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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.9

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC §1.9, Household Recipient Privacy Policy for Federal Funds or Assistance, without changes to the proposed text as published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7413). The rule will not be republished. The purpose of the new section is to provide a policy that protects, when permissible, the personal information provided by households to the Department or its subrecipients, when applying for assistance.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but provides for the privacy of information provided by households that apply for the Department's federal funding assistance.

2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section is creating a new regulation, but it is a regulation that does not place a burden on users of the Department's programs, but merely offers a privacy policy.

6. The new section will not expand, limit, or repeal an existing regulation.

7. The new section will increase the number of individuals subject to the rule's applicability; however that applicability is a household benefit (privacy).

8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that it will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be increased privacy with the information provided by households when applying to the Department for federal assistance. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the section does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period was held September 20, 2024 to October 21, 2024, to receive input on the proposed action. One comment was received from the Texas Council on Family Violence (TCFV).

Comment: TCFV specifically offers support for the protection of personally identifying information for participants of any federally funded program or resource administered by the Department, either assisted directly by the Department or indirectly through a Vendor, Subrecipient or Owner. Under the Violence Against

Women Act (VAWA), there are critical protections in place to ensure that survivors of domestic violence can access necessary resources without the fear of their sensitive data being mishandled or disclosed. Ensuring the privacy of such information is vital for fostering trust and encouraging individuals to seek assistance. TCFV commends the Department's commitment to enhancing privacy for all Texans and recommend clear guidelines and training for staff to effectively implement this policy.

Department Response: The Department appreciates the support for the policy. No changes to the rule are being made in response to this comment.

STATUTORY AUTHORITY. The new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405413
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 27, 2024
Proposal publication date: September 20, 2024
For further information, please call: (512) 475-3959

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER I. PUBLIC FACILITY CORPORATION COMPLIANCE MONITORING

10 TAC §10.1103

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC Subchapter I, §10.1103 Public Facility Corporation Compliance Monitoring, with changes to the text previously published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5863). The rule will be republished. The purpose of the adoption of amendments is to provide compliance with Tex. Gov't Code §2306.053. The purpose of the rule is to codify requirements on which Public Facility Corporation multifamily residential developments are required to submit annual audit reports to the Department by June 1 of each year.

Tex. Gov't Code §2001.0045(b) does not apply to the amendments because it is necessary to implement legislation with HB 2071 (88th Regular Legislature). The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendments do not create or eliminate a government program:

1. This adopted amendment to the rule provides for an assurance that properties created by a Public Facility Corporation must annually submit an Audit Report to the Department.

2. The adopted amendment to the rule will require a change in the number of employees of the Department; the Compliance Monitoring Division will gain two additional full-time employees through 2025.

3. The adopted amendment to the rule does not require additional future legislative appropriations.

4. The adopted amendment to the rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The adopted amendment to the rule will create new regulations; which was created and codified because of HB 2071.

6. The adopted amendment to the rule will not repeal an existing regulation; but will expand the existing regulation on this monitoring activity because the amendment is necessary to ensure ongoing compliance with HB 2071. The Department must adopt rules to codify monitoring applicability.

7. The adopted amendment to the rule will increase the number of individuals subject to the rule's applicability because the rule is codifying that all Public Facilities Corporations must submit an annual audit report to the Department.

8. The adopted amendment to the rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this adopted amendment to the rule, has attempted to reduce any adverse economic effect on small or micro-businesses or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.053.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The rule relates to the procedures for Public Facilities Corporations. Other than in the case of a small or micro-business that is a PFC Operator or Sponsor submitting an audit report to the Department, no small or micro-business are subject to the rule. It is estimated that there may be 200 or less small or micro-businesses that may submit an audit report and be subject to the rule. For those entities, the adopted amendment provides clear expectations for entities that are subject to the rule to submit annual audit reports as required and does not result in a negative impact for those small or micro businesses. There are likely to be some rural communities subject to the new rule; however, because the Department does not know the number of PFC developments in these areas, it cannot be estimated how many may be impacted. The PFC Operators or Sponsors are required to submit annual audit reports to the Department. There is no fee collected by the Department for the review of PFC annual audit reports.

3. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities

because it applies to all Public Facility Corporation multifamily residential developments regardless when approved.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendments do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment will be in effect the adopted amendment to the rule has no impact on local employment because the rule only addresses the requirement for PFC Operators and/or Sponsors to submit annual audit reports to the Department; therefore, no local employment impact statement is required to be prepared for the adopted amendment to the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule..." Considering that the adopted amendment to the rule only provides requirements for a PFC Operator and/or Sponsor to submit an annual audit report to the Department, there are no "probable" effects of the adopted amendment to the rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the adopted amendment to the rule will be to codify requirements for PFC multifamily residential developments to submit annual audit reports to the Department. There will be an economic cost to any individuals required to comply with the adopted amendment because they are required to hire an independent auditor to complete the annual audits. It is estimated the cost per annual PFC audit report is between $6,000 to $8,000. There is no additional cost to the PFC Operator or Sponsor to submit the annual audit to the Department, as the Department does not collect a fee to review PFC audit reports.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the adopted amendment to the rule is in effect, enforcing or administering the adopted amendment to the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule only relates to the requirements for PFC Operators and/ or Sponsors to submit annual audit reports.

SUMMARY OF PUBLIC COMMENT. The public comment was accepted from August 9, 2024, through September 9, 2024. Comment was received from twenty-four commenters. Comments regarding the proposed amendment were accepted in writing and by e-mail with comments received from:

1. Alan Hassenflu, Chair, Houston Region Business Coalition

2. Nick Walsh, Vice President of Development, the NRP Group

3. Ben Martin, Research Director, Texas Housers

4. Erick Waller, President of NRP Management, LLC

5. Sandy Hoy, Vice President & General Counsel, Texas Apartment Association

6. Mark Jensen, Vice President, Weston Urban

7. Darren W. Smith, Managing Member, AUXANO Development, LLC

8. Daniel L. Smith, Managing Director, Ojala Partners

9. Cynthia L. Bast, Locke Lord, LLP

10. Dave Holland, Executive Director, Provident Realty Advisors

11. Shera Eichler, Director, Texans for Workforce Housing

12. Brian Alef, Founder & CEO, Town Companies,

13. Trey Embrey, President & Chief Executive Officer, Embrey

14. Kevin Cherry, Cherry Petersen Albert

15. Sara Black, oppressed renter, Austin/Travis County

16. David M Adleman, Principal of AREA Real Estate LLC

17. Paul Ahls, Senior Vice President, Starwood Capital Group

18. John Jeter, Post Real Estate Group

19. Jessica Antoniades, Vice President & Assistant Secretary, Fairfield

20. Pete Alanis, Executive Director, San Antonio Housing Trust

21. Jessica Kuehne, Director of Asset Management, San Antonio Housing Trust Foundation

22. Timothy Alcott, Executive Vice President, Development and General Counsel, Opportunity Home

23. Barry J. Palmer, Director, Coats Rose

24. Miller Sylvan, Senior Vice President, JPI Regional Development Partner

Rule Section §10.1103:

Comment Summary: Commenters 1, 3, and 15 strongly support the proposed amendment to the rule and believe the language in HB 2071 supports these changes.

Commenters 2, 4, 6, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 22, 23, and 24 have strong concerns that the proposed rule change is an unreasonable interpretation of the plain language and context in Chapter 303 Tex. Local Gov't Code and HB 2071. They feel the Department has misinterpreted HB 2071 and has undermined the intent of the legislation.

Commenter 2 requests that the Department withdraw the proposed changes and maintain the current rule because the plain language reading demonstrates that the new provisions in Sections 303.0421, 303.0425, and 303.0426 apply solely to new construction approved or acquisitions completed after June 18, 2023.

Commenter 4 expresses concern that the rule would subject affordable housing developments to undue scrutiny, increased cost during trying economic times and a variety of other issues like the lack of current auditing resources for this program with only a handful of approved auditors for hundreds of developments.

Commenters 8 and 12 echo Commenter 4's concerns above but also see the new proposed rule as having other major impacts on developments and residents. The concerns are that the publication of these annual reports to the county appraisal districts and to the Department's website, creates undue scrutiny and the potential for Nimbyism that may affect the broader mission of providing affordable housing.

Commenters 2, 4, 6, 8, 10, 12, 13, 16, 17, 19, and 24 have additional concerns about the administrative and unanticipated cost burden for existing Public Facility Corporation developments to complete the requested audit by the December 1, 2024, deadline.

Commenter 8 went on to state that requiring PFC properties approved prior to June 18, 2023, to submit annual audit reports, is adding new expenses that will total hundreds of thousands of dollars over a development's lifetime.

Commenters 2 and 4 also have additional concerns with the structure of the current audit workbook that seems to overlook Regulatory Agreement terms executed prior to June 18, 2023. For instance, many PFC projects initiated prior to June 18, 2023, only needed to reserve 50% of the units for households at or below 80% Area Median Income (AMI), which the current audit workbook does not address. Other areas of concern with the current audit workbook for pre-June 18, 2023, developments is the lack of options for selecting "Not Applicable" (N/A) for audit requirements that are not applicable to these developments. Lastly, Commenters 2 and 4 are apprehensive that utilizing the current audit workbook for those pre-June 18, 2023, developments could easily lead to inconsistencies and potential misinterpretations. Such misinterpretations could affect property owners and operators, but also auditors, TDHCA, the public and others.

Commenters 4, 8, 9, 11, 12, 14, 20, 22, and 23 are requesting an extension to the December 1, 2024 deadline to allow the participants time to work through implementation issues without imposing undue burden or risk on TDHCA, the PFCs, or the other participants.

Commenters 9, 11, 14, 20, 22, and 23 suggest that if the Department moves forward with the December 1, 2024 deadline, that the information submitted will be for calendar year 2023.

Commenters 2, 6, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 22, 23, and 24 believe these changes are not supported by the language in HB 2071, and that TDHCA lacks statutory authority; they request that the Department withdraw the proposed rulemaking.

Commenters 9, 11, 14, 20, 22, and 23 have concerns about PFC developments approved prior to June 18, 2023, specifically that some developments have been operational over roughly the last 7 years and will have different affordability requirements, different lease-up requirements, and different enforcement provisions; some may have Regulatory Agreements while others may not. Commenters 9, 11, 14, 20, 22, 23 go on to state that these older PFC developments may lack uniformity in their documentation, and many of the participants may not have prior experience with affordable housing. Meeting the December 1, 2024, deadline would be challenging as third-party auditors may not have the capacity to take on hundreds of audit reports.

Commenter 5 has concerns regarding the audit workbook made available by the Department. The audit workbook requires additional data to be collected from Responsible Parties, which include all PFC governing body contact information, PHA board members contact information and elected official's contact information. In addition, the audit workbook asks about property information regarding utilities, fees, deposits, unit mix, square footage of each floorplan, occupancy information, number of voucher holders, qualification policies, marketing information etc., and believes this exceeds the governing statue and creates an undue financial and administrative burden for PFC Operators. Additionally, requesting this extra data requires extensive time to collect and complete the audit workbook. Due to the increased time required for the data collection and data entry, the average cost of a compliance audit is estimated to be $8,000 or more per year. The compliance audit fee is higher than a standard audit, and is an unexpected expense for 2024. Commenter 5 also goes on to say, that if the additional data is only being collected for informational purposes, it should be optional and should be allowed to be provided to the Department in the form of a questionnaire directly from the PFC Operator. Commenter 5 also requested that the Audit Report as defined in §10.1102(1) be accepted in other formats. Also, they recommend that the term "Auditor" defined in §10.1102(2) be expanded to include not only an individual, but companies and firms to help broaden the options on who PFC Operators can engage with to conduct compliance audits to ensure large portfolios can complete them timely. It is strongly suggested that the Department extend the reporting deadline to start with audit report due June 1, 2025, so that PFC developments are not having to report twice in a six-month period.

Staff Response: Staff agrees with Commenters 1, 3, and 15 in their support of the rule change.

Staff disagrees that the proposed rule change contradicts HB 2071 and believes that these costs and administrative actions have not been unforeseen. HB 2071 and Section 303.0421(c), Tex. Local Gov't Code, specifically require that existing PFC developments be required to comply and submit an annual audit.

Section 10(d) of HB 2071 states:

Notwithstanding any other provisions of this section: (1)Section 303.0426, Local Government Code, as added by this Act, applies to all multifamily residential developments to which Section 303.0421 applies and with respect to which an exemption is sought or claimed under Section 303.042(c); and (2)the initial audit report required to be submitted under Section 303.0426(b), Local Government Code, as added by the Act, for a multifamily residential development that was approved or acquired by a public facility corporation before the effective date of the Act must be submitted by the later of: (A)the date established by Section 303.0426(f), Local Government Code, as added by this Act; or (B) June 1, 2024.

PFC multifamily residential developments created under Chapter 303 of the Texas Local Government Code, with the exception of those described in Tex. Local Gov't code §303.0421(a)(1)-(4), must annually submit an audit report to the Department. PFC Developments acquired, approved, or occupied prior to the effective date of the Act, as described in Sections 10(b) and (c) of HB2071, are governed by the law in effect on the date the Development was approved by the corporation or sponsor. However, as Section 10(d) applies "notwithstanding any other provision of this section," all PFC-owned multifamily residential developments with respect to which an exemption is sought or claimed under §303.042(c) - regardless of when the Development was acquired, approved, or occupied - must submit an Audit Report in accordance with Tex. Local Gov't Code §303.0426(b). For those PFC-owned developments that pre-date the Act (as described in Sections 10(b) and (c) of the Act), the Audit Report requirements of Tex. Local Gov't Code §303.0426(b)(1) will be satisfied by simply demonstrating its eligibility to continue under the former law, but the Audit Report must still fully address the requirements of §303.0426(b)(2) (identifying the difference in rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions).

For those developments acquired by a Public Facility Corporation prior to the effective date of the Act, Section 10 (b) and (c) of HB 2071 speak to the applicability of sections 303.0421 and 303.0425 and restrict the need to be in compliance with Section 303.0425 new statutory provisions.

Therefore, all Public Facility Corporation approved developments must annually submit an audit report that includes the difference in the rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions in compliance with Sections 303.0421 and 303.0425. The Department has created a new audit workbook for pre-June 18, 2023, developments, and has made it available on the Department's website.

In addition, the Department has extended the deadline to the December 15, 2024. The deadline is a cursory extension for those PFC developments that did not report by June 1, 2024.

The Department is required to publish summary of audits in accordance with HB 2071 and make them available on TDHCA's website. The Department deems that making the monitoring reports available on TDHCA's website and providing them to county appraisal districts is necessary to be transparent in this monitoring activity to the public and stakeholders. These monitoring reports are subject to public information requests and would be made available upon request by any person or entity.

The Department has been tasked through HB 2071 to monitor PFC developments regardless of when approved and has no oversight of the cost of a third party auditor. The PFC Operator has the ability to choose their third-party auditor and negotiate the price of an audit. Further, the auditor list provided on the Department's Public Facility Corporation website is not an exclusive auditor list. The audit report may be submitted by any auditor who meets the qualifications outlined in §10.1103(6).

TDHCA Compliance Division has numerous years of experience monitoring affordable housing that often has multiple layers of different programs, affordability periods, and income/rent requirements. The Compliance Division has the capacity and knowledge to monitor third-party audit reports for PFC developments regardless of when they were approved. In addition, the Compliance Division, as needed will provide written technical assistance in its monitoring letters to help enhance and strengthen PFC compliance obligations. The Department agrees that reports submitted in 2024, should be reporting for calendar year 2023, while reports due June 1, 2025, should be reporting for calendar year 2024.

Staff appreciates the comments regarding the audit workbook; however, a majority of the information being collected is required statutorily. For instance, in accordance with HB 2071, §303.0426(c)(2), TDHCA must issue a copy of the report "to a public facility user that has an interest in a development that is subject of an audit, the comptroller, the applicable corporation, the governing body of the corporation's sponsor, and, if the corporation's sponsor is a housing authority, the elected officials who appointed the housing authority's governing board." Per §303.0425 the Department is required to monitor specific requirements for unit mix, rent, housing choice voucher and tenant protections, specific marketing requirements and qualification polices as it relates to the housing choice voucher holders. Department staff cannot appropriately monitor a PFC development without collection of the required information. The Department is collecting additional information on utilities, fees, and deposits, which takes very little time for an auditor to determine and complete the basic questions in the audit workbook. The only non-required information the Department is collecting on is utilities, fees, and deposits. This information is being collected in the interest of the Department for tracking purposes and the information is optional to provide. The Department has a very short timeframe of forty-five days to review audit reports and provide a response and allowing other formats to be submitted would create a substantial burden on staff. Due to time constraints, staff needs the audit format to be consistent to ensure all monitoring report deadlines are completed on time. Department staff will update the definition of "Auditor" as suggested in the Public Facilities Corporation Monitoring Rule the next time that section of the rule is made available for public comment. The December 15, 2024, deadline is a cursory extension granted by the Department for those PFC developments that did not report by the June 1, 2024, deadline. The Department is statutorily required to monitor all PFC developments starting June 1, 2024.

Additional Comments and Concerns received:

Comment Summary: Commenter 7 is requesting that the Department acknowledge that developments that originated before HB 2071 will be reviewed per the current Regulatory Agreement. Commenter 7 goes on to describe how income limits should be calculated in the absence of an income definition in a Regulatory Agreement and that the Department should confirm that utility allowance and other charges are not included in the definition of rent. In addition, the TDHCA Income Certification form should be required for PFC developments approved prior to June 18, 2023.

Commenters 4, 9, 11, 14, 20, 21, 22, and 23 had many suggested changes for the audit workbook. Commenters 9, 11, 14, 22, and 23 also included suggestions for the TDHCA's PFC Income Certification form.

Commenter 18 submitted comments requesting that 10 TAC §10.1104 be modified to reflect the different audit requirements for regulatory agreements of PFC developments that were approved prior June 18, 2023. Commenter 18 has the following specific concerns:

1. The inclusion of fees and other charges when determining rent,

2. The requirement for verifications of assets when determining income for a qualified household,

3. The review of one-time fee and deposits amounts, and

4. The percentage of units set aside in each unit type and the requirement of rent savings for the property must be equal to or exceed 60% of the tax savings.

Commenter 18 has also suggested for Regulatory Agreements in place prior to June 18, 2023, the rule should allow for the reservations of units to be occupied by income-qualified tenants to count towards the compliance threshold, and should allow developments with Regulatory Agreements to use those in determining program compliance requirements.

Commenters 20 and 21 seek clarification on the Public Facilities Corporation Monitoring Rule and the audit workbook. Specifically looking for the Department to expand on the definition of who the PFC's Responsibly Parties are and what role they play in the PFC ownership and sponsor structure. Commenters 20 and 21 also ask what is an equivalent certification to the Certi-

fied Occupancy Specialist (COS), what business credentials and qualifications the Department requires for an independent auditor, how a vendor would get on the auditor's list and why the Department is requiring the HUD income and rent limits. They are also seeking clarification on how to initiate the Options for Review in 10 TAC §10.1107 and what the process is. Commenter 21 also asked what if a PFC development is not using the Income Certification form as required in 10 TAC §10.1104(b)(6). Commenters 20 and 21 also suggested the implementation of an "Affidavit or Ownership and no affiliation statement" for an independent auditor. They are also seeking information on what utilities the PFC Operator pay and how to complete Tab 7 on the audit workbook. Commenter 21 indicates that Tab 7 is problematic and only onsite staff or management will be able to complete it without detailed instructions or guidance. They would also like to know if the Department is requiring proof of marketing, for copies of the Income Certification to be submitted with the audit workbook.

Staff Response: Staff confirms that all PFC developments will be monitored in accordance with their Regulatory Agreement regardless of when the PFC was approved. In addition, for PFC developments which were approved before the effective date of June 18, 2023, they will be monitored in accordance with the law in effect on the date the development was approved by the Corporation or Sponsor. PFC developments approved on or after June 18, 2023, will be monitored under all new statutory provisions outlined in HB 2071. Staff disagrees with Commenter 7 regarding the Income Certification form; this form should be implemented when certifying and recertifying households as required in the PFC Compliance Monitoring Rule in §10.1104(b)(6).

Staff agrees that the current workbook contains areas that would not apply to the existing Public Facility Corporation (PFC) developments and appreciates the feedback on the audit workbook. Staff will consider all the suggestions as it updates the workbook for the 2025 audit cycle.

Staff agrees with the suggestions from Commenters 9, 11, 14, 20, 22, and 23 and will review and implement changes to the TDHCA Income Certification form.

Staff will take into consideration the concerns outlined by Commenter 18 during future rule revisions, as Section §10.1104 Audit Requirements is currently not out for public comment. Staff will monitor for requirements outlined in the developments specific Regulatory Agreement, HB 2071, and Public Facilities Corporation Monitoring Rule.

Fees and other charges are not considered rent for PFC developments. Assets are a part of determining a household's gross annual income and should be verified by the development using the Department's Assets Certification of Net Family Assets form; or verified using third party or firsthand documentation. One-time fee and deposits amounts are optional information to provide to the Department by a PFC Operator and/or Sponsor. PFC properties approved after June 18, 2023, must meet a specific unit mix requirement per HB 2071 and the sixty percent (60%) rent savings is only applicable to properties that are acquired, and not for new construction.

Department staff does monitor compliance with Regulatory Agreements.

10 TAC §10.1101 requires the Department to communicate with the Responsible Parties. Responsible parties are further described in HB 2071. It is the PFC Operator's responsibility to provide all Responsible Parties contact information to the independent auditor so the audit workbook may be accurately completed. The Department will rely on the information provided on the audit workbook completed by the auditor. An equivalent certification to the COS is the Certified Professional of Occupancy (CPO) provided through The National Affordable Housing Management Association (NAHMA). The Auditor is an independent Auditor or compliance expert with an established history of providing similar audits on housing compliance matters and qualifications must include experience auditing housing compliance, a current COS certification or an equivalent certification and resume. These Auditor qualifications must be submitted with each Audit report. An interested person/entity may request to be listed on the list of Auditors on the website by contacting Department staff listed on the PFC website. The development is not limited to only the income and rent limits published by HUD, but to the limits specified in the PFC development's Regulatory Agreement per 10 TAC §10.1105(b) and (c). Per 10 TAC §10.1104(b)(6), PFC developments should implement the Department approved Income Certification form moving forward. The Department will consider Commenter suggestion for the implementation of an "Affidavit or Ownership and no affiliation statement" the next time the audit workbook is updated. Tab 7 of the audit workbook should be completed by the Auditor who obtains the information from the PFC Operator, Sponsor, Owner and / or Property staff, which should readily have this property information available. The Department is not requiring proof of marketing or copies of Income Certification forms, as this is the independent Auditor's role to obtain, review and report to the Department. The independent Auditor will complete the audit workbook's relevant sections after reviewing required documentation, website, and household files.

STATUTORY AUTHORITY. The amended rule is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described, herein, the adopted amendment to the rules affects no other code, article, or statute.

§10.1103. Reporting Requirements.

The following reporting requirements apply to all Developments owned by a Public Facility Corporation (PFC), subject to Sections 303.0421 and 303.0425 of the Texas Local Government Code, and not eligible under Section 10(b) or (c) of House Bill 2071, 88th Texas Legislative Session, effective June 18, 2023, (the Act) for continuation of the former law in effect prior to the effective date of the Act. Pursuant to Section 10(d) of the Act, all Developments owned by a PFC as described in Tex. Local Gov't Code §303.0421(a), and with respect to which an exemption is sought or claimed under §303.042(c) - regardless of when the Development was acquired, approved, or occupied - must submit an Audit Report in accordance with §303.0426(b) as described below.

(1) No later than June 1 of each year, the Public Facility User will submit to the Department an Audit Report from an Auditor, obtained at the expense of the Public Facility User. Concurrently with submission of the Audit Report, the Operator will complete the contact information form available on the Department's website. For Developments eligible for continuation of the former law in effect prior to June 18, 2023, the first Audit Report (due no later than December 15, 2024, with a one-time discretionary extension of 30 days available from the Department upon written showing of good cause, if submitted to pfc.monitoring@tdhca.texas.gov prior to 5:00 p.m. on December 15th), will satisfy the requirements of Tex. Local Gov't Code §303.0426(b)(1) (compliance with new statutory provisions) by demonstrating its eligibility to continue under the former law, but must

still fully address the requirements of §303.0426(b)(2) (identifying the difference in rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions).

(2) The first Audit Report must include a copy of the Regulatory Agreement. The first Audit Report for a Development must be submitted no later than June 1 of the year following the first anniversary of:

(A) The date of the PFC acquisition for an occupied Development; or

(B) The date a newly constructed PFC Development first becomes occupied by one or more tenants.

(3) No later than 60 days after the receipt of the Audit Report, the Department will post a summary of the Audit Report on its website. A copy of the summary will also be provided to the Development and all Responsible Parties. The summary must describe in detail the nature of any noncompliance.

(4) If any noncompliance with Sections 303.0421 and 303.0425 are identified by the Auditor, no later than 45 days after receipt of the Audit Report the Department will notify the Public Facility User. The notification must include a detailed description of the noncompliance and at least one option for corrective action to resolve the noncompliance. The Public Facility User will be given 60 days to correct the noncompliance. At the end of the 60 days, the Department will post a final report on its website.

(5) If all noncompliance is not corrected within the 60 days, the Department will notify the Public Facility User, appropriate appraisal district, and the Texas Comptroller. The Department will also recommend a loss of tax-exempt status.

(6) The qualification of the Auditor must be submitted with each Audit Report. Qualifications must include experience auditing housing compliance, a current Certified Occupancy Specialist (COS) certification or an equivalent certification, and resume. The Auditor may not be affiliated with or related to any Responsible Parties. Additionally, a current or previous Management Agent that has or had oversight of the Development or is/was responsible for reviewing and approving tenant files does not qualify as an Auditor under these rules.

(7) The Public Facility User may not engage the same individual as Auditor for a particular Development for more than three consecutive years. After the third consecutive Audit Report by the same Auditor, the Public Facility User must engage a new Auditor for at least two reporting years before re-engaging with a prior Auditor.

(8) Audit Reports and supporting documentation and required forms must be submitted to the following email address: pfc.monitoring@tdhca.state.tx.us.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: August 9, 2024
For further information, please call: (512) 475-3959

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CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (the Bond Rules), §§12.1 - 12.10, without changes to the text previously published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7557). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the issuance of Private Activity Bonds (PAB).

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department or a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation but is associated with a simultaneous readoption making changes to an existing activity, the issuance of PABs.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043.

The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the issuance of PAB. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 20, 2024, and October 18, 2024, with no comments on the repeal itself received.

The Board adopted the final order adopting the repeal on November 7, 2024.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

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

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Bobby Wilkinson
Executive Director
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For further information, please call: (512) 475-3959

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10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the text previously published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7558) new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules), §§12.1 - 12.10. The rules will not be republished. The purpose of the new sections is to provide compliance with Tex. Gov't Code §2306.359, to make minor administrative revisions, and to ensure that it is reflective of changes made in the Department's Qualified Allocation Plan where applicable.

Tex. Gov't Code §2001.0045(b) does not apply to the action on these rules pursuant to item (9), which excepts rule changes necessary to implement legislation. The rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rules will be in effect:

1. The rules do not create or eliminate a government program, but relates to the readoption of theses rules which makes changes to an existing activity, the issuance of Private Activity Bonds ("PAB").

2. The rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.

3. The rules do not require additional future legislative appropriations.

4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.

5. The rules are not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rules will not limit, expand or repeal an existing regulation but merely revises a rule.

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

8. The rules will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting these rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full Application is between $50,000 and $60,000; which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average result in an increased cost of filing an application as compared to the existing program rules.

1. The Department has evaluated these rules and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. These rules relate to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to these rules. There are approximately 100 to 150 businesses, which could possi-

bly be considered small or micro-businesses, subject to the rule for which the economic impact of the rule would be a flat fee of $11,000 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The fee for submitting an Application for PAB layered with LIHTC is based on $30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units.

These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are approximately 1,300 rural communities potentially subject to the new rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural PAB awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive PAB awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The rules do not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the rules may provide a possible positive economic effect on local employment in association with these rules since PAB Developments, layered with housing tax credits, often involve a total input of, typically at a minimum, $5 million in capital, but often an input of $10 million - $30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be an updated and more germane rule for administering the issuance of PABs and corresponding allocation of housing tax credits. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing a pre-application and application remain unchanged based on these rule changes. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at these sections being repealed.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comments between September 20, 2024, and October 18, 2024. No Comments were received.

The Board adopted the final order adopting the new rule on November 7, 2024.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.23; and Subchapter C, §60.33 and §60.34; adopts the repeal of existing rules at Subchapter C, §60.30 and §60.31; and Subchapter E, §§60.50 - 60.54; and adopts 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, without changes to the proposed text as published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6372). These rules will not be republished.

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 adopted rules update multiple subchapters and sections under Chapter 60 and are part of a larger effort to update the entire chapter. The adopted 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 adopted 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 adopted 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 adopted rules include changes identified by Department staff during the rule review process. The changes are reflected throughout the adopted 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 adopted 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 adopted rules add refunds into the list of possible disciplinary actions that may be imposed by the Commission or the Executive Director.

The adopted 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 adopted rules amend §60.23, Commission and Executive Director--Imposing Sanctions and Penalties. The adopted rules amend subsection (a) to remove the inspection and investigation provision under paragraph (3). This provision implements Texas Occupations Code §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 adopted 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 adopted rules renumber the subsequent paragraph and make technical changes to the provisions under paragraphs (6) and (8).

Subchapter C. License Applications and Renewals.

The adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted rules amend existing §60.33, Temporary License. The adopted rules update and clarify the existing rule in accordance with Texas Occupations Code §51.407, Temporary License. The adopted rules change the title of the section from "Temporary License Applications" to "Temporary License." The adopted 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 adopted rules also re-letter the subsections and update a cross-reference.

The adopted rules amend existing §60.34, Substantially Equivalent License Requirements. The adopted rules update and clarify the substantially equivalent license requirements and procedures. The adopted 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 adopted 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 adopted rules also re-letter the existing subsections as necessary and update the terminology throughout the section.

The adopted rules add new §60.37, Voluntary Surrender of a License. The adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted rules add new §60.50, Examination Providers. The adopted 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 adopted 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 adopted rules explain the applicability of the provisions in this subchapter.

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

The adopted 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 adopted rules under this section implement provisions under Texas Occupations Code §51.402, Examinations, and Texas Occupations Code §51.403, Examination Fee Refund. The adopted 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 adopted 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 adopted 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 adopted rules repeal existing §60.53, Access to Examinations. The provisions in this repealed rule have been incorporated into new §60.53, Examination Accommodations.

The adopted 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 adopted 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 adopted 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 adopted rules add new provisions under subsection (b) that provide the required procedures for requesting reasonable accommodations for an examination. The adopted 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 adopted 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 adopted rules add new §60.54, Examination Security. This new rule includes provisions from existing §60.52, Examination Security, which is being repealed. The adopted 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 adopted 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 adopted rules add new §60.55, Examination Results. This new rule implements Texas Occupation Code §51.402, Examinations. The adopted 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 adopted 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 adopted rules under subsection (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 adopted 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 adopted 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 adopted 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 adopted 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 adopted rules under subsection (c) address examination results for a person who previously held a Texas license and is applying for a new license. The adopted rules address previous examination results and whether the person has to take any required licensing examinations again. As explained under subsection (c)(1), the adopted rules group the different situations involving previous license holders into one subsection, and the specific situations are addressed in each paragraph. The adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules

were published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6372). The public comment period closed on September 23, 2024. The Department received comments from one interested party on the proposed rules. The public comments are summarized below.

Comment: The Texas Food & Fuel Association (TFFA) submitted comments on the Chapter 60 rules §60.31 and §60.83, regarding the late renewal fees under Texas Occupations Code, Chapter 51, and the late renewal fees for the Motor Fuel Metering and Quality (FMQ) Program under Texas Occupations Code, Chapter 2310.

TFFA stated: "Section 60.31 incorporates by reference the department's late renewal fee policy which is set forth in §60.83 and authorized by Chapter 51 of the Code. However, Chapter 2310, related to Motor Fuel Metering and Quality establishes a separate late renewal fee policy for motor fuel metering devices." TFFA explained the FMQ statutory late fee provisions for device registrations and noted the difference in late fees between the two statutes. TFFA encouraged the Department "to review §60.83 to incorporate §2310.103(e) motor fuel device registrations in accordance with Chapter 2310, as referenced in TFFA's Chapter 97 Rule Review comments." TFFA further stated: "In the interim, we propose that §60.31(g) be amended to refer to the exception for motor fuel metering device late renewal fees."

Department Response: The Department disagrees with the suggested changes as they relate to the Chapter 60 proposed rules. The Department declines to make the suggested changes as explained below.

First, the Department declines to make changes to §60.83, Late Renewal Fees, since it is not part of this rules package. Section 60.83 implements Texas Occupations Code §51.401, License Expiration and Renewal, which establishes the statutory late renewal fee structure and amounts. The TFFA comment that the Department should review §60.83 and incorporate the late renewal fees for motor fuel device registrations under Texas Occupations Code §2310.103(e) is outside of the scope of this rulemaking. The Department declines to make this change.

Second, the Department declines to make changes to the Chapter 60 proposed rules specific to the FMQ program while the rule review of Chapter 97 is still pending. As noted in its comment letter on the Chapter 60 proposed rules, TFFA submitted a separate comment letter in response to the four-year rule review of the FMQ rules under 16 TAC Chapter 97. The four-year rule review of Chapter 97 is a separate rulemaking action. The public comment period on the rule review opened May 24, 2024, and closed June 24, 2024. In its rule review comment letter dated June 24, 2024, TFFA suggested making changes to FMQ rule §97.74, Fee Policy, and adding a new rule §97.75, to address the late renewal fees for FMQ licenses and motor fuel device registrations. The rule review of Chapter 97 is still pending.

The Department declines to amend §60.31(g) in the interim to include an exception for motor fuel metering device late renewal fees. Any suggested rule changes regarding the late renewal fees specific to the FMQ program as authorized under the FMQ statute, Texas Occupations Code §2310.103(e), should be addressed as part of the FMQ program's rulemaking activities. The appropriate Department staff, the FMQ advisory board, and the FMQ interested parties should be part of the discussions regarding the late renewal fees that are specific to the FMQ program. The Department declines to make changes to the Chapter 60 proposed rules that could interfere with the FMQ rule review that is pending and any possible future FMQ rulemakings.

Third, the Chapter 60 rules are rules of general applicability that implement Texas Occupations Code, Chapter 51, and other state laws applicable to state agencies. As stated in §60.1, the Chapter 60 rules apply to all TDLR programs "except in the event of a conflict with specific statutes and rules governing a specific program." Rules that implement specific program statutes are addressed at the program-level. The Department declines to make changes to the Chapter 60 proposed rules that could interfere with the FMQ rule review that is pending and any possible future FMQ rulemakings.

COMMISSION ACTION

At its meeting on October 23, 2024, the Commission adopted the proposed rules as published in the *Texas Register*.

SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.23

STATUTORY AUTHORITY

The adopted rules are adopted 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 adopted rules are adopted 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 adopted 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 adopted 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 adopted rules.

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

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

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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

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SUBCHAPTER C. LICENSE APPLICATIONS AND RENEWALS

16 TAC §60.30, §60.31

STATUTORY AUTHORITY

The adopted repeals are repealed 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 adopted repeals are repealed 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 adopted 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 adopted 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 adopted repeals.

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

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

STATUTORY AUTHORITY

The adopted rules are adopted 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 adopted rules are adopted 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 adopted 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-Lan-

guage 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 adopted 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 adopted rules.

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

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SUBCHAPTER E. EXAMINATIONS

16 TAC §§60.50 - 60.54

STATUTORY AUTHORITY

The adopted repeals are repealed 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 adopted repeals are repealed 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 adopted 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 adopted 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 adopted repeals.

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

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16 TAC §§60.50 - 60.56

STATUTORY AUTHORITY

The adopted rules are adopted 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 adopted rules are adopted 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 adopted 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 adopted 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 adopted rules.

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

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CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Commission of Licensing and Regulation (Commission) adopts a new rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter C, §60.32, and amendments to an existing rule at Subchapter D, §60.40, regarding the Procedural Rules of the Commission and the Department, without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5236). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 60, Procedural Rules of the Commission and the Department, implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation, and other laws applicable to state agencies.

The adopted rules enable the Department to require certain individuals to furnish e-mail addresses for purposes of receiving correspondence. The adopted rules additionally permit certain incarcerated individuals to apply for licensure prior to release. The adopted rules are necessary to implement §§3 and 5 of House Bill (HB) 3743, 88th Legislature, Regular Session (2023). HB 3743 took effect on September 1, 2023.

Section 3 of HB 3743 amended Occupations Code §51.207(c) to permit the Commission to adopt a rule to require an applicant, license holder, or other person who regularly receives correspondence from the Department to provide an e-mail address for purposes of receiving correspondence. The section further provides that any e-mail address furnished under this provision is confidential for purposes of Government Code, Chapter 552 (the Public Information Act).

The adopted rules implement HB 3743 §3 by authorizing the Department to require e-mail addresses from applicants, license holders, and others who regularly receive correspondence from the Department, and to deem an application incomplete if an applicant fails to provide an e-mail address when directed to do so. The intent of this rule is to allow the Department the flexibility to use instructions on Department forms to make providing an e-mail address mandatory when, in the Department's discretion, requiring an e-mail address would be administratively expedient, while also allowing the Department the flexibility to process an application without an e-mail address on a case-by-case basis.

HB 3743 §5 enacted Occupations Code §51.4014, which authorizes the Department to accept a license application from an inmate imprisoned in the Texas Department of Criminal Justice (TDCJ), but prohibits the Department from issuing the license until the applicant has been released. The Department interprets these provisions as permitting, but not requiring, the Department to accept inmate applications. The adopted rules implement these provisions by amending the existing rule at 16 TAC, Chapter 60, Subchapter, C, at §60.40, License Eligibility for Persons with Criminal Convictions. The existing rule prohibits a person incarcerated because of a felony conviction from obtaining or renewing a license and requires a person whose license is revoked by operation of law under Occupations Code §53.021(b) to wait until release from imprisonment before applying for a license. Because under Occupations Code §53.021(b), automatic license revocation occurs upon imprisonment due to a felony conviction, the existing rule effectively bars formerly licensed TDCJ inmates from applying for a license.

The adopted rules carve out two new circumstances under which the Department will accept inmate applications: when the inmate previously held a license of the same type for which the inmate is applying, and when the inmate has completed a relevant course of study in the Windham School District, or other program acceptable to the Department, to prepare the person for reentry into the workforce in the occupation. The adopted rules further restrict the acceptance of these applications to those inmates who are scheduled for release within the next 90 days. The

adopted rules additionally keep in place a provision authorizing the issuance of student permits to inmates studying barbering or cosmetology in a Windham School District or TDCJ program. The Department enjoys a longstanding and successful partnership with the Windham School District and TDCJ. The adopted rules strike a balance in furthering a common goal of this partnership by ameliorating barriers convicted individuals face in reentry to the workforce, while avoiding the imposition of an undue burden on the Department by limiting the acceptance of applications to those reasonably likely to be eligible for approval in the near future.

SECTION-BY-SECTION SUMMARY

The adopted rules adopt new §60.32, E-mail Communications and Requirements. Subsection (a) states the circumstances under which the Department may require a person to provide an e-mail address for purposes of receiving correspondence. Subsection (b) sets forth a potential consequence to an applicant for failing to provide an e-mail address when directed to do so, namely, that the application may be deemed incomplete.

The adopted rules amend §60.40. The first sentence of subsection (c) is deleted and replaced with verbiage clarifying that the provisions in (c) apply when the exceptions in new subsection (d) are inapplicable. Subsection (c)(3) is deleted, and the substance moved to the new subsection (d). New subsection (d), containing the exceptions, is added and subdivided into two paragraphs. Subsection (d)(1) contains the substance of former (c)(3), the student permit exception for the barbering and cosmetology program. Subsection (d)(2) sets forth the new exceptions implemented under Occupations Code §51.4014 and contains language permitting the Department to accept applications from TDCJ inmates who are scheduled for release within the next 90 days in two circumstances, which are set forth in subsection (d)(2)(A) and (d)(2)(B), respectively. Subsection (d)(2)(A) refers to previously licensed inmates and subsection (d)(2)(B) refers to inmates who have completed participation in certain career preparation programs.

PUBLIC COMMENTS

The proposed rules were published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5236). The public comment period closed on August 19, 2024. The Department received comments from four interested parties on the proposed rules. The public comments are summarized below.

Comment: The commenter objected to incarcerated individuals being issued a barbering or cosmetology license, citing safety concerns, including access to sharp tools and the fact that some incarcerated individuals suffer from violent or unethical tendencies or psychiatric disorders.

Department Response: The Department notes that although the proposed rules affect the timing of license issuance by permitting an application to be processed prior to the applicant being released from incarceration and the applicant to be licensed immediately upon release, the proposed rules do not otherwise loosen the requirements for an individual to become licensed. Under the existing rules, incarcerated individuals are permitted to receive training in regulated occupations and may apply for licensure upon being released, with the exception that student permits in the barbering and cosmetology program are already issued to some incarcerated individuals who are receiving occupational training. Under existing law, the criminal history of applicants is considered on a case-by-case basis in accordance with statutory standards. Therefore, the Department declines to make changes in response to this comment.

Comment: The commenter stated general opposition to all of the proposed rules but provided no supporting rationale.

Department Response: Because no rationale was provided, the Department declines to make changes in response to this comment.

Comment: The commenter expressed support for the proposed changes to Rule §60.40, stating that allowing incarcerated individuals to apply for a cosmetology license is a positive decision and will bring hope to individuals otherwise facing a bleak future.

Department Response: The Department appreciates the comment in support of the proposed rules. The Department did not make any changes to the proposed rules as a result of the comment.

Comment: The commenter expressed opposition to the changes to Rule §60.40, expressing that the commenter has worked as a massage therapist for 25 years. The commenter alluded to a former statute prohibiting those with prostitution convictions from becoming licensed as massage therapists and questioned why, in light of the strict standards for the profession, should a convicted individual be permitted to be licensed.

Department Response: The Department notes that although the proposed rules affect the timing of license issuance, the proposed rules do not otherwise loosen the requirements for an individual to become licensed. The Department analyzes an applicant's criminal history and determines eligibility on a case-by-case basis in accordance with statutory standards. Lastly, the Department notes that although certain offenses are an automatic bar to a massage license, there have been recent statutory changes to the eligibility standards. The Department declines to make changes to the proposed rules in response to this comment.

COMMISSION ACTION

At its meeting on October 23, 2024, the Commission adopted the proposed rules as published in the *Texas Register*.

SUBCHAPTER C. LICENSE APPLICATIONS AND RENEWALS

16 TAC §60.32

STATUTORY AUTHORITY

The proposed rules are adopted 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 this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all of the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); 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 Pathol-

ogists 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); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 3743, 88th Legislature, Regular Session (2023).

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

Filed with the Office of the Secretary of State on November 7, 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) 475-4879

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SUBCHAPTER D. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

16 TAC §60.40

STATUTORY AUTHORITY

The proposed rules are adopted 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 this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all of the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); 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); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 3743, 88th Legislature, Regular Session (2023).

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

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CHAPTER 65. BOILERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 65, Subchapter A, §65.2; Subchapter C, §65.14 and §65.15; Subchapter D, §65.25 and §65.26; Subchapter F, §65.40 and §65.41; Subchapter H, §65.50; Subchapter I, §§65.60 - 65.63; Subchapter J, §65.70 and §65.71; Subchapter K, §65.83 and §65.86; Subchapter M, §65.101; Subchapter N, §65.206 and §65.217; Subchapter O, §65.300; Subchapter P, §65.401; new Subchapter S, Technical Requirements, amendments to §§65.607 - 65.609, 65.611, 65.612, and 65.614; new rules at Subchapter K, §65.87; and Subchapter R, §§65.550 - 65.552, 65.555, 65.556, 65.559, and 65.560; and the repeal of existing rules at Subchapter B, §65.8; Subchapter L, §65.90 and §65.91; Subchapter M, §65.104; and existing Subchapter R, §§65.600 - 65.604, regarding the Boiler program, without changes to the proposed text as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3441). These rules will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC Chapter 65, §§65.12, 65.13, 65.61, 65.200, and 65.555 regarding the Boiler program, with changes to the proposed text as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3441). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 65, implement Texas Health and Safety Code, Chapter 755, Boilers.

The adopted rules make twelve discrete changes to improve standards for and regulation of boilers and those who install, operate, maintain, and inspect them. The amendments originate with staff and the Board of Boiler Rules members and are authorized by the boiler enabling act.

The new and amended rules promote equipment safety and compliance. They include more detailed requirements for installing boilers and reporting their installation; installing blow-down equipment where needed and required; replacing and plugging boiler tubes; provide an option for remote monitoring of carbon monoxide levels in boiler rooms; and add a requirement for a visual display to carbon monoxide detectors if absent.

Other new and amended rules to enhance safety address National Fire Protection Association compliance; safety of the physical conditions of the premises for inspectors; and detailed requirements for preservation of the scene of boiler accidents to aid investigation and determine causes of malfunction.

To provide for more efficient and effective regulation, new rule requirements include clarifying the responsibilities of Authorized Inspection Agencies (AIA) to timely conduct required inspections and imposing the new late inspection fee on them as appropriate; prohibiting inspectors from installing boilers to prevent conflicts of interest; and removing minor or infrequently assessed fees. These amendments replace the late renewal fee with a fairer late inspection fee and a presumption of operation after expiration of the certificate of operation. The fee change for late inspections accompanies the removal of the referral fee for a department inspection when the owner fails to obtain an inspection. The late inspection fee is expected to increase compliance with the required frequency of boiler inspections, resulting in improved safety and more proportionate consequences for noncompliance.

Finally, the department has made edits throughout the rules to correct and update citations, cross-references, grammar, capitalization, and usage to improve accuracy, readability, and consistency in the rule text. These are hence referred to collectively as "nonsubstantive edits" for brevity.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §65.2, Definitions, to add definitions for blowdown separators, blowdown tanks, and blowdown water; clarify the definitions of "install" and "reinstalled boiler," make numerous nonsubstantive edits; and renumber the section.

The adopted rules repeal §65.8, Registration--Authorized Inspection Agency Without NB-360 Accreditation, because the National Board has retired this accreditation.

The adopted rules amend §65.12, Boiler Registration and Certificate of Operation Required, to add that the issuance of a certificate of operation triggers the obligation to remain in compliance, to timely conduct the required inspections, and that continued operation is presumed during the term of the certificate. The section is edited for clarity. The word "person" has been replaced with "owner or operator" for a more precise statement of the applicability of the rule.

The adopted rules amend §65.13, Boiler Installation, to require submission of the installation report upon completion of installation instead of within 30 days after installation, and to prohibit operation or test-firing before the first inspection unless the installation was conducted in compliance with the rules, the installation report has been submitted, and a temporary operating permit has been approved. In §65.13(a)(2) three undefined terms were removed and a citation to the definition of a fourth was added to improve clarity.

The adopted rules amend §65.14, Inspector Commissions, to make a nonsubstantive edit.

The adopted rules amend §65.15, Boiler Certificate of Operation, to add the condition that unpaid invoices associated with a boiler must be paid before the boiler is eligible for a certificate of operation. The section is renumbered, and the section heading is updated.

The adopted rules amend §65.25, Authorized Inspector--Eligibility Requirements and §65.26, Commission-Renewal and Reinstatement, to make non-substantive edits.

The adopted rules amend §65.40, Authorized Inspector--Commission Card, to simplify and clarify the requirements for obtaining and using commission cards.

The adopted rules amend §65.41, Reissuance of Commission Card after Reemployment, to simplify and clarify the requirements for reissuance of a commission card when changing employers. The section heading is amended.

The adopted rules amend §65.50, Inspectors--Prohibited Conflicts of Interest, to prohibit inspectors and inspection agencies from installing boilers or inspecting boilers installed by other inspectors or inspection agencies due to the inherent conflict of interest.

The adopted rules amend §65.60, External Inspection, to make a non-substantive edit.

The adopted rules amend §65.61, Inspection of All Boilers Required, to subject owners, operators, and Authorized Inspection Agencies that are responsible for a boiler to the late inspection fee for failure to conduct the certificate inspection before the certificate of operation expires. Operation beyond expiration of the certificate is presumed. AIAs are required to timely conduct inspections for boilers for which they are responsible. AIAs that are not responsible for a boiler at the time the certificate expires, and those agencies denied access to inspect, are not made responsible for the late inspection fee for failure to conduct the inspection timely. The late inspection fee is made applicable to boilers for which the certificate of operation expires one year or more after the adoption of these rule amendments. For clarity, staff has edited the text to state the date certain instead of the time period.

The adopted rules amend §65.62, Notice of Inspection to Owners or Operators of Boilers, to clarify that owners or operators must make boilers available for inspection when notified by the inspector.

The adopted rules amend §65.63, Inspection of Portable Boilers, to make nonsubstantive edits.

The adopted rules amend §65.70, Texas Boiler Numbers--Required, to clarify requirements related to the identification number tag attached to each boiler during its first inspection.

The adopted rules amend §65.71, Texas Boiler Number--Placement on Boiler, to make nonsubstantive edits.

The adopted rules amend §65.83, Boiler Accidents, to clarify and add details about the actions to take and the items to preserve and protect from disturbance following a serious accident until an inspection and investigation are conducted.

The adopted rules amend §65.86, Authorized Inspection Agencies Reporting Requirements, to remove mention of the obsolete NB-360 authorization.

The adopted rules add new §65.87, Boiler Installation Reporting Requirements, to add the updated requirement for the owner, operator, or installer to submit the boiler installation report upon completion of the installation of a boiler.

The adopted rules repeal §65.90, Commissions--Authorized Inspector, because the requirements in this section are obsolete or appear in §§65.14, 65.26, 65.40, and 65.41.

The adopted rules repeal §65.91, Overdue Boiler Inspection--Authorized Inspection Agency Referral, because the Department will no longer refer boilers for which the inspection is past due to another AIA but will instead impose the late inspection fee.

The adopted rules amend §65.101, Board of Boiler Rules--Membership; Presiding Officer, to update the requirements for presiding officer participation consistent with the Act, and to amend the section heading.

The adopted rules repeal §65.104 because the Boiler Board rules in §65.101 are being amended to include the relevant requirement.

The adopted rules amend §65.200, New Boiler Installations, to clarify and update requirements consistent with other updates in the chapter regarding installation, inspection, and operation, and to add the presumption of continued operation past expiration of the certificate of operation unless the owner, operator, or AIA demonstrates otherwise. The word "person" has been replaced with "owner or operator" for a more precise statement of the applicability of the rule.

The adopted rules amend §65.206, Boiler Room, to add the requirement to install a display on any carbon monoxide detector that is not so equipped. The amended rule also provides for the choice to use a remote monitoring system provided certain alarm and interlock conditions are met. The section is renumbered.

The adopted rules amend §65.217, Variance, to make nonsubstantive edits.

The adopted rules amend §65.300, Fees, to clarify that the owner or operator is responsible for the fee to file boiler installation reports. Additional amendments remove the late renewal fee, the fee for reissuance of a commission card, the fee for overdue boiler inspections, and make nonsubstantive edits. The rule specifies that any due or past due amounts must be paid with the fee for a certificate of operation. The late inspection fee is imposed and is limited to $25 per day for the first 30 days following expiration of the certificate of operation. The daily fee increases at the 31st day and the 61st day after expiration of the certificate of operation until the inspection is conducted.

The adopted rules amend §65.401, Sanctions, to impose the late inspection fee for boilers not inspected before the expiration of the certificate of operation, and to make nonsubstantive edits.

The adopted rules amend the heading of Subchapter R, Technical Requirements, to Subchapter R, Basic Technical Requirements, which now encompasses all sections from new §65.550 and ending with new §65.560. Sections 65.550, 65.551, 65.552, 65.556, and 65.559 were formerly §§65.600, 65.601, 65.602, 65.603, and 65.604, respectively, which are adopted for repeal and inclusion with these new section numbers as described in the following. New sections with all new requirements are §65.555 and §65.560.

The adopted rules add new §65.550, Conditions Not Covered by Rules, which is the repealed former §65.600, Conditions Not Covered by Rules, with no substantive changes made.

The adopted rules add new §65.551, General Safety, which is the repealed former §65.601, General Safety, but with new additional requirements for the owner or operator to maintain a safe work environment for access and inspection of a boiler, and which clarifies and updates the procedures for an inspector and the department to follow if the conditions or the boiler itself are unsafe.

The adopted rules add new §65.552, Chimneys and Vents, which is the repealed former §65.602, Chimneys and Vents, with no substantive changes made.

The adopted rules create new §65.555, Boiler Blowdown, which adds requirements to install blowdown separators or blowdown tanks to ensure that the temperature and pressure of the water does not exceed safe levels when discharged from a power boiler into a sanitary sewer. Requirements for design, standards, construction, and registration with the National Board of Boiler and Pressure Vessel Inspectors are included, as is a requirement for compliance with the new requirements no later than six months after the adoption of the rule. For clarity, staff has edited the text to state the date certain instead of the time period.

The adopted rules add new §65.556, Boiler Room Ventilation, which is the repealed former §65.603, Boiler Room Ventilation, with no substantive changes made.

The adopted rules add new §65.559, Location of Discharge Outlets, which is the repealed §65.604, Location of Discharge outlets, with no substantive changes made.

The adopted rules create new §65.560, Boiler and Combustion Systems Hazards Code, to add requirements for compliance with National Fire Protection Association Code Book 85 for certain specified types of boilers, pulverized fuel systems, and steam generators.

The adopted rules repeal existing §§65.600, 65.601, 65.602, 65.603, and 65.604 and repropose them with additional requirements and nonsubstantive edits as described above, in existing Subchapter R, as new §§65.550, 65.551, 65.552, 65.556, and 65.559.

The adopted rules add the new Subchapter S., Technical Requirements, which encompasses all existing sections from §65.605 to §65.615, the end of the boiler rules. These sections were formerly in Subchapter R. They are not renumbered and adopted changes to some sections are described in the following.

The adopted rules amend §65.607, Power Boilers, Excluding Unfired Steam Boilers and Process Steam Generators; §65.608, Unfired Steam Boilers; §65.609, Process Steam Generators; and §65.611, Heating Boilers, to correct cross-references and to make nonsubstantive edits.

The adopted rules amend §65.612, Repair and Alterations, to add requirements for replacing and plugging boiler tubes on certain boilers and to add qualifications for persons performing the

activities, to ensure safety. Renumbering and nonsubstantive edits are also made in the section.

The adopted rules amend §65.614, Authority to Set and Seal Safety Appliances, to make nonsubstantive edits.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3441). The public comment period closed on June 17, 2024. The Department received written comments on the proposed rules from two interested parties, Luminant Power Generation Company and NRG Energy. In addition, five individuals appeared at the Board of Boiler Rules' meeting on August 21, 2024, and provided public comment on behalf of the Texas Chemistry Council, Vistra Corp./Luminant Generating Co., Entergy Services Inc., Calpine Corp., and Constellation Energy Corp. The public comments are summarized below.

Comment: One commenter requests clarification of when an installation report following installation or reinstallation must be filed so that operators will know when an inspection must be scheduled, and the equipment may go online. The commenter states that the requirement to file the installation report before operation provides sufficient motivation to file the report timely, so there is no need for a filing deadline, or, alternatively, the existing 30-day deadline could be retained. The comments claim that operators and installers need time after installation concludes to complete the report. The commenter requests modifying both proposed §65.13(a) and new §65.87, regarding installation reporting requirements, to make consistent changes.

Department Response: The Department agrees that timely if not immediate notification of installation to the Department will occur if the operator desires to commence test firing and operation upon installation but before the initial inspection. In such a situation the submission of the installation report and the application for a Temporary Operating Permit can be made contemporaneously or in rapid succession. The Department does not agree that there is no benefit to requiring the installation report to be filed at the time that installation or reinstallation is completed. This provides the Department, the Authorized Inspection Agency, and all parties a trigger to completing the required initial inspection, which is done after the Temporary Operating Permit expires or after the boiler has been installed but not yet operated.

Each boiler must be installed, registered, and inspected. Currently, both an installation report and an inspection report must be submitted to the Department within 30 days after the completion of each activity. No deadline exists for completing the installation of a boiler. However, each boiler must have either a Temporary Operating Permit or a Certificate of Operation before it may be operated. A boiler that has been installed but for which no installation report has been submitted is unknown to the Department and has not been inspected. It presents a safety risk, both for unlawful operation or for inadvertent or accidental operation. The current 30-day notification period is unnecessarily long because the installation report can reasonably be completed and submitted upon completion of installation. Prompt submission will also reduce the potential delay of the initial inspection from 60 days to a maximum of either: (1) 30 days from the submission of the installation report or (2) the expiration of the Temporary Operating Permit. The Department has made no changes to the proposed rule in response to this comment.

Comment: All of the seven commenters recommended that the proposed new §65.13(a)(2) be revised either to remove undefined new terms; to possibly form a work group to create a clearer requirement; or to define "reconnection," "disassembly," and "reassembly" used in the proposed subsection: *"The owner or operator of a boiler in this state must submit a boiler installation report to the department . . . not later than the time of completion of: (1) a boiler installation; or (2) a boiler reinstallation following relocation, disconnection and reconnection, or disassembly and reassembly."*

The commenters state that from a practical standpoint, any disassembly, as that term is generally understood, will be accompanied by a disconnection; however, the commenters also stated that disassembly does not always refer to the entire boiler but to portions of it, thus creating ambiguity as to when an installation report is required. They indicate that maintenance and repair can result in disassembly and reassembly that is not accompanied by disconnection and reconnection of the boiler, as defined in §65.2(26). The commenters state that the ambiguity could result in confusion as to when to file an installation report, and delay in returning a boiler to service due to obtaining an unnecessary certificate inspection.

Department Response: The Department disagrees that the conditions upon which the installation or reinstallation of a boiler (qualitatively, exactly the same process) requires an installation report to be submitted are unclear. The operative word in §65.13(a)(2) is "reinstallation." That term is followed by the activities that typically precede the activity of reinstallation. However; the Department agrees with the board's recommendation to simplify the rule language, but notes that the applicability of the requirement to file an installation report and obtain an inspection following installation or reinstallation of a boiler remains unchanged. Reinstallation is invariably preceded by disconnection, then reconnection at the location where the boiler is reinstalled. The Department has amended the requirement in §65.13(a)(2) to say "a boiler reinstallation following relocation or disconnection (as defined in §65.2(26))."

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Board of Boiler Rules met on August 21, 2024, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §65.12 and §65.13 made in response to public comment and described in the Section-By-Section Summary. The recommended change to §65.12 replaces "person" with "owner or operator" for a more precise statement of the applicability of the rule. The Department made the identical change in §65.200 as well. In new §65.13(a)(2), which makes no substantive change to the rules, three undefined terms were removed and a citation to the definition of a fourth was added to improve clarity. In §§65.61 and 65.555 nonsubstantive edits were made to reword effective dates from stating a time period to stating the date certain.

At its meeting on October 23, 2024, the Commission adopted the proposed rules with changes as recommended by the Advisory Board.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §65.2

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER B. REGISTRATION--AUTHORIZED INSPECTION AGENCY

16 TAC §65.8

STATUTORY AUTHORITY

The adopted repeals are repealed 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. The adopted repeals are also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted repeals.

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

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SUBCHAPTER C. BOILER REGISTRATION AND CERTIFICATE OF OPERATION--REQUIREMENTS

16 TAC §§65.12 - 65.15

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

§65.12. Boiler Registration and Certificate of Operation Required.

(a) Except as provided by this chapter, the owner or operator of each boiler operated in this state must:

(1) register the boiler with the department;

(2) have qualified each boiler for a current certificate of operation; and

(3) post the current certificate of operation in a conspicuous place on or near the boiler for which it is issued.

(b) Upon issuance of a certificate of operation for a boiler:

(1) the obligation to comply with the Act and this chapter, including the requirement for periodic inspections, is required to continue operation; and

(2) the continued operation of the boiler is presumed unless the owner or operator establishes to the satisfaction of the department, based on the owner or operators' records or other evidence reasonably acceptable to the department, that the boiler was not in operation after the expiration of a certificate of operation for that boiler.

§65.13. Boiler Installation.

(a) The owner or operator of a boiler in this state must submit a boiler installation report to the department, in the manner prescribed by the department, not later than the time of completion of:

(1) a boiler installation; or

(2) a boiler reinstallation following relocation or disconnection (as defined in §65.2(26)).

(b) A boiler may not be test-fired or operated before the required first inspection unless the boiler installation:

(1) is conducted in accordance with the applicable requirements of this chapter, including but not limited to this section and §§65.50, 65.87, 65.200, 65.201, 65.204, and 65.209;

(2) the owner, operator, or boiler installer has submitted a boiler installation report to the department in the manner prescribed by the department; and

(3) a Temporary Boiler Operating Permit has been approved in accordance with subsection (c).

(c) Temporary Boiler Operating Permit.

(1) The owner or operator may request a Temporary Boiler Operating Permit in the manner prescribed by the department.

(2) The owner or operator must pay the applicable fee provided under §65.300.

(3) The department will not approve a Temporary Boiler Operating Permit if a boiler installation report for the boiler has not been submitted to the department in the manner prescribed by the department.

(4) Upon approval of the Temporary Boiler Operating Permit from the department, the boiler may be operated before the required initial inspection for up to thirty (30) days.

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

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SUBCHAPTER D. AUTHORIZED INSPECTOR

16 TAC §65.25, §65.26

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER F. COMMISSION CARDS

16 TAC §65.40, §65.41

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER H. INSPECTOR STANDARDS OF CONDUCT

16 TAC §65.50

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER I. INSPECTION OF BOILERS

16 TAC §§65.60 - 65.63

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

§65.61. Inspection of All Boilers Required.

(a) All boilers not exempted by Texas Health and Safety Code, §755.022 shall be inspected in accordance with Texas Health and Safety Code, §755.025, §755.026, or any applicable rules under this chapter.

(b) All boilers must receive a certificate inspection before the expiration date of the current certificate of operation.

(c) Boilers must be inspected by the Authorized Inspection Agency that issued an insurance policy to cover a boiler located in this state, or by an authorized representative. All other boilers must be inspected by the department.

(1) The Authorized Inspection Agency must conduct a certificate inspection for each boiler for which it is responsible before the expiration of the boiler's current certificate of operation.

(2) The continued operation of the boiler beyond the expiration of the certificate of operation is presumed in accordance with §65.200.

(3) The Authorized Inspection Agency listed in the department's reporting system that fails to timely inspect a boiler for which it is responsible is subject to the late inspection fee in §65.300 if the current certificate of operation expires while the Authorized Inspection Agency has inspection responsibility.

(4) The owner or operator of a boiler that does not receive a certificate inspection before the expiration of the current certificate of operation is subject to the late inspection fee in §65.300.

(5) An Authorized Inspection Agency that is denied access to a boiler for inspection purposes is not responsible for a late inspection fee under paragraph (c)(3). A denied-access violation of §65.62(a) must be documented on the inspection report.

(d) Upon request, an Authorized Inspection Agency must provide the department documentation of the effective dates of its inspection responsibility for a boiler.

(e) Subsections (c)(3) and (c)(4) apply to boilers for which the certificate of operation expires on or after December 1, 2025.

(f) Except in the case of an accident or other emergency, no inspection will be made by the chief inspector or any deputy inspector on a Saturday, Sunday, or legal holiday, unless otherwise directed by the department.

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

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SUBCHAPTER J. TEXAS BOILER NUMBERS

16 TAC §65.70, §65.71

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER K. REPORTING REQUIREMENTS

16 TAC §§65.83, 65.86, 65.87

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER L. RESPONSIBILITIES OF THE DEPARTMENT

16 TAC §65.90, §65.91

STATUTORY AUTHORITY

The adopted repeals are repealed 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. The adopted repeals are also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted repeals.

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

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SUBCHAPTER M. BOARD OF BOILER RULES

16 TAC §65.101

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

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16 TAC §65.104

STATUTORY AUTHORITY

The adopted repeals are repealed 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. The adopted repeals are also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted repeals.

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SUBCHAPTER N. RESPONSIBILITIES OF THE OWNER AND OPERATOR

16 TAC §§65.200, 65.206, 65.217

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

§65.200. New Boiler Installations.

(a) No boiler, except reinstalled boilers and those exempted by Texas Health and Safety Code, §755.022, may be operated in this state unless:

(1) it has been constructed, installed, inspected, and stamped in conformity with the applicable section of the ASME Code;

(2) it is registered with the National Board of Boiler and Pressure Vessel Inspectors except cast iron or cast-aluminum sectional boilers; and

(3) it is installed, approved, registered, and inspected in accordance with the requirements of this chapter.

(b) A boiler having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of the State of Texas, or a special-designed boiler, may be approved by the department. Any person desiring to install such a boiler must file a written request for approval to install and for a special inspection.

(c) New boilers and reinstalled boilers must be installed in accordance with the requirements of the latest revision of the applicable section of the manufacturer's recommendations, the ASME Code, the Act, and this chapter. These boilers must be inspected before test-firing or operation in accordance with §65.13 and all applicable rules.

(d) Upon issuance of a certificate of operation for a boiler:

(1) the obligation to comply with the Act and this chapter, including the requirement for periodic inspections, is required to continue operation; and

(2) the continued operation of the boiler is presumed unless the owner or operator establishes to the satisfaction of the department, based on the owner or operators' records or other evidence reasonably acceptable to the department, that the boiler was not in operation after the expiration of the certificate of operation for that boiler.

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

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SUBCHAPTER O. FEES

16 TAC §65.300

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER P. ADMINISTRATIVE PENALTIES AND SANCTIONS

16 TAC §65.401

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER R. BASIC TECHNICAL REQUIREMENTS

16 TAC §§65.550 - 65.552, 65.555, 65.556, 65.559, 65.560

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

§65.555. Boiler Blowdown.

(a) Blowdown water from power boilers must pass through an approved blowdown separator or blowdown tank when entering a sanitary sewer.

(b) The temperature of the blowdown water leaving the blowdown separator or blowdown tank must not exceed 140 degrees Fahrenheit.

(c) The pressure of the blowdown water leaving a blowdown separator or blowdown tank must not exceed 5 PSIG.

(d) All blowdown piping and fittings must meet requirements set forth in ASME Piping Code B31.1, Power Piping.

(e) A blowdown separator must be fitted with threaded or flanged openings to facilitate inspection. A blowdown tank must be fitted with a manway for cleaning and inspection.

(f) The vent and drain of the blowdown separator or blowdown tank must be piped to a safe point of discharge.

(g) A blowdown separator or blowdown tank, when required by this chapter, must:

(1) be constructed in accordance with ASME Boiler and Pressure Vessel Code, Section VIII Division 1;

(2) have a minimum design pressure equal to the recommended pressure of the boiler manufacturer for the boiler to which the tank or separator is connected; and

(3) be registered with the National Board of Boiler and Pressure Vessel Inspectors.

(h) Installation or modification of equipment to achieve compliance with this section is required to be completed no later than June 1, 2025.

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

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SUBCHAPTER R. TECHNICAL REQUIREMENTS

16 TAC §§65.600 - 65.604

STATUTORY AUTHORITY

The adopted repeals are repealed 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. The adopted repeals are also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted repeals.

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SUBCHAPTER S. TECHNICAL REQUIREMENTS

16 TAC §§65.607 - 65.609, 65.611, 65.612, 65.614

STATUTORY AUTHORITY

The adopted rules are adopted 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. The adopted rules are also adopted under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the adopted rules.

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

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CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.2 and §84.3; Subchapter C, §§84.40, 84.43, 84.44, 84.46; Subchapter D, §84.50; Subchapter E, §84.60 and §84.63; Subchapter G, §84.80; and Subchapter N, §84.601; new rule at Subchapter D, §84.52; Subchapter M, §§84.500 - 84.505; and the repeal of existing rules at Subchapter D, §84.51 and §84.52; and Subchapter M, §§84.500 - 84.502 and §84.504 regarding the Driver Education and Traffic Safety (DES) program, without changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6669). These rules will not be republished.

The Commission also adopts an amendment to existing rules at 16 TAC Chapter 84, Subchapter N, §84.600; the Program of Organized Instruction in Driver Education and Traffic Safety, also known as the "POI-DE Program Guide" and new rules at 16 TAC Chapter 84, Subchapter D, §84.51, regarding the Driver Education and Traffic Safety (DES) program, with changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6669). These rules will be republished. The POI-DE will be republished in the "In-Addition" section of the *Texas Register.*

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules under 16 TAC, Chapter 84, implement House Bill (HB) 1560, Article 5, Regular Session (2021) and Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

The adopted rules are necessary to complete the Department's administrative rulemaking effort for the implementation of HB 1560, Article 5 for the DES program, which addresses rule amendments relating to: (1) driver training curriculum, driver education certificate prerequisites, and enforcement; and (2) implementing the recommendations of the DES Curriculum Workgroup (Workgroup).

House Bill 1560, Article 5, Driver Education (Phase 2)

House Bill 1560, Article 5, Regular Session (2021) represented a significant reorganization and modification in the Driver Education and Traffic Safety program, which the Department is implementing in two phases. The first phase of the DES bill implementation project included: (1) repealing specific driver training license types, program courses, endorsements, and administrative functions to promote simplicity and transparency for stakeholders; and (2) amending program fees and requirements related to the revised license types. The Department accomplished these objectives in its first rulemaking to implement the

bill, through the adoption of rules that became effective June 1, 2023.

This second phase of rulemaking will address additional amendments that will impact issues such as: (1) driver education course curriculum, classroom and behind-the-wheel instruction hours, and course creation; (2) provider administration of driver education certificates after course auditing; and (3) authorizing the Commission to change minimum hours for driver education course instruction.

SECTION-BY-SECTION SUMMARY

Subchapter A, General Provisions.

The adopted rules amend §84.2, Definitions, by: (1) adding new definitions for "behind-the-wheel instruction", "in-car instruction", "registered agent", and "supervised practice"; and (2) renumbering the provisions as needed.

The adopted rules amend §84.3, Materials Adopted by Reference, by updating the DES Program Guides adopted by reference to their new 2024 editions, which include updates to reflect current laws, rules, and Department policies and to improve organization and clarity. The adopted rules include a change recommended by the Driver Education and Traffic Safety Advisory Committee at its meeting on October 3, 2024, to amend the minimum duration of Module One of the driver education classroom instruction course from four to six hours in the Program of Organized Instruction in Driver Education and Traffic Safety (POI-DE). Completion of this instructional module is the prerequisite for a student to receive a Learner License and required by Texas Transportation Code §521.222. The duration of Module One is governed by 37 TAC §15.27(b) and currently set at six hours. The Advisory Committee made no change to the published versions of the two remaining Program Guides. However, due to the change to the POI-DE, that specific Program Guide will be published separately in the *Texas Register* in the "In-Addition" section of the publication with the adopted rules.

Subchapter C, Driver Education Schools and Instructors.

The adopted rules amend §84.40, Driver Education Provider Licensure Requirements, by: (1) repealing the requirement that a school provide a current list of inventoried motor vehicles used for instruction as a part of the license renewal application; and (2) correcting rule language.

The adopted rules amend §84.43, Driver Education Certificates, by: (1) adding a provision that a school's failure to update curriculum following an audit recommendation could result in the Department's suspension of the school's right to receive driver education certificates; (2) expanding suspension or revocation penalties to a school's credentials in the event of any misrepresentation made by a school or instructor in issuing a driver education certificate; and (3) clarifying rule language and grammar.

The adopted rules amend §84.44, Driver Education Instructor License, by correcting rule language.

The adopted rules amend §84.46, Attendance and Makeup, by correcting rule language.

Subchapter D, Parent-Taught Driver Education.

The adopted rules amend §84.50, Parent-Taught Driver Education Program Requirements, by (1) adding language clarifying the minimum amount of behind-the-wheel instruction and supervised practice a student must complete after receiving a learner license upon completion of Module One; and (2) repealing language requiring that behind-the-wheel parent taught driver education be conducted solely on Texas highways.

The adopted rules repeal existing §84.51, Submission of Parent-Taught Course for Department Approval.

The adopted rules add new §84.51, Submission of Parent-Taught Course for Department Approval. The new rule replaces existing §84.51 to repeal the department's practice of pre-approval of course material at initial application, and course review upon renewal, consistent with HB 1560 directives. The adopted rules in this section include the Driver Education and Traffic Safety Advisory Committee amendments recommended at its October 3, 2024, meeting, in response to public comments received, to subsections (a)-(c) by: (1) correcting rule language addressing classroom instruction elements for parent-taught driver education courses; and (2) reorganizing subsections as needed.

The adopted rules repeal existing §84.52, Cancellation of Department Approval.

The adopted rules add new §84.52, Revocation of Department Approval (formerly entitled "Cancellation of Department Approval"). The new rule replaces existing §84.52 to: (1) expand the Department's authority to revoke a parent-taught driver education (PTDE) provider license in the event the course material is inconsistent with applicable state law; (2) provide a 90-day window for a PTDE provider to correct any deficiencies in the course material noticed by the Department before possible revocation; (3) establish a 30-day waiting period for a PTDE provider to reapply for a new parent-taught driver education provider license after revocation; and (4) clarified rule language.

Subchapter E, Providers.

The adopted rules amend §84.60, Driving Safety Provider License Requirements, by correcting rule language.

The adopted rules amend §84.63, Uniform Certificate of Course Completion for Driving Safety Course, by correcting rule language.

Subchapter G, General Business Practices.

The adopted rules amend §84.80, Names and Advertising, by correcting rule language.

Subchapter M, Curriculum and Alternative Methods of Instruction.

The adopted rules repeal existing §84.500, Courses of Instruction for Driver Education Schools.

The adopted rules add new §84.500, Courses of Instruction for Driver Education Providers. The new rule replaces existing §84.500 to: (1) update the educational objectives of driver training courses consistent with current state law; (2) reduce the minimum of classroom instruction hours in driver education courses from 32 to 24 hours; (3) govern the administration and teaching of driver education materials to maximize student mastery of educational content; (4) clarify driver education requirements related to behind-the-wheel and in-car instruction; (5) transfer the rule requirements for in-person and online adult six-hour driver education courses to new §§84.502 and 84.503, respectively; (6) restrict students from enrolling in a driver education course after commencement of the fifth hour (instead of the seventh hour) of classroom instruction; (7) allow DE providers more flexibility in the presentation of driver education

instruction to students, consistent with the provisions of HB 1560; and (8) reorganize subsections as needed.

The adopted rules repeal existing §84.501, Driver Education Course Alternative Method of Instruction.

The adopted rules add new §84.501, Driver Education Course Alternative Method of Instruction. The new rule replaces existing §84.501 to: (1) clarify minimum Department standards for AMI approval to ensure secure testing and security measures for content and personal validation, and integrity and consistency in presentation of driver education course curriculum with in-person and online instruction; (2) reduce the total duration of student break intervals, and the minimum hours of driver education instructional content presented in an AMI format from 32 hours to 24 hours; (3) increase the minimum amount of minutes allocated to an AMI for multimedia presentations from 640 minutes to 720 minutes; (4) simplify the academic integrity standards and instructional design concepts for an AMI driver education course; (5) add multifactor authentication requirements for personal validation of students for an AMI driver education course; (6) clarify the process by which a DE provider may modify AMI instructional methods and ensure that such changes are consistent with applicable law, rules and DE Program Guides; and (7) reorganize subsections as needed.

The adopted rules repeal existing §84.502, Driving Safety Courses of Instruction.

The adopted rules add new §84.502, In-Person Driver Education Course Exclusively for Adults. The new rule replaces existing §84.502 to: (1) move the Department rules related to the Adult In-Person Six Hour Driver Education Course from §84.500(b)(2) and place them in a separate section for greater ease in location and clarity for the public; and (2) reorganize the subsections as needed.

The adopted rules add new §84.503, Online Driver Education Course Exclusively for Adults, to: (1) move the Department rules related to the Adult Online Six Hour Driver Education Course from §84.500(b)(2)(B) and place them in a separate section for greater ease in location and clarity for the public; (2) add multifactor authentication requirements for personal validation of students for an online adult six-hour driver education course; and (3) reorganize the subsections as needed.

The adopted rules repeal existing §84.504, Driving Safety Course Alternative Delivery Method.

The adopted rules add new §84.504, Driving Safety Courses of Instruction. The new rule replaces existing §84.504 to: (1) relocate the Driving Safety rules from §84.502 to this new rule location; (2) update the educational objectives of driver training courses consistent with current state law; (3) remove authorship requirements for those providers that compose customized driving safety curriculum; (4) simplify rule language; and (5) reorganize the subsections as needed.

The adopted rules add new §84.505, Driving Safety Course Alternative Delivery Method, to: (1) relocate existing §84.504 to this new rule location; (2) add multifactor authentication requirements for personal validation of students for an ADM six-hour driving safety education course; (3) simplify rule language; and (4) reorganize the subsections as needed.

Subchapter N, Program Instruction for Public Schools, Education Service Centers, and Colleges or Universities Course Requirements.

The adopted rules amend §84.600, Program of Organized Instruction, by: (1) reducing the minimum of classroom instruction hours in a driver education course from 32 to 24 hours; (2) restricting students from enrolling in a driver education course after commencement of the fifth hour (instead of the seventh hour) of classroom instruction in a 24-hour program; (3) limiting driver education training (including in-car instruction) to a maximum of six hours each day; and (4) clarifying rule language. The adopted rules in this section include the Driver Education and Traffic Safety Advisory Committee amendments recommended at its October 3, 2024, meeting, and in response to public comments received, to subsections (a) and (c) by: (1) including rule language to provide consistency with previous sections; and (2) correcting the number of classroom instruction hours from four to six in Module One of minor and adult driver education classroom instruction to be consistent with the Department of Public Safety (DPS) rule at 36 TAC §17.27(b). The same six hour correction to Module One was made to the Program of Organized Instruction in Driver Education and Traffic Safety, also known as the "POI-DE Program Guide" to comply with the aforementioned DPS rule.

The adopted rules amend §84.601, Additional Procedures for Student Certification and Transfers, by reducing the record retention period for Texas schools of driver education course completion certificates from seven years to three years, or as mandated by the school district.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6669). The public comment period closed on September 30, 2024. The Department received comments from six interested parties in response to the required summary of the proposed rules, which was posted on the Department's website and distributed on August 20, 2024, the same day that the proposed rules were filed with the *Texas Register*, but before the official publication of the proposed rules and the official start of the public comment period. The Department received comments from 30 interested parties on the published proposed rules during the official public comment period. The public comments are summarized below.

Comments in Response to the Published Proposed Rules

Comment: Nine written comments were submitted related to the published rules proposing reduction of minimum classroom instruction course hours from 32 hours to 24 hours in the minor and adult driver education course as contained in the published proposed rules in 16 TAC Chapter 84, Subchapter M. The written comments submitted were five in favor and four opposed. Four comments representing four interested parties who opposed the reduction argued: (1) young students would not be able to retain sufficient knowledge and understanding of the traffic laws to operate motor vehicles properly and endanger lives; (2) that 32 hours of classroom instruction allowed the presentation of curriculum at a good pace for learning; and (3) 24 hours of instruction is insufficient time to present the growing number of state mandated topics to students thereby weakening curriculum. Five comments representing 25 interested parties who supported the reduction argued that the change: (1) would provide more flexibility for providers and instructors in the content and manner by which course materials were presented to students; (2) allows providers to concentrate on important issues in a more efficient manner promoting more innovative course creation; and

(3) benefits in-person providers by providing parents with fewer trips to the provider's location for instruction due to the reduction in classroom hours.

Department Response: The Department appreciates the input received from the commenters on the published rules. The Department agrees with the comments in support of the reduction in the minimum classroom instruction hours from 32 hours to 24 hours, and the Department disagrees with the comments opposing the change. The Legislature specifically changed Occupations Code §1001.101 in HB 1560 pursuant to a recommendation from the Sunset Commission in the 2020 Sunset Report (Report) to remove prescriptive curriculum hours from statute and authorize TDLR to set minimum hours of instruction in rule. The change in hours is consistent with the recommendation of the Driver Education and Traffic Safety Advisory Committee. Moreover, the rule change cites a "minimum" number of hours for classroom instruction. Driver education providers when creating their courses may choose additional hours of instruction for their curriculum. The Department expects that providers will design their courses to best promote subject matter mastery for students, address parents and instructor concerns, and emphasize the overall safety of the public. The Department made no change to the proposed rules as a response to these comments.

Comment: One commenter submitted comments seeking amendment to the proposed rules including: (1) 16 TAC §84.51(a) citing an error in the calculation in the number of minutes allowed for multimedia content in parent-taught courses due to the reduction in the minimum instructional classroom hours; and (2) requesting a revision to 16 TAC §84.51(b) to clarify the provider responsibilities in the event of a provider change in course curriculum. The commenter further submitted observations on the Department's rule deletion at 16 TAC §84.500(b)(1)(T) removing driver training provider and public school collection of collision data related to a discrete class of driver education students, and the Department's rule revision at 16 TAC 84.500(e) regarding personal validation requirements for online providers.

Department Response: The Department appreciates the input received from the commenter on these specific issues in the published rules. The Department agrees with the arguments made by the commenter and has made changes to the proposed rules as recommended by the Driver Education and Traffic Safety Advisory Committee at its October 3, 2024, meeting. The change to §84.51(a) replaces "640 minutes" with "720 minutes." The change to §84.51(b) clarifies that any substantive change in course curriculum or materials "must be consistent with applicable law, department rules and the POI-DE."

Due to the change made in subsection (b), the Department has determined that subsection (c) is no longer needed as it is duplicative of amended subsection (b). Thus, 16 TAC §84.51(c) has been removed and the subsequent subsections have been reorganized accordingly.

The Driver Education and Traffic Safety Advisory Committee did not recommend any changes to the proposed rules in response to the comments on §84.500(b)(1)(T) and §84.500(e), so the Department did not make any changes to the proposed rules in response to those comments. The commenter filed the same comments before the official comment period, and they are addressed here. The Department made no other changes to the proposed rules as a response to these comments.

Comment: One commenter submitted comments in support of the Department changes made at 16 TAC §§84.500(b)(1)(A)(i), 85.501(b)(4), 84.501(c)(3), and 84.501(i). The commenter also proposed an amendment to 16 TAC 84.82(b)(12) relating to driver training provider student enrollment contracts.

Department Response: The Department appreciates the comments in support of the proposed rule changes and declines to make any change to 16 TAC §84.82(b)(12) as that rule section was not included in this rulemaking and therefore, is outside of the scope of this proceeding. The Department may open a future rulemaking to address issues at a later date. The Department made no change to the proposed rules as a response to this comment.

Comment: One commenter offered a comment in support of the Department's changes to 16 TAC 84.501(d)(1) relating to the use of timers in online driver education courses to ensure the right amount of educational content is disseminated to students and aid in content and personal validation.

Department Response: The Department appreciates the comment in support the proposed rule change. The Department made no change in the proposed rules as a response to this comment.

Comments in Response to the Posted Summary

Comment: One commenter submitted a comment asking questions regarding what would be the Commission's decision on the minimum number of driver education instruction hours and when would any change take effect?

Department Response: The Department appreciates the comment in support the proposed rule change. The Department made no change in the proposed rules as a response to this comment.

Comment: Three written comments from three interested parties were submitted relating to the reduction of minimum classroom instruction course hours from 32 hours to 24 hours in the minor and adult driver education course as contained in the published proposed rules in 16 TAC Chapter 84, Subchapter M. These comments were filed in opposition to the proposed reduction in instructional hours. The commenters argued that the reduction in instructional hours would (1) not allow sufficient time to teach necessary instructional material; (2) increase the incidence of driver crashes and fatalities among young drivers; and (3) slow developmental driving skills in young drivers.

Department Response: The Department disagrees with the comment's opposition to the reduction in the minimum classroom instruction hours from 32 hours to 24 hours. The Legislature specifically changed Occupations Code §1001.101 in HB 1560 pursuant to a recommendation from the Sunset Commission in the 2020 Sunset Report (Report) to remove prescriptive curriculum hours from statute and authorize TDLR to set minimum hours of instruction in rule. The change in hours is consistent with the recommendation of the Driver Education and Traffic Safety Advisory Committee. Moreover, the rule change cites a "minimum" number of hours for classroom instruction. Driver education providers when creating their courses may choose additional hours of instruction for their curriculum. The Department made no change to the proposed rules as a response to these comments.

Comment: One commenter requested that driver education observation instruction hours be abolished as they served little pur-

pose. The driver education provider could provide the observation instruction as a charged service where needed.

Department Response: The Department disagrees with the comment as observation instruction is required under Education Code §1001.101(b). Such a change would require legislative intervention. The Department made no change to the proposed rules as a response to these comments.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Driver Training and Traffic Safety Advisory Committee met on October 3, 2024, to discuss the proposed rules and the public comments received. The Advisory Committee recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to 16 TAC §84.51 and §84.600, and the Program of Organized Instruction in Driver Education and Traffic Safety, also known as the "POI-DE Program Guide" made in response to public comment and Department recommendations as explained in the Section-by-Section summary. At its meeting on October 23, 2024, the Commission adopted the proposed rules with changes as published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §84.2, §84.3

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

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

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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

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SUBCHAPTER C. DRIVER EDUCATION SCHOOLS AND INSTRUCTORS

16 TAC §§84.40, 84.43, 84.44, 84.46

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

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SUBCHAPTER D. PARENT-TAUGHT DRIVER EDUCATION

16 TAC §84.50

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

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16 TAC §84.51, §84.52

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

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16 TAC §84.51, §84.52

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.51. Submission of Parent-Taught Course for Department Approval.

(a) If the curriculum and all materials meet or exceed the applicable minimum standards set forth in the Code, the department will approve the course. No more than 720 minutes of the required hours of classroom instruction delivered via multimedia may be counted.

(b) Notification of approval or denial will be sent to the requesting entity. Deficiencies will be noted in cases of denial. Any substantive change in course curriculum or materials must be consistent with applicable law, department rules and the POI-DE.

(c) The department will retain submitted materials according to the department's retention schedule.

(d) Course identification. All parent-taught courses must display the parent-taught provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(e) A parent-taught driver education provider may accept students redirected from a website if the student is redirected to a webpage that clearly identifies the parent-taught provider and license number offering the course. This information must be visible before and during the student registration and course payment processes.

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

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SUBCHAPTER E. PROVIDERS

16 TAC §84.60, §84.63

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER G. GENERAL BUSINESS PRACTICES

16 TAC §84.80

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §§84.500 - 84.502, 84.504

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

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16 TAC §§84.500 - 84.505

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

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SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

16 TAC §84.600, §84.601

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, 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 adopted rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.600. Program of Organized Instruction.

(a) To be approved under this subchapter, a driver education plan must include one or more of the following course programs.

(1) Core program. This program must consist of a minimum of 24 hours of classroom instruction; seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel supervised practice, including at least 10 hours of instruction that takes place at night, certified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(2) In-car only program. This program must consist of at least seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel supervised practice, including at least 10 hours of instruction that takes place at night, certified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(3) Classroom only program. This program must consist of a minimum of 24 hours of classroom instruction.

(b) The minimum requirements of the driver education program must be met regardless of how the course is scheduled. The following applies to all minor and adult driver education programs.

(1) A learner portion of a DE-964 must be issued to a student to obtain a learner's license upon completion of Module One of the POI-DE. A driver license portion of the DE-964 must be given when all in-car laboratory and classroom instruction has been completed by the student.

(2) In-car laboratory lessons may be given only after the student has obtained a learner's license.

(3) Instruction may be scheduled any day of the week, during regular school hours, before or after school, and during the summer.

(4) Instruction must not be scheduled before 5:00 a.m. or after 11:00 p.m.

(5) The driver education classroom phase must have uniform beginning and ending dates. Students must proceed in a uniform sequence. Students must be enrolled and in class before the fifth hour of classroom instruction in a 24-hour program and the 12th hour of classroom instruction in 56-hour or semester-length programs.

(6) Self-study assignments occurring during regularly scheduled class periods must not exceed 25 percent of the course and must be presented to the entire class simultaneously.

(7) The driver education course must be completed within the timelines established by the superintendent, college or university chief school official, or ESC director. This must not circumvent attendance or progress. Variances to the established timelines must be determined by the superintendent, college or university chief school official, or ESC director and must be agreed to by the parent or legal guardian.

(8) Public schools are allowed five minutes of break within each instructional hour in all phases of instruction. A break is an interruption in a course of instruction occurring after the lesson introduction and before the lesson summation. It is recommended that the five minutes of break be provided outside the time devoted to behind-the-wheel instruction so students receive a total of seven hours of instruction.

(9) Driver education training offered by the public school must not exceed six hours per day. Public schools may include five minutes of break per instructional hour as identified in §84.500 (relating to Courses of Instruction for Driver Education Providers). In-car instruction provided by the public school must not exceed four hours per day as follows:

(A) four hours or less of in-car training; however, behind-the-wheel instruction must not exceed two hours per day; or

(B) four hours or less of simulation instruction; or

(C) four hours or less of multicar range instruction; or

(D) any combination of the methods delineated in this subsection that does not exceed four hours per day.

(10) Driver education training certified by the parent is limited to two hours per day.

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range must include the instructional objectives established by the department, as specified in this subsection and the POI-DE, and meet the requirements of this subchapter. Sample instructional modules may be obtained from the department. Schools may use sample instructional modules developed by the department or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives that must be provided to every student enrolled in a minor and adult driver education course include information relating to litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; distractions, including the use of a wireless communication device that includes texting; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; and recreational water safety. A student may apply to the Texas Department of Public Safety (DPS) for a learner's license after completing six hours of instruction as specified in Module One of the POI-DE.

(d) A public school may use multimedia systems, simulators, and multicar driving ranges for instruction in a driver education program.

(e) Each simulator, including the instructional programs, and each plan for a multicar driving range must meet state specifications developed by the department. Simulators are electromechanical equipment that provides for teacher evaluation of perceptual, judgmental, and decision-making performance of individuals and groups. With simulation, group learning experiences permit students to operate vehicular controls in response to audiovisual depiction of traffic environments and driving emergencies. The specifications are available from the department.

(f) A minimum of four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of be-

hind-the-wheel and one hour observation instruction. A minimum of two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of behind-the-wheel and one hour observation instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to behind-the-wheel instruction and a minimum of four hours must be devoted to observation instruction.

(g) A school may not permit more than 36 students per driver education class, excluding makeup students.

(h) All behind-the-wheel lessons must consist of actual driving instruction. Observation of the instructor, mechanical demonstrations, etc., must not be counted for behind-the-wheel instruction. The instructor must be in the vehicle with the student during the entire time behind-the-wheel instruction is provided.

(i) Minor and adult driver education programs must include the following components.

(1) Driver education instruction is limited to eligible students between the ages of 14-18 years of age, who are at least 14 years of age when the driver education classroom phase begins and who will be 15 years of age or older when the behind-the-wheel instruction begins. Students officially enrolled in school who are 18-21 years of age may attend a minor and adult driver education program.

(2) Motion picture films, slides, videos, tape recordings, and other media that present concepts outlined in the instructional objectives may be used as part of the required instructional hours of the classroom instruction. Units scheduled to be instructed may also be conducted by guest speakers as part of the required hours of instruction. Together, these must not exceed 720 minutes of the total classroom phase.

(3) Each classroom student must be provided a driver education textbook or driver education instructional materials approved by the department.

(4) A copy of the current edition of the "Texas Driver Handbook" or equivalent study material must be made available to each student enrolled in the classroom phase of the driver education course.

(5) No public school should permit a ratio of less than two, or more than four, students per instructor for behind-the-wheel instruction, except behind-the-wheel instruction may be provided for only one student when it is not practical to instruct more than one student, for makeup lessons, or if a hardship would result if scheduled instruction were not provided. In each case when only one student is instructed:

(A) the school must obtain a waiver signed and dated by the parent or legal guardian of the student and the chief school official stating that the parent or legal guardian understands that the student may be provided behind-the-wheel instruction on a one-on-one basis with only the instructor and student present in the vehicle during instruction;

(B) the waiver may be provided for any number of lessons; however, the waiver must specify the exact number of lessons for which the parent is providing the waiver; and

(C) the waiver must be signed before the first lesson in which the parent is granting permission for the student to receive one-on-one instruction.

(j) Colleges and universities that offer driver education to adults must submit and receive written approval for the course from the department prior to implementation of the program. The request for approval must include a syllabus, list of instructors, samples of instructional records that will be used with the course, and information necessary for approval of the program.

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

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CHAPTER 96. ELECTRIC VEHICLE SUPPLY EQUIPMENT

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 96, regarding the Electric Vehicle Charging Stations (EVS) program, §§96.1, 96.90, and 96.91 without changes to the proposed text as published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6384). These rules will not be republished.

The Commission also adopts new rules at 16 TAC Chapter 96, Subchapter A, §96.10 and §96.14; Subchapter B, §§96.20 - 96.24, and 96.30; Subchapter C, §96.60; Subchapter D, §§96.70 - 96.72, and 96.74; Subchapter E, §96.80 and §96.83; and Subchapter G, §96.100 regarding the Electric Vehicle Charging Stations program, with changes to the proposed text as published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6384). These rules will be republished.

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 adopted 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 adopted rules.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions

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

The adopted rules create new §96.10, Definitions, to establish the definitions to be used in the rule chapter. On October 15, 2024, the Workgroup amended the definition for "charging unit" to clarify that the term had the same meaning as the definition for "electric vehicle supply equipment" for consistency and to lessen confusion within the industry.

The adopted 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. In response to public comments, changes were made to the published proposed rule text to: (1) relocate the text of subsection (a) to §96.20 and relabel the remaining provisions accordingly; (2) add language clarifying when charging units are considered to be operating; and (3) add language clarifying a reference to a "state" rebate program. On October 15, 2024, the Workgroup amended and extended the deadline for EVSE operational compliance to January 1, 2030, for charging units and legacy equipment installed before March 1, 2025, allowing time for providers to perform any necessary modifications to such equipment to comply with the Occupations Code, Chapter 2311 and the rules.

Subchapter B. Electric Vehicle Supply Equipment Registration

The adopted 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. In response to public comments, changes were made to the published proposed rule text to add language relocated from §96.14(a), remove unnecessary language, and add clarifying language.

The adopted 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 controlling provider status. On October 15, 2024, the Workgroup amended new §96.21 to clarify that installation and operation of EVSE must comply with Occupations Code, Chapter 1305, the Texas Electrical Safety and Licensing Act.

The adopted 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 adopted 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. On October 15, 2024, the Workgroup amended new §96.23 to clarify that installation and operation of EVSE must comply with Occupations Code, Chapter 1305, the Texas Electrical Safety and Licensing Act.

The adopted 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. In response to public comments, clarifying changes were made to the published proposed rule text to replace "registrant" with "provider."

The adopted rules create new §96.30, Exemptions, which illustrate exceptions under which electric vehicle supply equipment will not be regulated by the Department. On October 15, 2024, the Workgroup amended new §96.30 to clarify that the Department may extend an exemption to an EVSE provider from an administrative requirement if certain conditions are determined to exist that would hinder compliance with rule or state law, consistent with Occupations Code §2311.0206.

Subchapter C. Inspections and Investigations

The adopted 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. On October 15, 2024, the Workgroup amended new §96.60 to clarify that the Department would not perform on-site EVSE inspections until March 1, 2026, except for such action conducted as a part of an investigation pursuant to a filed consumer complaint.

Subchapter D. Responsibilities of the Provider

The adopted 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 or the provider's digital network that instruct consumers on how to file complaints about their vehicle charging experience with the Department. In response to public comments, changes were made to the published proposed rule text in subsection (b) to clarify that the notification can appear either on the charging unit's visual display or the provider's digital network.

The adopted 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. In response to public comments, changes were made to the published proposed rule text in subsection (a) to add clarifying language and remove unnecessary language and in subsection (c) to change from 30 to 60 the number of days within which a sticker must be replaced.

The adopted rules create new §96.72, Damaged Electric Vehicle Supply Equipment, to instruct EVSE providers on how to address onsite nonfunctional electric vehicle charging units and publish status warnings to consumers. In response to public comments, changes were made to the published proposed rule text to remove the term "recalled" and to add language clarifying that a provider is not required to physically relocate equipment from its current location while under repair.

The adopted 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 adopted 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. On October 15, 2024, the Workgroup amended new §96.80 to clarify that initial registration and renewal fees authorized by Occupations Code §2311.0202 would be charged to an EVSE provider for each electric vehicle charging port affixed to a charging unit.

The adopted 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. In response to public comments, changes were made to the published proposed rule text in subsection (d) to provide clarity on the applicable requirements. On October 15, 2024, the Workgroup amended new §96.83 to extend the time for compliance with this rule section to March 1, 2026, for those providers installing charging units on or after March 1, 2025, in order to allow sufficient time for software and firmware development.

Subchapter F. Enforcement Provisions

The adopted 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 adopted 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 adopted 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. In response to public comments, changes were made to the published proposed rule text to provide clarity on the applicable sections of the NIST handbooks.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6384). The public comment period closed on September 23, 2024. The Department received comments from 16 interested parties on the proposed rules. The public comments are summarized below.

Comments in Response to the Published Proposed Rules

The Department received comments from a number of interested parties during the official 30-day comment period. These parties include the Texas Food and Fuel Association (TFFA); the Joint EV Parties (Joint Parties), which includes ABB E-Mobility, the Alliance for Transportation Electrification, Alliance for Automotive Innovation, ChargePoint, Electrify America, EVgo, National Electrical Manufacturers Association (NEMA jointly and individually), Rivian, SWITCH, and Tesla (jointly and individually); CPS Energy; and Walmart. The Department received one comment from a private interested party during this period.

Many of the interested parties shared common concerns about the proposed rule sections and such comments will be combined in this document and the Department responses where appropriate. Some commenters filed comments in their sole capacity and unique comments will be addressed separately. The Department appreciates the comments received from the interested parties on the proposed rules and looks forward to working with all interested parties in creating a responsive and positive business environment for EVSE providers that will deploy an efficient, reliable and safe electric vehicle charging network for the public in the State of Texas.

TFFA Comments

Comment: TFFA filed comments requesting amendments to the proposed rules including: (1) opposing additional requirements in the proposed rules beyond that in the applicable sections in the National Institute of Standards and Technology (NIST) Handbooks 44 and 130 as problematic for providers required to rapidly implement hardware, firmware and software changes; (2) objecting to the requirements of §96.21 and §96.23 requiring a licensed electrical contractor to install the charging units at a location; (3) requesting that the Department issue a two-year registration in §96.21; (4) proposing the deletion of §96.24 suggesting the provision creates an undue burden in programming and digital network changes for providers; (5) promoting a rule change to §96.74 to limit Department requests for records directly related to the installation of equipment excluding business sensitive and proprietary information; and (6) recommending that the proposed rules adopt the National Electric Vehicle Infrastructure (NEVI) Standards and Requirements for terms not defined in statute for consistency within the industry.

Department Response: The Department appreciates the comments from TFFA. The Department agrees with TFFA's comment regarding issue (1), and has, in the interests of clarity and Occupations Code §2311.0303(a), made changes to the proposed rules by including specific reference to Section 3.40, NIST Handbook 44, and Section 2.34, NIST Handbook 130, in §96.100(a)(1) and (a)(2).

The Department agrees with the TFFA comments related to issue (2). Addressing this issue, Occupations Code §2311.0303(b) requires that EVSE be installed and operated in accordance with Occupations Code, Chapter 1305. That chapter governs the electrician's occupation and the classes of electrician that are required to perform the designated electrical tasks within that statutory chapter under the auspices of a licensed electrical contractor. Section 96.21 and §96.23 reflect the legal requirements imposed by Occupations Code, Chapters 1305 and 2311. On October 15, 2024, the Workgroup amended new §96.21 and §96.23 to clarify that installation and operation of EVSE must comply with Occupations Code, Chapter 1305, the Texas Electrical Safety and Licensing Act.

The Department disagrees with the TFFA comments related to issue (3). The Department has established a one-year registration at this time. The reason is that SB 1001, Section 4 requires that EVSE registration commence on March 1, 2025, which is in the middle of TDLR's fiscal year. In keeping with the legislative authority granted by SB 1001, the Department determined that a one-year registration term would best address its ability to reasonably incur the necessary costs and obtain revenues sufficient to administer this program. The Department may revisit the registration term duration in a future rulemaking. The Department made no change to the proposed rules as a response to this comment.

The Department declines to delete §96.24 as recommended in issue (4). The Department sees no undue burden imposed on EVSE providers to choose one of the methods contained within the proposed rule to provide a copy of its registration to a consumer upon request. The Department leaves it to the provider to choose its mode of compliance with a consumer's request for a copy of its registration. The Department agrees in part with TFFA's request to use the word "provider" throughout the rule chapter and revised this rule section to include the term in §96.24 for consistency throughout the proposed rules.

The Department disagrees with the TFFA comments related to issue (5). The Department contends that §96.74 is necessary for the administration of the program as contemplated by SB 1001 and 1732. These documents are essential for the Department to perform its inspection and enforcement duties. The inspection

and investigatory process is governed by 16 TAC Chapter 60, Subchapter H, and will be conducted in accordance with those rule sections, including the Department's handling of confidential materials. The Department made no change to the proposed rules as a response to this comment.

The Department disagrees with the TFFA comments related to issue (6). The Department is currently employing the terms mandated by the Legislature in SB 1001 and 1732, and has determined that using consistent rule language reduces public confusion. Neither SB 1001 nor SB 1732 adopted NEVI regulations in Occupations Code, Chapter 2311. It did, however, adopt NIST standards in the statutory chapter at §2311.0303(a). The Department made no change to the proposed rules as a response to this comment.

TFFA and Walmart Comments

Comment: TFFA and Walmart filed comments in common requesting amendments to the proposed rules including: (1) the establishment of a variance application process in §96.14 to allow providers additional time to comply with proposed operational compliance requirements for existing charging units, legacy chargers, and those units installed prior to March 1, 2025, or alternatively, urge the Department to allow providers in rule sufficient time for providers to perform the hardware and software work necessary to meet operational compliance for pre-March 1, 2025 charging units and legacy chargers; (2) seeking a registration exemption for charging units installed prior to March 1, 2025 in §96.20, including those not subject to operational compliance requirements; (3) proposing a "self-certification" process in §96.21 to expedite the application for initial registration and renewal of charging units for providers; (4) recommending that the Department adopt the receipt and price display requirements in the applicable sections of NIST Handbooks 44 and 130; (5) recommending revision to §96.71 to give a provider 60 days from the time the Department discovers a damaged or removed consumer information sticker to come into compliance with rule requirements; (6) removing the term "recalled" from §96.72 as that discrete EVSE class is not contemplated by the statute, and requesting that the proposed rule be clarified that the language "removed from service" does not mean the physical removal of a damaged charging unit; and (7) proposing the deletion of §96.70 as TFFA and Walmart contends the section is overly onerous, redundant and unreasonably costly by requiring a provider to post complaint and contact information in three different manners.

Department Response: The Department appreciates the comments from TFFA and Walmart. The Department recognizes the issues raised by the commenters in issue (1) and agrees that providers need sufficient time to bring charging units installed prior to March 1, 2025, into operational compliance with the rules and the Code. Therefore, §96.14(a) has been amended to address the issue by allowing pre-March 1, 2025, installed charging units to come into operational compliance not later than January 1, 2030. The Department further recognizes that Occupations Code §2311.0206 allows the Department to exempt EVSE providers from requirements established by law, if at least one of three conditions is determined to be present. To that end, the Department has amended §96.30(a) to either establish additional exemptions by rule, or consider petitions for exemption on a case-by-case basis.

The Department disagrees with the TFFA and Walmart comments related to issue (2). While the Department recognizes and agrees with the practical aspects of time extensions for operational compliance for legacy EVSE in §96.14, the Department disagrees that the same equipment should be exempt from registration. SB 1001 adopted a registration requirement for EVSE and the Department is obligated to implement legislative mandates. Registration is the means by which the EVSE deployment can be monitored. The Department intends to make the process efficient and simple. Neither commenter has presented sufficient reason to explain why legacy equipment should not be registered at minimum. EVSE registration allows the Department to receive complaints on such equipment, monitor deployment of the charging infrastructure statewide, and ensure the reliability and safety of the equipment and facilities. The Department made no change to the proposed rules as a response to this comment.

The Department disagrees with the TFFA and Walmart comments related to issue (3). The Department is not clear on what is meant by a "self-certification" amendment for §96.21. If what is meant by the commenters is providing a "self-service" process to register charging units, then the Department is currently developing an automated process by which providers can "self-register" and renew registration of charging units ready for commercial operation. Staff is targeting a "go-live" date for the system of December 1, 2024. The start for registration deadline is March 1, 2025. Staff will be scheduling a future demonstration for the system for interested parties with training and expects that, once operational, there will be little delay in registration. The Department made no change to the proposed rules as a response to this comment.

The Department agrees with the TFFA and Walmart comment related to issue (4). Occupations Code §2311.0303(a) adopts the NIST specifications and tolerances. The proposed rules at §96.83(d) and §96.100(a) have been amended to specifically adopt NIST Handbook 44, Section 3.40, and NIST Handbook 130, Section 2.34.

The Department agrees and disagrees in part with the TFFA and Walmart comment related to issue (5). The Department agrees with the commenters' argument requesting more time to replace a damaged or missing consumer information sticker (CIS) in §96.71. The Department amends §96.71(c) to allow a 60-day cure period to replace a damaged or missing CIS. The Department disagrees with the part of issue (5) where the commenters recommend that the 60-day clock starts from the time that the Department discovers the condition requiring replacement of the sticker. The Department contends that it is the responsibility of the provider to inspect their EVSE locations as part of their regular maintenance rotations and, if they discover a damaged or missing CIS, they are expected to order a replacement sticker from the Department. The 60-day clock starts from the time the provider discovers the damaged or missing CIS. If the Department receives notice of a damaged or missing CIS before the provider, it will inform the provider and appropriate action is expected from the provider under the proposed rules. The Department made no further change to the proposed rules as a response to this comment.

Four commenters, including TFFA, Walmart, NEMA and a private interested party filed comments related to issue (6). The Department, therefore, deletes the word "recalled" from §96.72 and has added §96.72(b) to clarify that a provider is not required to physically remove EVSE from its location while under repair. The Department declines, however, to delete §96.72 as recommended by TFFA.

The Department declines to delete §96.70 as recommended by TFFA in issue (7). However, the Department agrees with TFFA

and Walmart that the proposed rule imposed unreasonable consequences on providers if not given an option on the manner a provider transmits complaint filing information to consumers concerning improperly functioning charging units. Occupations Code §2311.0304(c) requires that complaint information be disclosed on the electric supply equipment or on the provider's digital network. Thus, the Department has amended the language in §96.70(b) to reflect the same.

TFFA, NEMA and Joint Parties Comments

Comment: TFFA, NEMA and the Joint Parties filed comments requesting amendments to the proposed rules including: (1) utilizing the statutory EVSE definition throughout the rules, and replacing the definition for "legacy charger", and "charging unit" in §96.10 with definitions for "charging connector" and "combined charging system" as it is advanced that "charging unit" is a term and definition not commonly used within the industry and causes confusion; (2) extending the deadline for operational compliance requirements for charging units installed prior to March 1, 2025 and legacy chargers in §96.14 to avoid additional expense to either retrofit or replace the affected charging units, and allow providers sufficient time to comply with the proposed rule; (3) requesting an exemption for EVSE from department inspection in §96.60 for legacy chargers and chargers installed prior to March 1, 2025, as it is stated that it would be financially and technologically challenging to providers; and (4) opposing uniform registration fees in §96.80 for Level 2 chargers and DC fast chargers (DCFC), and charging registration fees per connector.

Department Response: Five commenters, including TFFA, NEMA, the Joint Parties and a private interested party filed comments recommending the replacement of the "charging unit" definition. The Department disagrees with the comment related to issue (1) made by the commenters calling for replacement definitions in §96.10. The term "charging unit" is derived from the Legislature in SB 1001 and was employed in statute at Occupations Code §2311.0302 and §2311.0306. The Department has included the term as adopted in the legislative bill. On October 15, 2024, the Workgroup amended the definition for "charging unit" to clarify that the term had the same meaning as the definition for "electric vehicle supply equipment" for consistency and to lessen confusion within the industry.

Regarding issue (2), the Department has considered the TFFA, NEMA and Joint Parties comments related to §96.14 and notes the possible financial and logistical complications that a March 1, 2025, operational compliance deadline could impose for charging units installed between June 18, 2023, and March 1, 2025. The Department agrees that a March 1, 2025, deadline is an inadequate amount of time to allow pre-March 1, 2025, EVSE to comply with operational standards imposed by law. The proposed rules initially reflected the transition language of Section 4 of SB 1001. Therefore, the Department amends §96.14 to address the concerns raised by the commenters, and at the October 15, 2024, Workgroup meeting, by extending the operational compliance deadline to January 1, 2030, for charging units installed prior to March 1, 2025. The Department declines to amend the proposed rules to allow a 10-year extension as recommended by TFFA as unnecessary at this time. The Department also moved previous subsection (a) of §96.14 to §96.20 as recommended by TFFA for greater clarity.

The Department disagrees in part with the commenters on issue (3) requesting an exemption from inspection in §96.60 for EVSE installed prior to March 1, 2025. Inspections of licensees are part of the standard regulatory responsibility of the Department for all of its programs. The EVS program is no exception. Tracking the deployment of the EVSE network and monitoring reliability and safety concerns are facilitated by program inspections. At present, Department inspections and investigations will be limited to requests for documentation as maintained by EVSE providers pursuant to proposed rule §96.74. However, the Department recognizes the concerns raised by the commenters and adds subsection (b) to §96.60 to clarify that on-site EVSE inspections will not commence until March 1, 2026, except in conjunction with a Department investigation pursuant to a filed consumer complaint.

The Department disagrees with issue (4) recommending a different set of fees for Level 2 chargers and DC fast chargers. Occupations Code Chapters 51 and 2311 authorize the Commission to set fees at a level reasonable and necessary to cover the costs of administering a program. The Department has conducted the analysis and determined that the proposed registration and renewal fees are consistent with state law. On October 15, 2024, the Workgroup amended the registration and renewal fees at §96.80 to clarify the charges to refer to electric vehicle charging ports affixed to charging units. Therefore, the noted fees will be assessed by port instead of by charging connector or plug. This change was made for greater industry consistency, to assist those agencies in counseling prospective providers seeking NEVI funds on registration fees to be assessed for their charging units by the Department, and to lessen confusion within the industry.

CPS Energy Comments

Comment: CPS Energy filed comments raising questions on the proposed rules including: (1) when is a charging unit considered in "operation" under §96.14 and subject to the proposed rule requirements; (2) whether EVSE installed prior to March 1, 2025 needs to certify the installation were conducted by a licensed electrical contractor and within manufacturer's specifications, as noted in §96.21; (3) whether EVSE installed prior to March 1, 2025 will be required to have consumer and complaint notices on its display or the digital network, and consumer receipts under §96.70; (4) whether §96.70 and §96.83 were duplicative; and (5) would EVSE installed prior to March 1, 2025 be required to adhere to NIST requirements on receipts and calibration standards.

Department Response: In response to question (1), the Department amended §96.14(a) to clarify that a charging unit is considered to be "in operation" once it is activated as part of the provider's digital network as defined by §96.10(5). Thus, once a charging unit is enabled to work by the provider through the provider's digital network as a part of a commercial transaction to charge an electric vehicle, it is subject to the requirements of the rule chapter unless exempted.

The Department notes in regard to question (2) that EVSE installed prior to March 1, 2025, is not subject to the requirement that it be registered with a statement affirming that the charging unit was installed and operates in accordance with Occupations Code, Chapter 1305. Section 96.21(a)(2) was amended to include the language "for charging units installed on or after March 1, 2025," to address CPS Energy's comment and clarify this exemption.

Addressing question (3) about whether legacy equipment will be required to have consumer and complaint notices on its display or the digital network, and consumer receipts, the Department notes that under §96.14(a), EVSE installed prior to March

1, 2025, is subject to exemption to operational compliance until January 1, 2030.

In response to question (4), the Department disagrees that §96.70(a) and (b) are duplicative with §96.83(c)(1) and (c)(2). Section 96.70(a) and (b) describes the specific information that must be a part of the customer notice. Section 96.83 simply references back to §96.70. The Department made no change to the proposed rules as a response to this comment.

Addressing CPS Energy question (5) about whether receipt and calibration standards in §96.83(d) would apply to legacy equipment, the Department again notes that any EVSE installed prior to March 1, 2025, would not be subject to operational compliance requirements until January 1, 2030.

NEMA Comments

Comment: NEMA, individually, filed comments raising concerns on the proposed rules including: (1) recommending at §96.74 that the proposed rules amend the recordkeeping requirements to focus on the preservation and production of records by the provider that directly affect the metering functions for the charging unit; and (2) recommending that a one year phase-in period be provided for complying with the fee policy and disclosures in §96.83 to allow for software development, and suggests consideration for a reduction in detail of information required under the proposed rule, and if a link to TDLR consumer complaint information would be a sufficient alternative.

Department Response: The Department disagrees with NEMA's issue (1) in its comments to amend §96.74 to have the proposed rule focus recordkeeping requirements on document preservation relating to the EVSE metering functions. The Department contends that in order to properly administer this program, it must be able to have access to information related to a registrant's regulated activities. The proposed rule mandates that a provider maintain documents sufficient to allow the Department to adequately assess the provider's compliance with applicable rule and law. Access to the information required by the proposed rule becomes particularly important if the Department receives a complaint. The Department made no change to the proposed rules as a response to this comment.

The Department agrees with NEMA's issue (2) in its comments to amend §96.83 to allow providers a one-year phase-in period to comply with the proposed rule fee policy and disclosure requirements to allow for software and firmware changes, and its recommendation to reduce required detail on disclosures and receipts required in the proposed rule. The proposed rule is derived from Occupations Code §2311.0304 and §2311.0305 and, therefore, required under state law. The requirements are rooted in SB 1001 and NIST Handbook 44. The Department notes that pre-March 1, 2025, EVSE are subject to temporary exemption to the requirements of this proposed rule section. On October 15, 2024, the Workgroup amended §96.83 and added a subsection (e) to allow EVSE providers that install charging units after March 1, 2025, additional time to make software and firmware changes. The deadline is extended for those units until March 1, 2026.

Private Interested Party Comments

Comment: One commenter filed comments raising concerns on the proposed rules including: (1) noting surveys that illustrate consumer dissatisfaction with EV charging station reliability and usability, and that an effective registration, inspection, disclosure and complaint resolution process was necessary for Texas EV drivers; (2) recommending the Department extend the operational compliance deadline to March 1, 2028 for currently installed charging stations; and (3) supporting the proposed rules related to complaint information and the consumer information sticker regulations at §96.70 and §96.71, and the recordkeeping requirements at §96.74.

Department Response: The Department agrees with the concerns raised by issue (1) about customer surveys measuring dissatisfaction regarding electric vehicle charging station reliability and usability. These two elements represent some of the most significant worries for vehicle owners affecting vehicle sales, and serve as an impediment to statewide infrastructure network deployment for providers. SB 1001 and 1732 were passed by the Legislature to assist providers and consumers to nurture a safe, innovative and robust charging infrastructure which, in turn, will assist the overall growth of the electric vehicle market as a whole. The Department made no change to the proposed rules as a response to this comment.

The Department agrees with the commenter on issue (2) that §96.14 should extend the operational compliance deadline for pre-March 1, 2025, installed charging units. The new date extends compliance to January 1, 2030. The Department amended §96.14(a) to reflect the theme of the commenter's recommendation.

The Department agrees with the commenter on issue (3) and thanks the commenter for its support. While the Department amended §96.70 and §96.71 to more closely comply with applicable law and to accommodate providers with additional time to replace missing or damaged consumer information stickers, there was no change to the recordkeeping requirements found in §96.74 as a result of this comment.

Walmart Comments

Comment: Walmart filed comments seeking amendment to the proposed rules including: (1) amending §96.74 to require a provider to only retain and tender EVSE records to the Department that are in its possession; (2) amending §96.90 to allow for a 60-day cure period prior to penalties being imposed; and (3) amending §96.100 to not require National Type Evaluation Program (NTEP) certification for registered EVSE in Texas with its adoption of NIST Handbook 44 and 130.

Department Response: The Department disagrees with issue (1) of Walmart's comments, which are similar to the comment raised by NEMA to §96.74. The Department contends that in order to properly administer this program, it must be able to have access to information related to a registrant's regulated activities. The proposed rule mandates that a provider maintain specific documents in designated subjects sufficient to allow the Department to adequately assess the provider's compliance with applicable rule and law. Access to the information required by the proposed rule becomes particularly important if the Department receives a complaint. The Department understands that if a record is beyond the care, custody or control of the registrant that it may not be tendered by a provider. However, the Department expects reasonable cooperation from registrants in performing the recordkeeping obligations imposed by the proposed rule. The Department made no change to the proposed rules as a response to this comment.

The Department disagrees with issue (2) of Walmart's comments regarding §96.90. The Department does not employ a "cure period" prior to penalties being imposed on a registrant in any of its programs. The Department has established administrative pro-

cedures, rules and laws that it follows when pursuing enforcement actions which are readily available in Occupations Code, Chapters 51 and 2311 and in the Texas Administrative Code. The Department will be establishing an enforcement plan for this program, which is commonly done with the participation of the public for final approval by the Commission. Providers will have an opportunity to provide input on the EVS enforcement plan and this idea can be considered at that point. The Department made no change to the proposed rules as a response to this comment.

The Department agrees with Walmart regarding issue (3) to not require National Type Evaluation Program (NTEP) certification for registered EVSE in Texas with the adoption of NIST Handbook 44 and 130 at this time. The Department in §96.21 and §96.23 have set specific registration prerequisites which include proper installation and operation in accordance with Occupations Code, Chapter 1305. The Department is not at this time requiring NTEP certification as a part of §96.100. The Department made no change to the proposed rules as a response to this comment.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6384). The public comment period closed on September 23, 2024. The Department received comments from two interested parties in response to the required summary of the proposed rules, which was posted on the Department's website and distributed on August 13, 2024, before the official publication of the proposed rules and the official start of the public comment period. The public comments are summarized below.

Comments in Response to the Posted Summary

Comment: Love's Travel Stops and Country Stores, Inc (Love's) filed a comment to the posted summary requesting an amendment seeking that a change in ownership noted in §96.21 be filed with the Department only as a notification and not a new registration application. The commenter is concerned that the application process could disrupt business activity.

Department Response: The Department disagrees with the comment as simple notification is insufficient, however, it recognizes that diverse ownership interests owning disproportionate shares can be characteristic of large business entities. To that end, the Department has amended §96.21(c) and added a provision that requires a new registration application to the Department only if there is a change in controlling provider.

Comment: TFFA filed a comment to the posted summary seeking a halt to the rulemaking process for 16 TAC Chapter 96 to allow the EVSE working group to have more time to express its concerns regarding the posted summary.

Department Response: The Department disagrees with this comment as there was no reasonable basis presented justifying a pause in the rulemaking process. Such an occurrence to the rulemaking would have prevented the Commission from adopting the proposed rules by the legislative deadline of December 1, 2024. The Department made no change to the proposed rules as a response to this comment.

COMMISSION ACTION

At its meeting on October 23, 2024, the Commission adopted the proposed rules with changes to Subchapter A, §96.10 and §96.14; Subchapter B, §§96.20 - 96.24, and 96.30; Subchapter C, §96.60; Subchapter D, §§96.70 - 96.72, and 96.74; Subchapter E, §96.80 and §96.83; and Subchapter G, §96.100 as published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§96.1, 96.10, 96.14

STATUTORY AUTHORITY

The adopted rules are adopted 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

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

§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 - has the same definition as electric vehicle supply equipment.

(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) Except as provided in subsection (b), a charging unit installed in this state must be operated on the electric vehicle supply provider's digital network in compliance with manufacturer specifications, the Code, and this chapter:

(1) not later than January 1, 2030, if the charging unit is installed before March 1, 2025, or is a legacy charger; or

(2) when the charging unit begins operating on the provider's digital network if the charging unit is installed on or after March 1, 2025.

(b) 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 state 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 adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2024.

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Doug Jennings
General Counsel
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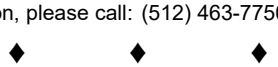

SUBCHAPTER B. ELECTRIC VEHICLE SUPPLY EQUIPMENT REGISTRATION

16 TAC §§96.20 - 96.24, 96.30

STATUTORY AUTHORITY

The adopted rules are adopted 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are 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 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, 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) for charging units installed on or after March 1, 2025, a statement, affirmed by the provider that the charging unit was installed and operates in accordance with Occupations Code, Chapter 1305, and 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.

(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 controlling provider 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.

(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) for charging units installed on or after March 1, 2025, a statement, affirmed by the provider that the charging unit was installed and operates in accordance with Occupations Code, Chapter 1305, and 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.

(b) If a provider removes or decommissions 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.

An electric vehicle supply provider must make available a copy of the current certificate of registration to a member of the public upon request. The provider 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.

(a) The department may exempt an electric vehicle supply equipment provider from a requirement established by this chapter or the Code if it determines that imposing or enforcing the requirement:

(1) is not cost-effective for the department;

(2) is not feasible with current resources or standards; or

(3) will not substantially benefit or protect consumers.

(b) 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 adoption and found it to be a valid exercise of the agency's legal authority.

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Doug Jennings
General Counsel
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SUBCHAPTER C. INSPECTIONS AND INVESTIGATIONS

16 TAC §96.60

STATUTORY AUTHORITY

The adopted rules are adopted 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

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

§96.60. EVSE Inspections and Investigations.

(a) 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.

(b) The department will not begin conducting on-site inspections until March 1, 2026, except for investigations conducted in response to complaints filed with the department.

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

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SUBCHAPTER D. RESPONSIBILITIES OF THE PROVIDER

16 TAC §§96.70 - 96.72, 96.74

STATUTORY AUTHORITY

The adopted rules are adopted 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are 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 appear on the charging unit's visual display or the provider's digital network.

(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 department issued consumer information sticker containing the department's contact information shown in §96.70(c) 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 60 days after the date the provider discovered the condition.

§96.72. Damaged Electric Vehicle Supply Equipment.

(a) Any damaged 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 charging unit by the public; and

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

(b) A provider is not required to physically relocate electric vehicle supply equipment from its current location while under repair.

§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.

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

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SUBCHAPTER E. FEES

16 TAC §96.80, §96.83

STATUTORY AUTHORITY

The adopted rules are adopted 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are 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 electric vehicle charging port.

(b) Renewal of Registration - $25 per electric vehicle charging port.

(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 §2311.0304 and §2311.0305 of the Code, and the requirements contained in the most recent version of NIST Handbook 44, Section 3.40, and NIST Handbook 130, Section 2.34.

(e) This section takes effect on March 1, 2026, for charging units installed on or after March 1, 2025.

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

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SUBCHAPTER F. ENFORCEMENT PROVISIONS

16 TAC §96.90, §96.91

STATUTORY AUTHORITY

The adopted rules are adopted 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

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

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

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SUBCHAPTER G. GENERAL TECHNICAL REQUIREMENTS

16 TAC §96.100

STATUTORY AUTHORITY

The adopted rules are adopted 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1305 and 2311. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are 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, Section 3.40, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices."

(2) NIST Handbook 130, Section 2.34, "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 adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 130. PODIATRIC MEDICINE PROGRAM

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 130, Subchapter A, §130.1 and §130.2; Subchapter B, §§130.20, 130.23, 130.27, and 130.28; Subchapter C, §130.30 and §130.32; Subchapter D, §§130.40 - 130.42; Subchapter E, §§130.50, 130.51, 130.54, 130.55, 130.58, and 130.59; Subchapter F, §130.60; and Subchapter G, §§130.70, 130.72, and 130.73; adopts new rules at Subchapter B, §§130.21, 130.22, and 130.24; Subchapter C, §§130.31 and 130.34 - 130.36; and Subchapter D, §§130.43 - 130.48; and adopts the repeal of existing rules at Subchapter B, §§130.21, 130.22, and 130.24; Subchapter C, §130.31; Subchapter D, §§130.43 - 130.49; and Subchapter E, §130.52 and §130.53, regarding the Podiatric Medicine Program, without changes to the proposed text as published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4537). These rules will not be republished.

The Commission also adopts a new rule at 16 TAC Chapter 130, Subchapter C, §130.37; and amendments to an existing rule at

Subchapter E, §130.57, regarding the Podiatric Medicine Program, with changes to the proposed text as published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4537). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 130, implement Texas Occupations Code, Chapter 202, Podiatrists; and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department). Specific provisions within this rule chapter also implement the statutory requirements under Texas Occupations Code, Chapters 53, 108, 112, 116, and 601.

Four-Year Rule Review

The adopted rules are necessary to implement changes recommended as a result of the required four-year rule review conducted under Texas Government Code §2001.039. The Department's Notice of Intent to Review 16 TAC Chapter 130, was published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5598). At its meeting on October 18, 2022, the Commission readopted the rule chapter in its entirety without changes. The readoption notice was published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 988).

In response to the Notice of Intent to Review that was published, the Department received one public comment from one interested party regarding Chapter 130. The comment questioned whether there is a fee for an inactive status license. The comment has been addressed in the adopted rules by explaining that there is not a fee for an inactive license.

The adopted rules also include changes recommended by Department staff during the rule review process to reorganize and streamline the entire chapter. These changes include consolidating the existing rules; reorganizing provisions by subject matter; expanding existing Subchapter C to include multiple license types; eliminating duplicative provisions; and using plain talk language to improve clarity.

In addition, the adopted rules include changes recommended by the Education and Examination Workgroup of the Podiatric Medical Examiners Advisory Board to increase the number of training hours required for Podiatric Medical Radiological Technicians. The updated training requirements apply to persons who apply for the Podiatric Medical Radiological Technician (PMRT) registration on or after the effective date of the adopted rules. The training requirements are prerequisites to applying for the PMRT registration, and the updated training requirements apply prospectively. Persons who applied for or obtained the PMRT registration before the effective date of the adopted rules do not have to obtain additional training hours.

Changes in License Terms

The adopted rules also change the license terms for the Podiatric Medical Radiological Technician Registration, the Hyperbaric Oxygen Certificate, and the Nitrous Oxide/Oxygen Inhalation Conscious Sedation Registration. Beginning January 1, 2025, all three license types change from one-year to two-year terms, and the application and renewal fees have been updated to reflect this change. Existing licenses renewed by the Department will be valid for one year if renewed before January 1, 2025, or for two years if renewed on or after January 1, 2025.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

The adopted rules amend §130.1, Authority and Applicability. The adopted rules change the name of the section from "Authority" to "Authority and Applicability." The adopted rules amend subsection (a) to identify other statutes that are implemented by the rules in Chapter 130. The adopted rules also add new subsection (b) to explain that the Chapters 60 and 100 rules also apply to the Podiatry program.

The adopted rules amend §130.2, Definitions. The adopted rules update the definition of "Podiatric Medical Radiological Technician" to clarify that the term includes a Podiatry X-ray Machine Operator. The adopted rules update the definition of "Practitioner" to clarify that the term is used interchangeably with "podiatrist" and "podiatric physician." The adopted rules also remove unnecessary language from the definition of "Act" and add clarifying language to the definition of "License."

Subchapter B. Advisory Board.

The adopted rules amend §130.20, Board Membership. The adopted rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The adopted rules repeal existing §130.21, Public Member Eligibility. This section is replaced with new §130.21, Public Member Eligibility.

The adopted rules add new §130.21, Public Member Eligibility. The adopted rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The adopted rules repeal existing §130.22, Membership and Employee Restrictions. This section is replaced with new §130.22, Membership and Employee Restrictions.

The adopted rules add new §130.22, Membership and Employee Restrictions. The adopted rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The adopted rules amend §130.23, Terms; Vacancies. The adopted rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The adopted rules repeal existing §130.24, Grounds for Removal. This section is replaced with new §130.24, Grounds for Removal.

The adopted rules add new §130.24, Grounds for Removal. The adopted rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The adopted rules amend §130.27, Advisory Board Meetings and Duties of Department. The adopted rules merge subsection (i) into subsection (g).

The adopted rules amend §130.28, Training. The adopted rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

Subchapter C. Temporary Residency and Other License Types.

The adopted rules amend Subchapter C, Temporary Residency and Other License Types. The adopted rules rename Subchapter C from "Temporary Residency" to "Temporary Residency and Other License Types," which now includes requirements for a Limited Faculty License, for a Podiatric Medical Radiological Technician Registration, for a Hyperbaric Oxygen Certificate, and for a Nitrous Oxide/Oxygen Inhalation Conscious Sedation Registration.

The adopted rules amend §130.30, Temporary Residency License--General Requirements and Application. The adopted

rules remove the word "successfully" and replace the word "shall" with "must."

The adopted rules repeal existing §130.31, Temporary Residency License--Residency Requirements; Program Responsibilities; License Term. This section is replaced with new §130.31, Temporary Residency License--License Term; Residency Requirements; Program Responsibilities.

The adopted rules add new §130.31, Temporary Residency License--License Term; Residency Requirements; Program Responsibilities. The adopted rules rename the section from "Temporary Residency License--Residency Requirements; Program Responsibilities; License Term" to "Temporary Residency License--License Term; Residency Requirements; Program Responsibilities." The adopted rules rearrange the order of the section to increase readability.

The adopted rules amend §130.32, Temporary Residency License--Final Year of Residency. The adopted rules streamline the section to increase readability, rearrange the order of the section, and establish requirements a resident must follow in their final year of residency.

The adopted rules add new §130.34, Limited Faculty License--Requirements; License Term. The adopted rules create a standalone section for a limited faculty license by relocating existing §130.40(b) and §130.42(d) to this section. The adopted rules explain the requirements for procuring a limited faculty license and establish that the term of this license is up to two years. The adopted rules also establish when a limited faculty license will be terminated, and that termination does not preclude a podiatrist from applying for or holding another license type issued under this subchapter.

The adopted rules add new §130.35, Podiatric Medical Radiological Technicians. The adopted rules relocate existing §130.53 to this section and increase the number of required training hours from 20 hours to 45 hours for podiatric medical radiological technicians. The adopted rules update the didactic and clinical training requirements; increase the number of x-rays to be performed; and reflect the actual time needed to complete the training requirements. The updated training requirements apply to persons who apply for the Podiatric Medical Radiological Technician (PMRT) registration on or after the effective date of the adopted rules. The training requirements are prerequisites to applying for the PMRT registration, and the updated training requirements apply prospectively. Persons who applied for or obtained the PMRT registration before the effective date of the adopted rules do not have to obtain additional training hours.

The adopted rules under new §130.35 also change the length of the registration term from one year to two years. A registration is valid for one year if the registration was issued before January 1, 2025, or two years if the registration was issued on or after January 1, 2025. Similarly, the adopted rules establish that a registration renewed by the department is valid for one year if the renewal was issued before January 1, 2025, and must be renewed annually, or two years if the renewal was issued on or after January 1, 2025, and must be renewed every two years. The adopted rules explain the process for completing a renewal application, establish that human trafficking prevention training is required for each renewal, and explain when the department may refuse to issue or renew a registration.

The adopted rules add new §130.36, Hyperbaric Oxygen Certificate--Application Requirements and Guidelines. The adopted rules relocate existing §130.47 to this section and change the length of the certificate term from one year to two years. A certificate is valid for one year if the certificate was issued before January 1, 2025, or two years if the certificate was issued on or after January 1, 2025. Similarly, the adopted rules establish that a certificate renewed by the Department is valid for one year if the renewal was issued before January 1, 2025, and must be renewed annually, or two years if the renewal was issued on or after January 1, 2025, and must be renewed every two years.

The adopted rules add new §130.37, Nitrous Oxide/Oxygen Inhalation Conscious Sedation-Registration Requirements, Guidelines, and Direct Supervision. The adopted rules relocate existing §130.48 to this section and change the length of the certificate term from one year to two years. A registration is valid for one year if the registration was issued before January 1, 2025, or two years if the registration was issued on or after January 1, 2025. Similarly, the adopted rules establish that a registration renewed by the Department is valid for one year if the renewal was issued before January 1, 2025, and must be renewed annually, or two years if the renewal was issued on or after January 1, 2025, and must be renewed every two years. In response to a public comment, the adopted rules add the Health and Safety Institute as a sponsor of a basic and advanced CPR program that can be utilized by a practitioner. The Health and Safety Institute is a recognized sponsor in addition to the American Heart Association and the American Red Cross. All three entities are listed in the adopted rules.

Subchapter D. Doctor of Podiatric Medicine.

The adopted rules amend §130.40, Doctor of Podiatric Medicine License--General Requirements and Application; Limited Faculty License. The adopted rules change the name of the section from "Doctor of Podiatric Medicine License--General Requirements and Applications; Limited Faculty License" to "Doctor of Podiatric Medicine License--General Requirements and Application." The adopted rules relocate the limited faculty license language to new §130.34 and streamline the remaining language to make it easier to read.

The adopted rules amend §130.41, Doctor of Podiatric Medicine License--Jurisprudence Exam. The adopted rules replace the word "shall" with "must."

The adopted rules amend §130.42, Doctor of Podiatric Medicine License--Term; Renewal. The adopted rules remove language relating to a limited faculty license and relocate it to new §130.34. The adopted rules also remove outdated language and add clarifying language.

The adopted rules repeal existing §130.43, Doctor of Podiatric Medicine License--Provisional License. This section is replaced with new §130.43, Doctor of Podiatric Medicine License--Provisional License.

The adopted rules add new §130.43, Doctor of Podiatric Medicine License--Provisional License. The adopted rules remove duplicative language located elsewhere in the chapter and streamline the remaining language to make it easier to read.

The adopted rules repeal existing §130.44, Continuing Medical Education--General Requirements. This section is replaced with new §130.44, Continuing Medical Education--General Requirements.

The adopted rules add new §130.44, Continuing Medical Education--General Requirements. The adopted rules streamline

the section and relocate the continuing medical education audit process to new §130.45.

The adopted rules repeal §130.45, Continuing Medical Education--Exceptions and Allowances; Approval of Hours. The adopted rules relocate the repealed provisions to new §130.46.

The adopted rules add new §130.45, Continuing Medical Education--Audit Process. The adopted rules relocate audit information from current §130.44 and establish that the Department will select random license holders to ensure compliance with CME hours.

The adopted rules repeal §130.46, Inactive Status. The adopted rules relocate the repealed provisions to new §130.47.

The adopted rules add new §130.46, Continuing Medical Education--Exceptions and Allowances; Approval of Hours. The adopted rules relocate the requirements of existing §130.45 to this new section.

The adopted rules repeal §130.47, Hyperbaric Oxygen Certificate--Application Requirements and Guidelines. The adopted rules relocate the repealed provisions to new §130.36.

The adopted rules add new §130.47, Inactive Status. The adopted rules relocate the requirements of existing §130.46 to this new section and establish that a practitioner may place a license on inactive status at no cost.

The adopted rules repeal §130.48, Nitrous Oxide/Oxygen Inhalation Conscious Sedation--Registration Requirements, Guidelines, and Direct Supervision. The adopted rules relocate the repealed provisions to new §130.37.

The adopted rules add new §130.48, Voluntary Charity Care Status. The adopted rules relocate the requirements of existing §130.49 to this new section.

The adopted rules repeal §130.49, Voluntary Charity Care Status. The adopted rules relocate the repealed provisions to new §130.48.

Subchapter E. Practitioner Responsibilities and Code of Ethics.

The adopted rules amend §130.50, Practitioner Identification; Professional Corporations or Associations. The adopted rules remove redundant and unnecessary language regarding the purpose of this section and streamline the rest of the section to make it easier to read.

The adopted rules amend §130.51, Advertising. The adopted rules streamline the section and remove language relating to certifying boards that are not recognized by the Council of Podiatric Medical Education of the American Podiatric Medical Association.

The adopted rules repeal §130.52, Medical Offices, because the Department does not regulate medical offices, but individual licensees.

The adopted rules repeal §130.53, Podiatric Medical Radiological Technicians. The adopted rules relocate the repealed provisions to new §130.35.

The adopted rules amend §130.54, Records. The adopted rules streamline the section to make it easier to read.

The adopted rules amend §130.55, Practitioner Code of Ethics. The adopted rules add new subsection (g) to establish that treatment must be consistent with best practices and standards observed in the podiatry community.

The adopted rules amend §130.57, Sexual Misconduct. The adopted rules streamline the section to make it easier to read. In response to a public comment, the adopted rules update the references in this section to use the terminology "podiatric physician" or "practitioner."

The adopted rules amend §130.58, Standards for Prescribing Controlled Substances and Dangerous Drugs. The adopted rules streamline the section to make it easier to read.

The adopted rules amend §130.59, Opioid Prescription Limits and Required Electronic Prescribing. The adopted rules streamline the section to make it easier to read.

Subchapter F. Fees.

The adopted rules amend §130.60, Fees. The adopted rules update the fees for the hyperbaric oxygen certificate, the nitrous oxide registration, and the podiatric medical radiological technician registration, because the certificate and registration terms are changed from one year to two years. The fees are $25 if the certificate or registration is issued or renewed before January 1, 2025, or $50 if the certificate or registration is issued or renewed on or after January 1, 2025. The adopted rules add a $0 fee for an Inactive Status License (Initial and Renewal). The adopted rules also make clean-up changes to the cross-referenced fees under Chapter 60.

Subchapter G. Enforcement.

The adopted rules amend §130.70, Complaints and Claims. The adopted rules replace the word "shall" with "must" and streamline the section to make it easier to read.

The adopted rules amend §130.72, Administrative Penalties and Sanctions. The adopted rules clarify that a person or entity who violates or attempts to violate the Occupations Code, this chapter, or any rule of the commission may face proceedings against them.

The adopted rules amend §130.73, Conditions of Suspension of License. The adopted rules streamline the section to make it easier to read.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4537). The public comment period closed on July 22, 2024. The Department received comments from one interested party in response to the required summary of the proposed rules, which was posted on the Department's website and distributed on June 10, 2024, before the official publication of the proposed rules and the official start of the public comment period. The Department received comments from two interested parties on the published proposed rules during the official public comment period. The public comments are summarized below.

Comments in Response to the Posted Summary

Comment: One interested party submitted a comment in response to the posted summary of the proposed rules, not the published proposed rules. The interested party disagreed with the increase in the number of training hours for Podiatric Medical Radiological Technicians and stated that the additional training does not seem to be warranted.

Department Response: The Department disagrees with this comment. The proposed rules under §130.35 increase the number of training hours from 20 hours to 45 hours for the

Podiatric Medical Radiological Technicians, as recommended by the Education and Examination Workgroup of the Podiatric Medical Examiners Advisory Board. This change is necessary as a result of moving to an online course; expanding the clinical training requirements; expanding the online course and student manual to add digital content as the profession shifts from film to digital x-rays; and increasing the number of x-rays performed in a clinical setting from 60 x-rays to 90 x-rays. The change in the number of training hours also reflects the actual time needed to complete these requirements and ensures that students receive credit for the hours they complete. The Podiatric Medical Examiners Advisory Board agreed that the proposed changes are necessary. The Department did not make any changes to the proposed rules as a result of this comment.

Comments in Response to the Published Proposed Rules

Comment: The Health and Safety Institute (HSI) submitted a comment on proposed rule §130.37 and requested that its organization be added as a sponsor of a basic and advanced CPR program that can be utilized by a practitioner. The proposed rules only list the American Heart Association and the American Red Cross as sponsors. HSI provided information on why it should be included in the proposed rules as a third sponsor, including: (1) HSI, along with the American Red Cross (ARC) and American Heart Association (AHA), are the largest providers of CPR training in the United States; (2) HSI's training programs are equivalent to those of ARC and AHA; (3) HSI, like ARC and AHA, is nationally accredited by the Commission on Accreditation of Pre-Hospital Continuing Education (CAPCE); (4) HSI's resuscitation training programs are currently in use by, and accepted, approved, or recognized by, thousands of employers, state agencies, licensing boards, professional associations, and other organizations nationwide; and (5) the training business units of HSI, AHA, and ARC are similar. HSI commented that similarly situated resuscitation training programs should be treated the same and that including HSI will encourage competition while protecting the public health and safety.

Department Response: The Department agrees with this comment. This comment was reviewed by the Standard of Care Workgroup of the Podiatric Medical Examiners Advisory Board. The workgroup found the Health and Safety Institute (HSI) training to be equivalent to the CPR training of the American Heart Association and the American Red Cross. The workgroup had no objection to HSI being added as another CPR sponsor in the rules. The Department made changes to §130.37 to include the Health and Safety Institute as a result of this comment.

Comment: The Texas Medical Association (TMA) submitted a comment on the proposed rules addressing three issues. First, TMA requested to amend the proposed rules by reinserting the language under §130.50(c), regarding the purpose of the professional designations, which was removed. Second, TMA strongly recommended that the podiatry rules under §130.50(a) and (b) be amended to only include the identifiers listed for podiatrists under the Healing Art Identification Act, Texas Occupations Code, Chapter 104. Third, TMA strongly recommended that references to podiatrists as "physicians" be removed from the rules under Chapter 130.

Department Response: The Department agrees with part of this comment but disagrees with other parts of the comment.

In response to the comment about reinserting the deleted language under §130.50(c), regarding the purpose of the section and a professional designation, the Department with the advice of the Podiatric Medical Examiners Advisory Board disagrees with the comment. The provision under former subsection (c) was removed from the proposed rules, since it is redundant with the existing provisions under subsections (a) and (b). These two subsections address the specific professional identifiers and professional designations that must be used by the practitioner. It is unnecessary to reinsert former subsection (c) into the proposed rules. The Department declined to make changes to §130.50 in response to this comment.

In response to the comment that any professional identifications that are not listed in the Healing Art Identification Act should be removed from the podiatry rules, the Department declines to make those changes at this time. Removing professional identifications used by podiatrists at this stage of the rulemaking process is a substantive and significant change that would require notice and opportunity for public comment and is beyond the scope of this rulemaking. The Department recommended that this part of the comment be referred to an advisory board workgroup for further review, research, and consideration about whether this type of change should be undertaken in a future rulemaking. The Department did not make any changes to the proposed rules in response to this comment.

In response to the comment about the use of the word "physician" in the proposed rules, the terms "podiatrist," "podiatric physician," and "practitioner" are used interchangeably in the proposed rules, as explained in the definition of "practitioner" under §130.2, Definitions. To the extent there are references to "physician" only, the Department agrees that the references in the rules should be to "podiatric physician." The Department made changes to §130.57 to update the references and to use the terminology "podiatric physician" or "practitioner" in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Podiatric Medical Examiners Advisory Board met on August 19, 2024, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §130.37 and §130.57 made in response to the public comments, as explained in the Section-by-Section Summary.

At its meeting on October 23, 2024, the Commission adopted the proposed rules with changes as recommended by the Advisory Board. In response to questions from the Commission regarding the updated training requirements for the Podiatric Medical Radiological Technician registration, the Department has added clarifying language in the Explanation and Justification section and in the Section-by-Section Summary under new §130.35 regarding the applicability of the updated training requirements. No changes were made to the adopted rule text under new §130.35.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §130.1, §130.2

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

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

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Doug Jennings
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SUBCHAPTER B. ADVISORY BOARD

16 TAC §§130.20 - 130.24, 130.27, 130.28

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

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16 TAC §§130.21, 130.22, 130.24

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 202, 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 adopted repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted repeals.

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

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SUBCHAPTER C. TEMPORARY RESIDENCY AND OTHER LICENSE TYPES

16 TAC §§130.30 - 130.32, 130.34 - 130.37

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

§130.37. Nitrous Oxide/Oxygen Inhalation Conscious Sedation--Registration Requirements, Guidelines, and Direct Supervision.

(a) As used in this section, conscious sedation means the production of an altered level of consciousness in a patient by pharmacological or non-pharmacological methods.

(b) Conscious sedation of a patient by nitrous oxide is the administration by inhalation of a combination of nitrous oxide and oxygen producing a minimally depressed level of consciousness while retaining the patient's ability to maintain a patent airway independently and continuously, and to respond appropriately to physical stimulation and verbal command.

(c) Conscious sedation of a patient by nitrous oxide must be induced, maintained, and continuously supervised only by the practitioner or by the assistant under continuous direct supervision of the practitioner. The nitrous oxide must not be flowing if the practitioner is not present in the room.

(d) To use nitrous oxide/oxygen inhalation conscious sedation on a patient for podiatric medical purposes in the State of Texas, the practitioner must first register with the department and provide the following:

(1) proof that the practitioner has completed a didactic and clinical course which includes aspects of monitoring patients and the hands-on use of the gas machine. The didactic and clinical course must:

(A) be directed by a licensed and certified M.D., D.O., D.D.S., or D.P.M., in the State of Texas with advanced educational and

clinical experience with routine administration of nitrous oxide/oxygen inhalation conscious sedation;

(B) include a minimum of four hours didactic work in pharmacodynamics of nitrous oxide/oxygen inhalation conscious sedation; and

(C) include a minimum of six hours of clinical experience under personal supervision;

(2) proof that the practitioner has completed a CME course in nitrous oxide/oxygen inhalation conscious sedation that includes training in the prevention and management of emergencies in the podiatric medical practice; and

(3) proof that the practitioner has completed a basic and advanced CPR program sponsored by the American Heart Association, the American Red Cross, or the Health and Safety Institute. Proof of current certification is the responsibility of the podiatric physician. Additionally, the D.P.M. must provide documented training or emergency procedures to office personnel.

(e) The department may, at any time and without prior notification, require an on-site office evaluation to determine that all standards regarding nitrous oxide/oxygen inhalation conscious sedation are being met.

(f) Registration Term and Renewal. A registration is valid for one or two years.

(1) A registration is valid for one year if the registration was issued before January 1, 2025, or two years if the registration was issued on or after January 1, 2025.

(2) A registration renewed by the department is valid for one year if the registration was renewed before January 1, 2025, and must be renewed annually, or two years if the registration was renewed on or after January 1, 2025, and must be renewed every two years. A registration renewal is completed by submitting a registration renewal application in a form and manner prescribed by the department and paying the required fee under §130.60.

(3) A registration will not be renewed if a current certificate of inspection of the gas machine is not filed with the department.

(g) A registrant must inform the department within 10 business days of any address change.

(h) When a registration is issued, it must be clearly displayed in the office.

(i) All office personnel who assist the practitioner in the nitrous oxide/oxygen inhalation conscious sedation procedure must:

(1) be trained in basic life support;

(2) have annual reviews of emergency protocols, contents, and use of emergency equipment; and

(3) have annual reviews of basic CPR.

(j) Documentation verifying these annual reviews must be maintained in the office of the practitioner who employs the personnel and must be provided to the department if requested.

(k) The practitioner must evaluate and document in the patient's medical record, prior to the nitrous oxide/oxygen inhalation conscious sedation procedure, the patient's health and medical status to ensure that nitrous oxide/oxygen inhalation conscious sedation is medically appropriate.

(l) Equipment used must meet the following safety criteria: The gas machine must have:

(1) 30% minimum oxygen flow;

(2) Glass flow tubes;

(3) Nitrous oxide fail-safe (will not flow without oxygen);

(4) Automatic room air intake in the event the bag is empty;

(5) Non-rebreathing check valve;

(6) Oxygen flush; and

(7) Auxiliary oxygen outlet with one demand valve resuscitation assembly per office.

(m) All practitioners administering nitrous oxide must have:

(1) a functioning vacuum system;

(2) a scavenger system;

(3) appropriate emergency drugs and equipment for resuscitation;

(4) a manifold to provide for protection against overpressure. The manifold must be equipped with an audible alarm system. The machine must have a service check on a three-year basis, a copy of which must be filed with the department; and

(5) a method of locking the nitrous oxide tanks after business hours.

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

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SUBCHAPTER C. TEMPORARY RESIDENCY

16 TAC §130.31

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 202, 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 adopted repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted repeals.

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

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SUBCHAPTER D. DOCTOR OF PODIATRIC MEDICINE

16 TAC §§130.40 - 130.48

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

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

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16 TAC §§130.43 - 130.49

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 202, 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 adopted repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted repeals.

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

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SUBCHAPTER E. PRACTITIONER RESPONSIBILITIES AND CODE OF ETHICS

16 TAC §§130.50, 130.51, 130.54, 130.55, 130.57 - 130.59

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

§130.57. Sexual Misconduct.

(a) Sexual misconduct is behavior that exploits the podiatric physician-patient or podiatric physician-staff member relationship in a sexual way. This behavior is non-diagnostic and non-therapeutic, may be verbal or physical, and may include expressions of thoughts and feelings or gestures that are sexual or that reasonably may be construed by a person as sexual.

(b) Sexual misconduct may be the basis for disciplinary action if the behavior was injurious or there is an exploitation of the podiatric physician-patient or podiatric physician-staff member relationship.

(c) Sexual violation may include podiatric physician-patient or podiatric physician-staff member sex, whether or not initiated by the patient/staff, and engaging in any conduct with a patient/staff that is sexual or may be reasonably interpreted as sexual, including but not limited to:

(1) sexual intercourse, genital-to-genital contact;

(2) oral to genital contact;

(3) oral to anal contact, genital to anal contact;

(4) kissing in a romantic or sexual manner;

(5) touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient/staff has refused or has withdrawn consent;

(6) encouraging the patient/staff to masturbate in the presence of the podiatric physician or masturbation by the podiatric physician while the patient/staff is present; and

(7) offering to provide practice-related services, such as drugs, in exchange for sexual favors.

(d) Sexual impropriety may comprise behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient/staff, including but not limited to:

(1) disrobing or draping practices that reflect a lack of respect for the patient's/staff's privacy, deliberately watching a patient/staff dress or undress, instead of providing privacy for disrobing;

(2) subjecting a patient/staff to an intimate examination in the presence of medical students or other parties without the explicit consent of the patient/staff or when consent has been withdrawn;

(3) examination or touching of genitals without the use of gloves;

(4) inappropriate comments about or to the patient/staff, including but not limited to:

(A) making sexual comments about a person's body or underclothing;

(B) making sexualized or sexually demeaning comments to a patient/staff;

(C) criticizing the patient's/staff's sexual orientation (transgender, homosexual, heterosexual, or bisexual);

(D) making comments about potential sexual performance during an examination or consultation, except when the examination or consultation is pertinent to the issue of sexual function or disfunction;

(E) requesting details of sexual history, sexual likes, or sexual dislikes when not clinically indicated for the type of consultation;

(5) engaging in treatment or examination of a patient/staff for other than bona fide health care purposes or in a manner substantially inconsistent with reasonable health care practices;

(6) using the podiatric physician-patient or podiatric physician-staff member relationship under the pretext of treatment to solicit a date;

(7) initiation by the podiatric physician of conversation regarding the sexual problems, preferences, or fantasies of the podiatric physician; and

(8) examining the patient/staff intimately without consent.

(e) Sexual exploitation by a practitioner is the breakdown of the professionalism in the podiatric physician/patient/staff relationship constituting sexual abuse. Sexual exploitation may undermine the therapeutic relationship, may exploit the vulnerability of the patient/staff, and ultimately may be detrimental to the patient's/staff's emotional well-being, including but not limited to:

(1) causing emotional dependency of the patient/staff;

(2) causing unnecessary dependence outside the therapeutic relationship;

(3) breach of trust; and

(4) imposing coercive power over the patient/staff.

(f) A third impartial person who is the same sex as the patient must be present in the examining room if a patient is asked to disrobe or if the genitalia are examined.

(g) The practitioner under investigation for sexual misconduct may be required to have a complete medical evaluation, including appropriate mental and physical examination. Laboratory examination should include appropriate urine and blood drug screens.

(h) The psychiatric history and mental status examination is to be performed by a psychiatrist knowledgeable in the evaluation suspected of sexual misconduct. The examination may include neuropsychological testing.

(i) Sexual violation or impropriety may warrant disciplinary action by the department up to and including revocation of license.

(j) In the event a podiatric physician applies for license reinstatement, any petition for reinstatement will include the stipulation that additional mental and physical evaluations may be required prior to the department's review for reinstatement to ensure the continuing protection of the public.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405436
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: December 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 463-7750

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16 TAC §130.52, §130.53

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 202, 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 adopted repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted repeals.

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

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Doug Jennings
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SUBCHAPTER F. FEES

16 TAC §130.60

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

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

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Doug Jennings
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SUBCHAPTER G. ENFORCEMENT

16 TAC §§130.70, 130.72, 130.73

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the adopted rules.

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

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7750

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CHAPTER 131. PROCEDURAL RULES DURING TEMPORARY ADMINISTRATION OF THE TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

16 TAC §§131.1, 131.11, 131.21, 131.23, 131.25, 131.27, 131.29

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 131, §§131.1, 131.11, 131.21, 131.23, 131.25, and 131.27, regarding the Procedural Rules During Temporary Administration of the Texas Board of Veterinary Medical Examiners, without changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6692). These rules will not be republished.

The Commission also adopts a new rule at 16 TAC Chapter 131, §131.29, regarding the Procedural Rules During Temporary Administration of the Texas Board of Veterinary Medical Examiners, with changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6692). This rule will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules under 16 TAC, Chapter 131, will implement Texas Occupations Code, Chapter 801, Veterinarians, Subchapter A-1, Temporary Administration by the Texas Department of Licensing and Regulation.

On September 1, 2023, the Texas Board of Veterinary Medical Examiners (Board) was brought under the temporary administration of the Department by Senate Bill (SB) 1414, 88th Legislature, Regular Session (2023). As a result of SB 1414, the Texas Commission of Licensing and Regulation (Commission) now serves as the decision-maker in contested cases under Occupations Code, Chapter 801 (Veterinary Licensing Act or "the Act."). Occupations Code §801.022(a) and (b) vest the Department, during temporary administration, with most of the Board's former policymaking and decision-making authority under the Act, with the Board retaining rulemaking authority over standard of care and scope of practice matters, subject to limited oversight, under §801.024. Occupations Code §801.022(c) gives the Commission and Department discretion to delegate powers to the Board or its executive director, and to withdraw these delegations of power. Under Occupations Code §801.022(d), the Commission is required to adopt rules necessary to implement the temporary administration of the Board. Occupations Code §801.025 provides that in the event of a conflict between Occupations Code, Chapters 51 and 801, the latter prevails, and that the provisions of Subchapter A-1 prevail over the remainder of Chapter 801.

Prior to the effective date of SB 1414, contested cases under the Act were decided by the Board, applying the Act and the Board's procedural rules found in 22 TAC, Chapter 575, which implement the Act. Similarly, contested cases before the Commission are decided under the procedural rules at 16 TAC, Chapter 60, which implement Occupations Code, Chapter 51, the Department's enabling statute. Key differences exist between the Chapter 60 and Chapter 575 rules, introducing the possibility of confusion in conduct of contested veterinary licensing cases during the temporary administration. The adopted rules address these issues by resolving conflicts between the Chapter 60 and Chapter 575 rules as necessary to effect the temporary administration, while preserving the statutory rights of license holders and the statutory hierarchy set forth in Occupations Code §801.025.

The adopted rules clarify that unless the Commission delegates its authority to make decisions in contested cases under the Veterinary Licensing Act, the Commission will serve as the decision-maker in these matters. The Commission may delegate this

authority to its own executive director, the Board, or the Board's executive director. Further, the adopted rules provide detail regarding the Board's, Department's, and Commission's roles in the contested case process, and the procedures to be followed if the Commission does not delegate its decision-making power. Further, the adopted rules address conflicts between the Board's existing rules and the Commission's rules relating to interim and interlocutory appeals, as well as deadlines for exceptions and replies in cases before the State Office of Administrative Hearings.

SECTION-BY-SECTION SUMMARY

The adopted rules add new 16 TAC, Chapter 131, Procedural Rules During Temporary Administration of the Texas Board of Veterinary Medical Examiners.

The adopted rules add new §131.1, Authority and Applicability. Subsection (a) sets forth the legal authority for the rule chapter. Subsection (b) sets forth the circumstances under which the rules apply. Subsection (c) sets forth a framework for resolving any conflicts between this chapter, the Chapter 60 rules, and the Chapter 575 rules, as enumerated in paragraphs (1) - (3).

The adopted rules add new §131.11, Definitions. Subsection (a) incorporates by reference the definitions in the Act, the APA, and in 16 TAC §60.10. Subsection (b) provides specific definitions in paragraph (1) - (9) for certain key terms, doing so for clarity and ease of reference.

The adopted rules add new §131.21, Contested Case Proceedings at SOAH. The rule mirrors language in 16 TAC §60.305(a) and clarifies that the period for exceptions and replies is determined under the APA and SOAH's procedural rules, rather than under 22 TAC §575.6.

The adopted rules add new §131.23, Interlocutory or Interim Appeals. The rule clarifies that, notwithstanding the rule at 22 TAC §575.30(f), which purports to permit interlocutory or interim appeals, such a proceeding is not available during the temporary administration.

The adopted rules add new §131.25, Commission and Board Consideration of Proposals for Decision. The rule clarifies that the Board acts in an advisory capacity and that the Commission is the decision-maker following the issuance of a proposal for decision. Subsection (a) sets forth the Commission's status as decision-maker and its authority to delegate this power to the Board on a revocable basis, as provided in Occupations Code §801.022(c). Subsection (b) provides that the Board is to consider the proposal for decision at an open meeting in accordance with its procedural rules, is to make a written recommendation to the Commission, and will notify the parties of its recommendation by mail or email. Subsection (b) provides that no motion for rehearing or reconsideration is to be filed at the Board level. Subsection (c) outlines the procedures for Commission consideration of the Board's recommendation. Subsection (d) addresses the content of oral argument, where permitted, and prohibits the consideration of new evidence presented during oral arguments, tracking certain language from 16 TAC §60.308(b). Subsection (e) provides the factors that will be considered by the Commission in determining the appropriate disciplinary action for a violation.

The adopted rules add new §131.27, Motions for Rehearing. The rule tracks the language of 16 TAC §60.309, clarifying that the Commission's procedures for motions for rehearing apply to cases under the Act.

The adopted rules add new §131.29, Proceedings for the Modification or Termination of Agreed Orders and Disciplinary Orders. The rule clarifies that the Commission is the decision-maker over proceedings to modify or terminate a previously imposed sanction. The text of the heading is corrected from the proposed version to correct a typographical error. Subsection (a) clarifies that the rule does not create a new right to relief. Subsection (b) provides that the Commission is the decision-maker unless this power is delegated, and that the terms of a delegation order override any conflicting provision in this rule section. Subsection (c) provides that the Board is to consider and make recommendations on motions to modify or terminate a sanction. Subsection (d) provides that the Commission will rule on the motion after considering the Board's recommendation.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6692). The public comment period closed on September 30, 2024. The Department did not receive any comments from interested parties on the proposed rules.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code §801.022, which authorizes the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, to adopt rules as necessary to effect the Department's temporary administration of the board in accordance with Occupations Code, Chapter 801, subchapter A-1.

The adopted rules are also adopted under Texas Occupations Code, Chapter 51, which authorize the Commission 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 801. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the proposed rules are adopted is Senate Bill 1414, 88th Legislature, Regular Session (2023).

§131.29. Proceedings for the Modification or Termination of Agreed Orders and Disciplinary Orders.

(a) No new right to relief created. This section governs proceedings to modify or terminate agreed orders and disciplinary orders where a right to seek such relief exists under current law and does not create a new right to such relief.

(b) Commission as decision-maker. The commission may delegate to the board or the executive director of the department the authority to rule upon motions to modify or terminate agreed orders or disciplinary orders. Such delegation is revocable. Unless so delegated, the commission will rule upon all such motions. Should the commission delegate this authority, the terms of the delegation will override any conflicting provision in this section.

(c) Board to issue recommendation. The board will receive and consider motions to modify or terminate agreed orders or disciplinary orders in accordance with the Veterinary Licensing Act and the board's procedural rules. Following board deliberation of the motion, the board will make a written recommendation to the commission on the resolution of the case and notify the parties or their representatives of its recommendation by postal or electronic mail.

(d) Following the issuance of the board's recommendation, the commission will rule upon the motion.

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

Filed with the Office of the Secretary of State on November 8, 2024.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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Proposal publication date: August 30, 2024
For further information, please call: (512) 463-3671

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 275. CONTINUING EDUCATION

22 TAC §§275.1 - 275.3

The Texas Optometry Board (Board) adopts amendments to 22 TAC Title 14 Chapter 275 Continuing Education without changes to the proposed text as published in the September 20, 2024 issue of the *Texas Register* (49 TexReg 7573). The rules will not be republished.

The Board adopts amendments to §§275.1 - 275.3.

The updated rule clarifies continuing education requirements for a biennial renewal period; for licensees who activating an expired license; and for new licensees when first licensed. The rule eliminates the continuing education requirement for the one-time controlled prescribing course as the course has been added as prerequisite for receiving a therapeutic license. No changes were made to the total number of continuing education courses required for renewal of a license.

No comments were received.

The Board adopts the amendments pursuant to the authority found in §351.151 of the Occupations Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Occupations Code and under §351.308 of the Occupations Code which requires continuing education as a condition for renewal of a license.

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

Filed with the Office of the Secretary of State on November 5, 2024.

TRD-202405321
Janice McCoy
Executive Director
Texas Optometry Board
Effective date: November 25, 2024
Proposal publication date: September 20, 2024
For further information, please call: (512) 305-8500

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.22, 537.28, 537.30 - 537.32, 537.37, 537.46, 537.47, 537.67

The Texas Real Estate Commission (Commission) adopts amendments to 22 TAC §537.20, Standard Contract Form TREC No. 9-16, Unimproved Property Contract; §537.22, Standard Contract Form TREC No. 11-7, Addendum for "Back-Up" Contract; §537.28, Standard Contract Form TREC No. 20-17, One to Four Family Residential Contract (Resale); §537.30, Standard Contract Form TREC No. 23-18, New Home Contract (Incomplete Construction); §537.31, Standard Contract Form TREC No. 24-18, New Home Contract (Completed Construction); §537.32, Standard Contract Form TREC No. 25-15, Farm and Ranch Contract; §537.37, Standard Contract Form TREC No. 30-16, Residential Condominium Contract (Resale); §537.46, Standard Contract Form TREC No. 39-9, Amendment to Contract; §537.47, Standard Contract Form TREC No. 40-10, Third Party Financing Addendum; and new rule §537.67, Standard Contract Form TREC No. 60-0, Addendum for Section 1031 Exchange in Chapter 537, Professional Agreements and Standard Contracts, without changes to the rule text, as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6965), but with non-substantive changes to the forms adopted by reference in Chapter 537, Professional Agreements and Standard Contracts. The rule text will not be republished, but the non-substantive changes to the forms adopted by reference are available through the Commission's website at www.trec.texas.gov.

Each of the rules correspond to contract forms adopted by reference. Texas real estate license holders are generally required to use forms promulgated by the Commission when negotiating contracts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee (the "committee"), an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by the Commission, and one public member appointed by the governor. The committee recommended revisions to the contract forms adopted by reference under the proposed amendments and new rule. The changes listed below apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale)*.

Paragraph 4 is amended to add the term "geothermal" to the definition of Natural Resource Leases as a result of a 2023 law change that stipulates property owners own the geothermal energy below the surface of their land and can drill or produce that energy and associated resources.

To be consistent with a recently updated Texas Department of Insurance procedural rule, Paragraph 6C(1) is amended to include the option of providing the T-47.1 Declaration (which does not need to be notarized)-in lieu of the T-47 Affidavit-when the Seller furnishes the Buyer an existing survey. In lieu of providing a "no survey required" option, Paragraph 6C(2) is amended to read "Buyer may obtain a new survey" instead of "Buyer shall

obtain a new survey", and adds that if the Buyer ultimately fails to obtain the survey, the Buyer does not have the right to terminate the contract under Paragraph 2B of the Third Party Financing Addendum because the survey was not obtained.

Because Texas law requires a seller to provide a buyer a copy of any mold remediation certificate issued during the five years preceding the sale of the property, new Paragraph 6E(11) is added to provide information regarding this requirement (except in the Unimproved Property Contract).

Paragraph 6E(12) is modified to add specific examples of the types of notices that should be listed in the paragraph and to add a caution that Seller's failure to provide required notices may provide Buyer with certain remedies, like the ability to terminate the contract.

In light of recent discussions surrounding broker compensation, Paragraph 12A(1)(a) and 12A(2) adds that each party pays the brokerage fees that they each have agreed to pay. Paragraph 12A(1)(b) is amended to allow for a specific seller contribution to the buyer's brokerage fees. A new Paragraph 12A(1)(c) has been added to separately address other seller contributions (that was previously in Paragraph 12A(1)(b)) and the prior language that specified the order in which any contribution was to be paid, as well as a limitation on the type of fee that could be paid, is removed. Conforming changes are also made in the Amendment to Contract.

The title of Paragraph 20 is changed to "Federal Requirements" from "Federal Tax Requirements." In new Paragraph 20B of the Farm and Ranch contract, information regarding the obligations related to the federal Agriculture Foreign Investment Disclosure Act has been added.

The compensation disclosure in the Broker Information section of the contracts (except for the Farm and Ranch Contract) has been modified to remove the parenthetical referencing the MLS and to add checkboxes to allow for the fee to be reflected either as a percentage or a dollar amount.

In the Third Party Financing Addendum, to ensure the buyer is terminating appropriately, Paragraph 2A, Buyer Approval, has been changed to require both a notice of termination and a copy of a written statement of the lender's determination like in Paragraph 2B, Property Approval. The language in Paragraph 2B is modified because the language related to notice of termination timing was different than in other contract provisions and was causing confusing. "Requirements" in Paragraph 4 is made singular and a conforming change is made to a paragraph citation.

In the Unimproved Property contract, Paragraph 3D is amended to include the same sales price adjustment language as in the Farm and Ranch contract. A dollar sign is also added to Paragraph 3D in the Farm and Ranch contract.

Out of concern about confusion and improper use of Paragraph 11, Special Provisions, by license holders, the Addendum for "Back-Up" Contract is modified to provide more clarity on the timing and payment of the earnest money and option fee by incorporating similar language from Paragraph 5 of the contract and by addressing timing and payment of additional fees.

The committee drafted a new Addendum for Section 1031 Exchange that allows the seller or buyer to disclose an intent to use the subject property as a 1031 exchange and includes a statement that the parties will reasonably cooperate with one another. Providing this as an addendum, rather than in the contract, allows the parties to use it when applicable without causing unnecessary confusion. A reference to the new Addendum for Section 1031 Exchange is also added to Paragraph 22 of the contract.

The committee met on October 11, 2024 and reviewed and discussed the 341 comments received on the proposed changes in total, including a comment from Texas Realtors. Eight of those comments expressed support for all of the proposed changes, while two comments were opposed to all proposed changes.

Regarding the changes to Paragraph 3D of the Unimproved Property contract, two comments were in support of the changes while one comment was opposed to the changes. The committee discussed the comments and declined to make changes at this time to ensure consistency with the Farm and Ranch contract.

Regarding the proposed changes to Paragraph 6C of the contract, 20 comments were received. Three comments were in support of the proposed changes (one noting concern about copyright issues) and one comment supported generally the idea of the T-47.1 declaration. Eight comments asked clarifying questions about the difference between the T-47 affidavit and the T-47.1 declaration. One comment asked clarifying questions regarding a specific fact scenario. Seven comments requested clarifying language changes, including what constitutes a "survey", adding a receipt line for the title company, changing termination timelines, formatting changes, and removing a reference to the Third Party Financing Addendum. The committee reviewed the comments and declined to make changes at this time, noting in particular that further education on the new T-47.1 will help alleviate confusion.

Four comments were received regarding the proposed changes to Paragraph 6E(11), with most noting concerns with the requirements of the statute. The committee declined to make changes at this time, noting that the language mirrored the statutory requirements.

Regarding the proposed changes to Paragraphs 6E(4), (7), and (9) which removed references to a separate related addendum, one commenter requested the deleted sentences be added back. The committee agreed and decided to retain the previously struck last sentences to better inform the parties. One comment had concerns regarding the statutory requirement. Regarding the proposed changes to Paragraph 6E(12), one comment was in support of the changes. One comment requested checkboxes be added to indicate whether the notice was received. Two comments found the caution statement insufficient, ambiguous, or wanted more details to be included. The committee discussed, but ultimately declined to make changes at this time.

Regarding the proposed change to Paragraph 8B to add the phrase "Broker fees are not set by law and are negotiable", one comment was in support of the proposed change. Three comments requested a clarifying change to the proposed language. Three comments wanted the language to be removed because of concerns of confusion and redundancy. One commenter made a general statement. After consideration of the comments and discussion, the committee decided to remove the proposed language.

The majority of the comments - 258 in total-were regarding the proposed changes to Paragraph 12. 12 comments were in support of the proposed Paragraph 12 changes generally, while four comments were generally opposed. One commenter was generally opposed to the concept of seller contributions. 170 comments (most with an identical comment) believed that

compensation should be addressed in a manner similar to that of the Farm and Ranch contract or the Texas Realtors' commercial contracts. Five commenters requested that the language be swapped for the language found in the Texas Realtors' Agreement Between Brokers form, including one comment which stated the changes should wait until after the settlement is finalized. 26 comments found the changes to be confusing, many specifically noting that it was unclear whether the amount in Paragraph 12A(1)(c) was exclusive of the amount in Paragraph 12A(1)(b) and one comment questioning what "brokerage fees" consists of in Paragraph 12A(1)(b). One commenter believed that the clauses within Paragraph 12 should be moved to separate paragraphs for clarity. Four comments believed the proposed change to Paragraph 12A(1)(b) to be unnecessary, while one comment stated that title companies would benefit from this information. Five comments stated that because of familiarity with the current order of the paragraph, the order of subparagraphs (b) and (c) should be reversed. Three comments took the position that broker compensation should not be addressed in the contract forms at all or should only be addressed in a separate addendum, while four comments were in favor of having compensation addressed only in the contract (not in an addendum). Six comments wanted the language in Paragraph 12 to be expanded to address or disclose other compensation scenarios, including what a seller may pay the listing broker, what a buyer may pay the buyer's broker, and if a buyer were to contribute to the seller's brokerage fees. One comment took the position that brokers should only be paid by their respective principal. Eight comments asked questions about how the proposed changes would apply to a particular scenario. Two comments were concerned that parties may think contributions are required or wanted language to indicate this was optional. Two comments were concerned about unintended consequences, like obligations to pay beyond what is already agreed upon. One comment believed that the language in Paragraph 12 should be moved to the Third Party Financing Addendum. One comment requested information be shared regarding federal tax requirements. The committee reviewed the comments and had extensive discussion on these changes. The committee declined to make changes at this time, but noted that discussions will continue, particularly as the industry evolves in this area. The committee did make non-substantive formatting changes to Paragraph 12B(1)(a)-(c).

Two comments were received on the proposed changes to Paragraph 20. One commenter requesting deadlines be added to the language, while the other commenter requested that the Commission promulgate a notice regarding the federal requirements and providing timeframes. The committee declined to make changes at this time, noting concerns regarding the complexity of the federal law.

Eight comments were received on the proposed changes to Paragraph 22, with the majority seeking the addition of a Texas Realtors form to the list. The committee believed it is not appropriate to include non-Commission forms, but noted there is a blank checkbox that could be used to address this.

Twenty-nine comments were received on the proposed changes to the compensation disclosure on the Broker Information page of the contracts. 17 comments wanted the disclosure to be removed altogether, while six comments wanted the disclosure to be replaced with the compensation language found in the Farm and Ranch contract. Several commenters wanted clarifying changes, ranging from the addition of the word "written" or to use "compensation" in lieu of "commission" to wanting to broaden the disclosure to include what the seller is paying the listing broker. Texas Realtors requested a change that would reflect the possibility of a seller paying the other broker directly. One commenter asked a question of how bonuses would be notated under the proposed changes. The committee elected to not make changes at this time, but will consider changes, including the possible removal of the disclosure, at a subsequent meeting.

Regarding the proposed new form-the Addendum for Section 1031 Exchange-five comments were in support of the new form, one was against, and one commenter asked a clarifying question regarding liability. The committee declined to make any changes at this time.

One comment was in support of the proposed changes to the Amendment to Contract.

Regarding the Addendum for "Back-Up" Contract, four comments supported the proposed changes. One commenter did not like repeating of language found within the contract itself. Four commenters raised concerns about how the option fee or additional option fee is handled. One commenter wanted a definition of "Escrow Agent" in this form and all others that use the term. The committee discussed the comments and declined to make changes at this time, but did decide to capitalize "effective date" in Paragraph J.

Eleven comments were received on the Third Party Financing Addendum. Five comments were generally in support of the proposed changes and one comment was against the changes. The remaining comments sought changes to the proposed language, like increasing the time periods and combining the buyer approval and property approval paragraphs. The committee discussed, but ultimately declined to make changes as a result of the comments.

The committee recommended the Commission adopt the forms as modified.

The amendments and new rule are adopted under Texas Occupations Code, §1101.151, which authorizes the Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments and rules are also adopted under Texas Occupations Code, §1101.155, which authorizes the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the committee and adopted by the Commission.

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

Filed with the Office of the Secretary of State on November 5, 2024.

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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
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Proposal publication date: September 6, 2024
For further information, please call: (512) 936-3057

22 TAC §537.39

The Texas Real Estate Commission (Commission) adopts amendments to 22 TAC §537.39, Standard Contract Form TREC No. 32-4, Condominium Resale Certificate in Chapter 537, Professional Agreements and Standard Contracts, without changes to the rule text or form adopted by reference, as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6965), and will not be republished. The form adopted by reference is available through the Commission's website at www.trec.texas.gov.

Texas real estate license holders are generally required to use forms promulgated by the Commission when negotiating contracts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee (the "committee"), an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by the Commission, and one public member appointed by the governor. The committee recommended revisions to the contract form adopted by reference under the proposed amendment.

The Condominium Resale Certificate is amended to conform the language in Paragraphs K and L with section 82.157, Texas Property Code.

One commenter requested a clarifying change in Paragraph K of the Condominium Resale Certificate. The committee declined to make changes at this time for form consistency

The committee recommended the Commission adopt the form as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments and rules are also adopted under Texas Occupations Code, §1101.155, which authorizes the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the committee and adopted by the Commission.

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

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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3057

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER K. INSPECTIONS, INVESTIGATIONS, AND CONFIDENTIALITY

DIVISION 1. OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

26 TAC §745.8401, §745.8411

The Texas Health and Human Services Commission (HHSC) adopts amendments to §745.8401, concerning Who is responsible for inspecting or investigating an operation under this division, and §745.8411, concerning What are an operation's responsibilities when an authorized representative inspects or investigates the operation.

The amendment to §745.8401 is adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5312). This rule will not be republished.

The amendment to §745.8411 is adopted with changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5312). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to implement House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. H.B. 4696 placed the responsibility for investigating an allegation of abuse, neglect, and exploitation of an elderly person or adult with a disability who resides in a residential child-care facility in Texas Human Resources Code (HRC) §48.251(a)(3) and §48.252(b) and (c), which correspond with the investigatory authority of HHSC Long-Term Care Regulation Provider Investigations. Accordingly, because HHSC Child Care Regulation (CCR) also conducts investigations at residential child-care facilities, CCR is adopting amended rules that clarify what authorized entities may inspect or investigate according to Title 26, Chapter 745, Subchapter K, Division 1, and responsibilities an operation has when an authorized entity conducts an inspection or investigation.

COMMENTS

The 31-day comment period ended August 19, 2024. During this period, HHSC received one comment from one commenter representing the Texas Alliance of Child and Family Services. A summary of the comment relating to the rules and the response from HHSC follows.

Comment: The commenter did not have feedback on the text of the rules but suggested that HHSC provide more background information in the rule's preamble and on state agency websites regarding the underlying and complex statutory changes that occur over time. The commenter indicated it can be difficult to ascertain which entity has jurisdiction for which function when there is so much in regulatory overlap among departments and agencies that conduct investigations or inspections at residential child-care operations.

Response: HHSC appreciates the general feedback from the commenter, but HHSC disagrees that it did not provide enough background information in the rule proposal preamble or on the HHSC website. In August 2023, HHSC emailed to residential providers and posted online a communication that included a summary of H.B. 4696, the specific operation types the bill applies to, and what rule changes that HHSC would later propose.

In the July 19, 2024, issue of the *Texas Register*, HHSC included the following information in the rule proposal preamble: (1) the specific statutes that H.B. 4696 amended; (2) the bill's purpose in amending those statutes; (3) what rule amendments CCR is generally proposing to implement the bill; and (4) a section-by-section summary of each proposed rule amendment. Additionally, HHSC emailed providers a link to that *Texas Register* issue and posted a news story on the CCR website with that link. HHSC will continue to make every effort to clearly communicate rule proposals to stakeholders and the public.

Minor editorial changes were made to §745.8411 to eliminate the use of first-person ("I," "me," "we," or "us") and second-person ("you," "your," or "yours") pronouns and possessive determinators, and to correct one capitalization error.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Texas Government Code Chapter 531. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§745.8411. What are an operation's responsibilities when an authorized representative inspects or investigates the operation?

(a) An operation must ensure that no one at the operation interferes with an inspection or investigation by Child Care Regulation (CCR), another department of the Texas Health and Human Services Commission (HHSC), or the Department of Family and Protective Services (DFPS).

(b) For an inspection or investigation described in subsection (a), the operation must ensure that the operation:

(1) Admits authorized representatives involved in conducting the inspection or investigation;

(2) Provides access to all areas of the operation;

(3) Provides access to all records; and

(4) Does not delay or prevent authorized representatives from conducting an inspection or investigation.

(c) If anyone at the operation refuses to admit, refuses access, or prevents or delays an authorized representative of CCR, another department of HHSC, or DFPS from visiting, inspecting, or investigating the operation, any or all of the following may occur:

(1) CCR may issue the operation a deficiency;

(2) CCR may recommend an enforcement action as specified in Subchapter L of this chapter (relating to Enforcement Actions); or

(3) CCR, DFPS, or HHSC may seek a court order granting access to the operation and records maintained by the operation.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405408

Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 22, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 438-3269

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CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

26 TAC §748.303

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §748.303, concerning When must a general residential operation (GRO) report and document a serious incident.

The amendment to §748.303 is adopted with changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5317). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. H.B. 4696 placed the responsibility for investigating an allegation of abuse, neglect, and exploitation of an elderly person or adult with a disability who resides in a residential child-care facility in Texas Human Resources Code (HRC) §48.251(a)(3) and §48.252(b) and (c), which correspond with the investigatory authority of HHSC Long-Term Care Regulation Provider Investigations. Accordingly, because HHSC Child Care Regulation (CCR) also conducts investigations at residential child-care facilities, CCR is adopting an amended rule to clarify that a report must be made to HHSC through the Texas Abuse and Neglect Hotline if there is reason to believe an adult resident has been abused, neglected, or exploited.

COMMENTS

The 31-day comment period ended August 19, 2024. During this period, HHSC received one comment from one commenter representing the Texas Alliance of Child and Family Services. A summary of the comment relating to the rule and the response from HHSC follows.

Comment: The commenter did not have feedback on the text of the rule but suggested that HHSC provide more background information in the rule's preamble and on state agency websites regarding the underlying and complex statutory changes that occur over time. The commenter indicated it can be difficult to ascertain which entity has jurisdiction for which function when there is so much in regulatory overlap among departments and agencies that conduct investigations or inspections at residential child-care operations.

Response: HHSC appreciates the general feedback from the commenter, but HHSC disagrees that it did not provide enough background information in the rule proposal preamble or on the HHSC website. In August 2023, HHSC emailed to residential

providers and posted online a communication that included a summary of H.B. 4696, the specific operation types the bill applies to, and what rule changes that HHSC would later propose. In the July 19, 2024, issue of the *Texas Register*, HHSC included the following information in the rule proposal preamble: (1) the specific statutes that H.B. 4696 amended; (2) the bill's purpose in amending those statutes; (3) what rule amendment CCR is generally proposing to implement the bill; and (4) a detailed summary of the proposed rule amendment. Additionally, HHSC emailed providers a link to that *Texas Register* issue and posted a news story on the CCR website with that link. HHSC will continue to make every effort to clearly communicate rule proposals to stakeholders and the public.

Minor editorial changes were made to §748.303 to eliminate the use of most first-person ("I," "me," "we," or "us") and second-person ("you," "your," or "yours") pronouns and possessive determinators, including non-substantive changes to make the resulting wording consistent, and change "Licensing" to "Child Care Regulation."

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Texas Government Code Chapter 531. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§748.303. When must a general residential operation (GRO) report and document a serious incident?

(a) A GRO must report and document the following types of serious incidents involving a child in its care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:
Figure: 26 TAC §748.303(a)

(b) If there is a medically pertinent incident that does not rise to the level of a serious incident, a GRO does not have to report the incident but the GRO must document the incident in the same manner as for a serious incident, as described in §748.311 of this division (relating to How must I document a serious incident?).

(c) If a child returns before the required reporting timeframe outlined in (a)(8) - (10) in Figure: 26 TAC §748.303(a), the GRO is not required to report the absence as a serious incident. Instead, the GRO must document within 24 hours after becoming aware of the unauthorized absence in the same manner as for a serious incident, as described in §748.311 of this division.

(d) If there is a serious incident involving an allegation of abuse, neglect, or exploitation of an elderly adult or an adult with a disability in a residential child-care operation, the GRO must document the incident in the same manner as a serious incident. The GRO must also report the incident to:

(1) The Department of Family and Protective and Services intake through:

(A) The Texas Abuse and Neglect Hotline (1-800-252-5400); or

(B) Online at https://www.txabusehotline.org;

(2) Law enforcement, if there is a fatality; and

(3) The parent, if the adult resident is not capable of making decisions about the resident's own care.

(e) A GRO must report and document the following types of serious incidents involving the GRO, an employee, a professional level service provider, contract staff, or a volunteer to the following entities within the specified time frames:
Figure: 26 TAC §748.303(e)

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

Filed with the Office of the Secretary of State on November 7, 2024.

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Karen Ray
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Health and Human Services Commission
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For further information, please call: (512) 438-3269

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

26 TAC §749.503

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §749.503, concerning When must a child-placing agency (CPA) report and document a serious incident.

The amendment to §749.503 is adopted with changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5318). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. H.B. 4696 placed the responsibility for investigating an allegation of abuse, neglect, and exploitation of an elderly person or adult with a disability who resides in a residential child-care facility in Texas Human Resources Code (HRC) §48.251(a)(3) and §48.252(b) and (c), which correspond with the investigatory authority of HHSC Long-Term Care Regulation Provider Investigations. Accordingly, because HHSC Child Care Regulation (CCR) also conducts investigations at residential child-care facilities, CCR is adopting an amended rule to clarify that a report must be made to HHSC through the Texas Abuse and Neglect Hotline if there is reason to believe an adult resident has been abused, neglected, or exploited.

COMMENTS

The 31-day comment period ended August 19, 2024. During this period, HHSC received one comment from one commenter representing the Texas Alliance of Child and Family Services. A

summary of the comment relating to the rule and the response from HHSC follows.

Comment: The commenter did not have feedback on the text of the rule but suggested that HHSC provide more background information in the rule's preamble and on state agency websites regarding the underlying and complex statutory changes that occur over time. The commenter indicated it can be difficult to ascertain which entity has jurisdiction for which function when there is so much in regulatory overlap among departments and agencies that conduct investigations or inspections at residential child-care operations.

Response: HHSC appreciates the general feedback from the commenter, but HHSC disagrees that it did not provide enough background information was included in the rule proposal preamble or on the HHSC website. In August 2023, HHSC emailed to residential child-care providers and posted online a communication that included a summary of H.B. 4696, the specific operation types the bill applies to, and what rule changes that HHSC would later propose. In the July 19, 2024, issue of the *Texas Register*, HHSC included the following information in the rule proposal's preamble: (1) the specific statutes that H.B. 4696 amended; (2) the bill's purpose in amending those statutes; (3) what rule amendment CCR is generally proposing to implement the bill; and (4) a detailed summary of the proposed rule amendment. Additionally, HHSC emailed providers a link to that *Texas Register* issue and posted a news story on the CCR website with that link. HHSC will continue to make every effort to clearly communicate rule proposals to stakeholders and the public.

Minor editorial changes were made to §749.503 to eliminate the use of most first-person ("I," "me," "we," or "us") and second-person ("you," "your," or "yours") pronouns and possessive determinators, including non-substantive changes to make the resulting wording consistent, and change "Licensing" to "Child Care Regulation."

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Texas Government Code Chapter 531. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§749.503. When must a child-placing agency (CPA) report and document a serious incident?

(a) A CPA must report and document the following types of serious incidents involving a child in the CPA's care. The reports must be made to the following entities, and the reporting and documenting must be within the specified timeframes:
Figure: 26 TAC §749.503(a)

(b) If there is a medically pertinent incident that does not rise to the level of a serious incident, a CPA does not have to report the incident but the CPA must document the incident in the same manner as for a serious incident, as described in §749.511 of this division (relating to How must I document a serious incident?).

(c) If a child returns before the required reporting timeframe outlined in (a)(8) - (10) in Figure: 26 TAC §749.503(a), the CPA is not required to report the absence as a serious incident. Instead, the CPA must document within 24 hours after the CPA becomes aware of the unauthorized absence in the same manner as for a serious incident, as described in §749.511 of this division.

(d) If there is a serious incident involving an allegation of abuse, neglect, or exploitation of an elderly adult or an adult with a disability in a residential child-care operation, the CPA must document the incident in the same manner as a serious incident. The CPA must also report the incident to:

(1) The Department of Family and Protective Services intake through:

(A) The Texas Abuse and Neglect Hotline (1-800-252-5400); or

(B) Online at https://www.txabusehotline.org;

(2) Law enforcement, if there is a fatality; and

(3) The parent, if the adult resident is not capable of making decisions about the resident's own care.

(e) A CPA must report and document the following types of serious incidents involving the CPA, one of its foster homes, an employee, professional level service provider, contract staff, or a volunteer to the following entities within the specified timeframe:
Figure: 26 TAC §749.503(e)

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

Filed with the Office of the Secretary of State on November 7, 2024.

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Health and Human Services Commission
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER TT. ALL-PAYOR CLAIMS DATABASE

28 TAC §§21.5401, 21.5403 - 21.5406

The commissioner of insurance adopts amendments to 28 TAC §21.5401 and §§21.5403 - 21.5406, concerning the all-payor claims database. The amendments to the rule text are adopted with changes to the proposed text published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6158). The commissioner adopts §§21.5401, 21.5404, and 21.5406 without changes to the proposed text. These rules will not be republished. The commissioner adopts §21.5403 and §21.5405 with a nonsubstantive change to the proposed text. These rules will be republished. Changes have also been made to the Texas APCD CDL version 3.0.1, referenced in §21.5403.

REASONED JUSTIFICATION. The amendments make changes in accordance with House Bill 3414, 88th Legislature, 2023, which made amendments to Insurance Code Chapter 38, including revisions to the definition of "payor" in Insurance Code §38.402, the membership of the stakeholder advisory group in §38.403, and permissible data collection in Insurance Code §38.404. A nonsubstantive amendment to §21.5401 is made to conform with House Bill 4611, 88th Legislature, 2023, which changed the location of statutes concerning Medicaid managed care programs in the Government Code. Other amendments are made in accordance with House Bill 2090, 87th Legislature, 2021. The amendments include a new version of the Texas APCD Common Data Layout (CDL) to conform with changes to the national CDL and other changes to support the purpose and mission of the APCD.

The CDL is a technical and natural language description of the file format that payors are required to use to submit data to the APCD. The CDL details the data structure and organization necessary for successful file submissions. Clear technical instructions--including definitions of data fields, required headers, and descriptions--in the CDL are necessary to ensure the integrity and validity of the APCD data. Periodic updates to the technical instructions ensure the CDL's long-term usability and relevance by allowing clarifications that improve payor understanding of the CDL requirements and accommodating technological improvements or changes in claim standards.

In addition, the amendments enhance clarity, streamline the sections, and make the text consistent with current agency drafting style and plain language preferences. These nonsubstantive changes include adding rule cross-references; deleting unnecessary statutory citations; and otherwise improving wording, such as by replacing "such" with "this" and "said" with "the." These amendments are not noted in the following descriptions of the amendments unless it is necessary or appropriate to provide additional context or explanation.

Descriptions of the sections' amendments follow.

Section 21.5401. The amendments to §21.5401 revise subsection (b) to clarify that the listing of payors required to submit data files is not exclusive but includes any payor subject to Insurance Code Chapter 38. Self-insurance funds established under Government Code Chapter 2259, concerning Self-Insurance by Governmental Units, are added to the listing to clarify applicability to those payors, and subsequent paragraphs are renumbered to reflect this addition. In paragraph (19), the citation to the Government Code for Medicaid managed care plans is changed to Title 4, Subtitle I, instead of Chapter 533, because of a change in the citation to these programs in Insurance Code §38.402(7) made in Section 2.117 of HB 4611.

Section 21.5403. An amendment to §21.5403(a) updates the CDL version that a payor is required to follow. The Texas APCD CDL has been updated to align with the national CDL. It identifies the types of data a payor is required to report by listing the standardized data elements for each data file identified in §21.5404(c) and identifying whether the data element is required. For each data element, it also identifies data quality standards and provides technical guidance describing the information payors must submit, including the source of the information and coding standards. In response to comments, CDL version 3.0.1 has been modified to change the reporting threshold for data elements CDLPV021 and CDLMC142 from 100% to 90%.

Amendments to subsection (b) permit the Center for Health Care Data at the University of Texas Health Science Center at Houston (Center) to adopt future versions of the Texas APCD CDL, as long as no additional data elements are required beyond those required in version 3.0.1 and no data elements are required that fall outside the scope of Insurance Code Chapter 38, Subchapter I. TDI modifies the first sentence in subsection (b) to avoid a double negative for clarity. This will streamline the Center's ability to update technical guidance and will reduce confusion by payors, clarifying that such guidance can be incorporated in the Texas APCD CDL, rather than in a separate document. It will also allow the Center to monitor changes taking place across the country to maximize uniformity with other states' APCDs, which is more cost-effective for the payors subject to reporting. Any addition of required data elements would occur only through TDI rulemaking. If the Center publishes an updated version of the Texas APCD CDL, it will communicate an implementation deadline and provide at least 90 days for payors to transition to the new version of the Texas APCD CDL.

Section 21.5404. An amendment to subsection (a)(1) updates the cross-reference to §21.5401 to conform with changes to numbering in that section. An amendment in subsection (b) clarifies that the requirement to register applies to payors or their designees that are subject to the subchapter where §21.5404 is located. An amendment removes paragraph (1) from subsection (d) to eliminate the option to use a USB drive because it is less efficient to administer, and no payors have chosen to use this option. Subsequent paragraphs are renumbered to reflect this change. The prohibition against using data with a unique coding system is eliminated from subsection (k) because it duplicates language in subsection (m).

Section 21.5405. The amendments to subsection (a) modify the monthly due date of payor reporting, reducing the time to submit the data from 90 days post-adjudication to 30 days. This change will provide more timely data to researchers and will allow the APCD to better and more timely support infectious disease monitoring efforts in coordination with the Texas Epidemic Public Health Institute. The updated submission timeframe will also allow the APCD, at the aggregate-geographic-region level, to support other state agency epidemiological monitoring of acute health conditions or events like pandemics or natural disasters.

Former subsection (b) is deleted because its provisions relating to the original commencement of APCD reporting are no longer necessary. A new subsection (b) is added to clarify the circumstances in which payors must submit test data files. TDI made a nonsubstantive change to subsection (b)(3) as proposed to replace "TX" with "Texas" when referencing the APCD CDL. This change is needed to be consistent with the term as defined in §21.5402(15).

Former subsections (c) and (e) are deleted, and their exception and extension provisions have been incorporated into former subsection (d), which is redesignated as subsection (c). The text of redesignated subsection (c) is also revised to allow payors to submit requests for exceptions and extensions 15 days in advance rather than 30 days, and to clarify that the deadline for data submissions is tolled while the Center considers a request for exception or extension. Redesignated subsection (c) authorizes payors to request temporary exceptions or extensions for up to 12 months if they demonstrate that compliance would impose an unreasonable cost or burden relative to the public value that would be gained from full compliance. To ensure APCD reporting is not a barrier to new payors entering the market, the

subsection allows an extension for a payor's first required reporting if the payor registers with the Center and demonstrates it has fewer than 10,000 covered lives across all plans subject to reporting. This approach ensures that the Center can make reasonable accommodations to help payors comply with APCD reporting obligations. To assist with the oversight and enforcement required by Insurance Code §38.409(a)(3), redesignated subsection (c) is also amended to add an annual reporting requirement for the Center to share information with TDI about payor compliance, exceptions, and extensions.

Former subsections (f) and (g) are redesignated as subsections (d) and (e).

A new subsection (f) is added. It states that payors must provide reasonable follow-up information requested by the Center, limited to ensuring that the payor submitted complete and correct information.

Former subsections (h) and (i) are redesignated as subsections (g) and (h).

A new subsection (i) is added. It provides the starting date for the new data submission time frames found in subsection (a).

Section 21.5406. New subsection (d) is added, establishing a one-year term of office for the new advisory member representing an institution of higher education, as required by HB 3414. New subsection (e) is added, limiting terms of office to no more than six consecutive years, except as provided by current subsection (d), which is redesignated as subsection (f). An amendment to redesignated subsection (f) changes the required designation of a replacement member to serve the remainder of a term to a permissive designation.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on September 16, 2024.

Commenters: TDI received comments from three commenters. The Center commented in support of the proposal. Commenters in support of the proposal with changes, were the Texas Association of Health Plans and the Texas Medical Association. Consistent with Insurance Code §38.409(a), TDI has consulted with the Center regarding these comments.

Comments on §21.5401

Comment. A commenter supports the changes as they appropriately clarify the application of the law concerning certain health benefit plans and address changes made by HB 3414.

Agency Response. TDI appreciates the support.

Comments on §21.5403

Comment. A commenter strongly supports and urges the adoption of the rule changes. The commenter states that the changes will bring the Texas APCD CDL into better alignment with the standard CDL maintained by the APCD Council, which will facilitate future academic research allowing for robust comparisons between states and help multistate companies maintain compliance. The commenter further states that the changes will provide additional flexibility to correct citations and provide clarifying updates, which are crucial to the technical document. On the other hand, the commenter agrees that it is appropriate that, should new fields be added to the CDL, a rulemaking process should be pursued.

Agency Response. TDI appreciates the support.

Comment. A commenter believes the proposed language strikes an appropriate balance between flexibility and fair notice of substantive changes and notes that aligning with national standards typically reduces administrative burden. However, the commenter notes that plans have had difficulty meeting the 100% reporting threshold for one item in the CDL (CDLPV021), which requires reporting of the National Uniform Claim Committee Health Care Provider Taxonomy (specialty) code (which is included in a standard claim). The commenter requests that the threshold for reporting this field be 95%.

Agency Response. TDI agrees with the commenter. In addition, according to information provided to TDI by the Center, plans have had similar difficulties reporting field CDLMC142, which is for the referring provider specialty. The plans rely on providers to provide this information, and plans currently must seek an exception if they do not have data in the field 100% of the time. Because the data is sometimes not provided to the plans, TDI, with the agreement of the Center, is changing the threshold for reporting these fields in the CDL from 100% to 90%. Plans must still report any data that they have for these fields but will not have to seek exceptions as often when they lack data. The Center believes that this change will not compromise data quality. TDI is revising Texas APCD CDL v3.0.1 to make changes to fields CDLPV021 and CDLMC142.

Comment. A commenter notes that the proposed rule authorizes the Center to adopt subsequent versions of the CDL despite the statutory requirement for TDI to adopt rules specifying the types of data required. The commenter states that the rule would authorize the Center to alter data elements and collect new data elements even if not specified in TDI rule without checks on the Center's authority, such as public comment or TDI review. The commenter adds that the Center could collect any information, including information on patients, physicians, and other health care providers, as long as a payor agreed. The commenter notes that decisions on the collection of health care data should be discussed in a public forum and in a manner that precludes even the potential appearance of impropriety. The commenter also states that the rule permits the Center to specify new technical requirements in the CDL, but the statute does not authorize the Center to unilaterally specify the manner or layout of data submissions, such as provisions that a payor uses to determine what data to provide. The commenter states that the rule should clearly differentiate between data collection procedure guidance and types of data and/or manner of providing data.

Agency Response. The proposed rule appropriately addresses the responsibilities the Legislature placed with TDI while leaving discretion to the Center on the matters the Legislature left to it. TDI first notes that the statutes creating the APCD in Insurance Code Chapter 38 largely contemplate a supporting role by TDI to the Center. Section 38.404(a) begins with the requirement that TDI "collaborate with the center under this subchapter to aid in the center's establishment of the database." The section then focuses on what data the Center should and should not require to be submitted. Subsection (c) also focuses on the Center: "In determining the information a payor is required to submit to the center . . . , the center must consider . . . ." Subsection (c-1) then qualifies that "the center may not require a payor" to collect data that is not on a standard claim form, but "the center may require submission of such data if it is otherwise collected by the payor . . . ." Finally, subsection (d) states that each payor "shall submit the required data under Subsection (c) at the schedule and frequency determined by the center and adopted by the commissioner by rule." Then, in §38.409, the Legislature set out TDI's

rulemaking authority, requiring TDI to adopt rules "specifying the types of data a payor is required to provide to the center under Section 38.404." This does not require TDI to specify all aspects concerning the specific data that must be provided, but only the "types" of data. TDI's rule proposal does this by adopting the CDL with the agreement of the Center and by leaving future updates and clarifications of the CDL to the Center, with the limitation that TDI is not requiring payors to provide any additional data elements in future iterations of the CDL adopted by the Center unless they fall within both TDI's adopted version referenced in §21.5403 and within the scope of Chapter 38, Subchapter I.

It is also notable that §38.409 only requires TDI to adopt rules that specify the type of data a payor is "required" to provide the Center. The subchapter does not address the ability of TDI or the Center to permit payors to provide additional information that is not required, and it does not require TDI's rules to limit the types of data the APCD may collect from payors on a voluntary basis.

Aside from TDI's determination by rule of the categories of information that are required to be provided, the Center is given broad authority under the statute regarding the actual collection of the information. Section 38.403 provides that the stakeholder advisory group will assist the Center with "establishing and updating the standards, requirements, policies, and procedures relating to the collection" of the data. Section 38.404 requires that the Center "establish" and "update" its data collection procedures. While §38.409 does require TDI's rules to also address data submission schedules and provisions relating to "data submission," the Legislature clearly did not intend for every detail of data submission to be articulated by rule. TDI's rules provide an appropriate balance in TDI's support of the Center's mission.

Comments on §21.5405

Comment. A commenter states that they strongly support the proposed changes, which are extremely important updates that will permit the Texas APCD to better supplement Texas' wastewater monitoring program. The commenter also supports the continued ability of the Center to grant temporary exemptions and exceptions, which will enable the Center to work with carriers for the benefit of the public without impairing the affordability that may be offered by small plans. The commenter welcomes the elimination of submission by USB drive and secure courier, as no payors use those methods.

Agency Response. TDI appreciates the support.

Comment. A commenter supports the changes. While the commenter does not believe that it is necessary for the Center to report exceptions and extensions to TDI, the commenter is not concerned about the information that will be provided and has heard positive feedback from health plans about the Center's administration of the extension and exception processes.

Agency Response. TDI appreciates the support.

Comment. A commenter states that TDI lacks authority to grant exceptions or extensions from any submission requirements and requests clarification on why there is an ongoing need for exceptions or extensions. The commenter also states that the rule would permit the Center to grant extensions allowing payors to provide data less frequently than quarterly, as required by §38.409(a)(2)(A) and that there is no authority to permit an extension of a payor's first required reporting for up to 12 months.

Agency Response. TDI disagrees with the commenter's statement that TDI lacks statutory authority to grant exceptions and extensions. TDI notes that the Legislature granted TDI broad authority in Insurance Code §38.409 in 2021 to specify "the schedule, frequency, and manner in which a payor must provide data," while emphasizing that TDI's rules should be "reasonable and cost-effective for payors." While the Legislature amended the statutes in 2023 in HB 3414, it chose not to address rulemaking generally or any issues of exceptions and extensions.

Comment. A commenter objects to the rule allowing exceptions or extensions for payors of any size and notes that there is no description of what constitutes an unreasonable cost or burden relative to the public value or what factors would be considered. The commenter also says that the rule would authorize exceptions from any requirements not contained in the statute, but it is unclear whether the rule prevents the Center from granting exceptions for any requirement described by §38.404(c) or if it only prevents the Center from granting an exception for any requirement actually listed in the nonexclusive list because §38.404(c) requires submission of useful information, so all the data requirements are contained in it. The commenter also notes that, if data is not collected, the public value of the APCD's data could be reduced.

Agency Response. TDI's rule proposal does not substantively change the ability of the Center to grant exceptions and extensions set forth in the existing APCD rules that were adopted by TDI in June of 2022. The rule, as adopted, permits the Center to grant an exception from a requirement, but the Center may not grant an exception to a requirement contained in Chapter 38, Subchapter I. The Center would not be able to grant an exception to reporting of the data elements listed in §38.404(c). While the Center could grant an extension to the reporting of any data if immediate compliance would impose an unreasonable cost or burden relative to the public value, the data would nevertheless have to be reported once the extension expires. This flexibility ensures that the data required by the Legislature is provided, while also complying with the statutory mandate to adopt rules that are reasonable and cost-effective for payors. For instance, it might be reasonable under this standard to grant a payor of any size an extension if its computer operations were impacted by a severe weather event.

Comment. A commenter objects to the 12-month extension available to small payors with fewer than 10,000 covered lives and suggests narrowing the threshold to payors with fewer than 1,000 lives. The commenter also asks TDI to clarify whether, if a payor has multiple plans and one is less than 10,000, then would the payor qualify entirely for an extension or just the one plan.

Agency Response. TDI's proposal does not change the Center's ability under the existing rule to grant a year's extension to a new payor with under 10,000 lives. TDI declines to narrow the threshold, as this extension continues to provide important flexibility for new payors. Smaller payors entering the market may need additional time to create the computer processes to properly submit the required data. The threshold for this extension looks at enrollment at the issuer level, such that enrollment in all plans subject to reporting are counted towards the 10,000 life threshold. The rule as adopted clarifies that a payor "that registers with the Center and demonstrates that it has fewer than 10,000 covered lives in plans subject to [the] subchapter qualifies for an extension." TDI notes that the most recent APCD biennial report (https://sph.uth.edu/research/centers/center-for-health-care-data/assets/tx-apcd/TX-APCD-Biennial%20Report-2022.pdf) from September 2022, prior to the APCD receiving any data, estimated that the APCD would

receive data on almost 15 million individuals. In this context, granting a temporary extension for a plan with under 10,000 lives will not materially impact the quality of the APCD's data.

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5401 and §§21.5403 - 21.5406 under Insurance Code §38.409 and §36.001.

Insurance Code §38.409 provides that the commissioner adopt rules specifying the types of data a payor is required to provide to the Center and also specifying the schedule, frequency, and manner in which a payor must provide data to the Center. It also requires the commissioner to adopt rules establishing oversight and enforcement mechanisms to ensure the submission of data.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.5403. Texas APCD Common Data Layout and Submission Guide.

(a) Payors must submit complete and accurate data files for all applicable plans as required by this subchapter and consistent with the data elements and technical requirements found in the Texas APCD CDL v3.0.1. The Texas APCD CDL v3.0.1 is available on the Center's website.

(b) If the Center adopts subsequent versions of the Texas APCD CDL, payors must submit data consistent with the requirements of each subsequent version, but this subchapter does not require the submission by payors of additional data elements unless they are both required in the Texas APCD CDL v3.0.1 and within the scope of Insurance Code Chapter 38, Subchapter I, concerning Texas All Payor Claims Database. The Center will communicate to payors an implementation deadline for use of an updated version of the Texas APCD CDL that is not less than 90 days after the updated version has been published by the Center in its final form.

(c) The Center will establish, evaluate, and update data collection procedures within a submission guide, consistent with Insurance Code §38.404(f), concerning Establishment and Administration of Database. Notwithstanding subsection (b) of this section, in the event of an inconsistency between this subchapter and the submission guide, this subchapter controls.

§21.5405. Timing and Frequency of Data Submissions.

(a) Payors must submit monthly data files according to the following schedule:

(1) January data must be submitted no later than March 7 of that year;

(2) February data must be submitted no later than April 7 of that year;

(3) March data must be submitted no later than May 7 of that year;

(4) April data must be submitted no later than June 7 of that year;

(5) May data must be submitted no later than July 7 of that year;

(6) June data must be submitted no later than August 7 of that year;

(7) July data must be submitted no later than September 7 of that year;

(8) August data must be submitted no later than October 7 of that year;

(9) September data must be submitted no later than November 7 of that year;

(10) October data must be submitted no later than December 7 of that year;

(11) November data must be submitted no later than January 7 of the following year; and

(12) December data must be submitted no later than February 7 of the following year.

(b) Payors must submit test data files as provided in the submission guide:

(1) after registering for the first time with the Center as a payor that is subject to reporting under this subchapter;

(2) after a merger, acquisition, divestiture, or other change of ownership that requires an update to a payor's registration; and

(3) before the effective date of a new version of the Texas APCD CDL, consistent with §21.5403 of this title (relating to Texas APCD Common Data Layout and Submission Guide) that contains additional data elements.

(c) A payor may request a temporary exception or extension of time from complying with one or more requirements of this subchapter or the Texas APCD CDL by submitting a request to the Center, as provided in the submission guide posted on https://go.uth.edu/DSG, no less than 15 calendar days before the date the payor is otherwise required to comply with the requirement.

(1) The Center may grant an exception or extension for good cause for not more than 12 consecutive months, if the payor demonstrates that compliance would impose an unreasonable cost or burden relative to the public value that would be gained from full compliance. An exception may not be granted from any requirement contained in Insurance Code Chapter 38, Subchapter I, concerning Texas All Payor Claims Database.

(2) A payor that registers with the Center and demonstrates that it has fewer than 10,000 covered lives in plans subject to this subchapter qualifies for an extension under this subsection for the payor's first required reporting. The Center may grant an extension for new payors for not more than 12 consecutive months.

(3) The Center may request additional information from a payor in order to make a determination on an exception or extension request. A request for additional information must be in writing and must be submitted to the payor within 14 calendar days from the date the payor's request is received. The deadline for data submission is tolled while the Center makes a determination on an exception or extension request.

(4) A request for an exception or extension that is neither accepted nor rejected by the Center within 14 calendar days from the date the payor's request is received will be deemed accepted. If the Center has requested additional information from a payor under paragraph (3) of this subsection, the 14-day timeline begins the day after the payor submits the information. If a payor does not respond to or fails to provide the Center with additional information as requested, the payor's request for an exception or extension may be deemed withdrawn by the Center at the end of the 14-day period.

(5) In order to assist TDI's oversight and enforcement required by Insurance Code §38.409, the Center will provide TDI on or before July 1st of each year for the prior year:

(A) the names of payors that timely reported data;

(B) information about payors that did not report data and either requested an exception or extension that the Center did not grant or otherwise failed to demonstrate an exemption from reporting under this subchapter;

(C) information about payors that obtained exceptions and extensions, including the nature of the exceptions and amount of extensions granted;

(D) information about payors that failed to report timely without obtaining an exception or extension, including the filing due dates and the dates of actual filing; and

(E) information about payors that otherwise failed to materially comply with the requirements of Insurance Code Chapter 38, Subchapter I, or this subchapter.

(d) The Center will assess each data submission to ensure the data files are complete, accurate, and correctly formatted.

(e) The Center will communicate receipt of data within 14 calendar days, inform the payor of the data quality assessments, and specify any required data corrections and resubmissions.

(f) Payors must provide reasonable follow-up information requested by the Center, limited to ensuring that the payor submitted complete and correct information.

(g) Upon receipt of a resubmission request, the payor must respond within 14 calendar days with either a revised and corrected data file or an extension request.

(h) If a payor fails to submit required data or fails to correct submissions rejected due to errors or omissions, the Center will provide written notice to the payor. If the payor fails to provide the required information within 30 calendar days following receipt of the written notice, the Center will notify the department of the failure to report. The department may pursue compliance with this subchapter via any appropriate corrective action, sanction, or penalty that is within the authority of the department.

(i) The reporting schedule under subsection (a) of this section applies to monthly data submissions due on or after March 7, 2025, containing data for months beginning January 1, 2025. Payors must submit data for November and December 2024 at the same time as January 2025 data.

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

Filed with the Office of the Secretary of State on November 8, 2024.

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Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: November 28, 2024
Proposal publication date: August 16, 2024
For further information, please call: (512) 676-6555

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §155.15

The School Land Board (Board) is adopting amendments to §155.15 relating to rent and fees for residential, commercial, and industrial activities on coastal public lands. The amendments include changes to the text of §155.15 and to the related graphics in section 155.15(b)(1)(C)(i), 155.15(b)(1)(C)(ii), 155.15(b)(1)(C)(iii), and 155.15(b)(1)(C)(iv). The amendments were published in the June 14, 2024, edition of the *Texas Register* (49 TexReg 4418). No comments were received, and the text is being adopted as previously published, without changes.

BACKGROUND AND JUSTIFICATION

Under Texas Natural Resources Code (TNRC) Chapter 33, the Board has the authority to grant certain interests in coastal public land, including leases for public purposes, easements connected with littoral ownership, cabin permits, and other interests for any purpose that the Board determines is in the best interest of the State. The Board may also prescribe fees and adopt rules for granting leases, easements, permits, and other interests in or rights to use coastal public land. Leases and easements may authorize structures such as breakwaters, jetties, and piers, as well as for open encumbrances, dredging, and fill placement.

Currently, the rent and fees for many coastal easements and leases issued by the Board are tied to the appraised market value of the adjacent littoral property. Recently, market values have increased at an unprecedented rate, resulting in rate increases that are unreasonable and often inconsistent with market conditions. The Board is adopting these amendments due to the rapid increase in real estate appraised values during the past five years. The amendments will ensure that rent and fees on the Texas coast are reasonable and more accurately reflect market value. In addition, some residential rent and fee rates are being revised in consideration of the environmental benefits of certain structures.

Rent and fees for residential coastal easements and leases are set based on the specifications in the graphics attached to §155.15 in subsections §155.15(b)(1)(C)(i), §155.15(b)(1)(C)(ii), and §155.15(b)(1)(C)(iii). The Board is adopting a decrease in the annual rent for breakwaters, jetties, and groins from 20 cents per square foot to 3 cents per square foot. The rent decrease is being adopted in consideration of the benefit these structures provide in the coastal environment, including the creation of habitat for small fish, crabs, and other animals. They also provide a hard substrate for oysters, barnacles, mussels, and other sessile animals. In addition, when breakwaters are a component of a living shoreline, which is an alternative to traditional shoreline armoring that incorporates nature-based features, no rent is assessed. Reducing the rents for all breakwaters is appropriate since they serve similar environmentally beneficial functions even if they are not part of a living shoreline. In addition, reducing rent may encourage more of these structures, adding environmental protection and coastal resiliency, eventually increasing revenue to the PSF.

The Board is also adopting an amendment that adjusts the fees for fill for residential use to address the recent unreasonably high rates caused by the rising assessed value of adjacent littoral property. This amendment will result in residential fill fees of either $0.10 per square foot, or an amount based on the fill formula, whichever is greater, as the baseline for annual rent,

not to exceed $1.00 per square foot. Annual rent below $1.00 per square foot will escalate in accordance with the terms currently in the rule, not to exceed $1.00 per square foot. This rate also aligns with the new rate for commercial fill, which will start at a $1.00 per square foot and increase based on the Consumer Price Index for All Urban Consumers (CPI-U). In addition, the phrase "no minimum rent" is being changed to "no rent" for clarity in all of the graphics.

The Board is also adopting changes to the Commercial and Industrial Activity rent and fees graphic that include the elimination of the basin formula, which ties rental fees to the assessed value of the adjacent littoral property. In its place, the Board adopts a component formula, which charges a separate rental fee to each component of the leased premises, standardizing the fees for most commercial leases and mitigating the impact of rising property values.

In addition, the Board is adopting an amendment that would require an update to the published fee schedule every five years. The fee schedule update would be based on the Consumer Price Index for All Urban Consumers (CPI-U). Rent and fees for Commercial and Industrial Activity will be based on the updated fee schedule in effect at the time of the execution of a new agreement or a renewal. The adopted changes will result in reduced revenue for the Permanent School Fund (PSF) initially; however, updating the fee schedule based on the CPI-U every five years ensures fees will adjust to inflation over time, stabilizing and potentially increasing long-term revenue. Standardizing fee calculations and aligning them with market conditions also attracts consistent lessees, enhancing occupancy rates and lease income. The lower initial rent benefits the public by making coastal commercial leases more affordable, promoting economic activity and job creation, and supporting local economies. Eliminating the basin formula and standardizing fee structures makes the rent and fees for commercial industries more predictable and transparent.

Other adopted adjustments aim to ensure consistent rates across all coastal commercial leases. These include the removal of the Submerged Land Discount, which is linked to the Basin Formula, setting a uniform fill rate at $1.00 per square foot, and decreasing the fee for Clear Lake Marina from $4.00 to $3.00 per linear foot of boatslip to align with the rates charged in other coastal counties. The adopted amendment standardizes fee structures across different uses of submerged lands and aligns them with market conditions and regulatory standards, thereby ensuring consistent, predictable, and transparent pricing for coastal commercial leases.

The graphic attached to §155.15(b)(1)(C)(iv) lists the fees for commercial and industrial activity. The adopted amended graphic has been edited with the above changes and also to reflect a previously implemented rate increase from $0.20 per square foot to $0.32 per square foot of proposed fill. This increase was approved in 2022 but was inadvertently omitted from the graphic due to a scrivener's error. Footnote 3 is also being updated to remove language about whether existing fill was placed under the authority of a permit since it is no longer applicable. The phrase "no minimum rent" is being changed to "no rent" for clarity in all of the attached graphics. The rule is also being revised to make the text consistent with the amendments to the rent and fees graphics and to make minor administrative, non-substantive edits to the text of the rule.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

The amendments to §155.15 are adopted under TNRC §33.063 relating to the Board's authority to charge fees for leases, easements, permits, and other interests in or rights to use coastal public land, and §33.064 providing that the Board may adopt rules necessary to carry out the provisions of TNRC Chapter 33. TNRC §§33.101-33.136 are affected by the amendments. The adopted amendments affect no other code, article, or statute. The Board certifies that the amendments have been reviewed by legal counsel and found to be within the Board's authority to adopt.

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

Filed with the Office of the Secretary of State on November 6, 2024.

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Jennifer Jones
Chief Clerk, Deputy Land Commissioner
School Land Board
Effective date: November 26, 2024
Proposal publication date: June 14, 2024
For further information, please call: (512) 475-1859

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code §§363.2, 363.12, 363.13, 363.14, 363.17, 363.19, 363.33, and 363.41.

Sections 363.2, 363.12, 363.13, 363.14, 363.17, 363.19, 363.33, and 363.41 are adopted without changes as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6709) and will not be republished. A correction of error for Section 363.33(a)(3) was published in the In Addition section of the September 27, 2024, issue of the *Texas Register* (49 TexReg 7995).

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

The adopted amendments to 31 TAC Chapter 363, containing the agency's rules related to the Financial Assistance Programs, implements legislative changes from Senate Bill (SB) 28, SB 30, and SJR 75 by modernizing the language, providing consistency with TWDB's general financial assistance programs' rules, and clarifying requirements for borrowers for the water loan assistance program.

The adopted amendments implement legislation and clarify the method in which interest rates will be set for loans when the source of funding is other than bond proceeds.

In addition, the 88th Texas Legislature enacted House Bill 1565, amending Tex. Water Code §17.276(d), Action on Application, to add new subsections relating to TWDB's review and approval or

disapproval plans and specifications for all wastewater projects funded by the TWDB. The new legislation allows the Board to adopt, by rule, an alternative standard of review and approval of design criteria for plans and specifications for sewage collection, treatment, and disposal systems.

This rulemaking includes substantive and non-substantive changes and updates to make this chapter more consistent with TWDB rules and to clarify requirements for TWDB borrowers.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Section 363.2. Definitions of Terms.

The adopted amendment adds the definition of community water system consistent with 30 TAC Chapter 290, Subchapter D.

The adopted amendment adds the definition of rural political subdivision to reflect the amendment of §365.2(6) and includes as a rural political subdivision those municipalities with a population of 10,000 or less.

The adopted amendment adds the definition of risk-based review to implement HB 1565. The adopted amendment allows the use of different standards of review and approval of design criteria for plans and specifications for sewage collection, treatment, and disposal systems.

The adopted amendment adds the definition WIF for the water infrastructure fund for Texas.

The adopted amendment adds the definition WLAF for the water loan assistance fund for Texas.

The remaining sections in §363.2 are renumbered to accommodate the addition of §363.32(9).

Section 363.12. General, Legal, and Fiscal Information.

The adopted amendment updates the financial requirements for applicants receiving funding to make the requirements consistent with other TWDB rules.

Section 363.13. Preliminary Engineering Feasibility Report.

The adopted amendment adds authority for the board to waive or modify the requirements of the preliminary engineering feasibility report for programs or categories of applications for the agency's financial assistance programs.

Section 363.14. Environmental Assessment.

The adopted amendment adds authority for the board to waive or modify the requirements of the environmental assessment for programs or categories of applications for the agency's financial assistance programs.

Section 363.17. Grants from Water Loan Assistance Fund.

The adopted amendment adds water conservation projects as eligible projects to receive grant funds from the water loan assistance fund and adds the definition of conservation for those projects.

The adopted amendment updates outdated references to other titles and sections of the TAC and modernizes the rule language.

Section 363.19. Priority of Projects.

The adopted amendment clarifies that this section only applies to water infrastructure fund projects.

Section 363.33. Interest Rates for Loans and Purchase of Board's Interest in State Participation and Board Participation Projects.

The adopted amendments update the title of the rule, reflecting that the rule is for setting interest rates for certain of the Board's state financial assistance programs, modernize the rule language, and update how the Board sets interest rates for financial assistance to better align with the process used for other programs offered by the Board.

Section 363.41. Engineering Design Approvals.

The adopted amendment seeks to authorize the risk-based review method of review of plans, specifications, and related documents for certain sewage collection, treatment, and disposal system projects that are compliant with existing state statutes and good public health engineering practices pursuant to §17.276(d).

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify eligibility, requirements, and methodology for TWDB borrowers. Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §§6.101 and 16.053. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to require additional information related to large water supply projects in the regional water plans. The rule will substantially advance this stated purpose by requiring the regional water planning groups to include new information related to the implementation status

of large water management strategies that are listed in the regional water plan.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation as required by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The following comments were received from the Lago Vista, Texas community.

Regarding

§363.12. General, Legal, and Fiscal Information.

Comment

The Lago Vista, Texas community commented that small communities could be burdened by the lack of resources and costs of preparing a full audit by a CPA for application submissions for TWDB funding. The Lago Vista, Texas community requested an alternative approval method or flexibility in audit submission requirements for small communities to reduce potential burdens for small communities.

Response

TWDB appreciates this comment. The amendment updates the financial requirement for applicants to make the requirements consistent with other TWDB rules. The TWDB notes that in many cases an audit is already required by Chapter 103, Local Government Code, and 31 TAC §363.12(x) provides for an executive administrator approved alternative method of establishing a reliable accounting of the financial records of the applicant that could address this concern for some applicants. No changes were made in response to this comment.

Comment

The Lago Vista, Texas community commented that TWDB's rules propose a complicated application process that disproportionately affects small communities.

Response

TWDB appreciates this comment. The amendment updates the financial requirements for applicants receiving funding to make the requirements consistent with other TWDB rules. No changes were made in response to this comment.

Regarding

§363.13. Preliminary Engineering Feasibility Report.

Comment

The Lago Vista, Texas community commented that the application process disproportionately affects small communities with complex requirements such as detailed engineering reports can be a significant hurdle for small municipalities with limited staff and resources. The Lago Vista, Texas community commented that creating a specific section within these rules that streamlines support for such communities would enhance participation in these vital programs.

Response

TWDB appreciates this comment. No changes were made in response to this comment.

Comment

The Lago Vista, Texas community commented that the TWDB's rules allow the TWDB Board to waive or modify requirements without clear criteria for when waivers or modifications might be granted causing uncertainty and inconsistency in decision-making. The Lago Vista, Texas community commented that the TWDB should provide clear criteria for when and under what conditions the Board will waive or modify requirements to ensure fairness and transparency.

Response

TWDB appreciates this comment. The amendment provides authority for the Board to waive or modify the requirements of the preliminary engineering feasibility report for the agency's financial assistance programs to assist programs or categories of applications in the application process. Because the board can only grant a waiver of its rules in an open meeting transparency is not an issue and members of the public would have the opportunity to comment on the waiver in the public meeting. No changes were made in response to this comment.

Regarding

§363.14. Environmental Assessment.

Comment

The Lago Vista, Texas community commented that the TWDB's rules allow the TWDB Board to waive or modify requirements without clear criteria for when waivers or modifications might be granted causing uncertainty and providing an argument for some of an unfair process if a waiver or modification leads to one applicant receiving assistance over another.

Response

TWDB appreciates this comment. The amendment provides authority for the Board to waive or modify the requirements of the environmental assessment for the agency's financial assistance programs to assist programs or categories of applications in the application process. Because the board can only grant a waiver of its rules in an open meeting transparency is not an issue and members of the public would have the opportunity to comment on the waiver in the public meeting. No changes were made in response to this comment.

Comment

The Lago Vista, Texas community commented that the application process disproportionately affects small communities with complex requirements such as environmental assessments can be a significant hurdle for small municipalities with limited staff and resources.

Response

TWDB appreciates this comment. No changes were made in response to this comment.

Regarding

§363.41. Engineering Design Approvals.

Comment

The Lago Vista, Texas community commented that the TWDB's rules allow the TWDB Board to waive or modify requirements without clear criteria for when waivers or modifications might be granted causing uncertainty and providing an argument for some of an unfair process if a waiver or modification leads to one applicant receiving assistance over another.

Response

TWDB appreciates this comment. Because the board can only grant a waiver of its rules in an open meeting transparency is not an issue and members of the public would have the opportunity to comment on the waiver in the public meeting. No changes were made in response to this comment.

Comment

The Lago Vista, Texas community commented that the risk-based review process requires clarification on the definition of risk, precisely how risk will be assessed, and whether smaller, lower-risk projects in communities will benefit from streamlined approvals.

Response

The amendment provides authority for the Executive Administrator to use the risk-based review method of review of plans, specifications, and related documents for certain sewage collection, treatment, and disposal system projects that are compliant with existing state statutes and good public health engineering practices pursuant to §17.276(d). The amendment outlines when the Executive Administrator may perform a risk-based review and the requirements for designs that qualify for a risk-based review. Guidance can be found in the staff issued memo titled "Alternate Standards for Review and Approval of P&S for WW Projects" dated December 8, 2023. No changes were made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.2

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapters 15, 16, and 17.

This rulemaking affects Water Code, Chapters 15, 16, and 17.

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

Filed with the Office of the Secretary of State on November 6, 2024.

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Ashley Harden
General Counsel
Texas Water Development Board
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Proposal publication date: August 30, 2024
For further information, please call: (512) 475-1673

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DIVISION 2. GENERAL APPLICATION PROCEDURES

31 TAC §§363.12 - 363.14, 363.17, 363.19

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendments are adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapters 15, 16, and 17.

This rulemaking affects Water Code, Chapters 15, 16, and 17.

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

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General Counsel
Texas Water Development Board
Effective date: November 26, 2024
Proposal publication date: August 30, 2024
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DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.33

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendments are adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapters 15, 16, and 17.

This rulemaking affects Water Code, Chapters 15, 16, and 17.

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

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Ashley Harden
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Texas Water Development Board
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DIVISION 4. PREREQUISITES TO RELEASE OF STATE FUNDS

31 TAC §363.41

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendments are adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapters 15, 16, and 17.

This rulemaking affects Water Code, Chapters 15, 16, and 17.

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

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND
SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §375.82

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code (TAC) §375.82. The proposal is adopted without changes as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6718). The rule will not be republished.

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

The 88th Texas Legislature enacted House Bill 1565, amending Tex. Water Code §17.276(d), Action on Application, to add new subsections relating to TWDB's review and approval or disapproval of plans and specifications for all wastewater projects funded by the TWDB. The new legislation allows the Board to adopt, by rule, an alternative standard of review and approval of design criteria for plans and specifications for sewage collection, treatment, and disposal systems.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

§375.82. Contract Documents: Review and Approval.

The amendment authorizes the risk-based review method of review of plans, specifications, and related documents for certain sewage collection, treatment, and disposal system projects that are compliant with existing state statutes and good public health engineering practices pursuant to §17.276(d).

Remaining subsections are renumbered to accommodate the new provision.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify eligibility, requirements, and methodology for TWDB borrowers.

Even if the adopted rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §17.956. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify eligibility, requirements, and methodology for TWDB borrowers. The adopted rules would substantially advance this stated purpose by aligning the rule's definitions and permissible use of funds with Water Code, Chapter 17, clarifying how the risk-based review analysis will be used for TWDB borrowers, and providing greater consistency between TWDB program rules.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this

is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that implements the applicable financial assistance programs, including the risk-based review.

Nevertheless, the TWDB further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule is merely an amendment to conform with statutory changes and clarify program methodology. It does not require regulatory compliance by any persons or political subdivisions. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The public comment period ended September 30, 2024. No comments were received, and no changes were made.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §17.276.

This rulemaking affects Water Code, Chapter 17.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4037

The Comptroller of Public Accounts adopts the repeal of §9.4037, concerning the use of electronic communications for transmittal of property tax information, without changes to the proposed text as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8067). The rule will not be republished. The comptroller repeals existing §9.4037 to replace it with new §9.4037. The repeal of §9.4037 will be effective the date the new §9.4037 takes effect.

The comptroller did not receive any comments regarding adoption of the repeal.

This repeal is adopted under Tax Code, §1.085, which provides the comptroller with the authority to prescribe a form, to adopt rules relating to acceptable media, formats, content, and methods for the electronic delivery of communications under Tax Code, Title 1, and to adopt guidelines for tax officials to implement the form and rules.

The repeal implements Tax Code, §1.085.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405404
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: November 27, 2024
Proposal publication date: October 4, 2024
For further information, please call: (512) 475-2220

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34 TAC §9.4037

The Comptroller of Public Accounts adopts new §9.4037, concerning electronic delivery of communications between tax officials and property owners, without changes to the proposed text as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8068). The rule will not be republished. The new section replaces existing §9.4037, concerning use of electronic communications for transmittal of property tax information, which the comptroller is repealing. New §9.4037 implements House Bill 1228, 88th Legislature, R.S., 2023, which amended Tax Code, §1.085 (Electronic Delivery of Communication), allowing a property owner or person designated by the property owner to elect to exchange communications with a tax official electronically.

Subsection (a) describes when electronic communications are required.

Subsection (b) lists acceptable methods and formats for electronic communications.

Subsection (c) describes the required form for electing electronic communications.

Subsection (d) describes the guidelines for implementation of this section by tax officials.

The comptroller did not receive any comments regarding adoption of the new section.

This section is adopted under Tax Code, §1.085 (Electronic Delivery of Communication), which provides the comptroller with the authority to prescribe by rule acceptable media, formats, content, and methods for the electronic delivery of communications, adopt guidelines for implementation and prescribe a form. The form and guidelines were not adopted by reference, but are available on the comptroller's website at https://comptroller.texas.gov/taxes/property-tax/.

This section implements Tax Code, §1.085 (Electronic Delivery of Communication).

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

Filed with the Office of the Secretary of State on November 7, 2024.

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS
SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §341.306

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §341.306, Providing Information to TJJD, without changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6723). The new rule will not be republished.

JUSTIFICATION

The new §341.306 requires juvenile probation departments to annually submit to TJJD information on gaps in resources, programs, and services for juveniles that, had they been available, might have allowed the juveniles to remain in the community rather than being committed to TJJD.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The new section is adopted under §203.0185, Human Resources Code (as added by SB 1727, 88th Legislature, Regular Session), which requires the board to adopt rules requiring juvenile probation departments to report to TJJD relevant information on gaps in resources, programs, and services that, if available in the community, may allow children to be kept closer to home as an alternative to commitment to TJJD.

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

Filed with the Office of the Secretary of State on November 5, 2024.

TRD-202405326
Jana Jones
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Texas Juvenile Justice Department
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For further information, please call: (512) 490-7278

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CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES
SUBCHAPTER B. TREATMENT
DIVISION 1. PROGRAM PLANNING

37 TAC §380.8703

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.8703, Rehabilitation Program Stage Requirements and Assessment, without changes to the proposed text as published in the September 13, 2024, issue of the *Texas Register* (49 TexReg 7314). The amended rule will not be republished.

JUSTIFICATION

The amended §380.8703: 1) adds that a youth's stage in the rehabilitation program may be lowered when the youth has been unresponsive to intervention attempts over an extended period of time and the youth's current stage does not reflect the youth's current progress; 2) for Stage 1, adds that youth are expected to review their own unique vulnerabilities with the case manager; 3) for Stage 2, clarifies that the goal is for youth to become *interpersonally* successful in the future; 4) for Stage 2, adds that youth are expected to identify a long-term success plan; 5) for Stage 2, clarifies that youth are expected to explore patterns in thoughts, feelings, attitudes, beliefs and *vulnerabilities* (rather than values); 6) for Stage 2, removes requirements for youth to make progress toward personalized goals, to present and discuss progress with the treatment team, and to complete case plan objectives; 7) for Stage 4, adds that completing case plan objectives includes the ability to articulate plans for successful community reentry; 8) for all stages, clarifies that youth are expected to participate *safely*, (rather than just participate) in various areas of programming; 9) removes the requirement for youth to receive a stage assessment based on current behavior and progress upon being returned to a high- or medium-restriction facility for disciplinary reasons or upon receiving an additional commitment, and adds that such youth will be placed on the most appropriate stage as specified by written procedure manuals; and 10) clarifies that one of the situations in which a youth's stage may be lowered is when the youth *receives an additional commitment* (rather than being recommitted).

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

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CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS
SUBCHAPTER B. INTERACTION WITH THE PUBLIC

37 TAC §385.8103

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §385.8103, Board Proceedings, without changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6724). The new rule will not be republished.

JUSTIFICATION

The new §385.8103 establishes provisions relating to the Texas Juvenile Justice Board's organization, powers and responsibilities, and meetings.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The new section is adopted under §202.008, Human Resources Code, which requires the board to adopt rules regulating the board's proceedings.

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

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