing the tariff filing; and

(E) whether the tariff is being filed on behalf of a member carrier.

(4) Format. Tariffs shall be filed:

(A) on 8 1/2" x 11" paper;

(B) with a cover sheet showing:

(i) the name of the issuing household goods carrier or collective ratemaking association;

(ii) the Texas mailing and street address;

(iii) the issuance date of the tariff;

(iv) the effective date of the tariff; and

(v) the tariff number; and

(C) separated into the following sections:

(i) general rules;

(ii) accessorial services; and

(iii) rates; and

(D) if the tariff references a mileage guide, the mileage guide shall be filed with the department as an addendum to the tariff, unless the household goods carrier utilizes a computer database as a mileage guide.

(5) Item numbers. Individual items shall be titled and designated by item number.

(6) Amendments. Any amendment to a tariff shall be filed with the department not less than 10 days prior to the effective date of

the amendment. The household goods carrier or collective ratemaking association filing on behalf of its member may either file an amended tariff in total or an amendment referencing the specific sections and items which are being amended. The amendment format shall be the same as required by paragraph (4) of this subsection. A transmittal letter providing the same information as required by paragraph (3) of this subsection shall accompany the amendment filing.

(7) Rejection. The department shall [will] reject a tariff or amendment filing if it is determined the tariff:

(A) fails to meet the requirements of this section; or

(B) fails to fully disclose, in clear and concise terms, all rates, charges, and rules.

(8) Electronic filings. A household goods carrier may file an electronic copy of its tariff provided that the document is consistent with the provision of this subsection and is formatted in Microsoft Word or other format approved by the director.

(b) Department access to computer database used as mileage guide. If the household goods carrier utilizes a computer database as a mileage guide in its tariff, the household goods carrier shall allow department personnel free access to the system when conducting an inquiry regarding a specific movement performed by the household goods carrier.

~~[(b) Operations. The department will accept a tariff which is in substantial compliance with this section if the tariff was submitted prior to November 1, 1995.]~~

(c) Access. In accordance with Transportation Code, §643.153, tariffs filed in accordance with this section shall [will] be made available for public inspection at the TxDMV Enforcement Division or by calling the department's toll-free consumer helpline as listed on the department's website.

(d) Conflicts. All provisions of household goods carriers' tariffs are superseded to the extent they may conflict with the provisions of this chapter.

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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For further information, please call: (512) 465-4160



43 TAC §218.58

STATUTORY AUTHORITY. The department proposes the repeal under Transportation Code, §643.152, which authorizes the department to establish voluntary standards for uniform cargo liability and uniform bills of lading or receipts for cargo, which standards must be consistent with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code

and other laws of this state; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed repeal implements Transportation Code, Chapter 643.

§218.58. *Moving Services Contract - Options for Carrier Limitation of Liability.*

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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SUBCHAPTER F. ADMINISTRATIVE PENALTIES AND SANCTIONS

43 TAC §218.72

STATUTORY AUTHORITY. The department proposes the amendments under Transportation Code, §643.252, which authorizes the department to suspend or revoke a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.257, which authorizes the department to order a motor carrier that violates Transportation Code, Chapter 643 or a rule or order adopted under Transportation Code, Chapter 643 to pay a refund to a consumer who paid the motor carrier to transport household goods; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed amendments implement Transportation Code, Chapter 643; and Government Code, Chapter 2001.

§218.72. *Administrative Sanctions.*

(a) Grounds for suspension, revocation, denial, and probation. Transportation Code, §643.252 provides the grounds on which the department can suspend, revoke, or deny a certificate of registration issued under Transportation Code, Chapter 643. Transportation Code, §643.252 also provides the grounds on which the department can place on probation a motor carrier whose registration is suspended.

(b) Texas Department of Public Safety enforcement recommendations.

(1) The department may suspend or revoke a certificate of registration of a motor carrier upon a written request by the Texas Department of Public Safety, if a motor carrier:

(A) has an unsatisfactory safety rating under 49 C.F.R., Part 385; or

(B) has multiple violations of Transportation Code, Chapter 644, a rule adopted under that chapter, or Transportation Code, Title 7, Subtitle C.

(2) A request under paragraph (1) of this subsection must include documentation showing the violation.

(c) Refund.

(1) The department may order a household goods [~~motor~~] carrier that violates Transportation Code Chapter 643, department rules, or a department order adopted under Transportation Code Chapter 643 to issue a refund to a customer who paid the household goods [~~motor~~] carrier to transport household goods.

(2) Under this subsection, a refund is the return of any percentage of funds paid, or contracted to be paid, to a household goods [~~motor~~] carrier transporting household goods, whether those funds are documented as a separate line item or included in the overall amount paid by a customer.

(A) A refund includes overpayments, fees paid for services not rendered, and fees paid for charges not listed on the household goods carrier's [~~motor's~~] tariff after the household goods carrier [~~motor~~] takes possession of the customer's property.

(B) A refund does not include any consideration of damages or harm over the amount paid by the customer.

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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SUBCHAPTER G. FINANCIAL RESPONSIBILITY FOR FOREIGN COMMERCIAL MOTOR VEHICLES

43 TAC §218.80, §218.82

STATUTORY AUTHORITY. The department proposes the amendments under Transportation Code, §648.102, which authorizes the department to adopt rules that conform with 49 C.F.R. Part 387 requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility; Transportation Code, §643.101(b), which authorizes the department to adopt rules to set the amount of liability insurance that a motor carrier that is required to register under Subchapter B of Transportation Code, Chapter 643 must maintain, at an amount that does not exceed the amount required for a motor carrier under a federal regulation adopted under 49 U.S.C. §13906(a)(1); Transportation Code, §643.003, which authorizes

the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed amendments implement Transportation Code, §648.102; and Government Code, §2001.004.

§218.80. Purpose and Scope.

The purpose of this subchapter is to comply with Transportation Code, §648.102. For the purposes of this subchapter, the term "motor carrier" is defined by Transportation Code, §648.001, and does not include the following:

(1) a motor carrier that is required to register with the department under Transportation Code, Chapter 643; or

(2) a motor carrier that is required to register with FMCSA for interstate transportation, and is not operating in intrastate transportation within this state.

(3) If a motor carrier is required to register with the department under Transportation Code, Chapter 643, the motor carrier must comply with the financial responsibility requirements in §218.16 of this title (relating to Insurance Requirements).

§218.82. Financial Responsibility.

(a) Intrastate transportation. No motor carrier shall operate a foreign commercial motor vehicle in intrastate transportation in Texas, unless the motor carrier obtains and has in effect an insurance policy which covers at least the minimum level required by 49 C.F.R. Part 387. [~~However, if the motor carrier is required to register with the department under Transportation Code, Chapter 643, the motor carrier must comply with the financial responsibility requirements in §218.16 of this title (relating to Insurance Requirements).~~] For the purposes of this subsection, intrastate transportation is any transportation on a public [~~road or~~] highway in Texas that is not described in 49 U.S.C. §13501.

(b) The department adopts by reference 49 C.F.R. Part 387 regarding the required level of financial responsibility, including any amendments that became effective through July 1, 2024. [~~Effective October 23, 2015, the department adopts by reference the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015.~~]

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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For further information, please call: (512) 465-4160



CHAPTER 224. ADJUDICATIVE PRACTICE AND PROCEDURE

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §224.27, concerning final orders and motions for rehearing, and Subchapter B, Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement, §224.54, concerning the assessment of civil penalties and license revocation. These amendments are necessary to conform these rules with House Bill (HB) 718 enacted during the 88th Legislature, Regular Session (2023). HB 718 amended Transportation Code, Chapter 503 to eliminate the use of temporary tags when purchasing a motor vehicle and replaced these tags with categories of license plates effective July 1, 2025. Section 34 of HB 718 grants the department authority to adopt rules necessary to implement or administer these changes in law and requires the department to adopt related rules by December 1, 2024.

The department also proposes a non-substantive change to add missing punctuation in §224.54(c)(6).

EXPLANATION.

Subchapter A. General Provisions.

Proposed amendments to §224.27(d) would delete the phrase "temporary tag database" and substitute the phrase "license plate system." This proposed amendment recognizes that under HB 718, the purpose of the database will change from the tracking and issuance of temporary tags to the tracking and issuing of license plates on July 1, 2025.

Subchapter B. Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement.

A proposed amendment to §224.54(b)(5)(C) would delete the phrase "or temporary tags" because effective July 1, 2025, a dealer may only issue a license plate or set of license plates, rather than a temporary tag, under Transportation Code, Chapter 503, as amended by HB 718.

Proposed amendments to §224.54(c)(4) would delete the phrases "or temporary tags" and "use an internet down tag to" because effective July 1, 2025, a dealer may only issue a license plate or set of license plates, rather than a temporary tag or internet down tag, under Transportation Code, Chapter 503, as amended by HB 718.

A proposed nonsubstantive amendment to §224.54(c)(6) would add a period to the end of the sentence to correct missing punctuation.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Thompson has also determined that, for each year of the first five years the amendments are in effect, public benefits include improved consistency and clarity in rule language, which will be helpful to dealers and the public.

Anticipated Costs To Comply With The Proposal. Ms. Thompson anticipates that there will be no costs to comply with this proposal as the proposal would not change a process and does not place a new requirement on a dealer.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because the amendments implement conforming language changes related to a continuing statutory requirement to prevent fraud - one that first applied to temporary tags and will now apply to license plates obtained or issued by a dealer. The amendments will also not have an adverse impact on rural communities because rural communities are not required to hold a general distinguishing number. The proposed amendments do not require small businesses or micro-businesses to pay a fee or incur any new costs to comply with the amendments unless a dealer commits acts considered fraudulent. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments do not create a new regulation and do not expand, limit, or repeal an existing regulation. Lastly, the proposed amendments do not increase the number of individuals subject to the rules and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on September 23, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §224.27

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department proposes amendments to Chapter 224 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license

holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code, §501.0041, which authorizes the department to adopt rules to administer Transportation Code, Chapter 501; Transportation Code, §502.0021 which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, as amended by HB 718, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631, which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; Transportation Code, §503.0633, which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §504.0011, which authorizes the board to adopt rules to implement and administer Chapter 504; Transportation Code, §520.003 which authorizes the department to adopt rules to administer Chapter 520; Transportation Code, §520.021, which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes amendments under the authority of Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble. Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These proposed revisions implement Government Code, Chapter 2001; Occupations Code, Chapter 2301; and Transportation Code, Chapters 503, 504, 520, 1001, and 1002.

§224.27. *Final Order; Motion for Rehearing.*

(a) The provisions of Government Code, Chapter 2001, Subchapter F, govern the issuance of a final order issued under this subchapter and a motion for rehearing filed in response to a final order.

(b) Except as provided by subsection (c) of this section and §224.29 of this title (relating to Delegation of Final Order Authority), the board has final order authority in a contested case filed under Occupations Code, Chapters 2301 or 2302, or under Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1001-1005.

(c) The hearings examiner has final order authority in a contested case filed under Occupations Code, §2301.204 or Occupations Code Chapter 2301, Subchapter M.

(d) A department determination and action denying access to the license plate system [temporary tag database] becomes final within 26 days of the date of the notice denying access to a database, unless the dealer or converter:

- (1) requests a hearing regarding the denial of access, or
- (2) enters into a settlement agreement with the department.

(e) Unless a timely motion for rehearing is filed with the appropriate final order authority as provided by law, an order shall be deemed final and binding on all parties. All administrative remedies are deemed to be exhausted as of the effective date of the final order.

(f) If a timely motion for rehearing is not filed, the final order shall be deemed final and binding in accordance with the provisions of Government Code, §2001.144.

(g) If a final and binding order includes an action on a license, the department may act on the license on the date the final order is deemed final and binding, unless the action is stayed by a court order.

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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General Counsel

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For further information, please call: (512) 465-4160



SUBCHAPTER B. MOTOR VEHICLE, SALVAGE VEHICLE, AND TRAILER INDUSTRY ENFORCEMENT

43 TAC §224.54

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department proposes amendments to Chapter 224 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board

to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code, §501.0041, which authorizes the department to adopt rules to administer Transportation Code, Chapter 501; Transportation Code, §502.0021 which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, as amended by HB 718, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631, which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; Transportation Code, §503.0633, which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §504.0011, which authorizes the board to adopt rules to implement and administer Chapter 504; Transportation Code, §520.003 which authorizes the department to adopt rules to administer Chapter 520; Transportation Code, §520.021, which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes amendments under the authority of Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble. Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These proposed revisions implement Government Code, Chapter 2001; Occupations Code, Chapter 2301; and Transportation Code, Chapters 503, 504, 520, 1001, and 1002.

§224.54. *Civil Penalty and Revocation Assessment.*

(a) Occupations Code, §2301.801 and §2302.354, and Transportation Code, §503.095 govern the amount of a civil penalty that may be assessed by the department against a license holder.

(b) In determining the amount of civil penalty to assess the department will consider the following aggravating factors:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;

(2) the economic damage to the public caused by the violation;

(3) any history of previous violations including whether the license holder previously entered into an agreed order with the department or otherwise received a warning or reduced penalty;

(4) the amount necessary to deter a future violation; and

(5) any other matter that justice may require, including:

(A) the number of violations or number of consumers harmed by violation(s);

(B) whether the consumer received a title;

(C) whether the license holder misused license plates [or temporary tags];

(D) whether the license holder attempted to conceal a violation;

(E) whether the act constituting the violation was intentional, premeditated, knowing, or grossly negligent; and

(F) whether an order issued by the department was violated.

(c) In determining whether license revocation is appropriate, the department will consider the following factors:

(1) whether the license holder is unfit under standards governing the occupation, including qualifications for a license;

(2) whether the license holder made a material misrepresentation in any written communication or information provided to the department;

(3) whether the license holder willfully defrauded a purchaser;

(4) whether the license holder misused license plates [or temporary tags], including whether the license holder attempted to [use an internet-down tag to] avoid inspection requirements;

(5) whether the license holder failed to fulfill a written agreement with a retail purchaser of a vehicle or motor vehicle; and

(6) whether the license holder failed to attend an approved dealer training seminar as ordered in an agreed final order.

(d) The department will consider the following mitigating factors in determining the amount of civil penalty to assess or whether license revocation is appropriate:

(1) acknowledgment by the licensee of any wrongdoing;

(2) willingness to cooperate with the department; and

(3) efforts to correct a violation.

(e) The department will publish a disciplinary matrix on the department website to provide guidance to license holders on the administrative penalties and other sanctions that may be assessed for the most common violations. The department will consider the disciplinary matrix published at the time of the violation; however, the disciplinary matrix does not prevent the department from seeking administrative penalties and other sanctions above or below the recommended ranges listed in the disciplinary matrix. Also, the disciplinary matrix does not prevent the board or the board's delegate from ordering administrative penalties and other sanctions above or below the recommended ranges listed in the disciplinary matrix.

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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