TEXAS REGISTER

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THE GOVERNOR

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

Appointments

Appointments for December 14, 2023

Appointed to the State Commission on Judicial Conduct for a term to expire November 19, 2029, Derek M. Cohen, Ph.D. of Austin, Texas (replacing Valerie E. Ertz of Dallas, whose term expired).

Appointed to the Texas State Board of Social Worker Examiners for a term to expire February 1, 2027, Korina "Kori" Delapeña of Jonestown, Texas (replacing Benny W. "Ben" Morris of Cleburne, who resigned).

Appointed to the Texas State Board of Social Worker Examiners for a term to expire February 1, 2029, Ryan C. Dollinger of Plano, Texas (replacing Martha R. Mosier of College Station, whose term expired).

Appointed to the Texas State Board of Social Worker Examiners for a term to expire February 1, 2029, Quida J. Pryor of Sugar Land, Texas (replacing Megan M. Graham of Houston, whose term expired).

Appointed to the Texas State Board of Social Worker Examiners for a term to expire February 1, 2029, Lea Ann Tatum of Palestine, Texas (replacing Audrey J. Ramsbacher of San Antonio, whose term expired).

Appointments for December 15, 2023

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2027, Michael A. Ebbeler, Jr. of Houston, Texas (replacing Lauren C. Taylor of Denton, who resigned).

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2027, Eva M. Read-Warden of Bryan, Texas (replacing Robert S. "Bob" Wetmore of Austin, who resigned).

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2029, Justin S. Hiles of Dallas, Texas (replacing Debra J. Dockery of San Antonio, whose term expired).

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2029, Rosa G. Salazar of Lubbock, Texas (Ms. Salazar is being reappointed).

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2029, Joyce J. Smith of Burnet, Texas (Ms. Smith is being reappointed).

Appointments for December 18, 2023

Appointed to the Texas Board of Professional Engineers and Land Surveyors for a term to expire September 26, 2029, Ademola "Peter" Adejokun of Arlington, Texas (Mr. Adejokun is being reappointed).

Appointed to the Texas Board of Professional Engineers and Land Surveyors for a term to expire September 26, 2029, Roberto Moreno of El Paso, Texas (replacing Rolando R. Rubiano of Harlingen, whose term expired).

Appointed to the Texas Board of Professional Engineers and Land Surveyors for a term to expire September 26, 2029, Kiran K. Shah of Richmond, Texas (Mr. Shah is being reappointed).

Appointed to the Credit Union Commission for a term to expire February 15, 2027, Cody R. Huggins of Georgetown, Texas (replacing Yusuf E. Farran of El Paso, who resigned).

Appointed to the Credit Union Commission for a term to expire February 15, 2029, Becky L. Ames of Beaumont, Texas (replacing Sherri B Merket of Midland, whose term expired).

Appointed to the Credit Union Commission for a term to expire February 15, 2029, Karyn C. Brownlee of Coppell, Texas (Ms. Brownlee is being reappointed).

Appointed to the Credit Union Commission for a term to expire February 15, 2029, James L. "Jim" Minge of Mansfield, Texas (Mr. Minge is being reappointed).

Appointed as State Board of Education Chair for a term to expire December 17, 2025, Aaron G. Kinsey of Midland, Texas (replacing Keven Ellis, D.C. of Lufkin, whose term expired).

Appointments for December 19, 2023

Appointed to the Broadband Development Office Board of Advisors for a term to expire February 1, 2025, Joseph E. "Joe" Cosgrove, Jr. of Austin, Texas (replacing Jennifer K. Harris of Austin, whose term expired).

Pursuant to SB 1727, 88th Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2025, Cloyce J. "Joe" Barton, III, Ph.D. of Canyon, Texas.

Pursuant to SB 1727, 88th Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2025, Stephanie M. House of Liberty Hill, Texas.

Pursuant to SB 1727, 88th Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2025, David "Scott" Matthew of Georgetown, Texas.

Pursuant to SB 1727, 88th Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2027, William W. "Will" Durham of Huntsville, Texas.

Pursuant to SB 1727, 88th Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2027, Luis Leija of Port Lavaca, Texas.

Pursuant to SB 1727, 88th Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2027, Manuel R. "Manny" Ramirez of Fort Worth, Texas.

Pursuant to SB 1727, 88th Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2029, Edeska Barnes, Jr. of Jasper, Texas.

Pursuant to SB 1727, 88th Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2029, Jerry D. Bullard of Colleyville, Texas.

Pursuant to SB 1727, 88th Legislature, Regular Session, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2029, Cynthia "Cyndi" Wheless of McKinney, Texas.

Greg Abbott, Governor

TRD-202304916

♦ ♦ ♦

Proclamation 41-4087

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Bee, Brewster, Brooks, Caldwell, Cameron, Chambers, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hidalgo, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala Counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 19th day of December, 2023.

Greg Abbott, Governor

TRD-202304917

♦ ♦ ♦

Proclamation 41-4088

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 11, 2023, certifying that wildfires that began on July 24, 2023, posed an imminent threat of widespread or severe damage, injury, or loss of life or property in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same wildfire conditions continue to exist in these and other counties in Texas, with the exception of Collin, Jack, Jasper, Newton, Refugio, and Webb Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Armstrong, Bailey, Baylor, Borden, Brewster, Briscoe, Brooks, Cameron, Carson, Castro, Cochran, Coke, Crockett, Culberson, Dimmit, Donley, Duval, Eastland, Ector, El Paso, Fisher, Garza, Glasscock, Gray, Hale, Hall, Haskell, Hemphill, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kenedy, King, Kinney, Knox, La Salle, Lamb, Lipscomb, Martin, Maverick, Medina, Mitchell, Moore, Nolan, Oldham, Potter, Presidio, Reagan, Reeves, Roberts, San Patricio, Scurry, Sherman, Starr, Stonewall, Terrell, Throckmorton, Upton, Val Verde, Ward, Wheeler, Wilbarger, Willacy, Winkler, Wise, Zapata, and Zavala Counties.

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

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 19th day of December, 2023.

Greg Abbott, Governor

TRD-202304918

♦ ♦ ♦

Proclamation 41-4089

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 8, 2022, as amended and renewed in a number of subsequent proclamations, certifying that exceptional drought conditions posed a threat of imminent disaster in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions continue to exist in these and other counties in Texas, with the exception of Austin, Bee, Brazos, Callahan, Coke, Colorado, Crane, DeWitt, Ector, Fayette, Fort Bend, Goliad, Hamilton, Jackson, Lee, Leon, Liberty, Live Oak, Loving, Madison, Mason, Matagorda, Midland, Mills, Palo Pinto, Reeves, Refugio, San Saba, Sutton, Victoria, Waller, Washington, and Winkler Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Atascosa, Bandera, Bastrop, Bell, Bexar, Blanco, Burnet, Caldwell, Calhoun, Cameron, Chambers, Childress, Comal, Comanche, Coryell, Culberson, Eastland, El Paso, Erath, Gillespie, Gonzales, Guadalupe, Hardeman, Hardin, Hays, Hidalgo, Hudspeth, Irion, Jasper, Jeff Davis, Jefferson, Karnes, Kendall, Kerr, Lampasas, Lavaca, Limestone, Llano, Maverick, McLennan, Medina, Newton, Orange, Parker,

Presidio, Sabine, San Augustine, Shelby, Tom Green, Travis, Tyler, Uvalde, Wharton, Wichita, Wilbarger, Willacy, Williamson, and Wilson Counties.

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

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

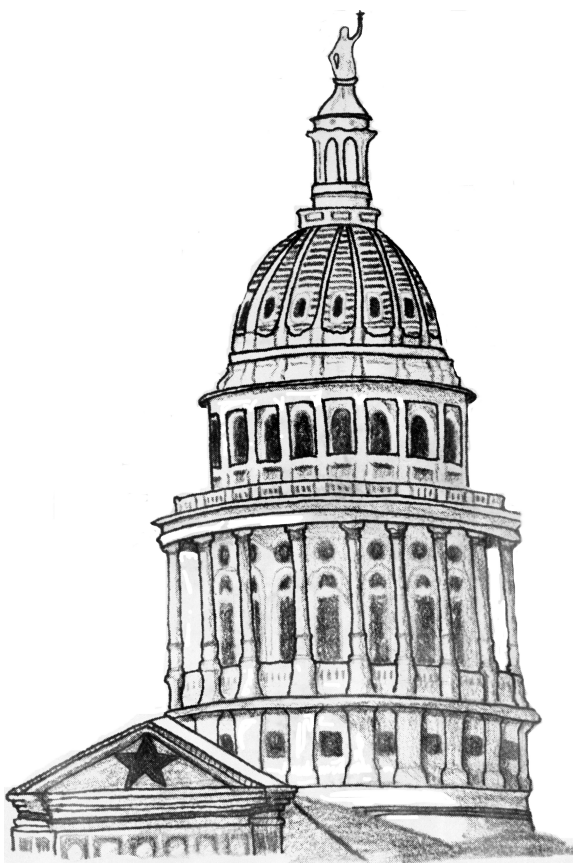
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 19th day of December, 2023.

Greg Abbott, Governor

TRD-202304919

♦ ♦ ♦



THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0524-KP

Requestor:

Mr. Tristan Marquez

Ector County Auditor

1010 East 8th Street, Room 121

Odessa, Texas 79761

Re: Request for an attorney general opinion regarding the legality of certain actions of the Ector County Utility District Board of Directors (RQ-0524-KP)

Briefs requested by January 17, 2024

RQ-0525-KP

Requestor:

The Honorable Charles Schwertner

Chair, Senate Committee on Business & Commerce

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether low-THC cannabis inventory may be transported between department-approved locations by a licensed dispensing organization before a prescription is issued and filled under the Compassionate Use Act (RQ-0525-KP)

Briefs requested by January 17, 2024

RQ-0526-KP

Requestor:

The Honorable J.M. Lozano

Chair, House Committee on Urban Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the exemptions in Health & Safety Code section 773.004(a)(4) exclude a person holding certain certifications from being sworn personnel under chapters 142 and 143 of the Local Government Code (RQ-0526-KP)

Briefs requested by January 17, 2024

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

TRD-202304886
Justin Gordon
General Counsel
Office of the Attorney General
Filed: December 19, 2023

♦ ♦ ♦

Opinions

Opinion No. KP-0452

Ms. Gloria Meraz

Director and Librarian

Texas State Library & Archives Commission

Post Office Box 12927

Austin, Texas 78711-2927

Re: Scope of authority of the Texas State Library and Archives Commission to accept gifts under Government Code section 441.006(b)(2) (RQ-0001-JS)

S U M M A R Y

Government Code subsection 441.006(b)(2) authorizes the Texas State Library and Archives Commission (TSLAC) to receive a donation of money or services on terms and conditions it considers proper as long as the State does not incur financial liability as a result of the donation. A court would likely conclude TSLAC's authority to receive a donation of "services" under subsection 441.006(b)(2) includes the authority to receive a donation of repair, rehabilitation, or construction work for a specific purpose, even if the donor pays a third party to perform the work.

The role of the Texas Facilities Commission in relation to repair, rehabilitation, or construction work donated to TSLAC for the Cleveland-Partlow House depends on the resolution of fact questions.

A contract between TSLAC and a private donor is a means by which TSLAC could retain oversight of a donation of repair, rehabilitation, or construction work.

Opinion No. KP-0453

The Honorable John K. Greenwood

Lampasas County Attorney

409 South Pecan, Suite 203

Lampasas, Texas 76550

Re: Authority under Government Code chapter 74 of the Judge of a multi-county district to appoint different court coordinators for each county of the district (RQ-0001-AC)

S U M M A R Y

Government Code chapter 74, subchapter E, governs court coordinators. A court would likely conclude that subsection 74.101(a) authorizes the appointment of a single court coordinator per court, even in a multi-county judicial district such as the 27th Judicial District Court.

A court would likely conclude that, in the context of a multi-county judicial district, only a commissioners court that will fund the court coordinator position must approve the "position and compensation" of a court coordinator as referenced in subsection 74.104(b).

Because the question of court coordinator compensation in a multi-county judicial district necessarily involves the issue of apportionment among the counties in the district, a court would likely conclude that in such a district, section 74.104 requires the appointing judge and respective commissioners courts to collaborate in apportioning the cost of a court coordinator's compensation as part of the overall compensation approval process.

A court coordinator's duties are largely determined by the judge of the appointing court pursuant to section 74.102 and may encompass coordination services to all counties of a multi-county judicial district at the discretion of the judge.

A court would likely conclude that a judge making an appointment of court coordinator staff or support personnel under section 74.103 must seek commissioners court approval of the positions pursuant to Local Government Code section 151.001.

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

TRD-202304887

Justin Gordon

General Counsel

Office of the Attorney General

Filed: December 19, 2023

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinions

EAO-596: Whether expenditures made by a former legislator for general administration of his own campaign account are "direct campaign expenditures" that trigger the Section 253.007 two-year waiting period before engaging in activity that would require registration as a lobbyist. (AOR-692).

SUMMARY

Expenditures made by a candidate or officeholder that benefit only his or her own campaign are not "direct campaign expenditures" and therefore do not trigger the Section 253.007 lobby waiting period.

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

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

Issued in Austin, Texas, on December 18, 2023.

TRD-202304885
James Tinley
General Counsel
Texas Ethics Commission
Filed: December 19, 2023

♦ ♦ ♦

EAO-597: Whether certain communications with a member of the legislative or executive branch to engender goodwill are communications to "influence legislative or administrative action." (AOR-694).

SUMMARY

A "communication to influence legislative or administrative action" includes any communication to establish *(i.e.* bring about, effect) goodwill that is made for the purpose of later communicating with the member to influence legislation or administrative action. This is true regardless of whether prior feelings of goodwill exist.

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

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

Issued in Austin, Texas, on December 18, 2023.

TRD-202304888
James Tinley
General Counsel
Texas Ethics Commission
Filed: December 19, 2023

♦ ♦ ♦

EAO-598: Whether the Chapter 572 of the Government Code revolving door provisions apply to a former State Board of Education member's appearing before the Texas Education Agency, the Texas Commissioner of Education, or the Texas Permanent School Fund Corporation. (AOR-685).

SUMMARY

A former State Board of Education (SBOE) member must wait two years before appearing before or seeking to influence the Permanent School Fund Corporation on behalf of another because the Corporation board contains SBOE members. Tex. Gov't Code § 572.054(a).

A former SBOE member must wait two years after ceasing service as an officer before appearing before or seeking to influence the Commissioner of Education on behalf of another because the Commissioner is an officer of the SBOE for purposes of Section 572.054(a).

The requestor would be subject to the Section 572.054(a) restriction with respect to Texas Education Agency employees if they were also employees of the SBOE under the common law employee-employer test.

Section 572.054(b) would prohibit a former SBOE member from ever receiving compensation for working on contacts in which they participated as a SBOE member even if the SBOE subsequently amended these contracts to make the Permanent School Fund Corporation a party rather than the SBOE.

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

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

TRD-202304890

James Tinley
General Counsel
Texas Ethics Commission
Filed: December 19, 2023

♦ ♦ ♦

EAO-599: Whether a former state employee may provide consulting services to company with which he participated in a procurement during his state service without violating Section 572.069 of the Government Code. (AOR-695).

SUMMARY

The requestor may provide consulting services to a company with which he participated in a procurement during his state service without violating Section 572.069 provided he does not become an employee of the company.

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

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

Issued in Austin, Texas, on December 18, 2023.

TRD-202304892
James Tinley
General Counsel
Texas Ethics Commission
Filed: December 19, 2023

♦ ♦ ♦

EAO-600: Whether Chapter 572 of the Government Code prohibits a former employee of a regulatory agency from accepting certain employment. (AOR-696).

SUMMARY

The requestor is not a member of the governing body or the executive head of a regulatory agency, so Section 572.054(a) does not apply. The requestor is not proposing to participate in any particular matter in which he participated as a state employee, so Section 572.054(b) would not prevent the requestor from engaging in his proposed employment. Merely reviewing a contract for conformity with certain form requirements, such as naming the correct party, does not constitute participating in the contract negotiation for purposes of Section 572.069. However, if the requestor gave approval, advice, or recommendation on whether to enter into a contract, or a substantive term of the contract such as how many employees to station at a given facility, he participated in that contract negotiation. If he participated in the contract negotiation, he would have to wait two years from when the contract was signed before accepting employment from any other person involved in that contract negotiation under Section 572.069.

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

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

Issued in Austin, Texas, on December 18, 2023.

TRD-202304893
James Tinley
General Counsel
Texas Ethics Commission
Filed: December 19, 2023

♦ ♦ ♦

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

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

TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 15. CORPORATE ACTIVITIES
SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

7 TAC §§15.1, 15.3 - 15.7

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend Subchapter A of Chapter 15 of Title 7 of the Texas Administrative Code, §§15.1, 15.3 - 15.7, concerning corporate activities by state banks. The amended rules are proposed to conform the rules to changes in applicable federal regulation and improve clarity.

Subchapter A of Chapter 15 provides general rules for corporate activities of state banks subject to the Texas Finance Code (Finance Code). Section 15.1 provides various definitions for Chapter 15 that incorporate various concepts and standards from other laws, including federal banking regulations, to ensure clear, consistent, and fair regulation with minimal additional burden. A citation in §15.1 to a federal regulation defining "well capitalized" is no longer correct and needs to be updated. Similarly, §15.3, which governs expedited corporate filings, provides a citation the same federal banking regulation, and also needs to be updated. Rather citing the current federal regulation, the underlying federal statute defining "well capitalized" can be cited instead. Changing these citations would not materially change the substance of these rules. In addition, state banks are already subject to these federal regulatory standards.

Section 15.4 discusses required information for filings and potential abandonment of incomplete filings. The proposed amendment to this section clarifies the process for determining that a previously accepted filing is abandoned due to the filer not timely paying additional fees or costs that may be required under existing law and regulation, such as application investigation fees.

Section 15.5 governs public notice requirements for certain filings. Subsection (e) contains a reference to a definition that has been removed from §15.1. Further, subsection (e) is redundant of subsection (a). Subsection (e) provides the Banking Commissioner (commissioner) with specific discretion to waive public notice requirements for a filing where public notice has been required and provided by another regulator. Subsection (a) provides the commissioner with more general discretion to find that any alternative form of publication is acceptable, which could include the alternative publication currently described in subsection (e). For these reasons, deletion of subsection (e) of §15.5 is appropriate.

Section 15.6 discusses applications for state bank charters. It contains a typographical error that needs to be corrected.

Section 15.7 discusses submission of documents in general, and submission of reproductions of documents in particular. This section should be amended to expressly apply both to original documents and to reproductions, where appropriate. Another appropriate amendment updates the name of the non-depository supervision division of the department. Finally, this section should amended to address electronic filings in all forms, and to clarify the rules on when filings of all types are deemed to be received by the department.

Daniel Frasier, Director of Corporate Activities and Financial Innovation, has determined that for the first five years the proposed amended rules are in effect, there will be no foreseeable increases or reductions in costs or other fiscal implications to state or local government as a result of enforcing or administering the rules as amended.

Director Frasier has further determined that for the first five years the proposed amended rules are in effect, the public benefit anticipated from enforcing the rules is ensuring that the Finance Code corporate activities requirements will be enforced for the benefit of banks and their constituents in a manner that is clear and not unnecessarily complex, and consistent with applicable federal regulations.

Director Frasier has also determined that for the first five years the proposed amended rules are in effect the economic costs to persons required to comply with the rules as proposed will be unchanged from the costs required under these rules as they currently exist.

In addition, Director Frasier has determined that for the first five years the proposed amended rules are in effect, the rules will not: create or eliminate a government program; require the creation of new department employee positions or the elimination of existing agency employee positions; require an increase or decrease in future legislative appropriations to the department; require an increase or decrease in fees paid to the department; create a new regulation; or increase or decrease the number of individuals subject to the rules' applicability.

Finally, Director Frasier has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities from the proposed amended rules and no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted to the department in writing no later than 5:00 p.m. on January 29, 2024. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Di-

vision, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

This proposal is made under the authority of Finance Code §11.301 which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

This proposal affects the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statute is affected by this proposal.

§15.1. Definitions.

Words and terms used in this chapter that are defined in the Finance Code, Title 3, Subtitle A or Subtitle G, have the same meanings as defined in the Finance Code. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Eligible bank--A state bank that:

(A) is well capitalized as defined in Section 38, Federal Deposit Insurance Act, 12 USC §1831o [~~12 Code of Federal Regulations (CFR), §325.103~~], or is operating in compliance with a capital plan approved in writing by the banking commissioner;

(B) received a composite rating of either 1 or 2 as defined by the Uniform Financial Institutions Rating System at the most recent examination by the department or federal regulatory agencies;

(C) received a CRA rating of either outstanding or satisfactory at the bank's most recent inspection by the appropriate federal regulatory agency;

(D) is not presently operating in violation of a regulatory condition or commitment letter imposed by a state or federal banking regulatory agency; and

(E) is not presently operating under a memorandum of understanding; determination letter or other notice of determination; order to cease and desist, or other state or federal administrative enforcement order issued by a state or federal banking regulatory agency.

(5) - (9) (No change.)

§15.3. Expedited Filings.

(a) (No change.)

(b) Notwithstanding another provision of this section, the banking commissioner may deny expedited filing treatment to an eligible bank, in the exercise of discretion, if the banking commissioner finds that the filing involves one or more of the following:

(1) the proposed transaction involves significant policy, supervisory, or legal issues;

(2) approval of the proposed transaction is contingent on additional statutory or regulatory approval by the banking commissioner or another state or federal regulatory agency;

(3) the proposed transaction will result in a fixed asset investment in excess of the limitation contained in the Finance Code, §34.002(a);

(4) the proposed transaction requires the approval of the banking commissioner under the Finance Code, §33.109(b);

(5) the proposed transaction involves an issue of parity between state and national banks pursuant to the Finance Code, §32.009;

(6) the proposed transaction significantly impacts the strategic plan of the bank;

(7) the proposed transaction will result in a decrease in capital below the levels required to qualify as an eligible bank [~~meet the definition of "well capitalized" in 12 Code of Federal Regulations, §325.103~~];

(8) the proposed transaction will result in an abandonment of the community pursuant to the Finance Code, §32.202(d);

(9) the proposed transaction involves an issue of regulatory concern as determined by the banking commissioner in the exercise of discretion; or

(10) the application is deficient and specific additional information is required, or the filing fee has not been paid.

(c) - (e) (No change.)

§15.4. Required Information and Abandoned Filings.

(a) - (c) (No change.)

(d) Abandoned filing. The banking commissioner may determine any submitted or accepted filing to be abandoned, without prejudice to the right to refile, if the information required by the Finance Code, this chapter, or any rule or regulation adopted pursuant to the Finance Code, or additional requested information, is not furnished within the time period specified by subsection (c) of this section or as requested by the department, [~~banking commissioner~~] in writing, to the person or entity making the submission. The banking commissioner may determine a submitted or accepted filing, for which additional fees or costs are required by the Finance Code or by this chapter [~~are not paid within 30 days of receipt of the initial submission~~] to be abandoned if those amounts are not paid by the deadline stated by the department, which shall be at least 14 days from the date the deadline is communicated in writing to the applicant.

(e) (No change.)

§15.5. Public Notice.

(a) - (d) (No change.)

[~~(e) Other acceptable public notice. The banking commissioner may determine that public notice required by another regulatory agency of a bank or other regulated entity satisfies the public notice requirements of this section. For example, if a state bank converts, merges, or organizes into a financial institution that is no longer regulated by the banking commissioner and the banking commissioner determines that public notice requirements imposed by the successor regulatory authority regarding the conversion, merger, or organization satisfy the notice requirements of the Act and this section, the banking commissioner may permit the notice required by the successor regulatory authority to serve as notice under the Act and this section.~~]

§15.6. Applications for Bank Charter: Notices to Applicants; Application Processing Times; Appeals.

(a) - (c) (No change.)

(d) Violation of Processing Times. If an application is not protested [~~pretested~~] or a hearing is not convened, an applicant may appeal directly to the banking commissioner for a timely resolution of a dispute arising from a violation of a processing period set forth in this section. An applicant may appeal by filing a written request with the banking commissioner on or before the 30th day after the date the decision is made on the application, requesting review by the banking commissioner to determine whether the established period for the granting

or denying of the application has been exceeded. The decision on the appeal shall be based on the written appeal filed by the applicant, any response by the department, and any agreements between the parties. The banking commissioner may convene a hearing to take evidence on the matter.

(e) (No change.)

§15.7. Submission of Documents and Reproductions.

(a) Scope. This section governs submission of [~~specified forms of copies of original~~] documents to the department, [~~Texas Department of Banking (the department)~~] for processing by the corporate activities division of the department, pursuant to this chapter, and does not permit, prohibit, or affect correspondence with or documents submitted to, the department for another purpose, including:

(1) applications submitted to the non-depository supervision [~~special audits~~] division of the department; and

(2) documents submitted to the department as required or permitted by Government Code, Chapter 2001, and Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(b) Reproduction. For purposes of this section, the term reproduction means:

(1) a photographic or photostatic copy or similar reproduction of an original document that is submitted to the department by mail or hand delivery;

(2) a facsimile copy of an original document submitted by telephonic document transmission to the fax number specified by the department; or

(3) if permitted by the department with respect to a specific filing, an electronic copy of an original document submitted by electronic means as authorized [~~to the email address specified~~] by the department.

(c) (No change.)

(d) Page limitations. A document [~~reproduction~~] submitted by telephonic document transmission to the department's fax machine may not exceed 25 pages in total length, including the transmittal document required by subsection (e) of this section, or it will be rejected for filing. The transmission of portions of any particular filing at different times is treated as one reproduction for purposes of this subsection.

(e) (No change.)

(f) Time of receipt. To be considered received by the department, a document [~~reproduction~~] must be in clearly legible form. Documents submitted by mail or hand delivery must be delivered during regular business hours of the department. For documents submitted by mail or hand delivery, the date and time the submission is actually received by the department will determine the time of receipt. For reproductions submitted by telephonic document transmission, [~~or~~] the date and time imprinted by the department's fax machine on the last page of a reproduction submitted by telephonic document transfer will determine the time of receipt. [, ~~provided that a~~] For reproductions submitted by email, the date and time reflected by the department's email system will determine the time of receipt. Any document [~~reproduction~~] received after 4:30 p.m. on a business day, or on a non-business day, is considered received at 8:00 a.m. on the next business day. A document [~~reproduction~~] will not be considered received until the department receives the entire document and the required filing fee, if any.

(g) (No change.)

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

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Robert K. Nichols, III
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1382

SUBCHAPTER F. APPLICATIONS FOR MERGER, CONVERSION, AND PURCHASE OR SALE OF ASSETS

7 TAC §15.103

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend Subchapter F of Chapter 15 of Title 7 of the Texas Administrative Code, §15.103, concerning corporate activities by state banks. The amended rule is proposed to conform the rule to changes in applicable federal regulation.

Subchapter F of Chapter 15 governs applications for merger, conversion, or purchase of assets relating to state banks subject to the Texas Finance Code (Finance Code). Section 15.103 permits expedited filings for these applications if they relate to "well capitalized" state banks as defined under federal regulation. The citation in §15.103 to this federal regulation is no longer correct and needs to be updated. Rather citing the current federal regulation, the underlying federal statute defining "well capitalized" can be cited instead. Changing this citation would not materially change the substance of this rule. In addition, state banks are already subject to these federal regulatory standards.

Daniel Frasier, Director of Corporate Activities and Financial Innovation, has determined that for the first five years the proposed amended rule is in effect, there will be no foreseeable increases or reductions in costs or other fiscal implications to state or local government as a result of enforcing or administering the rule as amended.

Director Frasier has further determined that for the first five years the proposed amended rule is in effect, the public benefit anticipated from enforcing the rules is ensuring that the Finance Code corporate activities requirements will be enforced for the benefit of banks and their constituents in a manner that is clear and not unnecessarily complex, and consistent with applicable federal regulations.

Director Frasier has also determined that for the first five years the proposed amended rule is in effect the economic costs to persons required to comply with the rule as proposed will be unchanged from the costs required under this rule as it currently exists.

In addition, Director Frasier has determined that for the first five years the proposed amended rule is in effect, the rule will not: create or eliminate a government program; require the creation of new department employee positions or the elimination of existing agency employee positions; require an increase or decrease

in future legislative appropriations to the department; require an increase or decrease in fees paid to the department; create a new regulation; or increase or decrease the number of individuals subject to the rule's applicability.

Finally, Director Frasier has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities from the proposed amended rule and no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendment must be submitted to the department in writing no later than 5:00 p.m. on January 29, 2024. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

This proposal is made under the authority of Finance Code §11.301 which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

This proposal affects the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statute is affected by this proposal.

§15.103. Expedited Filings.

(a) (No change.)

(b) An expedited filing consists of a letter application including, except to the extent waived by the banking commissioner, these items:

(1) a summary of the transaction;

(2) a current pro forma balance sheet and income statement for all parties to the transaction, with adjustments, reflecting the proposed transaction as of the most recent quarter ended immediately prior to the filing of the application, demonstrating that each resulting state bank is well capitalized as defined in Section 38, Federal Deposit Insurance Act, 12 USC §1831o [~~12 Code of Federal Regulations, §325.103~~];

(3) a completed Worksheet to Determine Eligibility form as prescribed by the commissioner;

(4) a completed Worksheet for Expedited Filings form as prescribed by the commissioner;

(5) an executed opinion of counsel conforming to the requirements of the section of this subchapter that would apply had the applicant not filed an expedited filing;

(6) copies of all other required regulatory notices or filings submitted concerning the transaction; and

(7) a copy of the public notice published in conformity with the section of this subchapter that would apply had the applicant not filed an expedited filing.

(c) (No change.)

(d) The banking commissioner, in the exercise of discretion, may withdraw an application from expedited processing or may deny expedited filing treatment to an otherwise eligible applicant if the banking commissioner finds that the application involves one or more of these issues:

(1) the proposed transaction involves significant policy, supervisory, or legal issues;

(2) approval of the proposed transaction is contingent on additional statutory or regulatory approval by the banking commissioner or another state or federal regulatory agency;

(3) the proposed transaction contemplates a resulting entity that is not a financial institution;

(4) the proposed transaction involves a financial institution or other entity that is not domiciled in Texas;

(5) the proposed transaction would cause the assets of a resulting state bank to increase more than:

(A) 100% if it had total assets of one billion dollars or less prior to the transaction; or

(B) 35% if it had total assets of more than one billion dollars prior to the proposed transaction;

(6) the proposed transaction involves a state bank that has experienced, since the last commercial examination by a state or federal regulatory agency, asset growth, through acquisition or otherwise, greater than:

(A) 100% if it had total assets of one billion dollars or less at the last examination; or

(B) 35% if it had total assets of more than one billion dollars at the last examination;

(7) the proposed transaction involves a resulting state bank that would not be well capitalized as defined in Section 38, Federal Deposit Insurance Act, 12 USC §1831o [~~12 CFR §325.103~~];

(8) the proposed transaction involves an issue of regulatory concern as determined by the banking commissioner in the exercise of discretion; or

(9) the banking commissioner determines that a conversion examination is necessary for financial institutions converting into a state bank.

(e) - (f) (No change.)

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

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Robert K. Nichols, III
General Counsel
Texas Department of Banking
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SUBCHAPTER G. CHARTER AMENDMENTS AND CERTAIN CHANGES IN OUTSTANDING STOCK

7 TAC §15.121, §15.122

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend Subchapter G of Chapter 15 of Title 7 of the Texas Administrative Code, §15.121 and §15.122, concerning corporate activities by state banks. The amendments are proposed

to conform the rules to changes in applicable Texas law and accounting standards.

Subchapter G of Chapter 15 provides general rules for charter amendments and outstanding stock changes for state banks subject to the Texas Finance Code (Finance Code). Section 15.121 governs acquisition and retention of shares of treasury stock by a state bank. Section 15.122 governs amendments to a state bank's certificate of formation to effect a reverse stock split.

Certain citations in §15.121 and §151.122 to Texas laws and Financial Accounting Standards Board standards are no longer correct and need to be updated. Changing these citations would not materially change the substance of these rules. In addition, state banks are already subject to these other requirements as currently in effect.

Daniel Frasier, Director of Corporate Activities and Financial Innovation, has determined that for the first five years the proposed amended rules are in effect, there will be no foreseeable increases or reductions in costs or other fiscal implications to state or local government as a result of enforcing or administering the rules as amended.

Director Frasier has further determined that for the first five years the proposed amended rules are in effect, the public benefit anticipated from enforcing the rules is ensuring that the Finance Code corporate activities requirements will be enforced for the benefit of banks and their constituents in a manner that is clear and not unnecessarily complex, and consistent with applicable state law and accounting standards.

Director Frasier has also determined that for the first five years the proposed amended rules are in effect, the economic costs to persons required to comply with the rules as proposed will be unchanged from the costs required under these rules as they currently exist.

In addition, Director Frasier has determined that for the first five years the proposed amended rules are in effect, the rules will not: create or eliminate a government program; require the creation of new department employee positions or the elimination of existing agency employee positions; require an increase or decrease in future legislative appropriations to the department; require an increase or decrease in fees paid to the department; create a new regulation; or increase or decrease the number of individuals subject to the rules' applicability.

Finally, Director Frasier has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities from the proposed amended rules and no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted to the department in writing no later than 5:00 p.m. on January 29, 2024. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

This proposal is made under the authority of Finance Code §11.301 which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

This proposal affects the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statute is affected by this proposal.

§15.121. Acquisition and Retention of Shares as Treasury Stock.

(a) - (c) (No change.)

(d) Compliance with securities law.

(1) An issuer's purchase of its own shares is a transaction subject to the antifraud provisions of federal securities law, see 15 United States Code, §78j, 17 Code of Federal Regulations, §240.10b-5, and Spector v. L Q Motor Inns, Inc., 517 F.2d 278 (5th Cir. 1975), cert. denied, 423 U.S. 1055 (1976). The transaction is also subject to the antifraud provisions of state securities law, see Texas Government Code, Title 12 [~~Civil Statutes, Article 581-33(B)~~]. Potential liability of the state bank to the selling shareholder can therefore arise if the state bank withholds or misrepresents material facts that the seller would have considered important in making the decision to sell.

(2) Approval of an application under this section by the commissioner does not constitute a determination that the bank has complied with applicable securities law.

(e) (No change.)

(f) Accounting for treasury stock. A state bank must account for the acquisition and retention of treasury stock in accordance with generally accepted accounting principles as prescribed by Financial Accounting Standard Board Accounting Standard Codification Topic 505-30, Treasury Stock [~~under either the cost method or the par value method (see Accounting Research Bulletin Number 43), although use of the cost method may avoid the reduction in capital and certified surplus that would be required under the par value method~~]. The method used for accounting for treasury stock must be clearly reflected in the bank's accounting records.

(g) (No change.)

§15.122. Amendment of Certificate to Effect a Reverse Stock Split.

(a) - (c) (No change.)

(d) Standards for approval.

(1) The banking commissioner will process the proposed reverse stock split in accordance with the Finance Code, §32.101(c). The banking commissioner will require that the reverse stock split be for valid business purposes of the bank itself, viewed as an entity distinct from its affiliates, and be accomplished through fair dealing with and a fair price to unaffiliated shareholders. The banking commissioner may impose conditions on approval, including a condition that an independent appraisal report be obtained regarding the value of the unaffiliated shareholders' shares, exclusive of any element of value arising from the accomplishment or expectation of the proposed transaction, and without minority discount. Share value determined by an independent and properly prepared appraisal report that is fully disclosed to bank shareholders or by the market price of publicly traded shares will be presumed to be a fair value unless extenuating circumstances to the contrary are specifically noted.

(2) In the event approval of the banking commissioner is obtained prior to approval by shareholders, the state bank must file a statement with the banking commissioner certifying that any future event or condition upon which the approval of the transaction was conditioned has been satisfied and the date that each such condition was satisfied. Upon receipt of such statement, the banking commissioner will file the approved amendment to the certificate of formation in accordance with the Finance Code, §32.101(c).

(3) An issuer's purchase of its own shares is a transaction subject to the antifraud provisions of federal securities law, see 15 United States Code, §78j, 17 Code of Federal Regulations (CFR), §240.10b-5, and Spector v. L Q Motor Inns, Inc., 517 F.2d 278 (5th Cir. 1975), cert. denied, 423 U.S. 1055 (1976). Such a transaction is also subject to the antifraud provisions of state securities law, see Texas Government Code, Title 12 [~~Civil Statutes, Article 581-33(B)~~]. Potential liability of the state bank to the selling shareholder can therefore arise if the state bank withholds or misrepresents material facts that the seller would have considered important in making the decision to sell. Consequently, a state bank must disclose to the shareholders in writing, prior to or simultaneously with the written notice of the shareholders meeting, all material information necessary to make an informed decision regarding the proposed reverse stock split. If the reverse stock split involves publicly traded shares and is subject to 15 CFR, §240.13e-3, the registration statement required by federal law is considered to satisfy this disclosure obligation. Approval of an application under this section by the banking commissioner does not constitute a determination that the bank has complied with applicable securities law.

(e) (No change.)

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

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Robert K. Nichols, III
General Counsel
Texas Department of Banking
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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 2. ENFORCEMENT

The Texas Department of Housing and Community Affairs (the Department) proposes amending 10 TAC Chapter 2, Enforcement, Subchapter A, General, §2.101, §2.102, §2.103, §2.104, Subchapter C Administrative Penalties, §2.301, §2.302 and Subchapter D, Debarment from Participation in Programs Administered by the Department, §2.401. The amendments will add reference to a new inspection protocol, NSPIRE, and brings this rule into consistency with changes recently made to Chapter 1, Subchapter C, relating to previous participation reviews and the removal of references to the now defunct Executive Award Review and Advisory Committee (EARAC).

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

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 proposed rule action would be in effect, the proposed actions do not create or eliminate a government program, but relate to changes to an existing activity, the enforcement of the Department's program rules.

2. The amendment to the rule will not require a change in the number of employees of the Department;

3. The amendment to the rule will not require additional future legislative appropriations;

4. The amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The amendment to the rule will not create a new regulation, but provides clarification to an existing regulation;

6. The amendment to the rule will not repeal an existing regulation;

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

8. The amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the adding a new federally required inspection standard and bringing the rule into consistency with other Department rules. There will not be any economic cost to any individual required to comply with the amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from December 22, 2023, through January 22, 2024. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, P.O. Box 13941, Austin, Texas 78711-3941, or by email to brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local (Central) time, January 22, 2024.

SUBCHAPTER A. GENERAL

10 TAC §§2.101 - 2.104

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

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

§2.101. Policy and Purpose.

This chapter sets forth the enforcement mechanisms that the Department may use to bring about compliant administration of Department funded state or federal programs[~~, state or federal,~~] and exclude or remove from Department programs, Persons who have established, through certain noncompliant behavior, that they are either unwilling to act in a compliant manner, or are unable to do so. These enforcement mechanisms are in addition to any available contractual remedies under program agreements.

§2.102. Definitions.

The words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific chapters of this title that govern the program associated with the request, in Chapter 1 of this title (relating to Administration), or assigned by federal or state law.

(1) Actively Monitored Development--A Development that within the last three years has been monitored by the Department, either through a Uniform Physical Condition Standards (UPCS) inspection, a National Standards for the Physical Inspection of Real Estate (NSPIRE) inspection, an onsite or desk file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures Review. UPCS and NSPIRE inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

(2) Consultant--A Person who provides services or advice for a fee in a capacity other than as an employee and does not have Control.

(3) Control (including the terms Controlled and Controlling)--"Control" is defined in §11.1 of this title (relating to General) or as identified in the specific Program rule.

(4) Debarment--A prohibition from future participation in some or all Programs administered by the Department. Except as otherwise stated in the Order, Debarment does not impact existing or ongoing participation in Department Programs, prior to the date of the Debarment, nor does it affect any continuing responsibilities or duties thereunder.

(5) Enforcement Committee (["] Committee ["])--A Committee of employees of the Department appointed by the Executive Director. [~~The voting members of that Committee shall be no fewer than five and no more than nine. Additionally, each voting member shall have an alternate member, also appointed by the Executive Director, in the event that the primary voting member is unavailable~~]. The Committee may be composed of any member of any Department division, but members from the referring division may not be present during deliberations. [~~Alternate members may serve on behalf of any voting member for purposes of assuring a quorum.~~] The Legal Division will designate person(s) to attend meetings and advise the Committee. A Legal Division designee will serve as Secretary to the Committee.

(6) Event of Noncompliance (including the alternate term (["] Finding of Noncompliance ["]))--Any event for which a Person may be found to be in noncompliance with Texas Government Code Chapters 2105 or 2306, any rule adopted thereunder, any Program Agreement requirement, or federal program requirements.

(7) Legal Requirements--All requirements, as it relates to the particular Department Program, of state, federal, or local statutes, rules, regulations, ordinances, orders, court opinions, official interpretations, policy issuances, OMB Circulars, representations to secure awards, or any similar memorialization of requirement, including contract requirements.

(8) Monitoring Event--An onsite or desk monitoring review, a [~~Uniform Physical Condition Standards~~] UPCS inspection, a NSPIRE inspection, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a Written Policies and Procedures Review, or any other instance when the Department's Compliance Division or other reviewing area provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include, but not be limited to, responding to a tenant complaint.

(9) Person--A legal entity including, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability corporation, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including individual members of the group.

(10) Program--Includes any activity performed by a Subrecipient, Administrator, Contractor, Development Owner, or other Person under a Program Agreement or activities performed by a third party under a Program Agreement, including but not limited to a Subgrantee or Subcontractor.

(11) Program Agreements include:

(A) agreements between the Department and a Person setting forth Legal Requirements; and

(B) agreements between a Person subject to a Program Agreement and a third party to carry out one or more Legal Requirements.

(12) Responsible Party--Any Person subject to a Program Agreement.

(13) Vendor--A person who is procured by a subrecipient to provide goods or services in any way relating to a Department program or activity.

§2.103. General.

(a) A Responsible Party must comply with all applicable Legal Requirements.

(b) A failure by the Department to identify, address, or take action with respect to any one or more Events of Noncompliance does not constitute a waiver, ratification, or approval of, consent to, or agreement with such noncompliance. It is the responsibility of a Responsible Party to be familiar with the applicable Legal Requirements.

(c) Recordkeeping. Each referring division will keep records in accordance with the Department's record retention schedule and any other state or Federal requirements of all Events of Noncompliance.

(d) As provided for in Texas Government Code, §2306.6719, parties subject to certain compliance requirements must be afforded written notice and a reasonable period to correct identified Events of Noncompliance that are susceptible to being corrected. It is the responsibility of each division to provide any required cure, Corrective Action, or notice period(s) prior to referral of any matter to the Committee under this chapter. Matters should not be referred to the Committee until such cure, Corrective Action, or notice periods have been completed or expired.

(e) For each Event of Noncompliance, the Department will evaluate which Person or Persons had Control of the Development, Program, or activity at the time the Event of Noncompliance occurred. A Person will not be referred for Debarment or assessed a Administrative Penalty because they have newly acquired a Development that has existing Events of Noncompliance, provided that the findings are resolved by transferee within a reasonable timeframe after purchase, in accordance with a plan that is approved by the Department in an ownership transfer request under §10.406 of this title (relating to Ownership Transfers (§2306.6713)). Sale or foreclosure of a property does not preclude Debarment consideration against the Person or Persons who had Control of the Development, Program, or activity at the time an Event of Noncompliance occurred.

§2.104. Enforcement Mechanisms.

(a) The enforcement mechanisms referenced in this chapter are not the exclusive mechanisms whereby compliance may be obtained in any particular circumstance. Enforcement mechanisms related to Department programs may include, where applicable, those required or employed by other entities or agencies. With regard to the low-income housing tax credit program, if an identified Event of Noncompliance is required to be reported to the Internal Revenue Service, (IRS) it will be reported by the Compliance Division on form 8823. For federally funded Programs or activities, the Department may recommend that a federal funding agency initiate a debarment proceeding under 2 CFR Part 180 or 2 CFR 2424, as applicable. Program Agreements may also include additional enforcement mechanisms, federal reporting, or penalties.

(b) Enforcement mechanisms available to the Department include but are not limited to:

(1) Enforcement of contractual provisions in the Program Agreements including, but not limited to, options to place a Development into receivership, and rights of suspension or termination, and placement on a cost reimbursement status as described in Subchapter B of this chapter (relating to Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7);

(2) Consideration of a reasonable plan for correction, warning letter, informal conference, and assessment of administrative penalties, as further described in Subchapter C of this chapter (relating to Administrative Penalties); or

(3) Debarment, as described in Subchapter D of this chapter (relating to Debarment from Participation in Programs Administered by the Department).

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

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SUBCHAPTER C. ADMINISTRATIVE PENALTIES

10 TAC §2.301, §2.302

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

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

§2.301. General.

Department divisions will recommend to the Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties have violated Chapters 2105 or 2306 of the Texas Government Code or a rule or order adopted under Chapters 2105 or 2306 of the Texas Government Code and failed, despite written notice, to take appropriate and timely corrective action or seek and obtain for good cause an extension of the time to take corrective action. In addition, staff from any Department Divisions may recommend to the Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties has an established pattern of repeated substantive and material violations, even if corrected within the applicable corrective action periods. All correspondence shall be delivered electronically.

§2.302. Administrative Penalty Process.

(a) The Executive Director will appoint an Enforcement Committee, as defined in §2.102 of this chapter (relating to Definitions).

(b) [~~This~~] The referring division will recommend the initiation of administrative penalty proceedings to the Committee by referral to the secretary of the Committee (["] Secretary ["]). At the time of referral for a multifamily rental Development, the referral letter from the referring Division will require the Responsible Party who Controls the Development to provide a listing of the Actively Monitored Developments in their portfolio. The Secretary will use this information to help determine whether mandatory Debarment should be simultaneously considered by the Enforcement Committee in accordance with §2.401(e)(2) of this section, related to repeated violations.

(c) The Secretary shall promptly contact the Responsible Party. If fully acceptable corrective action documentation is submitted to the referring division before the (["] Secretary ["]) sends an informal conference notice, the referral shall be closed with no further action provided that the Responsible Party is not subject to consideration for Debarment and provided that the referring division does not wish to move forward with the referral based upon a pattern of repeated violations. If the Secretary is not able to facilitate resolution, but receives a reasonable plan for correction, such plan shall be reported to the Committee to determine whether to schedule an informal conference, modify the plan, or accept the plan. If accepted, plan progress shall be regularly reported to the Committee, but an informal conference will not be held unless the approved plan is substantively violated, or an informal conference is later requested by the Committee or the Responsible Party. Plan examples include but are not limited to: a rehabilitation plan with a scope of work or contracts already in place, plans approved by [~~EARAC as part of~~] the Department as part of the Previous Participation Review process provided for in 10 TAC Subchapter C for an ownership transfer or funding application, plans approved by the Executive Director, plans approved by the Asset Management Division, and/or plans relating to newly transferred Developments with unresolved Events of Noncompliance originating under prior ownership. Should the Secretary and Responsible Party fail to come to, an agreement or closer of the referral, or if the Responsible Party or ownership group's prior history of administrative penalty referrals does not support closure, or if consideration of Debarment is appropriate, the Secretary will schedule an informal conference with the Responsible Party to attempt to reach an agreed resolution.

(d) When an informal conference is scheduled, a deadline for submitting Corrective Action documentation will be included, providing a final opportunity for resolution. If compliance is achieved at this stage, the referral will be closed with a warning letter provided that factors, as discussed below, do not preclude such closure. Closure with a warning letter shall be reported to the Committee. Factors that will determine whether it is appropriate to close with a warning letter include, but are not limited to:

(1) Prior Enforcement Committee history relating to the Development or other properties in the ownership group;

(2) Prior Enforcement Committee history regarding similar federal or state Programs;

(3) Whether the deadline set by the Secretary in the informal conference notice has been met;

(4) Whether the Committee has set any exceptions for certain finding types; and

(5) Any other factor that may be relevant to the situation.

(e) If an informal conference is held:

(1) Notwithstanding the Responsible Party's attendance or presence of an authorized representative, the Enforcement Committee may proceed with the informal conference;

(2) The Responsible Party may, but is not required to be, represented by legal counsel of their choosing at their own cost and expense;

(3) The Responsible Party may bring to the meeting third parties, employees, and agents with knowledge of the issues;

(4) Assessment of an administrative penalty and Debarment may be considered at the same informal conference; and

(5) In order to facilitate candid dialogue, an informal conference will not be open to the public; however, the Committee may include such other persons or witnesses as the Committee deems necessary for a complete and full development of relevant information and evidence.

(f) An informal conference may result in the following, which shall be reported to the Executive Director:

(1) An agreement to dismiss the matter with no further action;

(2) A compliance assistance notice issued by the Committee, available for Responsible Parties appearing for the first time before the Committee for matters which the Committee determines do not necessitate the assessment of an administrative penalty, but for which the Committee wishes to place the Responsible Party on notice with regard to possible future penalty assessment;

(3) An agreement to resolve the matter through corrective action without penalty. If the agreement is to be included in an order, a proposed agreed order will be prepared and presented to the Board for approval;

(4) An agreement to resolve the matter through corrective action with the assessment of an administrative penalty which may be probated in whole or in part, and may, where appropriate, include additional action to promote compliance such as requirements to obtain training. In this circumstance, a proposed agreed order will be prepared and presented to Department's Governing Board for approval;

(5) A recommendation by the Committee to the Executive Director to determine that a violation occurred, and to issue a report to the Board and a Notice of Violation to the Responsible Party, seeking the assessment of administrative penalties through a contested case hearing with the State Office of Administrative Hearings ([“]SOAH[”]); or

(6) Other action as the Committee deems appropriate.

(g) Upon receipt of a recommendation from the Committee regarding the issuance of a report and assessment of an administrative penalty under subsection (f)(5), the Executive Director shall determine whether a violation has occurred. If needed, the Executive Director may request additional information and/or return the recommendation to the Committee for further development. If the Executive Director determines that a violation has occurred, the Executive Director will issue a report to the Board in accordance with §2306.043 of the Texas Government Code.

(h) Not later than [~~fourteen~~ (] 14 [)] days after issuance of the report to the Board, the Executive Director will issue a Notice of Violation to the Responsible Party. The Notice of Violation issued by the Executive Director will include:

(1) A summary of the alleged violation(s) together with reference to the particular sections of the statutes and rules alleged to have been violated;

(2) A statement informing the Responsible Party of the right to a hearing before the SOAH, if applicable, on the occurrence of the violation(s), the amount of penalty, or both;

(3) Any other matters deemed relevant; and

(4) The amount of the recommended penalty. In determining the amount of a recommended administrative penalty, the Executive Director shall take into consideration the statutory factors at Tex. Gov't Code §2306.042 the penalty schedule shown in the tables in subsection (k) of this section and in the instance of a proceeding to assess administrative penalties against a Responsible Party administering the annual block grant portion of CDBG, CSBG, or LIHEAP, whether the assessment of such penalty will interfere with the uninterrupted delivery of services under such program(s). The Executive Director shall further take into account whether the Department's purposes may be achieved or enhanced by the use of full or partial probation of penalties subject to adherence to specific requirements and whether the violation(s) in question involve disallowed costs.

(i) Not later than 20 days after the Responsible Party receives the Notice of Violation, the Responsible Party may accept the requirements of the Notice of Violation or request a SOAH hearing.

(j) If the Responsible Party requests a hearing or does not respond to the Notice of Violation, the Executive Director, with the approval of the Board, shall cause the hearing to be docketed before a SOAH administrative law judge in accordance with §1.13 of this title (relating to Contested Case Hearing Procedures), which outlines the remainder of the process.

(k) Penalty schedules.
Attached Graphic [~~Attached Graphic~~]
Attached Graphic [~~Attached Graphic~~]
Attached Graphic [~~Attached Graphic~~]

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

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SUBCHAPTER D. DEBARMENT FROM PARTICIPATION IN PROGRAMS ADMINISTERED BY THE DEPARTMENT

10 TAC §2.401

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

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

§2.401. General.

(a) The Department may debar a Responsible Party, a Consultant and/or a Vendor who has exhibited past failure to comply with any condition imposed by the Department in the administration of its programs. A Responsible Party, Consultant or Vendor may be referred to the Committee for Debarment for any of the following:

(1) Refusing to provide an acceptable plan to implement and adhere to procedures to ensure compliant operation of the program after being placed on Modified Cost Reimbursement;

(2) Refusing to repay disallowed costs;

(3) Refusing to enter into a plan to repay disallowed costs or egregious violations of an agreed repayment plan;

(4) Meeting any of the ineligibility criteria referenced in §11.202 of this title (relating to Ineligible Applicants and Applications) or other ineligibility criteria outlined in a Program Rule, with the exception of: ineligibility related to conflicts of interest disclosed to the Department for review, and ineligibility identified in a previous participation review in conjunction with an application for funds or resources (unless otherwise eligible for Debarment under this Subchapter D);

(5) Providing fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission with regard to any documentation, certification or other representation made to the Department;

(6) Failing to correct Events of Noncompliance as required by an order that became effective after April 1, 2021 [~~the effective date of this rule~~], and/or failing to pay an administrative penalty as required by such order, within six months of a demand being issued by the Department. In this circumstance, if the Debarment process is initiated but the Responsible Party fully corrects the findings of noncompliance to the satisfaction of the referring division and pays the administrative penalty as required by the order before the Debarment is finalized by the Board, the Debarment recommendation may be cancelled or withdrawn by Committee recommendation and Executive Director concurrence. This type of referral would be initiated by the Secretary;

(7) Controlling a multifamily Development that was foreclosed after the April 1, 2021 [~~effective date of this rule~~], where the foreclosure or deed in lieu of foreclosure terminates a subordinate TDHCA LURA;

(8) Controlling a multifamily Development and allowing a change in ownership after April 1, 2021 [~~the effective date of this rule~~], without Department approval;

(9) Transferring a Development, after April 1, 2021 [~~the effective date of this rule~~], without regard for a Right of First Refusal requirement;

(10) Being involuntary removed, or replaced due to a default by the General Partner under the Limited Partnership Agreement, after April 1, 2021;

(11) Controlling a multifamily Development and failing to correct Events of Noncompliance before the expiration of a Land Use Restriction Agreement, after April 1, 2021;

(12) [~~(11)~~] Refusing to comply with conditions approved by the Board that were recommended by the Executive Award Review Advisory Committee after April 1, 2021 [~~the effective date of this rule~~];

(13) [~~(12)~~] Having any Event of Noncompliance that occurs [~~occur~~] after April 1, 2021 [~~the effective date of this rule~~], that causes the Department to be required to repay federal funds to any federal agency including, but not limited to the U.S. Department of Housing and Urban Development; and/or

(14) [~~(13)~~] Submitting a written certification that non-compliance has been corrected when it is determined that the Event of Noncompliance was not corrected. For certain Events of Noncompliance, in lieu of documentation, the Compliance Division accepts a written certification that noncompliance has been corrected. If it is determined that the Event of Noncompliance was not corrected, a Person who signed the certification may be recommended for debarment;

(15) ([~~(14)~~]) Refusing to provide an amenity required by the LURA after April 1, 2021; [~~the effective date of this rule~~]

(16) [~~(15)~~] Failing to reserve units for Section 811 PRA participants after April 1, 2021; [~~the effective date of this rule;~~]

(17) [~~(16)~~] Failing to notify the Department of the availability of 811 PRA units after April 1, 2021; [~~the effective date of this rule;~~]

(18) [~~(17)~~] Taking "choice limiting" actions prior to receiving HUD environmental clearance (24 CFR §58.22);

(19) [~~(18)~~] Substandard construction, as defined by the Program, and repeated failure to conduct required inspections;

(20) [~~(19)~~] Repeated failure to provide eligible match. 24 CFR §92.220, 24 CFR §576.201, and as required by NOFA;

(21) [~~(20)~~] Repeated failure to report program income. 24 CFR §200.80, 24 CFR §570.500, 24 CFR §576.407(c), 24 [~~2~~] CFR §92.503, (as [~~Part 215 (if~~] applicable), and 10 TAC §20.9, or as defined by Program Rule;

(22) [~~(21)~~] Participating in activities leading to or giving the appearance of "Conflict of Interest". As applicable, in 2 CFR Part 215 2 CFR Part 200, [~~(if applicable)~~], 24 CFR §93.353 [~~84.42~~], §92.356 24 CFR [~~(if applicable)~~], §570.489, 24 CFR §576.404, 10 TAC §20.9, or as defined by Program Rule;

(23) [~~(22)~~] Repeated material financial system deficiencies. As applicable, 2 CFR Part 200, 24 CFR §§ [~~84.21, 84.43, 85.20, 85.22, 85.36,~~] 92.205, 92.206, 92.350, 92.505, and 92.508, [~~(if applicable), OMB A-110 Relocated to~~] 2 CFR Part 215, [~~(if applicable), OMB A-87 Relocated to~~] 2 CFR Part 225 (if applicable), [~~OMB A-122 Relocated to~~] 2 CFR Part 230 [~~(if applicable)~~](, 10 TAC §20.9[~~and~~], Uniform Grant Management Standards [~~(if~~], and Texas Grant Management Standards (as applicable), [~~)~~] and as defined by Program Rule.

(24) [~~(23)~~] Repeated violations of Single Audit or other programmatic audit requirements;

(25) [~~(24)~~] Failure to remain a CHDO for Department committed HOME funds;

(26) [~~(25)~~] Commingling of funds, Misapplication of funds;

(27) [~~(26)~~] Refusing to submit a required Audit Certification Form, Single Audit, or other programmatic audit;

(28) [~~(27)~~] Refusing to timely respond to reports/provide required correspondence;

(29) [~~(28)~~] Failure to timely expend funds; and

(30) [~~(29)~~] A Monitoring Event determines that 50% or more of the client or household files reviewed do not contain required documentation to support income eligibility or indicate that the client or household is not income eligible.

(b) The Department shall debar any Responsible Party, Consultant, or Vendor who is debarred from participation in any program administered by the United States Government.

(c) Debarment for violations of the Department's Multifamily Programs. The Department shall debar any Responsible Party who has materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including but not limited to a material or repeated violation of a land use restriction agreement (LURA[~~).~~]) or Contract. Subsection (d) of this section provides the criteria the Department will use to determine if there has been a material violation of a LURA. Subsections (e)(1) and (e)(2) of this section provide the criteria the Department shall use to determine if there have been repeated violations of a LURA.

(d) Material violations of a LURA. A Responsible Party will be considered to have materially violated a LURA, Program Agreement, or condition imposed by the Department and shall be referred to the committee for mandatory Debarment if they: [;]

(1) Control a Development that has, on more than one occasion scored 50 or less on a UPCS inspection [;] or has, on more than one occasion scored 50 or less on a NSPIRE inspection, or any combination thereof. The Compliance Division may temporarily decrease this NSPIRE score threshold with approval by the Executive Director, for a period of time not longer than one year, so long as the score threshold is applied evenly to all properties;

(2) Refuse to allow a monitoring visit when proper notice was provided or failed to notify residents, resulting in inspection cancellation, or otherwise fails to make units and records available;

(3) Refuse to reduce rents to less than the highest allowed under the LURA;

(4) Refuse to correct a UPCS, NSPIRE, or final construction inspection deficiency after the effective date of this rule;

(5) [~~(4)~~] Fail to meet minimum set aside by the end of the first year of the credit period (HTC Developments only) after April1, 2021; or

(6) [~~(5)~~] Excluding an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program after April 1, 2021 [~~the effective date of this rule.~~].

(e) Repeated Violations of a LURA that shall be referred to the Committee for Debarment.

(1) A Responsible Party shall be referred to the Committee for mandatory Debarment if they Control a Development that, during two Monitoring Events in a row is found to be out of compliance with the following Events of Noncompliance:

(A) No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement;

(B) Any Uniform Physical Condition Standards Violations that result in a score of 70 or below in sequential UPCS inspections after April 1, 2021 or NSPIRE violations that result in a score of 50 or below in sequential inspections after the effective date of this rule, or any combination thereof. The Compliance Division may temporally decrease this NSPIRE score threshold with approval by the Executive Director, for a period not to exceed one year, so long as the score threshold is applied evenly to all properties; [~~the effective date of this rule;~~]

(C) Refuse to submit all or parts of the Annual Owner's Compliance Report for two consecutive years after April 1, 2021; or [~~the effective date of this rule; or~~]

(D) Gross rents exceed the highest rent allowed under the LURA or other deed restriction.

(2) Repeated violations in a portfolio. Persons who control five or more Actively Monitored Developments will be considered for Debarment based on repeated violations in a portfolio. A Person shall be referred to be committee [~~for mandatory will be referred for Debarment~~] if an inspection or referral, after April 1, 2021 [~~the effective date of this rule~~], indicates the following:

(A) 50% or more of the Actively Monitored Developments in the portfolio have been referred to the Enforcement Committee within the last three years. The Enforcement Committee may increase this threshold at its discretion. For example, if three properties in a five-property portfolio are monitored in the same month, and then referred to the Enforcement Committee at the same time, it may be appropriate to increase the 50% threshold; or, [~~; or,~~]

(B) 50% or more of the Actively Monitored Developments in the portfolio score a 70 or less during a Uniform Physical Conditions Standards inspection or score 50 or less during a NSPIRE inspection, or any combination thereof. The Compliance Division may decrease this NSPIRE score threshold with approval by the Executive Director, so long as the score threshold is applied evenly to all properties.

(f) Debarment for violations of [~~all other~~] Department Programs, with the exception of the Non-Discretionary funds in the Community Services Block Grant program. Material or repeated violations of conditions imposed in connection with the administration of Programs administered by the Department. Administrators, Subrecipients, Responsible Parties, contractors, multifamily owners, and related parties shall be referred to the Committee for consideration for Debarment for violations including but not limited to:

(1) 50% or more loan defaults in the first 12 months of the loan agreement after April 1, 2021 [~~the effective date of this rule~~];

(2) The following Davis Bacon Act Violations:

(A) Refusing to pay restitution (underpayment of wages). 29 CFR §5.31.

(B) Refusing to pay liquidated damages (overtime violations). 29 CFR §5.8.

(C) Repeated failure to pay full prevailing wage, including fringe benefits, for all hours worked. 29 CFR §5.31.

(3) The following violations of the Uniform Relocation Act and requirements of §104(d):

(A) Repeated failure to provide the General Information Notice to tenants prior to application. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352 and HUD Handbook 1378.

(B) Repeated failure to provide all required information in the General Information Notice. 49 CFR §24.203, 24 CFR §570.606, 24 CFR §92.353, 24 CFR §93.352 or [~~and~~], HUD Handbook 1378.

(C) Repeated failure to provide the Notice of Eligibility and/or Notice of Non-displacement on or before the Initiation of Negotiations date. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or [~~and~~] 24 CFR §570.606.

(D) Repeated failure to provide all required information in the Notice of Eligibility and/or Notice of Non-displacement. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or [~~and~~] 24 CFR §570.606.

(E) Repeated failure to provide 90 Day Notices to all "displaced" tenants and/or repeated failure to provide 30 Day Notices to all "non-displaced" tenants. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or [~~and~~] 24 CFR §570.606.

(F) Repeated failure to perform and document "decent, safe and sanitary" inspections of replacement housing. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or [~~and~~] 24 CFR §570.606.

(G) Refusing to properly provide Uniform Relocation Act or §104(d) assistance. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §570.606 and §104(d) of the Housing & Community Development Act of 1974 - 24 CFR Part 42.

(4) Refusing to reimburse excess cash on hand;

(5) Using Department funds to demolish a homeowner's dwelling and then refusing to rebuild;

(6) Drawing down Department funds for an eligible use and then refusing to pay a properly submitted request for payment to a subgrantee or vendor with the drawn down funds.

(g) The referring division shall provide the Responsible Party with written notice of the referral to the Committee, setting forth the facts and circumstances that justify the referral for Debarment consideration.

(h) The Secretary shall then offer the Responsible Party the opportunity to attend an Informal Conference with the Committee to discuss resolution of the. In the event that the Debarment referral was the result of a violated agreed order or a determination that 50% or more of the Actively Monitored Developments in their portfolio have been referred to the Enforcement Committee, the above written notice of the referral to the Committee and the informal conference notice shall be combined into a single notice issued by the Secretary.

(i) A Debarment Informal Conference may result in the following, which shall be reported to the Executive Director:

(1) A determination that the Department did not have sufficient information and/or that the Responsible Party does not meet any of the criteria for Debarment;

(2) An agreed Debarment, with a proposed agreed order to be prepared and presented to the Board for approval;

(3) A recommendation by the Committee to the Executive Director for Debarment;

(4) A request for further information, to be considered during a future meeting; or,

(5) If Debarment is not mandatory, an agreement to dismiss the matter with no further action, an agreement to dismiss the matter with corrective action being taken, or any other action as the Committee deems appropriate, which will then be reported to the Executive Director.

(j) The Committee's recommendation to the Executive Director regarding Debarment shall include a recommended period of Debarment. Recommended periods of Debarment will be based on material factors such as repeated occurrences, seriousness of underlying issues, presence or absence of corrective action taken or planned, including corrective action to install new responsible persons and ensure they are qualified and properly trained. Recommended periods of Debarment if based upon HUD Debarment, shall be for the period of the remaining HUD Debarment; or, if based upon criminal conviction, shall be up to ten (10) years or until fulfillment of all conditions of incarceration and/or probation, whichever is greater.

(k) The Executive Director shall accept, reject, or modify the Debarment recommendation by the Committee and shall provide written notice to the Responsible Party of the determination, and an explanation of the determination if different than the Committee's recommendation, including the period of Debarment, if any. The Responsible Party may appeal the Debarment determination in writing to the Board as described in §1.7 of this title (relating to Appeals Process).

(l) The Debarment recommendation will be brought to the next Board meeting for which the matter can be properly posted. The Board reserves discretion to impose longer or shorter Debarment periods than those recommended by staff based on its finding that such longer or shorter periods are appropriate when considering all factors and/or for the purposes of equity or other good cause. An action on a proposed Debarment of an Eligible Entity under the CSBG Act will not become final until and unless proceedings to terminate Eligible Entity status have occurred, resulting in such termination and all rights of appeal or review have run or Eligible Entity status has been voluntarily relinquished.

(m) Until the Responsible Party's Debarment referral is fully resolved, the Responsible Party may not participate in new Department financing and assistance opportunities.

(n) Any person who has been debarred is prohibited from participation as set forth in the final order of Debarment for the term of their Debarment. Unless specifically stated in the order of Debarment, Debarment does not relieve a Responsible Party from its current obligations, or prohibit it from continuing its participation in any existing engagements funded through the Department, nor limit its responsibilities and duties thereunder. The Board will not consider modifying the terms of the Debarment after the issuance of a final order of Debarment.

(o) If an Eligible Entity under the CSBG Act meets any of the criteria for Debarment in this rule, the Department may recommend the Eligible Entity for Debarment. However, that referral or recommendation shall not proceed until the termination of the Eligible Entity's status under the CSBG Act has concluded, and no right of appeal or review remains.

(p) All correspondence under this rule shall be delivered electronically.

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

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS
DIVISION 1. GENERAL PROVISIONS

16 TAC §321.1

The Texas Racing Commission (TXRC) proposes amendments to an existing rule in Texas Administrative Code, Title 16, Part 8, Chapter 321, Subchapter A, Division 1, §321.1, Definitions and General Provisions, concerning the pari-mutuel wagering procedures. This amendment is referred to as a "proposed rule amendment." The purpose of these rule amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002.

SECTION-BY-SECTION SUMMARY.

The proposed rule amends §321.1 to update definitions related to e-wagering activities and systems authorized in the Texas Occupations Code § 2027.002.

GOVERNMENT GROWTH IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code § 2001.022.

For each year of the first five years the proposed rules will be in effect, Amy F. Cook, Executive Director has determined the following:

The proposed rule amendment does not create or eliminate a government program.

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

Implementation of the proposed rule amendment does not require an increase or decrease in future agency legislative appropriations.

The proposed rule amendment does not require an increase or decrease in fees paid to the agency.

The proposed rule amendment does not create a new regulation.

The proposed rule amendment does expand, limit, or repeal an existing regulation.

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

The proposed rule amendment does not positively or adversely affect this state's economy.

ECONOMIC IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

REGULATORY FLEXIBILITY ANALYSIS.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

TAKINGS IMPACT ASSESSMENT.

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

LOCAL EMPLOYMENT IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

COST-BENEFIT ANALYSIS.

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected benefit the State of Texas by accurately describing technology changes in pari-mutuel wagering systems which will assist licensed racetrack associations in providing wagering opportunities in the enclosed area of a racetrack authorized in Texas Occupations Code § 2027.002.

FISCAL NOTE ANALYSIS.

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

PUBLIC COMMENTS.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register,* via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by telephone at (512) 833-6699.

STATUTORY AUTHORITY.

The amendments are proposed under Tex. Occ. Code § 2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the proposed amendments.

§321.1. Definitions and General Provisions.

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

(1) ASCII formatted flat file--A data file containing structured data which is both record and field delimited containing only characters found in the American Standard Code for Information Interchange (ASCII) specification.

(2) Betting interest--a single race animal or a group of race animals coupled pursuant to the Rules which the totalisator system designates as an interest on which a patron may wager.

(3) Closed-loop subscriber-based system - a system with a minimum of a device or combination of devices authorized and operated for placing, receiving, or otherwise making a wager and by which a person must subscribe in order to be able to place, receive, or otherwise make a bet or wager that has an effective customer verification

and age verification system; and appropriate data security standards to prevent unauthorized access to a person.

(4) [~~(3)~~] Export simulcast--a race simulcast from a racetrack facility.

(5) [~~(4)~~] Firmware--The system software permanently stored in a computer or ticket issuing machine's read-only memory or elsewhere in the circuitry that cannot be modified by the user.

(6) [~~(5)~~] Guest racetrack--a racetrack facility at which a simulcast race is received and offered for wagering purposes; a receiving location, as defined in the Act, §2021.003.

(7) [~~(6)~~] Host racetrack--a racetrack facility at which a race is conducted and simulcast for wagering purposes; a sending track, as defined in the Act, §2021.003.

(8) [~~(7)~~] Import simulcast--a simulcast race received at a racetrack facility.

(9) [~~(8)~~] Intelligent Terminal--a terminal or peripheral device which contains code extending beyond that which is necessary to allow the terminal to communicate with the central controlling device to which it is directly attached or to control the presentation of data on the display unit of the device.

(10) [~~(9)~~] Log--an itemized list of each command, inquiry, or transaction given to a computer during operation.

(11) [~~(10)~~] Major Revision--a specific release of a hardware or software product, including additional functionality, major user interface revisions, or other program changes that significantly alter the basic function of the application.

(12) [~~(11)~~] Minor Revision--an incrementally improved version of hardware or software, usually representing an error (bug) fix, or a minor improvement in program performance which does not alter basic functionality.

(13) [~~(12)~~] Multi-leg wager--a wagering pool that involves more than one race.

(14) [~~(13)~~] Player Tracking System--a system that provides detailed information about pari-mutuel play activity of patrons who volunteer to participate. The system can be used to customize highly specific promotions and tailor rewards to encourage incremental visits by patrons. The system should be able to produce customized informational reports based on such parameters as type of wager, type of race, favorite race meet, or other parameters deemed helpful by the association in supporting the patron.

(15) [~~(14)~~] Remote site--a racetrack or other location at which wagering is occurring that is linked via the totalisator system to a racetrack facility for pari-mutuel wagering purposes.

(16) [~~(15)~~] Report--a summary of betting activity.

(17) [~~(16)~~] Resultant--the profit-per-dollar wagered in a pari-mutuel pool computation.

(18) [~~(17)~~] Ticketless Electronic Wagering (E-wagering)--[~~a form of pari-mutuel wagering in which wagers are placed and cashed through an electronic ticketless account system operated through a licensed totalisator vendor in accordance with §2027.002 of this Act. Wagers are automatically debited and credited to the account holder.~~]

(A) a form of pari-mutuel wagering in which wagers are placed and cashed through a licensed totalisator vendor via an electronic ticketless account system operated in accordance with §2021.002 of this Act; or

(B) a closed-loop subscriber-based system, which includes:

(i) a device or combination of devices authorized and operated for placing, receiving, or otherwise making a wager and by which a person must subscribe to be able to place, receive, or otherwise make a bet or wager;

(ii) an effective customer verification and age verification system; and

(iii) appropriate data security standards to prevent unauthorized access to a person:

(I) who seeks to make a bet or wager outside the racetrack's enclosure;

(II) who seeks to make a bet or wager on any live or simulcast race not available to other persons within the racetrack's enclosure; and

(III) who is a minor; and

(C) Where wagers are automatically debited and credited to the account holder.

(19) [~~(18)~~] TIM--ticket-issuing machine.

(20) [~~(19)~~] TIM-to-Tote network--a wagering network consisting of a single central processing unit and the TIMs at any number of remote sites.

(21) [~~(20)~~] Totalisator system--a computer system that registers and computes the wagering and payoffs in pari-mutuel wagering.

(22) [~~(21)~~] Totalisator operator--the individual assigned to operate the totalisator system at a racetrack facility.

(23) [~~(22)~~] Tote-to-tote network--a wagering network in which each wagering location has a central processing unit.

(24) [~~(23)~~] User--a totalisator company employee authorized to use the totalisator system in the normal course of business.

(b) A reference in this chapter to the mutuel manager includes the mutuel manager's designee, in accordance with §313.53 of this title (relating to Mutuel Manager) or §315.36 of this title (relating to Mutuel Manager.)

(c) A request required to be made in writing under this chapter may be transmitted via hand delivery, e-mail, facsimile, courier service, or U.S. mail.

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

Filed with the Office of the Secretary of State on December 13, 2023.

TRD-202304701
Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 822-6699

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16 TAC §321.21

The Texas Racing Commission (TXRC) proposes amendments to an existing rule in Texas Administrative Code, Title 16, Part 8,

Chapter 321, Subchapter A, Division 1, §321.21, Certain Wagers Prohibited, concerning the pari-mutuel wagering procedures. This amendment is referred to as a "proposed rule amendment." The purpose of this amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002.

SECTION-BY-SECTION SUMMARY.

The proposed rule amendment §321.2 to incorporate Texas Occupations Code § 2027.002 into the e-wagering rules.

GOVERNMENT GROWTH IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code § 2001.022.

For each year of the first five years the proposed rules will be in effect, Amy F. Cook, Executive Director has determined the following:

The proposed rule amendment does not create or eliminate a government program.

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

Implementation of the proposed rule amendment does not require an increase or decrease in future agency legislative appropriations.

The proposed rule amendment does not require an increase or decrease in fees paid to the agency.

The proposed rule amendment does not create a new regulation.

The proposed rule amendment does expand, limit, or repeal an existing regulation.

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

The proposed rule amendment does not positively or adversely affect this state's economy.

ECONOMIC IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

REGULATORY FLEXIBILITY ANALYSIS.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

TAKINGS IMPACT ASSESSMENT.

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

LOCAL EMPLOYMENT IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

COST-BENEFIT ANALYSIS.

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected benefit the State of Texas by accurately describing technology changes in pari-mutuel wagering systems which will assist licensed racetrack associations in providing wagering opportunities in the enclosed area of a racetrack authorized in Texas Occupations Code § 2027.002.

FISCAL NOTE ANALYSIS.

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

PUBLIC COMMENTS.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register,* via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by telephone at (512) 833-6699.

STATUTORY AUTHORITY.

The amendments are proposed under Tex. Occ. Code § 2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the proposed amendments.

§321.21. Certain Wagers Prohibited.

(a) Except as otherwise provided by Section 2027.002 of the Act, an [~~An~~] association may not accept a wager made by mail, by telephone, or by internet. A data communications link for common pooling purposes is not considered a wager for purposes of this section.

(b) An association may not accept a wager made on credit.

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

Filed with the Office of the Secretary of State on December 13, 2023.

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Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 833-6699

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SUBCHAPTER D. SIMULCAST WAGERING
DIVISION 1. GENERAL PROVISIONS

16 TAC §321.413

The Texas Racing Commission (TXRC) proposes amendments to an existing rule in Texas Administrative Code, Title 16, Part 8, Chapter 321, Subchapter D, Division 1, General Provisions §321.413, Duties of Guest Racetrack, concerning the pari-mutuel wagering procedures. This amendment is referred to as a "proposed rule amendment." The purpose of these rule amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002.

SECTION-BY-SECTION SUMMARY.

The proposed rule amends §321.1 to update definitions related to e-wagering activities and systems authorized in the Texas Occupations Code § 2027.002.

GOVERNMENT GROWTH IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code § 2001.022.

For each year of the first five years the proposed rules will be in effect, Amy F. Cook, Executive Director has determined the following:

The proposed rule amendment does not create or eliminate a government program.

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

Implementation of the proposed rule amendment does not require an increase or decrease in future agency legislative appropriations.

The proposed rule amendment does not require an increase or decrease in fees paid to the agency.

The proposed rule amendment does not create a new regulation.

The proposed rule amendment does expand, limit, or repeal an existing regulation.

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

The proposed rule amendment does not positively or adversely affect this state's economy.

ECONOMIC IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

REGULATORY FLEXIBILITY ANALYSIS.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

TAKINGS IMPACT ASSESSMENT.

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

LOCAL EMPLOYMENT IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

COST-BENEFIT ANALYSIS.

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected benefit the State of Texas by accurately describing technology changes in pari-mutuel wagering systems which will assist licensed racetrack associations in providing wagering opportunities in the enclosed area of a racetrack authorized in Texas Occupations Code § 2027.002.

FISCAL NOTE ANALYSIS.

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

PUBLIC COMMENTS.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register,* via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by telephone at (512) 833-6699.

STATUTORY AUTHORITY.

The amendments are proposed under Tex. Occ. Code § 2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the proposed amendments.

§321.413. Duties <u>of</u> [~~Of~~] Guest Racetrack.

(a) An association that conducts pari-mutuel wagering on a simulcast import acts as a guest
racetrack on those dates. The guest racetrack shall:

(1) provide adequate communication facilities, enabling pari-mutuel data transmissions and data communications between totalisator systems of the host racetrack and the guest racetrack;

(2) if the guest racetrack participates in common pools, provide a direct telephone line and a facsimile machine, or other means approved by the executive <u>director</u> [~~secretary~~], located in the mutuel area to transmit information to the host racetrack in case of a system failure; and

(3) display the audio and video signals of the races being simulcast to the patrons<u>, unless the patrons otherwise have access to the program and race information for the simulcast races available within the racetrack's enclosure</u>.

(b) After each simulcast performance, the guest racetrack shall provide the reports of its parimutuel operations required by Subchapters A and B of this chapter.

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

Filed with the Office of the Secretary of State on December 13, 2023.

TRD-202304703
Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 833-6699

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16 TAC §321.417

The Texas Racing Commission (TXRC) proposes amendments to an existing rule in Texas Administrative Code, Title 16, Part 8, Chapter 321, Subchapter D, Division 1, General Provisions §321.417, Emergency Procedures, concerning the pari-mutuel wagering procedures. This amendment is referred to as a "proposed rule amendment." The purpose of these rule amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002.

SECTION-BY-SECTION SUMMARY.

The proposed rule amends §321.417 to update definitions related to e-wagering activities and systems authorized in the Texas Occupations Code § 2027.002.

GOVERNMENT GROWTH IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code § 2001.022.

For each year of the first five years the proposed rules will be in effect, Amy F. Cook, Executive Director has determined the following:

The proposed rule amendment does not create or eliminate a government program.

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

Implementation of the proposed rule amendment does not require an increase or decrease in future agency legislative appropriations.

The proposed rule amendment does not require an increase or decrease in fees paid to the agency.

The proposed rule amendment does not create a new regulation.

The proposed rule amendment does expand, limit, or repeal an existing regulation.

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

The proposed rule amendment does not positively or adversely affect this state's economy.

ECONOMIC IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

REGULATORY FLEXIBILITY ANALYSIS.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

TAKINGS IMPACT ASSESSMENT.

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

LOCAL EMPLOYMENT IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

COST-BENEFIT ANALYSIS.

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected benefit the State of Texas by accurately describing technology changes in pari-mutuel wagering systems which will assist licensed racetrack associations in providing wagering opportunities in the enclosed area of a racetrack authorized in Texas Occupations Code § 2027.002.

FISCAL NOTE ANALYSIS.

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

PUBLIC COMMENTS.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register,* via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by telephone at 512-833-6699.

STATUTORY AUTHORITY.

The amendments are proposed under Tex. Occ. Code § 2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the proposed amendments.

§321.417. Emergency Procedures.

(a) If an association is unable to establish or to maintain the audio or video signal from a host racetrack <u>of any races for which the association is displaying the audio and video signal</u>, the association shall immediately notify the

host racetrack of the lost signal and may continue to accept wagers for four hours while attempting to establish the signal.

(b) If after four hours the audio or video signal cannot be established the association may
continue to accept wagers on the signal provided:

(1) the mutuel manager makes an announcement to the public informing them that due to technical difficulties the audio or video signal has been lost;

(2) the association transmits the odds on the affected race to the video department to be
displayed to the patrons; and

(3) the totalisator operator locks all wagering on the affected race at zero minutes to
post to ensure the integrity and transfer of the wagering pools.

(c) If the host racetrack loses the ability to transmit the audio or video signal, the host
racetrack:

(1) shall notify all guest racetracks of the technical difficulties being experienced;

(2) may continue to accept wagers from the guest racetracks on that day's races; and

(3) may not accept wagers from the guest racetracks for subsequent race days until the technical difficulties have been corrected.

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

Filed with the Office of the Secretary of State on December 13, 2023.

TRD-202304704
Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 833-6699

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SUBCHAPTER E. TICKETLESS ELECTRONIC WAGERING

DIVISION 1. CONDUCT OF E-WAGERING

16 TAC §321.607

The Texas Racing Commission (TXRC) proposes amendments to an existing rule in Texas Administrative Code, Title 16, Part 8, Chapter 321, Subchapter E, Division 1, §321.607, Conduct of E-Wagering, concerning the pari-mutuel wagering procedures. This amendment is referred to as a "proposed rule amendment." The purpose of this rule amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002.

SECTION-BY-SECTION SUMMARY.

The proposed rule amends §321.607 to update definitions related to e-wagering activities and systems authorized in the Texas Occupations Code § 2027.002.

GOVERNMENT GROWTH IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed rules will not affect the local economy, so the Commission is not required to prepare a local employment impact statement under Government Code § 2001.022.

For each year of the first five years the proposed rules will be in effect, Amy F. Cook, Executive Director has determined the following:

The proposed rule amendment does not create or eliminate a government program.

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

Implementation of the proposed rule amendment does not require an increase or decrease in future agency legislative appropriations.

The proposed rule amendment does not require an increase or decrease in fees paid to the agency.

The proposed rule amendment does not create a new regulation.

The proposed rule amendment does expand, limit, or repeal an existing regulation.

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

The proposed rule amendment does not positively or adversely affect this state's economy.

ECONOMIC IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

REGULATORY FLEXIBILITY ANALYSIS.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

TAKINGS IMPACT ASSESSMENT.

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

LOCAL EMPLOYMENT IMPACT STATEMENT.

Amy F. Cook, Executive Director, has determined that the proposed amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

COST-BENEFIT ANALYSIS.

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to benefit the State of Texas by accurately describing technology changes in pari-mutuel wagering systems which will assist licensed racetrack associations in providing wagering opportunities in the enclosed area of a racetrack authorized in Texas Occupations Code § 2027.002.

FISCAL NOTE ANALYSIS.

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

PUBLIC COMMENTS.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register,* via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by telephone at (512) 833-6699.

STATUTORY AUTHORITY.

The amendments are proposed under Tex. Occ. Code § 2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the proposed amendments.

§321.607. E-Wagering Account Restrictions.

(a) The mutuel manager of an association shall establish and manage E-wagering within an association's enclosure.

(b) The making and acceptance of wagers over the communications facility known as the "Internet" or "telephone" is prohibited, [.]except as otherwise permitted by §2027.002 of the Act.

(c) An association may accept deposits to an account only in the form of cash, cashier's check, money order, or other method determined by the executive director [~~secretary~~] to be a cash equivalent.

(d) The association may not accept wagers in an amount that exceeds the account balance.

(e) An account holder must be at least 21 years of age.

(f) An account holder is responsible for all activity associated with his or her account.

(g) An association may use E-wagering devices only if the devices are connected to the totalisator system [.] either directly or via a closed-loop subscriber-based system.

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

Filed with the Office of the Secretary of State on December 13, 2023.

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Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 67. STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MANUALS

The State Board of Education (SBOE) proposes new §§67.21, 67.23, 67.25, 67.81, and 67.83, concerning state review and approval of instructional materials. The proposed new sections would implement House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, by defining the criteria to be used in the review and approval of instructional materials by the SBOE and the Texas Education Agency (TEA); defining requirements for publisher participation in the instructional materials review and approval (IMRA) process; and establishing rules for the annual request for instructional materials for review and future proclamations, contracts for instructional materials, and criteria for publishers required to host parent portals.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), Chapter 31, addresses instructional materials in public education and permits the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials. HB 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised TEC, Chapter 31, including several provisions under SBOE authority. HB 1605 also added a new provision to TEC, Chapter 48, to provide additional funding to school districts and charter schools that adopt and implement SBOE-approved materials. In addition, the bill added requirements related to adoption of essential knowledge and skills in TEC, Chapter 28.

At the June 2023 SBOE meeting, the Committee of the Full Board held a work session to receive an overview presentation on HB 1605 from the commissioner of education and begin discussing preliminary decisions and next steps. The June 2023 SBOE HB 1605 Work Session Presentation shared during the work session is available on the TEA website at https://tea.texas.gov/about-tea/leadership/state-board-of-education/sboe-2023/sboe-2023-june/sboe-hb1605-working-session-slidedeck-062223.pdf.

At the August-September meeting, the Committee of the Full Board discussed the IMRA process and discussed the approach to developing the quality rubric criteria and process.

The proposed new sections would implement HB 1605 and incorporate the feedback provided by the board.

The SBOE approved the proposed new sections for first reading and filing authorization at its December 13, 2023 meeting.

FISCAL IMPACT: Todd Davis, associate commissioner of instructional strategy, has determined that there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

COST INCREASE TO REGULATED PERSONS: The proposal may impose a cost on regulated persons, another state agency,

a special district, or a local government. However, these rules are necessary to implement legislation and, therefore, are not subject to Texas Government Code, §2001.0045.

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, the proposed rulemaking would create new regulations regarding the review and approval of instructional materials, the requirements of publishers when hosting a publisher parent portal, and standard terms and conditions for approved instructional materials contracts in order to implement HB 1605, 88th Texas Legislature, Regular Session, 2023. The proposed rulemaking would require an increase in future legislative appropriations to the agency. The Texas Legislature funded this program through House Bill 1, Article IX, Section 18.78, 88th Texas Legislature, Regular Session, 2023; however, future legislative appropriations will be required to implement the process outlined by these proposed rules. The proposed rulemaking would positively affect the state's economy by allowing increased participation by publishers in the market for instructional materials in the state of Texas.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Davis has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that adopted instructional materials continue to appropriately meet statutory and SBOE requirements prior to use by Texas teachers and students, that publishers hosting a publisher parent portal meet statutory and SBOE requirements, and that approved instructional materials contracts appropriately meet statutory and SBOE requirements. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data or reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins December 29, 2023, and ends at 5:00 p.m. on January 29, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January-February 2024 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 29, 2023.

SUBCHAPTER B. STATE REVIEW AND APPROVAL

19 TAC §§67.21, 67.23, 67.25

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §26.006, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which requires school districts and open-enrollment charter schools to make available access to instructional materials for parents via a parent portal if applicable; TEC, §31.003(a), as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.022, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency (TEA) under TEC, §31.023; TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE; TEC, §31.151, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the SBOE to determine the standard terms and conditions of instructional materials contracts; and TEC, §31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to adopt standards for entities that supply instructional materials reviewed by TEA to make instructional materials supplied by the entity available on a parent portal hosted by the entity.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§26.006, 31.003(a), 31.022, 31.023, and 31.151, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, and 31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023.

§67.21. Proclamations, Public Notice, and Requests for Instructional Materials for Review.

(a) Upon the adoption of revised Texas Essential Knowledge and Skills (TEKS) or Texas Prekindergarten Guidelines (TPG), the State Board of Education (SBOE) shall determine if the extent of the revisions have created a need to remove instructional materials from the list approved under Texas Education Code, §31.022.

(b) The SBOE shall issue a proclamation calling for instructional materials if the determination in subsection (a) of this section results in a decision that a proclamation is necessary. The proclamation shall serve as notice to:

(1) all publishers to submit instructional material for review for the subject and grade level or course(s); and

(2) all publishers with approved instructional materials for the subject and grade level or course(s) that to remain on the list of approved materials, the publisher must submit new or revised materials or new information demonstrating alignment of current instructional materials to the revised TEKS or TPG.

(c) The Texas Education Agency shall issue an annual request for instructional materials to notify all publishers and the public that submissions of instructional materials aligned to quality rubrics and the suitability rubric approved by the SBOE are being invited for review.

(d) Each proclamation and annual request for instructional materials for review shall contain the following:

(1) information about and reference to applicable TEKS in each subject for which submissions are being invited;

(2) the student enrollment of the courses or grade levels called for, to the extent that it is available, for the school year prior to the year in which the proclamation or annual request for instructional materials is issued;

(3) the requirement that a publisher grant electronic access to the instructional materials being submitted that complies to the specifications in the proclamation or annual request for instructional materials for review and may not submit a print copy;

(4) specifications for providing computerized files to produce accessible formats of approved instructional materials;

(5) specifications for ensuring that electronic instructional materials are fully accessible to students with disabilities; and

(6) a schedule of instructional materials review and approval procedures.

§67.23. Requirements for Publisher Participation in Instructional Materials Review and Approval (IMRA).

(a) A publisher with approved materials shall comply with product standards and specifications.

(b) Publishers participating in the adoption process are responsible for all expenses incurred by their participation.

(c) A publisher may not submit instructional materials for review that have been authored or contributed to by a current employee of the Texas Education Agency (TEA). This does not apply to open education resource instructional materials as developed by TEA in accordance with Texas Education Code, Chapter 31, Subchapter B-1.

(d) On or before the deadline established in the schedule of approval procedures, publishers shall submit correlations of instructional materials submitted for review in a format designated by the commissioner of education. Correlations shall be provided for materials designed for student use and materials designed for teacher use and include:

(1) evidence of coverage of each student expectation, in the context of the lesson, of the Texas Essential Knowledge and Skills required by the proclamation or the request for instructional materials for review; and

(2) evidence of alignment to the quality rubric indicators.

(e) On or before the deadline established in the schedule of approval procedures, publishers shall certify that after exercising reasonable efforts, the submitted material complies with suitability standards and all applicable state laws.

(f) A publisher that intends to offer instructional materials for review and approval shall comply with additional requirements included in a proclamation or the annual request for instructional materials for review.

§67.25. Consideration and Approval of Instructional Materials by the State Board of Education.

The State Board of Education (SBOE) shall review the results of the instructional materials reviews completed by a review panel and submitted by the commissioner of education in accordance with Texas Education Code (TEC), §31.022 and §31.023. Instructional materials may be placed on the list of approved instructional materials only if they meet the following criteria:

(1) for full-subject and partial-subject tier one instructional materials for foundation subjects as defined by TEC, §28.002(a)(1), the product components cover 100% of the Texas Essential Knowledge and Skills (TEKS) for the specific grade level and subject area when the proclamation or request for instructional materials was issued. In determining the percentage of the TEKS covered by instructional materials, each student expectation shall count as an independent element of the TEKS;

(2) materials have been reviewed through the process required by TEC, §31.023;

(3) materials are free from factual error, defined as a verified error of fact or any error that would interfere with student learning, including significant grammatical or punctuation errors;

(4) materials meet the Web Content Accessibility Guidelines (WCAG) and meet the technical specifications of the Federal Rehabilitation Act, Section 508, as specified when a request for instructional materials or proclamation was issued;

(5) materials conform to or exceed in every instance the latest edition of the Manufacturing Standards and Specifications for Textbooks (MSST), developed by the State Instructional Materials Review Association, when the proclamation or request for instructional materials was issued;

(6) materials are compliant with the suitability standards adopted by the SBOE and are compliant with all applicable state laws; and

(7) materials provide access to a parent portal as required by TEC, §31.154.

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

Filed with the Office of the Secretary of State on December 18, 2023.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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SUBCHAPTER D. DUTIES OF PUBLISHERS AND MANUFACTURERS

19 TAC §67.81, §67.83

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §26.006, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which requires school districts and open-enrollment charter schools to make available access to instructional materials for parents via a parent portal if applicable; TEC, §31.003(a), as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care,

use, and disposal of instructional materials; TEC, §31.022, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency (TEA) under TEC, §31.023; TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE; TEC, §31.151, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the SBOE to determine the standard terms and conditions of instructional materials contracts; and TEC, §31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to adopt standards for entities that supply instructional materials reviewed by TEA to make instructional materials supplied by the entity available on a parent portal hosted by the entity.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§26.006, 31.003(a), 31.022, 31.023, and 31.151, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, and 31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023.

§67.81. Instructional Materials Contracts.

(a) The state contract for materials placed on the list of approved materials shall not be changed or modified without the approval of Texas Education Agency (TEA) legal counsel.

(b) Contracts shall be sent to publishers for signature. Signed contracts returned by publishers shall be signed by the chair of the State Board of Education (SBOE) and attested to by the commissioner of education. Properly signed and attested contracts shall be filed with TEA.

(c) The publisher of instructional materials approved by the SBOE shall:

(1) enter into a contract with the SBOE for a term not to exceed an initial term of eight years; and

(2) commit to provide the instructional materials in the manner specified by the publisher in the official bid specified in §67.23 of this title (relating to Requirements for Publisher Participation in Instructional Materials Review and Approval (IMRA)).

(d) The commissioner shall annually review contracts for instructional materials and present to the SBOE those contracts that are eligible for renewal.

(e) The SBOE shall renew existing contracts upon determining that the renewal would be in the best interest of the state and after considering the following factors:

(1) placement of subject areas in the Texas Essential Knowledge and Skills review schedule;

(2) willingness of publishers to renew contracts; and

(3) cost of instructional materials under a renewal contract.

(f) Publishers awarded new contracts shall be prepared to make the approved instructional materials available for at least one contract renewal period of not more than four years at prices that are mutually agreeable to publishers and to the commissioner. The SBOE may consider refusing to award future contracts to a publisher that, after receiving written notice to do so, refuses to rebid instructional materials at least once. Failure of a publisher to negotiate an acceptable price for an extended contract shall not be considered failure to rebid instructional materials.

(g) Contracts with publishers are subject to all provisions of Texas Education Code (TEC), Chapter 31.

(h) This section does not apply to open education resource instructional material.

§67.83. Publisher Parent Portal.

(a) Standards under this section apply to any publisher that supplies instructional materials that are reviewed by a review panel under Texas Education Code (TEC), §31.022 and §31.023, and placed on the list of approved instructional materials by the State Board of Education (SBOE) as outlined in TEC, §31.022.

(b) Standards under this section apply to any instructional materials, including:

(1) full-subject tier one instructional material;

(2) open education resource instructional material;

(3) partial-subject tier one instructional material; and

(4) supplemental instructional material.

(c) A publisher hosting an instructional materials parent portal must:

(1) include in the portal all components placed on the list of instructional materials approved by the SBOE, including teacher- and student-facing materials;

(2) for each school district or open-enrollment charter school that purchases the instructional materials, make the parent portal interoperable with any learning management system or online learning portal used by the district or charter school to assign, distribute, present, or make available instructional materials as defined by TEC, §31.002, to students;

(3) for instructional materials not available in a digital format, contain the instructional materials component International Standard Book Number (ISBN) or part number, title, edition, and author to allow a parent to locate a physical copy of the material;

(4) allow access beginning not later than 30 days before the school year begins and concluding not earlier than 30 days after the school year ends;

(5) optimize the portal for viewing on large monitors, laptops, tablets, and smartphone devices; and

(6) meet Web Content Accessibility Guidelines (WCAG) identified in the associated proclamation or annual request for instructional materials for review and any technical standards required by the Federal Rehabilitation Act, Section 508.

(d) A publisher hosting an instructional materials parent portal may not:

(1) include any instructional materials as defined by TEC, §31.002, that were not reviewed and placed on the approved materials list; or

(2) include any instructional materials on the portal that would undermine, subvert, or impede any local education agency or open-enrollment charter school from complying with TEC, §31.1011.

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

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Texas Education Agency
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CHAPTER 97. PLANNING AND ACCOUNTABILITY
SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS
DIVISION 2. CONTRACTING TO PARTNER TO OPERATE A DISTRICT CAMPUS

19 TAC §97.1075, §97.1079

The Texas Education Agency (TEA) proposes amendments to §97.1075 and §97.1079, concerning contracting to partner to operate a district campus. The proposed amendments would remove language regarding the finality of decisions under 19 TAC §97.1075 and §97.1079 as a result of two court cases invalidating the provisions.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 97.1075 describes the requirements for contracting to partner to operate a campus under Texas Education Code (TEC), §11.174, including requirements related to conferred authorities, performance contracts, and ongoing monitoring. Section 97.1079 describes the criteria and determination processes for districts applying for benefits under TEC, §11.174(a)(2). Each rule includes a provision regarding the finality of the commissioner of education's decisions under the rule and the inability of districts to appeal those decisions. Due to recent court cases invalidating the provisions, the proposed amendments would remove §97.1075(k) and §97.1079(f).

FISCAL IMPACT: Kelvey Oeser, deputy commissioner of educator support, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit existing regulations by removing the inability to appeal final decisions of the commissioner under the affected regulations.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Oeser has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to reflect current law regarding appeals rights under the affected rules, as determined by the courts. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins December 29, 2023, and ends February 5, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 29, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §11.174, which requires the commissioner to adopt rules to administer the provisions for contracts regarding district campus operations; and TEC, §48.252, which requires the commissioner to adopt rules to administer the provisions for entitlements for district charter partnerships.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §11.174 and §48.252.

§97.1075. Contracting to Partner to Operate a Campus under Texas Education Code, §11.174.

(a) - (j) (No change.)

~~[(k) Decision finality. A decision of the commissioner made under this section is a final administrative decision and is not subject to appeal under TEC, §7.057.]~~

§97.1079. Determination Processes and Criteria for Eligible Entity Approval under Texas Education Code, §11.174.

(a) - (e) (No change.)

~~[(f) Decision finality. The approval or denial of the eligibility approval request is a final administrative decision by the commissioner and not subject to appeal under TEC, §7.057.]~~

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

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Cristina De La Fuente-Valadez
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Texas Education Agency
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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

The State Board for Educator Certification (SBEC) proposes a repeal and new 19 Texas Administrative Code (TAC) §§228.1, 228.2, 228.4, 228.6, 228.11, 228.13, 228.15, 228.17, 228.19, 228.21, 228.23, 228.25, 228.31, 228.33, 228.35, 228.37, 228.39, 228.41, 228.43, 228.45, 228.47, 228.49, 228.51, 228.53, 228.55, 228.57, 228.61, 228.63, 228.65, 228.67, 228.69, 228.71, 228.73, 228.75, 228.77, 228.79, 228.81, 228.91, 228.93, 228.95, 228.97, 228.99, 228.101, 228.103, 228.105, 228.107, 228.109, 228.111, 228.113, 228.115, 228.117, 228.121, and 228.123, concerning requirements for educator preparation programs (EPPs). The proposed repeal and new rules would provide updated guidance on the requirements for EPPs.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 228, Requirements for Educator Preparation Programs, establish the requirements for EPPs in the preparation of candidates for Texas educator certification.

The proposed repeal of and new 19 TAC Chapter 228 was initially driven by the following three primary goals prescribed by the SBEC and were informed by extensive stakeholder input: 1) reorganize the chapter to support enhanced organization and readability, including the creation of subchapters and sections and the streamlining of redundancy to make the rules clearer and more user-friendly; 2) create a residency preparation route leading to an enhanced standard certificate to recognize programs who have implemented this quality preparation pathway and recognize candidates who have completed this extensive preparation; and 3) codify foundational components of the SBEC's Educator Preparation Framework (EPF), to ensure the foundational expectations of preparation programs as prescribed in Chapter 228 align with the aspirational vision outlined in the EPF.

Throughout extensive engagement with stakeholders in the Chapter 228 redesign process, additional opportunities to elevate the quality of educator preparation were surfaced and integrated into the draft rule text presented to the SBEC at its September 2023 meeting. The proposed new rules reflect additional edits informed by stakeholder input.

The following is a description of proposed new 19 TAC Chapter 228.

Subchapter A. General Guidance

§228.1, General Provisions

Proposed new §228.1 would provide an overview of the purpose and goals of educator preparation in Texas.

§228.2, Definitions.

Proposed new §228.2 would include definitions from the proposed repeal of §228.2, with the addition of definitions for *analysis, assignment start date, authentic school setting, clinical experience, completer, co-teaching, enactments, host teacher, representations, performance task, and residency,* and revised definitions for *campus supervisor, classroom teacher, clinical teaching, cooperating teacher, educator preparation program, field-based experiences, enhanced standard certificate, late hire, and standard certificate.*

The proposed new definition of *assignment start date* would set the point at which the teacher candidate's internship experience starts for the purpose of field supervision and ongoing support of candidates as required.

The proposed new definition of *clinical experience* would provide a common term in which to categorize the supervised clinical requirement for each certificate class, including clinical teaching, internship, practicum, and residency.

The proposed new definition of *authentic school setting* would establish that a candidate cannot count professional development, extracurricular activities, workdays when students are not present, or before or after-school childcare or tutoring as field-based experiences, 30 hours of which are required as pre-requisites for an intern certificate, and that field-based experience hours are allowable in a summer school setting.

The proposed new definition of *completer* would match the definition in 19 TAC §229.2(10), Definitions, to create consistency between chapters of SBEC rules.

The proposed new definitions of *cooperating teacher*, *mentor*, and *site supervisor* would be streamlined to remove the qualifications and duties of these positions that appear in the proposed repeal of 19 TAC Chapter 228. The qualifications and duties are proposed in new §228.93, Cooperating Teacher Qualifications and Responsibilities, §228.97, Mentor Qualifications and Responsibilities, and §228.99, Site Supervisor Qualifications and Responsibilities, respectively. These proposed new sections would increase clarity and ease of reference so that the public no longer has to go to §228.2 to find definitions for this critical information.

The proposed new definition of *entity* would be updated with a more specific list of the types of entities that act as EPPs.

The proposed new definition of *educator preparation program* would define the role of an entity approved by the SBEC.

The proposed new definition of *field-based experiences* would be updated to include the proposed new defined term *authentic school setting* and add that field-based experiences include both observation and interaction and are an element of coursework.

The proposed new definition of *field supervisor* would be modified to improve readability and clarity.

The proposed new definition of *school day* would specify that conference periods, lunch periods, professional development,

and extracurricular activities do not count as part of the school day for purposes of determining the length of a clinical teaching or internship experience.

The proposed new definition of *late hire* would specify that after the 45th day before the first day of instruction, an individual must be both accepted into an EPP and hired for a teaching position at a school district.

Definitions are also proposed for the following five terms from the Effective Preparation Framework (EPF): *analysis, co-teaching, enactments, performance task, and representations.* The proposed additions would offer clarity to EPPs and candidates around the intended meaning of the terms, how and when they are applied in preparation and practice, and relevance to improving quality practices in approved programs. The additional definitions would provide a common language in the effective preparation of candidates for certification.

The proposed new definitions of *school day* and *school year* would provide flexibility by aligning them with the school calendars of the campuses on which the candidates are completing the clinical experiences.

The proposed new definitions of *enhanced standard certificate* and *standard certificate* would mirror definitions proposed in new §230.1, Definitions, and align with the inclusion of *intern certificate* and *probationary certificate*.

To implement the Residency preparation route, the proposed new language in §228.2, Definitions, would amend the definition of *campus supervisor* to include residency candidates along with intern candidates, and add definitions of *host teacher, residency, and co-teaching* to standardize the meaning of those terms.

§228.4, Declared State of Disaster

Proposed new §228.4 would provide continuity of educator preparation program processes during a declared state of disaster.

§228.6, Implementation Date

Proposed new §228.6 would confirm the repeal of Chapter 228 and the provisions of new Chapter 228 are effective September 1, 2024.

Subchapter B. Approval of Educator Preparation Programs

§228.11, New Entity Approval

Proposed new §228.11 would identify the requirements that must be met by an entity seeking approval from the SBEC as an EPP. The proposed new rule would authorize the Texas Education Agency (TEA) to develop and identify the approval components to be included in the application. TEA staff can revise EPP applications as needed to align with the TEC and TAC.

Proposed new §228.11(a) would require that entities seeking to become an EPP take part in a workshop conducted by TEA staff to familiarize the entity with the SBEC rules.

Proposed new §228.11(a)(2) would create a limitation that an entity seeking initial approval cannot apply to offer more than five certificate categories within one certificate class. This limitation would allow an entity to focus on high-quality preparation and provide TEA staff time to review application materials more efficiently.

Proposed new §228.11(a)(3) would require that an entity seeking approval must demonstrate that it has the staff, knowledge, and expertise to support individuals in each certificate category and class requested.

Proposed new §228.11(d) would establish the timing of the post-approval site visit to occur after the first year in which the new EPP reports that it has completers.

Proposed new §228.11(f) would require an entity seeking approval to have at least one location in Texas that provides candidate's a face-to-face setting for interacting with EPP staff as necessary.

§228.13, Continuing Educator Preparation Program Approval.

Proposed new §228.13 would establish the timeframe for EPP reviews.

Proposed new §228.13(b) would establish the types of continuing approval reviews--an onsite visit involves TEA staff going to the EPP's location, while a desk review is conducted remotely.

Proposed new §228.13(c) would establish the components of the risk assessment with regard to alignment with requirements in TEC, §21.0454.

Proposed new §228.13(d) would require a continuing approval review when an EPP consolidates with another EPP. This would allow TEA staff to identify whether the surviving EPP is adequately supporting the candidates and certificate categories that it received.

Proposed new §228.13(e) would require an EPP undergoing a continuing approval review to pay the required fees prior to the start of the review. This would prevent EPPs from attempting to evade or indefinitely delay payment.

Proposed new Figure: 19 TAC §228.13(f) would set out the required evidence of compliance that EPPs must create, maintain, and present during the continuing approval review.

Proposed new §228.13(f) would incorporate the requirement that an EPP retain documents demonstrating a candidate's eligibility for admission and completion of requirements for five years from the date the candidate completes or leaves the EPP. The proposed additions to new §228.13(f) would also specify that the EPP will be scored on a rubric developed and published by TEA staff and provide that 80% of records reviewed by TEA staff must meet or exceed the requirements.

Proposed new §228.13(g) would allow EPPs participating in a Continuing Approval Review pilot to use that pilot to meet the requirements of the five-year continuing approval review.

§228.15, Additional Approval.

Proposed new §228.15(b) would set out the requirements for an EPP seeking approval from the SBEC to offer the residency route to certification. It would require the EPP to complete an application outlining its compliance with the residency requirements established within Chapter 228 and Chapter 230, which would be reviewed by the TEA and approved by the SBEC, and would require a post-approval site visit demonstrating compliance with rules once the EPP produces residency completers. Proposed new §228.15(b)(1) would adopt in rule a figure that would describe evidence sources to evaluate and approve residency applications. EPPs will be scored for approval on a rubric developed and published by TEA staff.

Proposed new §228.15(c) would require EPPs to apply for new certification classes or categories, reference the applications that EPPs must complete when seeking to offer a new certificate

class or category, and add language about the parameters that must be used by TEA staff to develop the applications. The proposed new language in §228.15(c)(4) would require that an EPP have an accreditation status of Accredited to add new certificate categories and/or classes.

§228.17, Limitations on Educator Preparation Program Amendment

Proposed new §228.17 would establish the process through which an EPP can amend its program.

§228.19, Contingency of Approval

Proposed new §228.19 would specify that approval of an entity is contingent on approval by other governing bodies, including the Texas Higher Education Coordinating Board, board of regents, and school district boards of trustees, and that continuing approval is contingent on compliance with state and federal law.

Subchapter C. Administration and Governance of Educator Preparation Programs

The subchapter title would be updated to more accurately reflect that the proposed new rules focus on both the administration and governance of EPPs.

§228.21, Program Consolidation or Closure

Proposed new §228.21 would state that closure rules apply to an EPP regardless of whether the EPP is closing fully or eliminating certificate classes and regardless of whether the closure is voluntarily or due to SBEC action.

Proposed new §228.21(a)(1) would replace August 31 as the effective date for EPP closure with a more flexible requirement that would specify an effective date of at least 90 days and no more than 270 days after the date of notification of closure or consolidation. This would allow programs to choose a closure date that gives them enough time to fulfill the obligations to candidates.

Proposed new §228.21(a)(2) would require the EPP legal authority to communicate with the TEA on a scheduled basis so that staff from the closing program can seek guidance concerning questions and problems that arise during the close out phase, which ultimately benefits candidates and past finishers.

The proposed new rule text in §228.21(a)(3) would expand the EPP's obligation to notify candidates of its closure to include candidates who have been enrolled within the last five years and completers within the last five years. This proposed new requirement would ensure that candidates who may still need support or paperwork from the closing EPP are able to learn what options are available.

Proposed new §228.21(a)(5) would require closing EPPs to identify other EPPs to provide test approval and standard certification recommendations for completers at the closing EPP and to provide candidates with all necessary documentation to expedite the candidates' transfer. This would allow candidates in a closing EPP an easier transition to another EPP and certification.

§228.23, Change of Ownership and Name Change

Proposed new §228.23(d) would set an exception to the general rule that EPPs cannot change their names without a change in ownership to allow colleges and universities to change their names when the entire college or university changes its name. The purpose of the original prohibition on EPP name changes was to prevent EPPs from changing names frequently to confuse or mislead the public.

Proposed new §228.23(e) would require EPPs to report to the SBEC annually any names that the EPP had used "doing business as" during the previous year so that the SBEC can make that information available to the public. By providing this information to consumers, the SBEC allows the public to better understand the true identity and performance history of an EPP.

§228.25, Governance of Educator Preparation Programs

Proposed new §228.25 would establish expectations of how EPPs should govern themselves and collaborate with other entities (i.e., education service centers or local education agencies) to effectively support the preparation and certification of candidates.

Proposed new §228.25(b) would include a specific requirement for the membership of EPP advisory committees that the committee include at least three of the types of interest groups listed in proposed new §228.25(a).

Proposed new §228.25(d) would set out requirements for EPPs approved to offer a residency program to convene key personnel quarterly to review teacher residency implementation data, including candidate performance, to make shared programmatic decisions and inform the continuous improvement of the residency program.

Subchapter D. Required Educator Coursework and Training

§228.31, Minimum Educator Preparation Program Obligations to All Candidates

Proposed new §228.31 would establish general guidelines around expectations of services and supports that EPPs shall provide to all candidates.

Proposed new §228.31(a) would specify by when late hires need to complete admission, coursework, training, and field-based experience requirements.

Proposed new §228.31(b) would require EPPs to identify a dismissal point in their exit policy at which inactive candidates are removed from the EPP and allow a university-based EPP to adopt the university policy for inactive students that must reapply for admission.

Proposed new §228.31(c) would require an EPP to use benchmarks and formal and informal assessment data to design and implement appropriate interventions when needed to ensure continued, effective preparation for certification and teacher candidate support.

Proposed new §228.31(d) would require that an EPP must ensure candidates are adequately prepared to take all certification exams and not just the content pedagogy exams. This additional clarification was inadvertently left off during the initial reorganization of the chapter.

Proposed new §228.31(e) would require an EPP to grant test approval for a completer. If a candidate has returned to the EPP five or more years after completing the program requirements, the EPP may require the candidate to complete additional coursework or training.

Proposed new §228.31(f) would limit when an EPP can prepare a candidate and grant test approval for a certificate category other than the one for which the candidate was initially admitted to the program. The candidate must meet the requirements

for admission in the new certificate category, the EPP must provide coursework and training to the candidate in the new certificate category, and the EPP must ensure that the candidate is adequately prepared for the certification examination in the new certificate category. This would prevent programs from admitting a candidate in one certificate category and switching them to another category for which the candidate is unqualified or unprepared.

Proposed new §228.31(h) would require the EPP to ensure candidates complete all requirements of coursework, training, and the clinical experience before being identified as a completer and being recommended for standard certification, unless the candidate qualifies for an exemption in §228.79, Exemptions from Required Clinical Experiences for Classroom Teacher Candidates.

§228.33, Preparation Program Coursework and/or Training for All Certification Classes

Proposed new §228.33 would establish coursework and training requirements that EPPs must provide to ensure candidate preparedness for certification and readiness for assignments.

Proposed new §228.33(a) would specify that educator effectiveness must be measured in the candidate's assignment.

Proposed new §228.33(b) would create specific requirements for the coursework and training EPPs provide candidates, including performance-based activities, evaluative tools, and required demonstration of proficiency by candidates.

Proposed new §228.33(c) would clarify that all coursework and/or training must be completed before a candidate is marked a finisher and recommended for either the standard or new enhanced standard certificate.

§228.35, Substitution of Applicable Experience and Training

Proposed new §228.35 would specify that EPPs must develop and implement procedures to allow military-related and non-military related candidates to substitute portions of educator certification requirements with applicable experience and training.

Proposed new §228.35(c) would provide rule text specific to candidates seeking test approval for the Deafblind Supplemental Early Childhood-Grade 12 certification and candidates who have previously completed coursework related to the field in a program approved to offer the Deafblind Supplemental Early Childhood-Grade 12 certification. The language would also indicate that programs may require additional coursework for test approval.

§228.37, Coursework and Training for Classroom Teacher Candidates Proposed new §228.37 would establish the minimum required clock-hours of coursework and/or training required for initial classroom teacher certification and the Trade and Industrial Workforce Training certificate. *§228.39, Intensive Pre-Service* Proposed new §228.39(a) would establish the requirements that an EPP must provide prior to issuing an intern certificate under the intensive pre-service. Proposed new §228.39(b) would establish the requirements for a candidate coach under intensive pre-service. Proposed new §228.39(c) would establish the requirements that a candidate must complete to be eligible for an intern certificate under pre-intensive service.

Proposed new §228.39(d) would provide that a candidate participating in intensive pre-service will be eligible for a probationary certificate as prescribed in §230.37(f), Probationary Certificates.

§228.41, Pre-Service Coursework and Training for Classroom Teacher Candidates

Proposed new §228.41(a) was revised in response to stakeholder feedback, increasing the hours required for field-based experiences from 30 to 50.

Proposed new §228.41(b)(11) would require coursework on instructional planning techniques and inclusive practices for students with disabilities to implement HB 159, 87th Texas Legislature, Regular Session, 2021.

Proposed new §228.41(b)(12) would require coursework on the use of open education resource instructional materials approved by the SBOE to implement HB 1605, 88th Texas Legislature, Regular Session, 2023.

A reference to "performance tasks" would reflect the incorporation of the Effective Preparation Framework (EPF) and its use of performance tasks that support integration of authentic performance tasks throughout the curriculum, in particular during the first 150 hours, which are required before the intern certificate.

§228.43, Pre-Service Field-Based Experiences for Classroom Teacher Candidates

Proposed new §228.43 would establish parameters around field-based experiences and related reflections and increase the required number of interactive hours from 15 to 25 and technology-based hours from 15 to 25 in response to stakeholder feedback.

Proposed new §228.43(c)(2) would provide examples of activities in which candidates may engage during interactive experiences. Flexibility for completion of technology-based hours was added to allow substitute teaching hours.

§228.45, Coursework and Training Requirements for Early Childhood: Prekindergarten-Grade 3 Certification

Proposed new §228.45 would require that coursework and training provided is based on concepts and themes in §228.45(a) and not just in §228.45(a)(1).

§228.47, Coursework and Training Requirements for Bilingual Special Education Certification

Proposed new §228.47 would set the requirements for EPPs of candidates in bilingual special education and implement HB 2256, 87th Texas Legislature, Regular Session, 2021.

§228.49, Coursework and Training Requirements for a Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12

Proposed new §228.49 would provide specific language related to the minimum number of clock-hours of coursework and/or training requirements for EPPs offering and candidates who are seeking the Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12 certificate.

§228.51, Coursework and Training for a Deafblind Supplemental: Early Childhood-Grade 12

Proposed new §228.51 would provide specific language related to the minimum number of clock-hours of coursework and/or training requirements for EPPs offering and candidates who are seeking the Deafblind Supplemental: Early Childhood-Grade 12 certificate.

§228.53, Coursework and Training for Non-Teacher Candidates

Proposed new §228.53 would establish coursework and training requirements for certification areas other than classroom teacher and ensure consistency in candidates' preparation that is directly aligned with the educator standards.

§228.55, Late Hire Candidates

Proposed new §228.55 would establish flexibilities and responsibilities related to beginning employment later than originally anticipated for candidates, local employment agencies, and EPPs.

Proposed new §228.55(c) would require an EPP to deactivate a candidate's intern or probationary certificate if the candidate is a late hire and does not complete the required pre-internship coursework and training within 90 days of the start of the internship. This would incentivize EPPs to ensure that their candidates receive the required training timely and prevent untrained educators from staying in Texas classrooms.

§228.57, Educator Preparation Curriculum

Proposed new §228.57 would require that the educator standards adopted by the SBEC serve as the curricular foundation for all educator preparation and, for each certificate, the curriculum must address the relevant Texas Essential Knowledge and Skills.

Proposed new §228.57(c) would expand on the varied and rich types of instructional opportunities that EPPs shall support candidates in experiencing. This would align with information in the EPF and reinforce the expectation that candidates are practicing, and receiving feedback on that practice, throughout the program and reinforce the connected relationship between coursework, practice, and coaching.

Proposed new §228.57(c)(8)(c) would require EPPs to teach candidates about assessing students who are receiving virtual instruction and about how to implement virtual learning curriculum to implement Senate Bill 226, 87th Texas Legislature, Regular Session, 2021.

Proposed new §228.57(10) would require coursework on the use of open education resource instructional materials approved by the SBOE for the subject area and grade level of the candidate's certification category and prohibit coursework on instructional materials that incorporated "three-cueing" into foundational skills reading instruction to implement HB 1605, 88th Texas Legislature, Regular Session, 2023.

Subchapter E. Educator Candidate Clinical Experiences

§228.61, Required Clinical Experiences

Proposed new §228.61 would provide an overview of the clinical experience required for candidates prior to standard certification.

Proposed new §228.61(a) would establish clinical experience options for candidates seeking teacher certification (clinical teaching, internship, or residency) and would include an alternative residency certification route.

Proposed new §228.61(b) would require that teacher candidates participating in an internship experience a full range of professional responsibilities, including the start of the school year, and would provide flexibility to utilize field-based experiences, as needed, to meet this requirement.

Proposed new §228.61(c) would identify the practicum requirement for candidates pursuing certification in non-teacher certificate classes and set the minimum number of clock hours required for completion of a practicum.

§228.63, Locations for Required Clinical Experiences

Proposed new §228.63 would establish the limitations on the location in which a candidate can have an internship, a clinical teaching, or a practicum experience.

Proposed new §228.63(a) was updated from authentic school setting to in-person Prekindergarten-Grade 12 setting to restore the meaning that the candidate must be in an assignment that is in-person in a physical classroom and not in a distance learning or virtual learning classroom.

The requirement in proposed new §228.63(c)(2) was updated to add site supervisor and would identify that the candidate completing a practicum cannot be related to the site supervisor.

Proposed new §228.63 would establish "residency" as a clinical experience across subsections (a)-(g).

§228.65, Residency

Proposed new §228.65 would require that the residency clinical experience include programmatic requirements to issue an enhanced standard certificate and require the program to provide candidates with one full school year of clinical teaching, to include in the first and last day of school, in a classroom with a qualified host teacher in the classroom teaching assignment(s) that matches the certification category sought by the candidate. It would also require that the residency include a minimum of 750 hours in total, with a minimum of 21 hours per week during a school week that does not include closures or disruptions, and the program must document reduced clinical experience hours during weeks with closures or disruptions (see proposed new §228.61(a)). Candidates must complete a minimum of 700 hours in the event of life events such as bereavement, illness, or FMLA.

Proposed new §228.65(b) would require that the instructional setting include one distinct field site, with some exceptions for candidates seeking more than one certification category, Early Childhood-Grade 12 certification, and/or a significant human resources concern, with a limit of two field placements. Exceptions require documentation from both the EPP and partner district. Additionally, it would require that a candidate is co-teaching as lead instructor for at least 400 hours of the residency program.

Proposed new §228.65(c) would establish the requirements for determining a candidate's readiness for teaching, including requiring the EPP to manage candidate progress toward mastery of educator standards through administration of performance gates at least twice per semester, totaling at least four times a year. It also would require field supervisors to be responsible for assessing and evaluating candidate progression through the program.

Proposed new §228.65(d) would specify the circumstances under which an EPP no longer needs to provide ongoing support to a candidate.

Proposed new §228.65(c) would require the EPP, the district personnel, and the candidate to inform one another of the candidate's departure for any of the reasons stated in proposed new §228.65(d).

Proposed new §228.65(f) would establish the requirements for a candidate's eligibility for an enhanced standard certificate, including the requirements for issuance in §230.39(b) and the requirements in proposed new §228.65(a)-(c). Additionally, it would define the requirement for candidates to meet a Proficient performance level for all pedagogical skill dimensions. The dimensions listed are the same as those in 19 TAC §150.1002,

Assessment of Teacher Performance, with the addition of the Instruction Dimension 2.3: Communication.

Proposed new §228.65(g) would define the requirements for successful completion of a residency, including proficiency in the educator standards and a shared recommendation from the host teacher, field supervisor, and campus administrator. If there is no consensus on the recommendation, documentation of why the candidate is not being recommended for a certificate is required to be submitted to the candidate and the field supervisor, host teacher, and/or campus administrator.

§228.67, Clinical Teaching

Proposed new §228.67 would include language that reflects stakeholder feedback and clarify the duration of clinical teaching in a uniform requirement of 490 hours (the equivalent of 70 days).

In proposed new §228.67(b), the abbreviated clinical teaching allowed for maternity leave would be expanded to parental leave in the interest of shared parental responsibility.

Proposed new §228.67(c) would provide guidance for candidates seeking certification in more than one subject area to complete clinical teaching and confirm EPP and LEA training responsibilities and supports to ensure candidate success.

Proposed new §228.67(d) would require EPPs to structure the clinical teaching assignment in such a manner that candidates are provided co-teaching opportunities and additional experiences to have greater responsibility for the instruction being provided over the course of the clinical teaching assignment. This would directly align with the requirement for the residency certification pathway that explicitly includes co-teaching and a gradual release of responsibility.

Proposed new §228.67(g) would specify that only the certification of the candidate or the discharge, release, or withdrawal of the candidate from the EPP would relieve the EPP of the duty to support the candidate during clinical teaching.

§228.69, Clinical Teaching While Employed as Educational Aide

Proposed new §228.69 would align with the requirements for clinical teaching.

In proposed new §228.69(c), the clinical teaching requirement previously allowed for maternity leave would be expanded to parental leave in recognition of shared parental responsibility.

§228.71, Exceptions to Clinical Teaching Requirement

Proposed new §228.71 would establish the process EPPs utilize if they are unable to support candidates through the clinical teaching process specified in proposed new §228.67, Clinical Teaching.

Proposed new §228.71(b) would require an EPP to request an exception to the clinical teaching requirement by September 15, which coincides with the existing requirement that an EPP submit a written report on the results of a clinical teaching exception by September 15.

Proposed new §228.71(c)(3) would require TEA staff to present the EPP's report to the SBEC to determine whether the exception should be renewed and require EPPs approved for an exception before September 1, 2022, to submit a report to the TEA by September 1, 2024. This would give the SBEC an opportunity to decide whether to renew exceptions annually rather than continue indefinitely.

§228.73, Internship

Proposed new §228.73(a) would require EPPs to verify that a candidate participating in an internship hold an active intern or probationary certificate.

Proposed new §228.73(g)(5) would require EPPs to request deactivation of the certificate of a late-hire candidate that failed to meet training requirements in a timely manner to parallel the requirement in proposed new §228.55(c), Late Hire Candidates.

In proposed new §228.73(c), the abbreviated internship previously allowed for maternity leave would be expanded to parental leave in recognition of shared parental responsibility.

§228.75, Clinical Experience for Candidate Seeking Certification as Teacher of Students with Visual

Impairments (TVI) Supplemental: Early Childhood-Grade 12

Proposed new §228.75 would provide specific language related to the clinical teaching requirements for candidates seeking the Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certification.

§228.77, Clinical Experience for Candidate Seeking Deafblind (DB) Supplemental: Early Childhood-Grade 12 Certification

Proposed new §228.77 would provide specific language related to the clinical teaching requirements for candidates seeking the Deafblind Supplemental: Early Childhood-Grade 12 certification.

§228.79, Exemptions from Required Clinical Experiences for Classroom Teacher Candidates

Proposed new §228.79 would include residency in existing exemptions included in subsections (a) and (b) to exempt candidates pursuing classroom teacher certificates from required clinical experiences.

§228.81, Clinical Experience for Certification Other Than Classroom Teacher

Proposed new §228.81 would establish requirements for EPPs and candidates on completing clinical experience in certificate classes other than classroom teacher.

Proposed new §228.81(f) would specify that only the certification of the candidate, or the discharge, release, or withdrawal of the candidate from the EPP, would relieve the EPP of the duty to support the candidate during the practicum experience.

Specificity was added to proposed new §228.81(d)(1) to include feedback from the candidate's site supervisor, which is responsive to stakeholder feedback and mirrors similar requirements added for clinical teaching and internships.

Subchapter F. Support for Candidates During Required Clinical Experiences

§228.91, Mentors, Cooperating Teachers, Host Teachers and Site Supervisors

Proposed new §228.91(a) would establish the shared responsibility of the EPP and district/campus administrator to determine selection criteria and develop a shared selection process to assign mentors, cooperating teachers, host teachers, and site supervisors to candidates as appropriate.

Proposed new §228.91(b) would specify for teacher residencies that the EPP and district/campus administrator share responsibility to assign host teachers to candidates, by determining the selection criteria and development of a scoring rubric.

Proposed new §228.91(c) would require a mentor or site supervisor be assigned within three-weeks of the start date of an internship or practicum and that a candidate not remain in a placement without an assigned mentor or site supervisor for longer than three weeks.

Proposed new §228.91(d) would provide provisions for cooperating teacher, mentor, host teacher, or site supervisor selection if there is not an individual that matches the criteria for qualification.

Proposed new §228.91(e) would require the EPP to provide research-based training to mentors, cooperating teachers, host teachers, and site supervisors. An education service center or district entity may provide that training with proper documentation of evidence shown in Figure: 19 TAC §228.13(f).

§228.93, Cooperating Teacher Qualifications and Responsibilities

Proposed new §228.93(a)(3) would update the training provided to the cooperating teacher by the EPP to include co-teaching strategies. The window of time in which training must be provided would be expanded to twelve weeks before or three weeks after the candidate assignment.

In proposed new §228.93(a)(4), "not assigned to the clinical teacher" would parallel language to the similar requirement for mentor teacher qualifications.

§228.95, Host Teacher Qualifications and Responsibilities

Proposed new §228.95(a) would define the requirements for host teachers as at least three creditable years of teaching experience (19 TAC Chapter 153, Subchapter CC, Commissioner's Rules on Creditable Years of Teaching Experience), recognition as an accomplished teacher demonstrated by at least three years of teacher evaluations with a proficient or above proficient appraisal rating, evidence of student growth and achievement impact, and other dispositional criteria defined by the EPP and district/campus administration partnership. Host teachers are required to be trained by the EPP at least twice per school year on best practices in coaching, mentoring, and co-teaching, cannot already be assigned as a field supervisor, and are required to hold a valid certificate in the certification category of the residency assignment.

Proposed new §228.95(b) would establish the duties of a host teacher to include supporting the candidate's development in a co-teaching model that allows for gradual release of the candidate to lead instruction, providing feedback and support on key dimensions such as classroom management and assessment, and reporting the candidate's progress during collaboration with the field supervisor at least monthly. *§228.97, Mentor Qualifications and Responsibilities*

Proposed new §228.97(a)(5) would provide flexibility to the training requirement for mentor teachers by expanding the window of time of the training to twelve weeks before or three weeks after the candidate's assignment start date.

§228.99, Site Supervisor Qualifications and Responsibilities

Proposed new §228.99 would set out the qualifications and responsibilities of a site supervisor in a separate subsection for ease of reference. Section 228.99(a)(3) would provide flexibility to the training requirement for site supervisors by expanding the window of time in which the EPP must provide the training from three weeks to within twelve weeks before or three weeks after the candidate's assignment start date. This flexibility would allow for training to occur before the start of school if needed.

§228.101, Field Supervisor Qualifications and Responsibilities

Proposed new §228.101(a) would identify the field supervisor must be an accomplished educator with experience and certification in the class of certificate being pursued by the candidate observed and the appropriate training for the role of field supervisor.

Proposed new §228.101(a)(4) would require that field supervisors of residency candidates are trained annually by the EPP in coaching, candidate evaluation, and co-teaching strategies and participate in school and district trainings as determined by the partnership. All other qualifications would remain consistent with field supervisor qualifications for all other candidates.

Proposed new §228.101(a)(8) and (9) would establish that a field supervisor must hold a current certification in which supervision is provided or, at a minimum, a master's degree in the academic area or field related to the certification area being supervised and compliance with continuing professional education requirements in Chapter 232, Subchapter A, Certificate Renewal and Continuing Professional Education Requirements.

Proposed new §228.101(b)(1) would require the supervision of each candidate be conducted by a field supervisor that has been trained annually by the EPP and completes the TEA-approved field supervisor training every three years. Field supervisors that have previously completed the TEA-approved training must renew the training by September 1, 2026. Field supervisors that hold valid Texas Teacher Evaluation and Support System (T-TESS) certification do not need to complete the TEA-approved field supervisor training.

Proposed new §228.101(b)(5)(A) would require that, at a minimum, field supervisors must provide informal observations and ongoing coaching, informed by the areas identified for improvement in the formal post-observation conference, at least three times per semester for at least 15 minutes for candidates in clinical teaching, internships, and practicum assignments, and must include observation and feedback on targeted skills.

The language in proposed new §228.101(b)(5)(B) would require that the first informal observation must occur within the first six weeks of the clinical teaching or internship assignment and must be in person, while providing flexibility for the remainder of informal observations to be conducted in person or virtually.

Proposed new §228.101(b)(5)(C) would establish that all informal observations for practicums may be conducted virtually.

Proposed new §228.101(b)(6) would require the first two informal observations for late hire candidates to be conducted in person within the first eight weeks of the candidate's start date to ensure early responsive support for teacher candidates who are entering the classroom as a teacher of record with limited previous preparation.

Proposed new §228.101(b)(7) would require informal observations for candidates in residency assignments.

Proposed new §228.101(b)(9)-(12) would require that the field supervisor must collaborate with the candidate and cooperating teacher, mentor and campus supervisor, or site supervisor, as applicable throughout the clinical experience and would define quality and frequency of the collaboration to ensure candidates receive consistent support.

§228.103, Formal Observations for Candidates in Residency Assignments

Proposed new §228.103(a) would require the EPP to provide the first formal observation within the first six weeks of the residency assignment.

Proposed new §228.103(b) would require two in-person 45-minute formal observations per semester that include pre- and post-observation conference with the candidate.

§228.105, Formal Observations for All Candidates for Initial Classroom Teacher Certification

Proposed new §228.105 would set out the requirements for formal observations that apply to all classroom teacher certification candidates regardless of their certification route.

§228.107, Formal Observations for Candidates in Clinical Teaching Assignments

Proposed new §228.107 would set out the observation requirements that apply specifically to clinical teaching. The observation requirements would align with the duration of clinical teaching in proposed new §228.67, Clinical Teaching.

§228.109, Formal Observations for Candidates in Internship Assignments

Proposed new §228.109 would set out the observation requirements that apply specifically to internships. In response to stakeholder feedback, the number of formal observations conducted for candidates holding Probationary certificates was increased from three to five.

§228.111, Formal Observations for Candidates Employed as Educational Aides

Proposed new §228.111 would set out the observation requirements that apply specifically to candidates seeking to complete their clinical teaching while working as educational aides. In response to stakeholder feedback, the number of formal observations conducted was increased from three to four.

§228.113, Support and Formal Observations for Candidates Seeking Certification as Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12

Proposed new §228.113 would set out the observation requirements that apply specifically to candidates seeking supplemental certification as a Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12.

Proposed new §228.113(c)(3) would provide specification regarding the pre- and post-observation activities that must be conducted relative to the observation.

§228.115, Support and Formal Observations for Candidates Seeking the Deafblind Supplemental: Early Childhood-Grade 12 Certification

Proposed new §228.115 would set out the observation requirements that apply specifically to candidates seeking supplemental certification as a teacher of Deafblind Supplemental: Early Childhood-Grade 12 certification.

§228.117, Support and Formal Observations for Candidates Other Than Classroom Teacher

Proposed new §228.117 would establish the requirements for EPPs supporting candidates seeking certificates other than classroom teacher during the candidates' practicums.

Proposed new §228.117(b)(3) would provide specification regarding when the pre-observation and post-observation activities should be conducted relative to the observation.

Subchapter G. Complaints and Investigations

§228.121, Complaints and Investigations Procedures

Proposed new §228.121(d)(3)(B) would require the EPP to respond to requests for more information during a complaint's investigation within 10 business days.

Proposed new §228.121(d)(4)(D) would require TEA staff to provide written notice to the EPP under investigation when TEA staff closes an investigation.

§228.123, Educator Preparation Program Responsibilities for Candidate Complaints

Proposed new §228.123(a) would establish that an EPP must adopt and send to TEA staff a complaint procedure that requires the EPP to timely attempt to resolve complaints at the EPP level before a complaint is filed with TEA staff.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that for the first five years the proposal is in effect, that there may be an additional fiscal impact on state or local governments and potential increased costs to entities required to comply with the proposal. The impact to state government is to EPPs and the impact to local government or other entities are to school districts and open-enrollment charter schools.

The requirements created by HB 1605, 88th Texas Legislature, Regular Session, 2023, for EPPs include changes to curriculum regarding the use of open education resource (OER) instructional materials approved by the SBOE and the prohibition of instruction on three-cueing may increase costs for EPPs in developing that curriculum for each year of the first five years the rule is in effect, but that impact is created by the statutory requirement from HB 1605 and not the agency regulation.

There may be costs for an EPP to implement the proposed increase in formal observations (from three to five) for Probationary Certificate holders; the increase in formal observations (from three to four) for candidates completing clinical teaching; and for required informal observations and ongoing coaching at least three times per semester for 15 minutes, with the first informal observation required to be in-person and the flexibility to conduct other observations virtually. While these requirements may increase costs for EPPs, due to the various programmatic models and structures of EPPs, including an EPP's staffing structure, current number of internally required observations, and travel, TEA staff is unable to estimate the potential cost increase.

The increase in field supervisor training requirements via a TEA-approved training or T-TESS certification beginning in FY27 imposes an additional cost to EPPs. TEA staff has determined a $135-$150 estimated cost per participant for field supervisor training and a $450-$550 estimated cost per participant for T-TESS training. Because both options are acceptable to satisfy Chapter 228 requirements, and because TEA staff are unable to accurately determine the number of individuals by EPP who will need to take these trainings to calculate the scope of this cost due to constraints and due to limitations on the state's insight into the number of field supervisors active on a year-to-year basis, no additional specificity can be offered.

The proposed teacher residency preparation pathway does require EPPs to apply, at no cost, for residency pathway approval.

While there may be additional costs for an EPP associated with developing a high-quality program, the residency preparation pathway is optional for EPPs and is, therefore, not a required cost. The costs to EPPs would be widely variable, in that EPPs may already have an established residency preparation pathway that meets the proposed requirements while other EPPs would need to invest time and resources into the development of the residency preparation pathway.

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

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

COST INCREASE TO REGULATED PERSONS: The proposal does impose a cost on regulated persons and, therefore, is subject to TGC, §2001.0045. However, the proposal is exempt from TGC, §2001.0045, as provided under that statute, because the proposal is necessary to protect the safety and welfare of the residents of this state and necessary to implement HB 1605, 88th Texas Legislature, Regular Session, 2023. In addition, the proposal is necessary to ensure that certified Texas educators are competent to educate Texas students.

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

GOVERNMENT GROWTH IMPACT The TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation with the new teacher residency preparation route and would expand existing regulations by adding preparation requirements specifically for two new certification categories under the teacher class of certificate for Deafblind Early Childhood-Grade 12 and Bilingual Special Education Supplemental certifications.

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

PUBLIC BENEFIT AND COST TO PERSONS: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years that the rule will be in effect the public benefit anticipated as a result of the proposal would be clear and better organized rules regarding EPPs. Overall, the proposal will ensure increased responsiveness to candidate needs, and the overall elevation of the quality of educator preparation influenced by the proposal will have a lasting, positive impact on education and the preparation and retention of qualified educators in every classroom. TEA staff has determined there is no anticipated costs to persons required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins December 29, 2023, and ends January 29, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal at the February 16, 2024 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Preparation, Certification, and Enforcement, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 29. 2023.

19 TAC §§228.2, 228.10, 228.15, 228.17, 228.20, 228.30, 228.33, 228.35, 228.40, 228.50, 228.60, 228.70

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering EPPs and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated

EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public though its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

§228.1. General Provisions.

§228.2. Definitions.

§228.10. Approval Process.

§228.15. Program Consolidation or Closure.

§228.17. Change of Ownership and Name Change.

§228.20. Governance of Educator Preparation Programs.

§228.30. Educator Preparation Curriculum.

§228.33. Intensive Pre-Service.

§228.35. Preparation Program Coursework and/or Training.

§228.40. Assessment and Evaluation of Candidates for Certification and Program Improvement

§228.50. Professional Conduct.

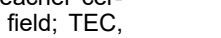
§228.60. Implementation Date.

§228.70. Complaints and Investigations Procedures.

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

Filed with the Office of the Secretary of State on December 18, 2023.

TRD-202304865
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 475-1497



SUBCHAPTER A. GENERAL GUIDANCE

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering EPPs and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public though its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; 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TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

§228.1. General Provisions.

(a) To ensure the highest level of educator preparation and practice, the State Board for Educator Certification (SBEC) recognizes that the preparation of educators must be the joint responsibility of educator preparation programs (EPP) and the Early Childhood-Grade 12

public and private schools of Texas. Collaboration in the development, delivery, and evaluation of educator preparation is required.

(b) Consistent with Texas Education Code (TEC), §21.049, the SBEC's rules governing educator preparation are designed to promote flexibility and creativity in the design of EPPs to accommodate the unique characteristics and needs of different regions of the state as well as the diverse population of potential educators.

§228.2. Definitions.

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

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education (IHE), September 1 through August 31.

(2) Accredited institution of higher education--An IHE that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(3) Alternative certification program--An approved educator preparation program, delivered by entities described in §228.25(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree from an accredited IHE.

(4) Analysis--examining teaching and/or instructional resources (e.g., student work samples, a video of teaching practices) to recognize key teaching practices enacted in a variety of ways, build understanding of the practice through repeated review, develop a shared vision for a teacher practice, and compare their own practice for improvement.

(5) Assignment start date--For an internship, clinical teaching, or residency, the first day of instruction with students. For a non-teacher practicum experience, the first day of the window in which the candidate is authorized by the EPP to begin the practicum experience.

(6) Authentic school setting--For the purpose of field-based experiences, during the school day and the school year and including summer school; not to include professional development, extracurricular activities, workdays when students are not present, and before- or after-school childcare or tutoring.

(7) Benchmarks--Reference points throughout the preparation process where candidates are assessed for progress toward completing EPP requirements (e.g., admission, passing a specific course or courses, passing a certification exam, completing preservice requirements).

(8) Campus supervisor--A school administrator or designee responsible for the annual performance appraisal of an intern or a candidate pursuing a residency certificate.

(9) Candidate--An individual who has been formally or contingently admitted into an EPP; also referred to as an enrollee or participant.

(10) Candidate coach--A person as defined in §228.39(b)(1)-(3) of this title (relating to Intensive Pre-Service) who participates in a minimum of four observation/feedback coaching cycles provided by program supervisors, completes a Texas Education Agency (TEA)-approved observation training or has completed a minimum of 150 hours of observation/feedback training, and has current certification in the class in which supervision is provided.

(11) Certification category--A certificate type within a certification class, as described in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(12) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics; may contain one or more certification categories, as described in Chapter 233 of this title.

(13) Classroom teacher--An educator who is employed by a school or district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide, a full-time administrator, or a substitute teacher.

(14) Clinical experience--A supervised educator assignment through an EPP at a public school accredited by the TEA or other school approved by the TEA for this purpose where candidates demonstrate proficiency in the standards for the certificate sought and that may lead to completion of a standard certificate. Clinical experience includes clinical teaching, internship, practicum, and residency.

(15) Clinical teaching--A supervised teacher assignment through an EPP in the classroom of a cooperating teacher at a public school accredited by the TEA or other school approved by the TEA for this purpose that may lead to completion of a standard certificate; also referred to as student teaching.

(16) Clock-hours--The actual number of hours of coursework or training provided; for purposes of calculating the training and coursework required by this chapter, one semester credit hour at an accredited IHE is equivalent to 15 clock-hours. Clock-hours of field-based experiences, clinical teaching, internship, residency, and practicum are actual hours spent in the required educational activities and experiences.

(17) Contingency admission--Admission as described in §227.15 of this title (relating to Contingency Admission).

(18) Completer--A person who has met all the requirements of an approved EPP; also referred to as finisher. In applying this definition, the fact that a person has or has not been recommended for a standard certificate or passed a certification examination shall not be used as criteria for determining who is a completer.

(19) Cooperating teacher--For a clinical teacher candidate, an educator who is collaboratively assigned by the EPP and campus administrator who supports the candidate during the clinical teaching experience.

(20) Co-teaching--A practice in which two or more teachers share instructional responsibility for a single group of students to address specific content and related learning objectives through a variety of approaches that best support the students' learning needs.

(21) Educator--An individual who is required to hold a certificate issued under TEC, Chapter 21, Subchapter B.

(22) Educator preparation program--An entity that is approved by the SBEC to prepare and recommend candidates for certification in one or more educator certification classes.

(23) Enactments--Opportunities to engage teacher candidates in sheltered/protected practice to develop a skill through such examples as doing student work, role playing student interactions, coached lesson rehearsals, and peer run throughs of a proposed lesson. Candidates should have the opportunity to receive feedback on current practice and integrate feedback into future practices.

(24) Enhanced standard certificate--A type of certificate issued to an individual who has met all requirements as specified in

§230.39(b) of this title (relating to Enhanced Standard Certificates) under the teacher class of certificates.

(25) Entity--The individual, corporation, partnership, IHE, public school or school district that is approved to deliver an EPP.

(26) Field-based experiences--Introductory experiences for a classroom teacher certification candidate, incorporated with preparation coursework that involve, at the minimum, reflective observation of and interaction with Early Childhood-Grade 12 students, teachers, and faculty/staff members engaging in educational activities in an authentic school setting.

(27) Field supervisor--A currently certified educator, who preferably has advanced credentials, hired by the EPP to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators.

(28) Formal admission--Admission as described in §227.17 of this title (relating to Formal Admission).

(29) Head Start Program--The federal program established under the Head Start Act (42 United States Code (USC), §9801 et seq.) and its subsequent amendments.

(30) Host teacher--for a teacher resident candidate, an educator who is jointly assigned by the EPP and the campus administrator who supports the candidate through co-teaching and coaching during their teacher residency field placement.

(31) Initial certification--The first Texas certificate in a class of certificate issued to an individual based on participation in an approved EPP.

(32) Intensive pre-service--An educator assignment supervised by an EPP accredited and approved by the SBEC prior to a candidate meeting the requirements for issuance of intern and probationary certificates.

(33) Intern certificate--A type of certificate as specified in §230.36 of this title (relating to Intern Certificates) that is issued to a candidate who has passed all required content pedagogy certification examinations and is completing requirements for initial certification through an approved EPP.

(34) Internship--A paid supervised classroom teacher assignment for one full school year at a public school accredited by the TEA or other school approved by the TEA for this purpose that may lead to completion of a standard certificate.

(35) Late hire--An individual who is both accepted into an EPP after the 45th day before the first day of instruction and hired for a teaching assignment by a school after the 45th day before the first day of instruction or after the school's academic year has begun.

(36) Long-term substitute--An individual that has served in place of a teacher of record in a classroom for at least 30 consecutive days; also referred to as a permanent substitute.

(37) Mentor--For an internship candidate, an educator who is employed as a classroom teacher on the candidate's campus and who is assigned to support the candidate during the internship experience.

(38) Pedagogy--The art and science of teaching that incorporates instructional methods that are developed from scientifically based research.

(39) Performance task--An assessment in which the teacher candidate applies learning and demonstrates a discrete set of skills, resulting in a tangible product or performance that serves as evidence of learning. The assessment must be evaluated using a standard rubric or set of criteria and must not include multiple-choice questions.

(40) Post-baccalaureate program--An EPP, delivered by an accredited IHE and approved by the SBEC to recommend candidates for certification, that is designed for individuals who already hold at least a bachelor's degree and are seeking an additional degree.

(41) Practicum--A supervised educator assignment at a public school accredited by the TEA or other school approved by the TEA for this purpose that is in a school setting in the particular class for which a certificate in a class other than classroom teacher is sought.

(42) Probationary certificate--A type of certificate as specified in §230.37 of this title (relating to Probationary Certificates) that is issued to a candidate who has passed all required certification examinations and is completing requirements for certification through an approved EPP.

(43) Representations--Artifacts and illustrations of instruction used to help teacher candidates see and analyze strong teaching practices. Representations expose teacher candidates to and build understanding of specific criteria of effective teacher practices, as well as deepen their content knowledge for teaching. May include teacher educator modeling, student work, videos and transcripts.

(44) Residency--A supervised educator assignment for an entire school year through a partnership between an EPP and a public school accredited by the TEA or other school approved by the TEA for this purpose that may lead to completion of an enhanced standard certificate.

(45) School day--Actual school attendance days during the regular academic school year, including a partial day that students attend school for instructional purposes as adopted by the district or governing body of the school, excluding weekends, holidays, summer school, etc. For the purpose of completing clinical experiences, the school day must be at least four hours, including intermissions and recesses, but not including conference or lunch periods, professional development, or extracurricular activities.

(46) School year--The period of time starting with the first instructional day for students through the last instructional day for students as identified on the calendar of the campus or district for the school year in which the candidate is completing the clinical experience.

(47) Site supervisor--For a practicum candidate, an educator who is assigned collaboratively by the campus or district administrator and the EPP and who supports the candidate during the practicum experience.

(48) Standard certificate--A type of certificate issued to an individual who has met all requirements for a given class of certification, as specified in §230.33 of this title.

(49) Students with disabilities--A student who is eligible to participate in a school district's special education program under Texas Education Code, §29.003, is covered by Section 504, Rehabilitation Act of 1973 (29 USC Section 794), or is covered by the Individuals with Disabilities Education Act (20 USC Section 1400 et seq.).

(50) Substitute teacher--An individual that serves in place of a teacher of record in a classroom in an accredited public or private school.

(51) Teacher of record--An educator who is employed by a school or district and who teaches in an academic instructional setting or a career and technical instructional setting not less than an average of

four hours each day and is responsible for evaluating student achievement and assigning grades.

(52) Texas Education Agency staff--Staff of the TEA assigned by the commissioner of education to perform the SBEC's administrative functions and services.

(53) Texas Essential Knowledge and Skills (TEKS)--The Kindergarten-Grade 12 state curriculum in Texas adopted by the State Board of Education and used as the foundation of all state certification examinations.

§228.4. Declared State of Disaster.

If the governor declares a state of disaster consistent with Texas Government Code, §418.014, Texas Education Agency staff may extend deadlines in this chapter for up to 90 days and decrease clinical teaching, internship, and practicum assignment minimums by up to 20 percent as necessary to accommodate persons in the affected disaster areas.

§228.6. Implementation Date.

The provisions of this chapter are effective September 1, 2024, unless otherwise specified in rule.

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

Filed with the Office of the Secretary of State on December 18, 2023.

TRD-202304866
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 475-1497

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SUBCHAPTER B. APPROVAL OF EDUCATOR PREPARATION PROGRAMS

19 TAC §§228.11, 228.13, 228.15, 228.17, 228.19

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering EPPs and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public though its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC

to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

§228.11. New Entity Approval.

(a) An entity seeking initial approval to deliver an educator preparation program (EPP) shall attend a new applicant workshop conducted by Texas Education Agency (TEA) staff and, by December 1 of the same year as the entity attends the workshop, submit an application with evidence indicating the ability to comply with the provisions of this chapter, Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates), Chapter 229 of this title (relating to Accountability System for Educator Preparation Programs), and Chapter 230 of this title (relating to Professional Educator Preparation and Certification).

(1) The application will be in a format determined by the TEA and shall include all the following program components:

(A) ownership and governance of the EPP;

(B) criteria for admission to the EPP;

(C) EPP curriculum;

(D) EPP coursework and training, including ongoing support during clinical teaching, internship, practicum, and residency experiences;

(E) assessment and evaluation of candidates for certification and EPP improvement;

(F) professional conduct of EPP staff and candidates;

(G) EPP complaint procedures;

(H) certification procedures;

(I) required submissions of information, surveys, and other accountability data; and

(J) as required under Texas Education Code (TEC), §21.0443(b)(1) and (2), instruction for all candidates in proactive instructional planning techniques and inclusive practices for all students throughout coursework and clinical experiences.

(2) The applicant may submit an application for one certificate class and up to five certificate categories within the certificate class requested for initial approval.

(3) The applicant must provide evidence the proposed program has the staff, knowledge, and expertise to support individuals in each certificate class and category being requested.

(b) TEA staff will review the application and conduct a pre-approval site visit.

(c) TEA staff shall recommend to the State Board for Educator Certification (SBEC) whether the entity should be approved.

(d) A post-approval site visit will be conducted after the end of the first academic year in which the entity reports completers to TEA in accordance with §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data).

(e) All EPPs must be implemented as approved by the SBEC.

(f) An individual or entity seeking approval from the SBEC as an EPP must have at least one physical location open for business in the state of Texas.

§228.13. Continuing Educator Preparation Program Approval.

(a) An educator preparation program (EPP) under this chapter shall be reviewed at least once every five years; however, a review may be conducted at any time at the discretion of TEA staff. Beginning with the 2026-2027 academic year, continuing approval reviews will evaluate implementation of the requirements of this chapter, including implementation during the 2025-2026 academic year.

(b) To conduct the five-year review, TEA staff may conduct either:

(1) an onsite visit, in which TEA staff go in person to an EPP's physical location to review the EPP's evidence of compliance; or

(2) a desk review, in which TEA staff review the EPP's evidence of compliance remotely.

(c) To efficiently administer and implement the State Board for Educator Certification (SBEC)'s purpose under this chapter and the Texas Education Code (TEC), TEA staff must use the following risk factors to determine the need for discretionary reviews and the type of five-year reviews:

(1) a history of the EPP's compliance with state law and SBEC rules, standards, and procedures, with consideration given to:

(A) the seriousness of any violation of a rule, standard, or procedure;

(B) whether the violation resulted in an action being taken against the program;

(C) whether the violation was promptly remedied by the program;

(D) the number of alleged violations; and

(E) any other matter considered to be appropriate in evaluating the EPP's compliance history;

(2) whether the EPP meets the accountability standards under TEC, §21.045; and

(3) whether the EPP is accredited by other organizations.

(d) When an EPP consolidates with another EPP as described in §228.21 of this title (relating to Program Consolidation or Closure), TEA staff shall conduct a review of the resulting program within one year after the effective date for the consolidation.

(e) The EPP under review must pay the fee for the continuing approval review, as set out in §229.9 of this title (relating to Fees for Educator Preparation Program Approval and Accountability), prior to the start date of the review.

(f) At the time of the review, the EPP shall submit to TEA staff a status report regarding its compliance with existing standards and requirements for EPPs and documentary evidence of its compliance. To determine whether the EPP's evidence of compliance is sufficient, the EPP shall be scored on a rubric developed and published by TEA staff. Eighty percent of the records reviewed must be compliant with applicable requirements in the Texas Administrative Code and TEC. Evidence of compliance is described in the figure provided in this subsection.
Figure: 19 TAC §228.13(f)

(g) An EPP's participation in a continuing approval review pilot may serve as the EPP's required five-year review as prescribed in subsection (a) of this section.

(h) An EPP is responsible for establishing procedures and practices to ensure the security of information against unauthorized or accidental access, disclosure, modification, destruction, or misuse prior to the expiration of the retention period. Unless specified otherwise, the EPP must retain evidence of compliance described in the figure provided in subsection (f) of this section for a period of five years. The EPP shall retain documents that evidence a candidate's eligibility for admission to the EPP and all evidence of a candidate's completion of all EPP requirements for a period of five years after a candidate completes, withdraws from, or is discharged or released from the EPP.

§228.15. Additional Approval.

(a) An alternative certification program seeking approval to implement a clinical teaching component shall submit a description of the following elements of the program for approval by Texas Education Agency (TEA) staff on an application in a form developed by TEA staff that shall include, at a minimum, the following:

(1) general clinical teaching program description, including conditions under which clinical teaching may be implemented;

(2) selection criteria for clinical teachers;

(3) selection criteria for cooperating teachers;

(4) description of support and communication between candidates, cooperating teachers, and the alternative certification program;

(5) description of program supervision; and

(6) description of how candidates are evaluated.

(b) An educator preparation program (EPP) seeking approval to implement a residency program must submit a complete application in a form developed by TEA staff for consideration and approval by the State Board for Educator Certification (SBEC). The application must include evidence indicating the ability to comply with the provisions of this chapter and Chapter 230 of this title (relating to Professional Educator Preparation and Certification).

(1) To determine whether the EPP's evidence of compliance is sufficient, the program shall be scored on a rubric developed and published by TEA staff. Evidence of compliance is described in the figure provided in this paragraph.
Figure: 19 TAC §228.15(b)(1)

(2) TEA staff will review the application and required evidence and shall recommend to the SBEC whether the residency program should be approved.

(3) A post-approval site visit will be conducted after the end of the first academic year in which the program reports residency completers to the TEA in accordance with §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data).

(c) An EPP seeking the addition of certificate categories and classes must comply with the following as applicable.

(1) An EPP that is rated Accredited, as provided in §229.4 of this title (relating to Determination of Accreditation Status), may request the addition of a certificate class that has not been previously approved by the SBEC but must present a complete application in a form developed by TEA staff for consideration and approval by the SBEC. The application at a minimum must include the components identified in §228.11(a)(1) of this title (relating to New Entity Approval) and must document evidence that the EPP has the staff knowledge and expertise to support individuals participating in the certificate class being requested.

(2) An EPP that is rated Accredited, as provided in §229.4 of this title, may request additional certificate categories be approved by TEA staff if the requested additional certificate categories are within the classes of certificates for which the EPP has been previously approved by the SBEC, by submitting an application in a form developed by TEA staff. The application shall include, at a minimum, the curriculum matrix, a description of how the educator standards for the certificate are incorporated into the coursework and training; and documentation showing that the program has the staff knowledge and expertise to support individuals participating in the certificate category being requested. The curriculum matrix must include the educator standards, the test framework competencies, the applicable Texas Essential Knowledge and Skills, the course and/or module names, and the benchmarks and assessments used to measure mastery of the standards and competencies and candidate progress through coursework.

(3) An EPP rated Accredited, as provided in §229.4 of this title, and currently approved to offer a certificate for which the SBEC is changing the grade level of the certificate may request to offer the preapproved category at different grade levels if the requested additional certificate categories are within the classes of certificates for which the EPP has been previously approved by the SBEC, by submitting an application in a form developed by TEA staff that shall include, at a minimum, a modified curriculum matrix that includes:

(A) the educator standards;

(B) test framework competencies;

(C) course and/or module names; and

(D) the benchmarks and assessments used to measure successful program progress.

(4) An EPP that has an accreditation status other than Accredited, as listed in §229.4 of this title, may not apply to offer additional certificate categories or classes of certificates.

(d) An EPP that is rated Accredited, may open additional locations, provided the program informs TEA staff of any additional locations at which the program is providing educator preparation 60 days

prior to providing educator preparation at the location. Additional program locations must operate in accordance with the program components under which the program has been approved to operate. An EPP that has an accreditation status listed in §229.4 of this title other than Accredited may not open additional locations.

§228.17. Limitations on Educator Preparation Program Amendments.

(a) An educator preparation program (EPP) that is rated Accredited or Accredited-Not Rated may amend its program, provided the program informs Texas Education Agency (TEA) staff of any amendments 60 days prior to implementing the amendments. An EPP must submit notification of a proposed amendment to its program on a letter signed by the EPP's legal authority or representative that explains the amendment, details the rationale for changes, and includes documents relevant to the amendment.

(b) An EPP that is not rated Accredited or Accredited-Not Rated may amend its program, provided the program informs TEA staff of any amendments 120 days prior to implementing the amendments. An EPP must submit notification of a proposed amendment on a letter signed by the EPP's legally authorized agent or representative that explains the amendment, details the rationale for changes, and includes documents relevant to the amendment. The EPP shall be notified in writing of the approval or denial of its proposal within 60 days following the receipt of the notification by TEA staff.

§228.19. Contingency of Approval.

(a) Approval of an educator preparation program (EPP), including each specific certificate class and category, by the State Board for Educator Certification, is contingent upon approval by other lawfully established governing bodies such as the Texas Higher Education Coordinating Board, boards of regents, or school district boards of trustees.

(b) Continuing EPP approval is contingent upon compliance with superseding state and federal law.

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

Filed with the Office of the Secretary of State on December 18, 2023.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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SUBCHAPTER C. ADMINISTRATION AND GOVERNANCE OF EDUCATOR PREPARATION PROGRAMS

19 TAC §§228.21, 228.23, 228.25

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering EPPs and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public though its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine

whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

§228.21. Program Consolidation or Closure.

(a) An educator preparation program (EPP) that is consolidating or closing, whether as an entire program or only for specific individual certification categories or classes and whether voluntarily or by order of the State Board for Educator Certification (SBEC), must comply with the following procedures to ensure that all issues relevant to EPP consolidation or closure have been addressed.

(1) The EPP shall submit a letter on official letterhead to Texas Education Agency (TEA) staff signed by the legal authority of the EPP that contains a formal statement of consolidation or closure with a specified effective date for consolidation or closure at least 90 days and no more than 270 days after the date of the letter.

(2) The legal authority of the EPP shall meet with TEA staff weekly between the date of the notice letter required in paragraph (1) of this subsection and the date of closure.

(3) The EPP shall contact the following types of candidates, either in the entire program or in the impacted certification category or class depending on the scope of the closure, with notification of consolidation or closure and the steps candidates must take in relation to their status, and shall maintain evidence of the attempts to notify each candidate:

(A) currently enrolled candidates;

(B) candidates who have been enrolled within the previous five years; and

(C) completers within the previous five years.

(4) The EPP shall not admit candidates or recommend candidates for an intern or probationary certificate within one year of its closure date.

(5) The EPP shall identify approved EPPs to provide test approval and standard certification recommendations for completers at the closing EPP.

(A) The closing EPP shall provide its candidates with a list of approved EPPs that can continue to support completers through test approval and standard certification.

(B) To expedite the candidates' transfer to other programs, the closing EPP shall provide each candidate with appropriate documentation, such as a transcript or transfer form, reflecting all program requirements the candidate has met.

(6) For five years after an EPP's closure, the EPP must identify and keep current a representative's name, electronic mail address, and telephone number to provide access to candidate records and responses to former candidate's questions and/or issues. If an EPP is consolidating, the candidate records will transfer to the new EPP.

(7) The EPP must complete required SBEC and TEA actions, including required submissions of information, surveys, and other accountability data; removal of security accesses; reconciliation of certification recommendations; and payment of the Accountability System for Educator Preparation Programs technology fee as specified in §229.9 of this title (relating to Fees for Educator Preparation Program Approval and Accountability).

(b) The chief operating officer, legal authority, or a member of the governing body of an EPP that fails to comply with the consolidation or closure procedures in this section is not eligible to apply for SBEC approval to offer an EPP.

(c) The chief operating officer, legal authority, or a member of the governing body of an EPP that closes voluntarily due to pending TEA or SBEC action or involuntarily due to SBEC action is not eligible to apply for SBEC approval to offer an EPP.

(d) If an EPP is consolidating or closing only individual certification classes or categories and fails to comply with the consolidation procedures in this section, TEA staff may make a recommendation that the SBEC impose sanctions affecting the new EPP's accreditation status in accordance with §229.5 of this title (relating to Accreditation Sanctions and Procedures) and/or continuing approval status in accordance with §229.6 of this title (relating to Continuing Approval).

(e) If an EPP violates any of the requirements as prescribed in subsection (a)(1)-(7) of this section, TEA staff shall recommend re-

vocation of the EPP's continuing approval to prepare and recommend candidates for certification in accordance with §229.6(c) of this title.

§228.23. Change of Ownership and Name Change.

(a) An educator preparation program (EPP) that changes ownership shall notify Texas Education Agency (TEA) staff of the change of ownership in writing within 10 days of the change.

(b) A change of ownership is any agreement to transfer the control of an EPP. The control of an EPP is considered to have changed:

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

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

(3) in the case of ownership by a board of directors, officers, shareholders, or similar governing body, when more than 50% of the ownership has changed.

(c) An EPP that is not a college or university may not change its name unless it has notified the TEA of a change of ownership within the preceding 90 days and has a State Board for Educator Certification (SBEC) accreditation status of Accredited or Accredited-Not Rated. The EPP shall notify TEA staff of the name change in writing.

(d) An EPP that is a college or university may change its name if the EPP has notified the TEA that the entire college or university has changed its name.

(e) An EPP shall annually report to the SBEC all names that the EPP has done business as during the preceding year. The TEA shall make EPPs' doing-business-as names available to the public on the TEA website as consumer information.

(f) TEA staff shall recommend an accreditation status of Accredited-Probation in accordance with §229.4(e)(2) of this title (relating to Determination of Accreditation Status) for any EPP that fails to timely notify TEA staff regarding a change in ownership or a change of program name.

§228.25. Governance of Educator Preparation Programs.

(a) The preparation of educators shall be a collaborative effort among public schools accredited by the Texas Education Agency (TEA) and/or TEA-recognized private schools; regional education service centers; institutions of higher education; and/or business and community interests; and shall be delivered in cooperation with public schools accredited by the TEA and/or TEA-recognized private schools.

(b) An advisory committee with members representing at least three out of the five groups identified as collaborators in subsection (a) of this section shall assist in the design, delivery, evaluation, and major policy decisions of the educator preparation program (EPP) and shall meet a minimum of once during each academic year. The approved EPP shall inform each member of the advisory committee of the roles and responsibilities of the advisory committee.

(c) The governing body and chief operating officer of an EPP shall provide sufficient support to enable the EPP to meet all standards set by the SBEC and shall be accountable for the quality of the EPP and the candidates whom the EPP recommends for certification.

(d) For an EPP that the State Board for Educator Certification has approved to offer a residency program under §228.65 of this title (relating to Residency), the EPP must meet at least quarterly with district and campus administrators of the school district with which the EPP has partnered, including the campus supervisors of all the EPP's current residency candidates, to review data, including performance data, for the EPP's current residency candidates and to make programmatic decisions or changes to implement continuous improvement of the EPP's residency program.

(e) For the purposes of EPP improvement, an EPP shall continuously evaluate the design and delivery of the EPP components based on performance data, scientifically based research practices, and the results of internal and external feedback and assessments.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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SUBCHAPTER D. REQUIRED EDUCATOR COURSEWORK AND TRAINING

19 TAC §§228.31, 228.33, 228.35, 228.37, 228.39, 228.41, 228.43, 228.45, 228.47, 228.49, 228.51, 228.53, 228.55, 228.57

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering EPPs and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial

workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public though its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

§228.31. Minimum Educator Preparation Program Obligations to All Candidates.

(a) Each educator preparation program (EPP) must develop and implement a calendar of program activities that must include a deadline for accepting candidates into a program cycle to assure adequate time for admission, coursework, training, and field-based experience requirements prior to a clinical teaching or internship experience. If an EPP accepts candidates after the deadline, the EPP must develop and implement a calendar of program activities to assure adequate time for admission, coursework, training, and field-based experience requirements prior to a clinical teaching experience or internship or, if a late hire, by the specified deadline in the late hire provision.

(b) All EPPs shall have a published exit policy for dismissal of candidates that is reviewed and signed by candidates upon admission. The exit policy must identify a point of dismissal for inactive candidates after no more than two years of inactivity, or university-based EPPs may adopt their institution's policy. An inactive candidate is one who is no longer completing coursework, training, and testing requirements with an EPP and is not a completer of the EPP.

(c) To ensure that a candidate for educator certification is prepared to receive a standard or enhanced standard certificate, the EPP shall establish benchmarks and structured assessments of the candidate's progress throughout the EPP and provide support and interventions to each candidate based on the benchmark and structured assessment results.

(d) An EPP is responsible for ensuring that each candidate is adequately prepared to pass the appropriate examination(s) required for certification. An EPP shall determine the readiness of each candidate to take the appropriate certification examination of content, pedagogy, and professional responsibilities, including professional ethics and standards of conduct.

(e) The EPP shall grant test approval when the EPP determines the candidate is ready, or if the candidate is a completer. An EPP may make test approval contingent on a candidate completing additional coursework and/or training to show that the candidate is prepared to pass the test if the candidate is seeking test approval from the EPP in an area where the standards and/or test changed since the candidate completed all requirements of the EPP or if the candidate has returned

to the EPP for test approval one or more years following the academic year of completion of all program requirements.

(f) Upon the written request of the candidate, an EPP may prepare a candidate and grant test approval for a classroom teacher certificate category other than the category for which the candidate was initially admitted to the EPP only if:

(1) the candidate would meet the requirements for admission under §227.10 of this title (relating to Admission Criteria) in the requested certificate category;

(2) the EPP provides coursework and training in the educator standards and test framework competencies related to the requested certificate category; and

(3) the EPP ensures that the candidate is adequately prepared to pass the appropriate content pedagogy examination(s) required for the requested certificate category.

(g) An EPP shall not grant test approval for a certification examination until a candidate has met all of the requirements for admission to the EPP and has been contingently or formally admitted into the EPP.

(h) An EPP shall ensure that candidates complete all coursework and training and complete a successful clinical experience prior to identifying the candidate as a completer and recommending standard or enhanced standard certification. Candidates for teacher certification that meet one of the requirements in §228.79 of this title (relating to Exemptions from Required Clinical Experiences for Classroom Teacher Candidates) are exempt from completing the required field-based experience and clinical experience.

(i) An EPP shall retain documents that evidence a candidate's eligibility for admission to the program and evidence of completion of all program requirements for a period of five years after a candidate completes, withdraws from, or is discharged or released from the program.

(j) During the period of preparation, the EPP shall ensure that the individuals preparing candidates and the candidates themselves understand and adhere to Chapter 247 of this title (relating to Educators' Code of Ethics).

§228.33. Preparation Program Coursework and/or Training for All Certification Classes.

(a) An educator preparation program (EPP) shall provide coursework and/or training to adequately prepare candidates for educator certification and ensure the educator is effective in the assignment.

(b) Coursework and/or training shall be sustained, rigorous, intensive, interactive, candidate-focused, and must include multiple performance tasks and other evaluative tools that require candidates to demonstrate proficiency in the educator standards and test framework competencies related to the certificate class or category sought.

(c) All coursework and/or training shall be completed prior to an EPP identifying a candidate as a completer and recommending standard or enhanced standard certification.

(d) Coursework and training that is offered online must meet criteria set for accreditation, quality assurance, and/or compliance with one or more of the following:

(1) Accreditation or Certification by the Distance Education Accrediting Commission;

(2) Program Design and Teaching Support Certification by Quality Matters;

(3) Part 1, Chapter 4, Subchapter P, of this title (relating to Approval of Distance Education Courses and Programs for Public Institutions); or

(4) Part 1, Chapter 7, of this title (relating to Degree Granting Colleges and Universities Other than Texas Public Institutions).

§228.35. Substitution of Applicable Experience and Training.

Each educator preparation program (EPP) must develop and implement specific criteria and procedures that allow:

(1) military service member or military veteran candidates to credit verified military service, training, clinical and professional experience, or education toward the training, education, work experience, or related requirements (other than certification examinations) for educator certification requirements, provided that the military service, training, or education is directly related to the certificate being sought;

(2) candidates who are not military service members or military veterans to substitute prior or ongoing service, training, or education, provided that the experience, education, or training is not also counted as a part of the internship, clinical teaching, or practicum requirements, was provided by an approved EPP or an accredited institution of higher education within the past five years, and is directly related to the certificate being sought; and

(3) candidates who previously completed a graduate program from a program approved to offer the Deafblind Early Childhood-Grade 12 certificate to receive test approval from the EPP. The EPP may require additional coursework.

§228.37. Coursework and Training for Classroom Teacher Candidates.

(a) An educator preparation program (EPP) shall provide each candidate seeking an initial classroom teacher certification with a minimum of 300 clock-hours of coursework and/or training, including required pre-service coursework and training under §228.41 of this title (relating to Pre-Service Coursework and Training for Classroom Teacher Candidates).

(b) An EPP shall provide a minimum of 200 clock-hours of coursework and/or training for a candidate seeking a Trade and Industrial Workforce Training certificate as specified by §233.14(e) of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area).

§228.39. Intensive Pre-Service.

(a) To offer intensive pre-service, an educator preparation program (EPP) shall provide the following programmatic requirements for a candidate prior to issuing an intern certificate:

(1) a four-week minimum intensive program;

(2) a minimum of 12 instructional days with one hour of supervised instruction per day;

(3) a minimum of four face-to-face observation/feedback coaching cycles provided by qualified coaches with observations that are a minimum of 15 minutes and coaching meetings that are a minimum of 30 minutes; and

(4) the requirements regarding coursework and/or training for a candidate seeking initial certification in the classroom teacher certification class as specified in §228.41of this title (relating to Pre-Service Coursework and Training for Classroom Teacher Candidates) and §228.43 of this title (relating to Pre-Service Field-based Experiences for Classroom Teacher Candidates).

(b) An EPP offering intensive pre-service shall ensure that:

(1) a candidate coach participates in a minimum of four observation/feedback coaching cycles provided by program supervisors and ongoing training;

(2) a candidate coach completes a Texas Education Agency (TEA)-approved observation training or has completed a minimum of 150 hours of observation/feedback training; and

(3) a candidate coach shall have a current certification in the class in which supervision is provided.

(c) A candidate participating in intensive pre-service will be eligible for an intern certificate by completing:

(1) the requirements as prescribed in §230.36(f) of this title (relating to Intern Certificates);

(2) programmatic requirements under subsection(a)(1)-(4) of this section; and

(3) the requirements of the following proficiencies in §150.1002 of Part II of this title (relating to Assessment of Teacher Performance) for pedagogical skills that are used by the program and approved by the state and meet all of the following performance level measures:

(A) Developing performance level on Planning Dimension 1.1: Standards and Alignment;

(B) Developing performance level on Planning Dimension 1.2: Data and Assessment;

(C) Developing performance level on Instruction Dimension 2.1: Achieving Expectations;

(D) Developing performance level on Instruction Dimension 2.2: Content Knowledge and Expertise;

(E) Developing performance level on Learning Environment Dimension 3.1: Classroom Environment, Routines, and Procedures;

(F) Developing performance level on Learning Environment Dimension 3.2: Managing Student Behavior;

(G) Developing performance level on Learning Environment Dimension 3.3: Classroom Culture;

(H) Proficient performance level on Professional Practices and Responsibilities Dimension 4.1: Professional Demeanor and Ethics;

(I) Developing performance level on Professional Practices and Responsibilities Dimension 4.2: Goal Setting; and

(J) Developing performance level on Professional Practices and Responsibilities Dimension 4.3: Professional Development.

(d) A candidate participating in intensive pre-service will be eligible for a probationary certificate as prescribed in §230.37(f) of this title (relating to Probationary Certificates).

§228.41. Pre-Service Coursework and Training for Classroom Teacher Candidates.

Unless a candidate qualifies as a late hire under §228.55 of this title (relating to Late Hire Candidates), a candidate shall complete the following prior to any clinical teaching, internship, or residency:

(1) a minimum of 50 clock-hours of field-based experiences that are integrated into coursework and are completed as described in §228.43 of this chapter (relating to Pre-Service Field-Based Experiences for Classroom Teacher Candidates); and

(2) 150 clock-hours of coursework and/or training as prescribed in §228.57 of this title (relating to Educator Preparation Curriculum) that allows candidates to demonstrate proficiency through performance tasks in:

(A) preparing clear, well-organized, sequential, engaging, and flexible lessons that reflect best practice, align with standards and related content, are appropriate for all learners, and encourage higher-order thinking, persistence, and achievement;

(B) formally and informally collecting, analyzing, and using student progress data to inform instruction and make needed lesson adjustments;

(C) ensuring high levels of learning and achievement for all students through knowledge of students, proven practices, and differentiated instruction;

(D) clearly and accurately communicating to support persistence, deeper learning, and effective effort;

(E) organizing a safe, accessible, and efficient classroom;

(F) establishing, communicating, and maintaining clear expectations for student behavior;

(G) leading a mutually respectful and collaborative class of actively engaged learners;

(H) meeting expectations for attendance, professional appearance, decorum, procedural, ethical, legal, and statutory responsibilities;

(I) reflecting on his or her practice;

(J) effectively communicating with students, families, colleagues, and community members;

(K) proactively implementing instructional planning techniques and inclusive practices for all students, including students with disabilities; and

(L) effectively implementing open education resource instructional materials included on the list of approved instructional materials maintained by the State Board of Education under Texas Education Code, §31.022, in each subject area and grade level covered by the certification category.

§228.43. Pre-Service Field-Based Experiences for Classroom Teacher Candidates.

(a) An educator preparation program (EPP) shall require each candidate to complete field-based experiences in a variety of authentic school settings with diverse student populations, including observation of teachers modeling effective practices to improve student learning and opportunities for candidates to practice skills and receive feedback.

(b) For initial certification in the classroom teacher certification class, each EPP shall provide field-based experiences, as defined in §228.2 of this title (relating to Definitions), for a minimum of 50 clock-hours. The field-based experiences must be completed prior to assignment in an internship, clinical teaching, or residency.

(c) Field-based experiences must include, at a minimum, 25 clock-hours in which the candidate, under the direction of the EPP, is actively engaged in instructional or educational activities.

(1) Field-based experiences must be conducted in settings that include all of the following:

(A) authentic school settings in a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose, including all Department of Defense Educa-

tion Activity (DoDEA) schools, wherever located, and all schools accredited by the Texas Private School Accreditation Commission (TEPSAC);

(B) instruction by content certified teachers;

(C) actual students in classrooms/instructional settings with identity-proof provisions; and

(D) content or grade-level specific classrooms/instructional settings.

(2) Field-based experiences include candidates engaging with activities such as:

(A) small group instruction;

(B) tutoring;

(C) presenting whole class instruction;

(D) one-on-one student support;

(E) practicing classroom management skills;

(F) supporting lead teacher instruction; and

(G) coteaching.

(3) Each field-based experience must include a written reflection of the experience that:

(A) is guided by the EPP;

(B) is unique from the other reflections;

(C) includes a detailed reflection of each field-based experience; and

(D) identifies educational practices observed and/or experienced.

(4) The time spent writing the written reflection does not count toward the required 25 clock-hours for field-based experiences.

(d) Up to 25 clock-hours of field-based experience may be provided by use of electronic transmission or other video or technology-based method; service as a teacher of record, service as an educational aide, and service as a substitute teacher; and must be under the direction of the EPP.

(1) The field-based experience setting must include:

(A) authentic school settings in an accredited public or private school;

(B) instruction by content certified teachers;

(C) actual students in classrooms/instructional settings with identity-proof provisions; and

(D) content or grade-level specific classrooms/instructional settings.

(2) Each field-based experience must include a written reflection of the observation that:

(A) is guided by the EPP;

(B) is unique from the other reflections;

(C) includes a detailed reflection of each field-based experience; and

(D) identifies educational practices observed and/or experienced.

(3) The time spent writing the written reflection does not count toward the required 25 clock-hours for field-based experiences.

(4) Field-based experience hours identified in this subsection must occur after the candidate's admission into the EPP. The candidate's experience in instructional or educational activities, including reflections as described in paragraph (2) of this subsection, must be documented by the EPP and must be obtained at a public or private school accredited or approved for this purpose by the TEA.

(e) Up to 15 clock-hours of field-based experience may be satisfied by serving as a long-term substitute (as defined in §228.2 of this title) either after the candidate's admission to an EPP or during the two years before the candidate's admission to an EPP. The candidate's experience in instructional or educational activities must be documented by the EPP and must be obtained at a public or private school accredited or approved for this purpose by the TEA.

(f) An EPP may apply to use a public school, a private school, or a school system located within any state or territory of the United States as a site for field-based experience in accordance with §228.63(f) of this title (relating to Locations for Required Clinical Experiences).

§228.45. Coursework and Training Requirements for Early Childhood: Prekindergarten-Grade 3 Certification.

(a) An educator preparation program (EPP) must provide a minimum of 300 clock-hours of coursework and/or training related to the educator standards for the Early Childhood: Prekindergarten-Grade 3 certificate adopted by the State Board for Educator Certification (SBEC) as specified in Chapter 235, Subchapter B, of this title (relating to Elementary School Certificate Standards).

(b) An EPP shall provide each candidate who holds a valid standard, provisional, or one-year classroom teacher certificate specified in §230.31 of this title (relating to Types of Certificates) in a certificate category that allows the applicant to teach all subjects in Prekindergarten, Kindergarten, Grade 1, Grade 2, or Grade 3 with a minimum of 150 clock-hours of coursework and/or training that is directly aligned to the educator standards as specified in Chapter 235, Subchapter B, of this title. A clinical teaching, internship, or practicum assignment is not required for completion of program requirements.

(c) An EPP shall provide each candidate who holds a valid standard, provisional, or one-year classroom teacher certificate as specified in §230.31 of this title in a certificate category that does not allow the candidate to teach all subjects in Prekindergarten, Kindergarten, Grade 1, Grade 2, or Grade 3 coursework and/or training as specified in §228.33 of this title (relating to Preparation Program Coursework and/or Training for All Certification Classes) and §228.37 of this title (relating to Coursework and Training for Classroom Teacher Candidates of this section) that is directly aligned to the educator standards as specified in Chapter 235, Subchapter B, of this title. An EPP shall also provide such a candidate a clinical experience as specified in §228.61(a) of this title (relating to Required Clinical Experiences) and §228.63 of this title (relating to Locations for Required Clinical Experiences), a mentor or cooperating teacher as specified in Subchapter F of this chapter (relating to Support for Candidates During Required Clinical Experiences), and field supervision and ongoing support as specified in Subchapter F of this chapter.

§228.47. Coursework and Training Requirements for Bilingual Special Education Certification.

An educator preparation program must provide a minimum of 300 clock-hours of coursework and/or training related to the educator standards described in Texas Education Code (TEC), §21.04891, for the Bilingual Special Education certificate adopted by the State Board for Educator Certification.

§228.49. Coursework and Training Requirements for a Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12.

An educator preparation program must provide a minimum of 300 clock-hours of coursework and/or training related to the educator standards for the Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12 certificate adopted by the State Board for Educator Certification.

§228.51. Coursework and Training Requirements for a Deafblind Supplemental: Early Childhood-Grade 12.

An educator preparation program must provide a minimum of 300 clock-hours of coursework and/or training related to the educator standards for the Deafblind Supplemental: Early Childhood-Grade 12 certificate adopted by the State Board for Educator Certification.

§228.53. Coursework and Training for Non-Teacher Candidates.

(a) An educator preparation program (EPP) shall provide coursework and/or training to ensure that the educator is effective in the assignment.

(b) An EPP shall provide a candidate with a minimum of 200 clock-hours of coursework and/or training that is directly aligned to the educator standards for the applicable certification class in §239.15 of this title (relating to Standards Required for the School Counselor Certificate), §239.55 of this title (relating to Standards Required for the School Librarian Certificate), §239.84 of this title (relating to Requirements for the Issuance of the Standard Educational Diagnostician Certificate), §239.93 of this title (relating to Requirements for the Issuance of the Reading Specialist Certificate), §241.15 of this title (relating to Standards Required for the Principal as Instructional Leader Certificate), or §242.15 of this title (relating to Standards Required for the Superintendent Certificate).

§228.55. Late Hire Candidates.

(a) A late hire for a school district teaching position may begin employment under an intern or probationary certificate before completing the pre-internship requirements under §228.41 of this title (relating to Pre-Service Coursework and Training for Classroom Teacher Candidates) and §228.43 of this title (relating to Pre-Service Field-Based Experiences for Classroom Teacher Candidates) but shall complete these requirements within 90 business days of the hire date.

(b) With appropriate documentation such as certificate of attendance, sign-in sheet, or other written school district verification, 50 clock-hours of pre-internship training required in subsection (a) of this section may be provided by a school district and/or campus that is a Texas Education Agency (TEA)-approved continuing professional education provider to a candidate who is considered a late hire. The training provided by the school district and/or campus must meet the criteria described in Texas Education Code, §21.451, and must be directly related to the certificate being sought.

(c) A candidate that does not complete the pre-internship requirements under §228.41 of this title and §228.43 of this title within 90 business days of the hire date is not qualified for the intern or probationary certificate. The educator preparation program shall then notify TEA staff to deactivate the intern or probationary certificate in accordance with §228.73(h) of this title (relating to Internship).

§228.57. Educator Preparation Curriculum.

(a) The educator standards adopted by the State Board for Educator Certification (SBEC) shall be the curricular basis for all educator preparation and, for each certificate, address the relevant Texas Essential Knowledge and Skills (TEKS).

(b) The curriculum for each educator preparation program (EPP) shall rely on scientifically based research to ensure educator effectiveness and include opportunities for candidate practice in increasingly more authentic and developmentally rigorous ways, including analysis, representations, and enactments of instructional pedagogies and opportunities to receive feedback and adjust practice during coursework, training and field-based and clinical experiences.

(c) The following subject matter shall be included in the curriculum for candidates seeking initial certification in any certification class:

(1) the code of ethics and standard practices for Texas educators, pursuant to Chapter 247 of this title (relating to Educators' Code of Ethics) as well as Chapter 249, Subchapter B, of this title (relating to Enforcement Actions and Guidelines), which include:

(A) professional ethical conduct, practices, and performance;

(B) ethical conduct toward professional colleagues; and

(C) ethical conduct toward students;

(2) instruction in detection and education of students with dyslexia by an approved provider as indicated in Texas Education Code (TEC), §21.044(b);

(3) instruction regarding mental health, substance abuse, and youth suicide, as indicated in TEC, §21.044(c-1). Instruction acquired from the list of recommended best practice-based programs or from an accredited institution of higher education or an alternative certification program as part of a degree plan shall be implemented as required by the provider of the best practice-based program or research-based practice;

(4) the skills that educators are required to possess, the responsibilities that educators are required to accept, and the high expectations for all students in this state, including students with disabilities;

(5) the importance of building strong classroom management skills;

(6) the framework in this state for teacher and principal evaluation;

(7) appropriate relationships, boundaries, and communications between educators and students;

(8) instruction in digital learning, virtual instruction, and virtual learning, as defined in TEC, §21.001, including a digital literacy evaluation followed by a prescribed digital learning curriculum. The instruction required must:

(A) be aligned with the latest version of the International Society for Technology in Education's (ISTE) standards as appears on the ISTE website;

(B) provide effective, evidence-based strategies to determine a person's degree of digital literacy;

(C) cover best practices in:

(i) assessing students receiving virtual instruction, based on academic progress; and

(ii) developing a virtual learning curriculum; and

(D) include resources to address any deficiencies identified by the digital literacy evaluation;

(9) instruction regarding students with disabilities, the use of proactive instructional planning techniques, and evidence-based inclusive instructional practices, as required under TEC §21.044(a-1)(1)-(3); and

(10) instruction in the open education resources instructional materials included on the list of approved instructional materials

maintained by the State Board for Education under TEC, §31.022, in each subject area and grade level covered by the candidate's certification category, as required under TEC, §21.044(a-1)(4). A preparation program may not include instruction on the use of instructional materials that incorporate the method of three-cueing, as defined by TEC, §28.0062(a-1), into foundational skills reading instruction, as required under TEC, §21.044(h).

(d) The following subject matter shall be included in the curriculum for candidates seeking initial certification in the classroom teacher certification class:

(1) the relevant TEKS, including the English Language Proficiency Standards;

(2) reading instruction, including instruction that improves students' content-area literacy;

(3) for certificates that include early childhood and prekindergarten, the Prekindergarten Guidelines; and

(4) the skills and competencies as prescribed in Chapter 235 of this title (relating to Classroom Teacher Certification Standards) and captured in the Texas teacher standards in Chapter 149, Subchapter AA, of Part 2 of this title (relating to Teacher Standards).

(e) The following educator content standards from Chapter 235 of this title shall be included in the curriculum for candidates who hold a valid standard, provisional, or one-year classroom teacher certificate specified in §230.31 of this title (relating to Types of Certificates) in a certificate category that allows the candidates who are seeking the Early Childhood: Prekindergarten-Grade 3 certificate to teach all subjects in Prekindergarten, Kindergarten, Grade 1, Grade 2, or Grade 3:

(1) child development provisions of the Early Childhood: Prekindergarten-Grade 3 Content Standards;

(2) Early Childhood-Grade 3 Pedagogy and Professional Responsibilities Standards; and

(3) Science of Teaching Reading Standards.

(f) For candidates seeking certification in the Principal certification class, the curriculum shall also include the skills and competencies captured in the Texas administrator standards, as indicated in Chapter 149, Subchapter BB, of Part 2 of this title (relating to Administrator Standards).

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

Filed with the Office of the Secretary of State on December 18, 2023.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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SUBCHAPTER E. EDUCATOR CANDIDATE CLINICAL EXPERIENCES

19 TAC §§228.61, 228.63, 228.65, 228.67, 228.69, 228.71, 228.73, 228.75, 228.77, 228.79, 228.81

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering EPPs and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public though its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in

lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

§228.61. Required Clinical Experiences.

(a) To prepare a candidate for initial certification in the classroom teacher certification class, an educator preparation program (EPP) shall provide the candidate one of the following:

(1) clinical teaching that meets the standards in §228.67 of this title (relating to Clinical Teaching); or

(2) a clinical teaching option that is approved by the State Board for Educator Certification through an exception request under §228.71 of this title (relating to Exceptions to the Clinical Teaching Requirement); or

(3) an internship that meets the requirements of §228.73 of this title (relating to Internship); or

(4) a residency that meets the requirements of §228.65 of this title (relating to Residency).

(b) Candidates participating in an internship or a clinical teaching assignment must experience a full range of professional responsibilities that shall include the start of the school year. The start of the school year is defined as the first 15 instructional days of the school year. If these experiences cannot be provided through clinical teaching or an internship, they must be provided through field-based experiences.

(c) To prepare a candidate for initial certification in a class other than classroom teacher, an EPP shall provide a practicum for a minimum of 160 clock-hours that meets the requirements in §228.81 of this title (relating to Clinical Experience for Certification Other Than Classroom Teacher).

§228.63. Locations for Required Clinical Experiences.

(a) An internship, clinical teaching, practicum, or residency experience must take place in-person in a Prekindergarten-Grade 12 school setting rather than a distance learning lab or virtual school setting.

(b) An internship, clinical teaching, or residency experience for certificates that include early childhood may be completed at a Head Start Program with the following stipulations:

(1) a certified teacher is available as a trained mentor;

(2) the Head Start program is affiliated with the federal Head Start program and approved by the Texas Education Agency (TEA);

(3) the Head Start program teaches three- and four-year-old students; and

(4) the state's prekindergarten curriculum guidelines are being implemented.

(c) An internship, clinical teaching, practicum, or residency experience shall not take place in a setting where the candidate:

(1) has an administrative role over the mentor, cooperating teacher, site supervisor, or host teacher; or

(2) is related to the field supervisor, mentor, cooperating teacher, site supervisor, or host teacher by blood (consanguinity) within the third degree or by marriage (affinity) within the second degree.

(d) School districts and charter schools authorized under Texas Education Code, Chapter 12, all Department of Defense Education Activity (DoDEA) schools, wherever located, and all schools accredited by the Texas Private School Accreditation Commission (TEPSAC) are approved by the TEA for purposes of internship, clinical teaching, practicum, and/or residency.

(e) Subject to all the requirements of this section, the TEA may approve a school that is not a public school accredited by the TEA as a site for internships, clinical teaching, practicums, and/or residency.

(f) An educator preparation program (EPP) may file an application, with the appropriate fee specified in §229.9 of this title (relating to Fees for Educator Preparation Program Approval and Accountability), with the TEA for approval, subject to periodic review, of a public

or private school for a candidate's placement located within any state or territory of the United States, as a site for clinical teaching, practicum, or residency required by this chapter.

(1) The clinical teaching, practicum, or residency site may be approved for a candidate who must complete requirements outside the state of Texas due to the following reasons if they occur following admission to the EPP:

(A) military assignment of candidate or spouse;

(B) illness of candidate or family member for whom the candidate is the primary caretaker;

(C) candidate becomes the primary caretaker for a family member residing out of state; or

(D) candidate or spouse transfer of employment.

(2) The application shall identify the circumstances that necessitate the request to complete clinical teaching, practicum, or residency outside of the state of Texas and be in a form developed by TEA staff and shall include, at a minimum:

(A) the accreditation(s) held by the school;

(B) a crosswalk comparison of the alignment of the instructional standards of the school with those of the applicable Texas Essential Knowledge and Skills and State Board for Educator Certification certification standards;

(C) the certification, credentials, and training of the field supervisor(s) who will supervise candidates in the school; and

(D) the measures that will be taken by the EPP to ensure that the candidate's experience will be equivalent to that of a candidate in a Texas public school accredited by the TEA.

(g) An EPP may file an application, with the appropriate fee specified in §229.9 of this title, with the TEA for approval, subject to periodic review, of a public or private school for a candidate's placement located outside the United States, as a site for clinical teaching, practicum, or residency required by this chapter.

(1) The site may be approved for a candidate who must complete requirements outside the United States due to the following reasons if they occur following admission to the EPP:

(A) military assignment of candidate or spouse;

(B) illness of candidate or family member for whom the candidate is the primary caretaker;

(C) candidate becomes the primary caretaker for a family member residing out of country; or

(D) candidate or spouse transfer of employment.

(2) The application shall identify the circumstances that necessitate the request to complete clinical teaching, practicum, or residency outside of the United States and be in a form developed by TEA staff and shall include, at a minimum:

(A) the same provisions required in subsection (f)(2) of this section for schools located within any state or territory of the United States;

(B) a description of the on-site program personnel and program support that will be provided;

(C) a description of any risks to candidate or supervising personnel associated with placement in the country specified in the application and options for mitigating risks; and

(D) a description of the school's recognition by the U.S. State Department Office of Overseas Schools.

§228.65. Residency.

(a) To offer a residency, an educator preparation program (EPP) shall provide the following programmatic requirements for a candidate prior to issuing an enhanced standard certificate as prescribed in §230.39 of this title (relating to Enhanced Standard Certificates):

(1) the residency must include a minimum of one full school year of clinical experience, including the first and last instructional days with students, in a classroom supervised by a host teacher in the classroom teacher assignment or assignments that match the certification category or categories for which the candidate is prepared by the EPP;

(2) the residency clinical experience must meet a minimum of 750 hours in total, with a minimum of 21 hours per week during a school week that does not include school district or campus closures or disruptions (e.g., inclement weather, holidays). In the event of a district or campus closure that results in the need for reduced residency clinical experience hours during a given week, the program must document the need for the reduced hours;

(3) the minimum may be reduced to no less than 700 hours if the candidate is absent from the clinical assignment due to a documented instance of parental leave, military leave, extended illness, or bereavement; and

(4) the beginning date of a residency clinical experience for the purpose of field supervision is the first day of instruction with students in the school or district in which the residency takes place.

(b) An EPP offering a residency shall ensure that:

(1) residency candidates are assigned to one distinct field site for the duration of the residency. EPPs may allow exceptions with a documented process for candidates seeking certification in more than one certification category, candidates seeking certification in Early Childhood-Grade 12 certification categories, and candidates with reasonable human resources concerns. The program and the district must both sign documentation that the benefits of two placements outweigh the consequence of not assigning one distinct field placement. Candidates who receive exceptions shall be placed in no more than two distinct field sites;

(2) during the course of the residency, the residency candidate shall engage in increased responsibility for student instruction, including co-teaching and leading classroom instruction for at least 400 hours; and

(3) a residency candidate must experience a full range of professional responsibilities during the residency.

(c) In addition to the benchmarks and structured assessments required under §228.31(c) of this title(relating to Minimum Educator Preparation Program Obligations to All Candidates), the EPP shall manage and support candidate progression through the dimensions described in subsection (f) of this section and determine readiness to proceed to the next level of increased responsibility for student instruction during the residency, including establishing performance gates with performance tasks observed and evaluated by the field supervisor that require residency candidates to demonstrate mastery of certain educator standards to progress to the next level of responsibility for student instruction. Performance gates must be conducted at least four times a year and occur at least twice per semester.

(d) The EPP must provide ongoing support to a candidate as described in Subchapter F of this chapter (relating to Support for Can-

didates During Required Clinical Experiences) for the full term of the residency, unless, prior to the expiration of that term:

(1) the candidate resigns or is terminated by the school or district;

(2) the candidate is discharged or is released from the EPP;

(3) the candidate withdraws from the EPP; or

(4) the residency assignment does not meet the requirements described in this subchapter.

(e) If the candidate leaves the residency assignment for any of the reasons identified in subsection (d) of this section, the EPP, the campus or district personnel, and the candidate must inform each other within one calendar week of the candidate's last day in the assignment.

(f) A candidate participating in a residency shall be eligible for an enhanced standard certificate by completing all of the following:

(1) the requirements as prescribed in §230.39(b) of this title (relating to Enhanced Standard Certificates);

(2) programmatic requirements under subsections (a)-(c) of this section;

(3) the requirements of the following proficiencies in §150.1002 of Part II of this title (relating to Assessment of Teacher Performance) for pedagogical skills that are used by the program and approved by the state and meet the Proficient performance level measure in each of the following dimensions:

(A) Planning Dimension 1.1: Standards and Alignment;

(B) Planning Dimension 1.2: Data and Assessment;

(C) Instruction Dimension 2.1: Achieving Expectations;

(D) Instruction Dimension 2.2: Content Knowledge and Expertise;

(E) Instruction Dimension 2.3: Communication;

(F) Learning Environment Dimension 3.1: Classroom Environment, Routines, and Procedures;

(G) Learning Environment Dimension 3.2: Managing Student Behavior;

(H) Learning Environment Dimension 3.3: Classroom Culture;

(I) Professional Practices and Responsibilities Dimension 4.1: Professional Demeanor and Ethics;

(J) Professional Practices and Responsibilities Dimension 4.2: Goal Setting; and

(K) Professional Practices and Responsibilities Dimension 4.3: Professional Development.

(g) A residency is successful when the candidate demonstrates proficiency in each of the educator standards for the assignment and the field supervisor, host teacher, and campus supervisor recommend to the EPP that the candidate should be recommended for a residency certificate. If the field supervisor, host teacher, or campus supervisor do not recommend that the candidate should be recommended for an enhanced standard certificate, the person who does not recommend the candidate must provide documentation (e.g., evidence of failure to demonstrate proficiency in educator standards, evidence of failure to meet program requirements, evidence of failure to adhere to campus policies) supporting the lack of recommendation to the candidate and the field supervisor, the host teacher, or the campus supervisor.

§228.67. Clinical Teaching.

(a) A candidate for initial certification as a classroom teacher must have a clinical teaching assignment for each subject area in which the candidate is seeking certification.

(b) The required duration of a clinical teaching assignment shall be a minimum of 490 hours that is not less than an average of 4 hours each day in the subject area and grade level of certification sought, including planning periods but not including lunch periods. The minimum may be reduced to no less than 455 hours if the candidate is absent from the clinical teaching assignment due to a documented instance of parental leave, military leave, illness, or bereavement.

(c) For certification in more than one subject area that cannot be taught concurrently during the same period of the school day as the primary teaching assignment, at least five hours per week of the clinical teaching requirement in subsection (b) of this section must be completed in each additional subject area if and only if:

(1) the educator preparation program (EPP) is approved to offer preparation in the certification category required for the additional assignment;

(2) the EPP provides ongoing support for each assignment as prescribed in Subchapter F of this chapter (relating to Support for Candidates During Required Clinical Experiences);

(3) the EPP provides coursework and training for each assignment to adequately prepare the candidate to be effective in the classroom; and

(4) the campus administrator agrees to assign a qualified cooperating teacher appropriate to each assignment.

(d) The EPP must structure the clinical teaching assignment so that the candidate is provided opportunities for co-teaching and increased instructional responsibility over the course of the clinical teaching assignment and as the candidate demonstrates mastery of educator standards.

(e) Clinical teaching is successful when the candidate demonstrates proficiency in each of the educator standards for the assignment and the field supervisor and cooperating teacher recommend to the EPP that the candidate should be recommended for a standard certificate. If either the field supervisor or cooperating teacher do not recommend that the candidate should be recommended for a standard certificate, the person who does not recommend the candidate must provide documentation (e.g., evidence of failure to demonstrate proficiency in educator standards, evidence of failure to meet program requirements, evidence of failure to adhere to campus policies) supporting the lack of recommendation to the candidate and either the field supervisor or cooperating teacher.

(f) The EPP may require additional hours of clinical teaching if the first experience was not successful.

(g) An EPP must provide ongoing support to a candidate as described in Subchapter F of this chapter for the full term of the initial and any additional clinical teaching, unless, prior to the expiration of that term:

(1) a standard certificate is issued to the candidate;

(2) the candidate is discharged or is released from the EPP; or

(3) the candidate withdraws from the EPP.

§228.69. Clinical Teaching While Employed as Educational Aide.

Candidates employed as certified educational aides may satisfy their clinical teaching assignment requirement through their instructional duties. Clinical teaching must meet requirements for clinical teaching as specified in §228.67 of this title (relating to Clinical Teaching) and in Subchapter F of this chapter (relating to Support for Candidates During Required Clinical Experiences).

§228.71. Exceptions to Clinical Teaching Requirement.

(a) An educator preparation program (EPP) may request an exception to the clinical teaching option described in §228.67 of this title (relating to Clinical Teaching).

(b) An EPP must request an exception by September 15 by submitting a form developed by Texas Education (TEA) staff that requires the EPP to specify:

(1) an alternate requirement that will adequately prepare the candidate for educator certification and ensure the educator is effective in the classroom;

(2) the rationale and support for the alternate clinical teaching option;

(3) a full description and methodology of the alternate clinical teaching option;

(4) a description of the controls to maintain the delivery of equivalent, quality education; and

(5) a description of the ongoing monitoring and evaluation process to ensure that EPP objectives are met.

(c) Exception requests will be reviewed by TEA staff, and TEA staff shall recommend to the State Board for Educator Certification (SBEC) whether the exception should be approved.

(1) The SBEC may:

(A) approve the request;

(B) approve the request with conditions;

(C) deny approval of the request; or

(D) defer action on the request pending receipt of further information.

(2) If the SBEC approves the request with conditions, the EPP must meet the conditions specified in the request. If the EPP does not meet the conditions, the approval is revoked.

(3) If the SBEC approves the request, the EPP must submit a written report of outcomes resulting from the clinical teaching exception to the TEA by September 15 of each academic year. EPPs who were approved for an exception before September 1, 2022, must submit a report to the TEA by September 1, 2024.

(A) TEA staff shall present the report to the SBEC to determine whether to renew the exception for another year.

(B) If the EPP does not timely submit the report, the approval is revoked.

(4) If the SBEC denies the exception or an approval is revoked, an EPP must wait at least two years from the date of the denial or revocation before submitting a new request.

§228.73. Internship.

(a) While participating in an internship, a candidate must hold an intern or probationary certificate that is effective on or before the assignment start date of the internship and is valid for the entire duration of the internship. The educator preparation program (EPP) must verify and document that the candidate's intern or probationary certificate is active prior to the start of the internship assignment.

(b) An internship must be for a minimum of one full school year for the classroom teacher assignment or assignments that match the certification category or categories for which the candidate is prepared by the EPP.

(c) An EPP may permit an internship of up to 30 school days less than the required minimum for parental leave, military leave, illness, bereavement leave, or if the late hire date is after the first day of the school year.

(d) The beginning date of an internship for the purpose of field supervision is the first day of instruction with students in the classroom for the school or district in which the internship takes place.

(e) An internship assignment shall not be less than an average of four hours each day in the subject area and grade level of certification sought. The average includes intermissions and recesses but does not include conference and lunch periods. An EPP may permit an additional internship assignment of less than an average of four hours each day only if all of the following are met:

(1) the employing school or district notifies the candidate and the EPP in writing that an assignment of less than four hours will be required;

(2) the primary assignment is not less than an average of four hours each day in the subject area and grade level of certification sought;

(3) the EPP is approved to offer preparation in the certification category required for the additional assignment;

(4) the EPP provides ongoing support for each assignment as prescribed in Subchapter F of this chapter (relating to Support for Candidates During Required Clinical Experiences); and

(5) the EPP provides coursework and training for each assignment to adequately prepare the candidate to be effective in the classroom.

(f) An EPP may recommend an additional internship if:

(1) the EPP certifies that the first internship was not successful, the EPP has developed a plan to address any deficiencies identified by the candidate, the candidate's field supervisor, and/or the candidate's mentor, and the EPP implements the plan during the additional internship; or

(2) the EPP certifies that the first internship was successful and that the candidate is making satisfactory progress toward completing the EPP before the end of the additional internship.

(g) An EPP must provide ongoing support to a candidate as described in Subchapter F of this chapter (relating to Support for Candidates During Required Clinical Experiences) for the full term of the initial and any additional internship, unless, prior to the expiration of that term:

(1) a standard certificate is issued to the candidate during any additional internship under an intern or probationary certificate;

(2) the candidate resigns, is non-renewed, or is terminated by the school or district;

(3) the candidate is discharged or is released from the EPP;

(4) the candidate withdraws from the EPP;

(5) the candidate is a late hire and fails to meet the pre-internship requirements within 90 business days of assignment in accordance with §228.55 of this title (relating to Late Hire Candidates); or

(6) the internship assignment does not meet the requirements described in this subchapter.

(h) If the candidate leaves the internship assignment for any of the reasons identified in subsection (g) of this section:

(1) the EPP, the campus or district personnel, and the candidate must inform each other within one calendar week of the candidate's last day in the assignment; and

(2) the TEA must receive the certificate deactivation request with all related documentation from the EPP within two calendar weeks of the candidate's last day of the assignment in a format determined by the TEA.

(i) The EPP must communicate the requirements in subsection (h) of this section to candidates and campus or district personnel prior to the assignment start date.

(j) An internship is successful when the candidate demonstrates proficiency in each of the educator standards for the assignment and the field supervisor and campus supervisor recommend to the EPP that the candidate should be recommended for a standard certificate. If either the field supervisor or campus supervisor do not recommend that the candidate should be recommended for a standard certificate, the person who does not recommend the candidate must provide documentation (e.g., evidence of failure to demonstrate proficiency in educator standards, evidence of failure to meet program requirements, evidence of failure to adhere to campus policies) supporting the lack of recommendation to the candidate and either the field supervisor or campus supervisor.

(k) An internship for a Trade and Industrial Workforce Training certificate may be at an accredited institution of higher education if the candidate teaches not less than an average of four hours each day, including intermissions and recesses, in a dual credit career and technical instructional setting as defined by Part 1, Chapter 4, Subchapter D, of this title (relating to Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges).

§228.75. Clinical Experience for Candidate Seeking Certification as Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12.

(a) For a candidate seeking certification as a Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12, an educator preparation program (EPP) shall provide a clinical experience of at least 350 clock-hours in a supervised educator assignment in a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for a candidate seeking certification as a TVI.

(b) The clinical experience is successful when the field supervisor recommends to the EPP that the TVI certification candidate should be recommended for a TVI supplemental certification.

§228.77. Clinical Experience for Candidate Seeking Certification as Deafblind (DB) Supplemental: Early Childhood-Grade 12.

(a) For a candidate seeking certification in the Deafblind (DB) Supplemental: Early Childhood-Grade 12, an educator preparation program (EPP) shall provide a clinical experience of at least 350 clock-hours in a supervised educator assignment in a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for a candidate seeking certification in the Deafblind supplemental.

(b) The clinical experience is successful when the field supervisor recommends to the EPP that the Deafblind certification candidate should be recommended for a Deafblind supplemental certification.

§228.79. Exemptions from Required Clinical Experiences for Classroom Teacher Candidates.

(a) Under Texas Education Code (TEC), §21.050(c), a candidate who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, is exempt from the requirements of this chapter relating to field-based experience, internship, clinical teaching, or residency.

(b) Under TEC, §21.0487(c)(2)(B), a candidate's employment by a school or district as a Junior Reserve Officer Training Corps instructor before the person was enrolled in an educator preparation program (EPP) or while the person is enrolled in an EPP is exempt from any clinical teaching, internship, residency, or field-based experience program requirement.

§228.81. Clinical Experience for Certification Other Than Classroom Teacher.

(a) During the practicum, the candidate must demonstrate proficiency in each of the educator standards for the certificate class being sought.

(b) A practicum may not take place exclusively during a summer recess.

(c) An intern or probationary certificate may be issued to a candidate for a certification in a class other than classroom teacher who meets the requirements and conditions, including the subject matter knowledge requirement, prescribed in §230.36 of this title (relating to Intern Certificates) and §230.37 of this title (relating to Probationary Certificates).

(d) An educator preparation program (EPP) may require additional hours of a practicum, including a practicum under an intern or probationary certificate if:

(1) the EPP certifies that the first practicum was not successful, the EPP has developed a plan to address any deficiencies identified by the candidate, the candidate's field supervisor, and/or the candidate's site supervisor, and the EPP implements the plan during the additional practicum; or

(2) the EPP certifies that the first practicum was successful and that the candidate is making satisfactory progress toward completing the EPP before the end of the additional practicum.

(e) A practicum is successful when the field supervisor and the site supervisor recommend to the EPP that the candidate should be recommended for a standard certificate. If either the field supervisor or site supervisor does not recommend that the candidate should be recommended for a standard certificate, the person who does not recommend the candidate must provide documentation (e.g., evidence of failure to demonstrate proficiency in educator standards, evidence of failure to meet program requirements, evidence of failure to adhere to campus policies) supporting the lack of recommendation to the candidate and either the field supervisor or site supervisor.

(f) An EPP must provide ongoing support to a candidate as described in Subchapter F of this chapter (relating to Support for Candidates During Required Clinical Experiences) for the full term of the initial and any additional practicum, unless, prior to the expiration of that term:

(1) a standard certificate is issued to the candidate;

(2) the candidate is discharged or is released from the EPP; or

(3) the candidate withdraws from the EPP.

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

Filed with the Office of the Secretary of State on December 18, 2023.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

SUBCHAPTER F. SUPPORT FOR CANDIDATES DURING REQUIRED CLINICAL EXPERIENCES

19 TAC §§228.91, 228.93, 228.95, 228.97, 228.99, 228.101, 228.103, 228.105, 228.107, 228.109, 228.111, 228.113, 228.115, 228.117

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering EPPs and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public though its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse

student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

§228.91. Mentors, Cooperating Teachers, Host Teachers, and Site Supervisors.

(a) In order to support a new educator and to increase educator retention, an educator preparation program (EPP) and campus or district administrator shall collaboratively assign each candidate a mentor during the candidate's internship, collaboratively assign a cooperating teacher during the candidate's clinical teaching experience, collaboratively assign a host teacher during the candidate's residency, and collaboratively assign a site supervisor during the candidate's practicum.

(b) For teacher residencies, the EPP and campus or district administrator shall share responsibility for selection of host teachers, including determining specific selection criteria, development of a scoring rubric, and development of a selection process that involves representatives from the EPP and campus or district administration.

(c) For internships and practicums, the mentor or site supervisor must be assigned to the candidate within three weeks of the candidate's assignment start date. The EPP must not allow a candidate to be in an internship or practicum without an assigned mentor or site supervisor for longer than three weeks.

(d) If an individual who meets the certification category and/or experience criteria for a cooperating teacher, mentor, host teacher, or site supervisor is not available, the EPP and campus or district administrator shall collaborate to ensure an individual who most closely meets the criteria is assigned to the candidate, and the EPP must document the reason for selecting an individual that does not meet the criteria.

(e) The EPP is responsible for providing mentor, cooperating teacher, host teacher, and/or site supervisor training that relies on scientifically based research, but the program may allow the training to be provided by a school, district, or regional education service center if properly documented in accordance with the evidence requirements of Figure: 19 TAC §228.13(f).

§228.93. Cooperating Teacher Qualifications and Responsibilities.

(a) Required qualifications of a cooperating teacher:

(1) at least three creditable years of teaching experience, as defined in Chapter 153, Subchapter CC, of Part II of this title (relating to Commissioner's Rules on Creditable Years of Teaching Experience);

(2) an accomplished educator as shown by student learning;

(3) trained by the educator preparation program, including training in co-teaching strategies and in how to coach and mentor teacher candidates, during the twelve weeks before or three weeks after being assigned to the clinical teacher;

(4) not assigned to the candidate as a mentor, field supervisor, or site supervisor; and

(5) valid certification in the certification category for the clinical teaching assignment for which the clinical teacher candidate is seeking certification.

(b) Duties of a cooperating teacher:

(1) guide, assist, and support the candidate during the candidate's clinical teaching in areas such as lesson preparation, classroom management, instruction, assessment, working with parents, obtaining materials, and district policies; and

(2) report the candidate's progress to the candidate's field supervisor.

§228.95. Host Teacher Qualifications and Responsibilities.

(a) Required qualifications of a host teacher:

(1) at least three creditable years of teaching experience, as defined in Chapter 153, Subchapter CC, of Part II of this title (relating to Commissioner's Rules on Creditable Years of Teaching Experience);

(2) an accomplished educator, as determined by the educator preparation program (EPP) in partnership with the district or campus administration, and shown by:

(A) at least three years of proficient or above proficient ratings on teacher evaluations;

(B) demonstrated evidence of positive impact on student learning as determined by a set of student growth and/or achievement data agreed upon by the partnership; and

(C) other dispositional criteria prioritized by the residency partnership;

(3) trained by the EPP, including training in co-teaching strategies and how to coach and mentor teacher candidates, at least twice per school year, including before or within the three weeks after being assigned as a host teacher;

(4) not assigned to the candidate as a field supervisor; and

(5) valid certification in the certification category for the residency assignment for which the residency candidate is seeking certification.

(b) Duties of a host teacher:

(1) co-teach with the residency candidate, gradually releasing instructional responsibility and lead instruction time to the candidate as specified in §228.65(b)(2) of this title (relating to Residency);

(2) guide, assist, give feedback to, and support the candidate during the candidate's residency in areas such as lesson preparation, classroom management, instruction, assessment, working with parents, obtaining materials, and district policies; and

(3) report the candidate's progress to the candidate's field supervisor at least monthly.

§228.97. Mentor Qualifications and Responsibilities.

(a) Required qualifications of a mentor:

(1) at least three creditable years of teaching experience, as defined in Chapter 153, Subchapter CC, of Part II of this title (relating to Commissioner's Rules on Creditable Years of Teaching Experience);

(2) accomplishment as an educator as shown by student learning;

(3) not assigned to the candidate as a cooperating teacher, field supervisor, or site supervisor;

(4) trained as a mentor by the educator preparation program (EPP) or the campus or district, including training in how to coach and mentor teacher candidates, during the twelve weeks before or three weeks after the candidate's assignment start date; and

(5) valid certification in the certification category in which the internship candidate is seeking certification.

(b) Duties of a mentor:

(1) guide, assist, and support the candidate throughout the entirety of the internship in areas such as lesson preparation, classroom management, instruction, assessment, working with parents, obtaining materials, and district policies; and

(2) report the candidate's progress to the candidate's field supervisor.

§228.99. Site Supervisor Qualifications and Responsibilities.

(a) Required qualifications of a site supervisor:

(1) at least three creditable years of experience, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service), in the aspect(s) of the certification class being pursued by the candidate;

(2) valid certification in the certification class in which the practicum candidate is seeking certification;

(3) trained by the educator preparation program (EPP), including training in how to coach and mentor candidates, during the twelve weeks before or three weeks after the start of the candidate's practicum;

(4) not serving as a field supervisor for a candidate completing a practicum, clinical teaching, or internship; and

(5) accomplishment as an educator as shown by student learning.

(b) Duties of a site supervisor:

(1) guide, assist, and support the candidate during the practicum; and

(2) report the candidate's progress to the candidate's field supervisor.

§228.101. Field Supervisor Qualifications and Responsibilities.

(a) Required qualifications of a field supervisor:

(1) accomplishment as an educator as shown by student learning; and

(2) not employed by the same school where the candidate being supervised is completing his or her clinical teaching, internship, or practicum; and

(3) trained by the educator preparation program (EPP) as a field supervisor; and

(4) for a supervisor of residency candidates, trained annually by the EPP in coaching and co-teaching strategies and candidate evaluation and participation in school and/or district trainings, as determined by the district partner; and

(5) has completed Texas Education Agency (TEA)-approved training as required in subsection (b)(1) of this section or, for field supervisors supporting teacher candidates, is a currently certified Texas Teacher Evaluation and Support System (T-TESS) appraiser; and

(6) not assigned to the candidate as a mentor, cooperating teacher, or site supervisor; and

(7) three years of creditable experience, as defined by Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service), in the class in which supervision is provided, including:

(A) for a supervisor of classroom teacher and reading specialist candidates, experience as a campus-level administrator and a current certificate that is appropriate for a principal assignment may also supervise teacher and reading specialist candidates; and

(B) for a supervisor of principal candidates, experience as a district-level administrator and a current certificate that is appropriate for a superintendent assignment may also supervise principal candidates; and either

(8) valid certification in the class in which supervision is provided; or

(9) at least a master's degree in the academic area or field related to the certification class for which supervision is being provided, and in compliance with the same number, content, and type of continuing professional education requirements described in §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours) and §232.15 of this title (relating to Types of Acceptable Continuing Professional Education Activities) for the certification class for which supervision is being provided.

(b) Duties of a field supervisor:

(1) Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained annually as a field supervisor by the EPP and completed TEA-approved field supervisor training at least every three years. Field supervisors who have completed TEA-approved training must renew that training by September 1, 2026, and then renew the training at least one time per each three-year period thereafter. Field supervisors who support teacher candidates and who maintain valid T-TESS certification are not required to renew TEA-approved field supervisor training.

(2) The field supervisor must contact the assigned candidate within the first three weeks after the assignment start date for a candidate seeking certification as a classroom teacher and within the first quarter of the assignment for a candidate seeking certification in a class other than classroom teacher. The field supervisor must contact a candidate who is a late hire as defined in §228.2 of this title (relating to Definitions) within the first week after the candidate's assignment start date. Contact may be made by telephone, email, or other electronic communication.

(3) The field supervisor shall verify the candidate's internship placement within the first three weeks of the candidate's internship assignment and shall notify the EPP if the internship placement does not meet the requirements of this chapter, including assignment of a qualified mentor.

(4) Field supervisors shall conduct observations of candidates as described in §§228.103 of this title (relating to Formal Observations for Candidates in Residency Assignments), 228.105 of this title (relating to Formal Observations for All Candidates for Initial Classroom Teacher Certification), 228.107 of this title (relating to Formal Observations for Candidates in Clinical Teaching Assignments), 228.109 of this title (relating to Formal Observations for Candidates in Internship Assignments), 228.111 of this title (relating to Formal Observations for Candidates Employed as Educational Aides), 228.113 of this title (relating to Support and Formal Observations for Candidates Seeking Certification as Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12), 228.115 of this title (relating to Support and Formal Observations for Candidates Seeking

Deafblind Supplemental: Early Childhood-Grade 12), and 228.117 of this title (relating to Support and Formal Observations for Candidates Other Than Classroom Teacher).

(5) With the exception of candidates who are late hires as defined in §228.2 of this title, field supervisors of candidates in clinical teaching, internship, and practicum assignments shall provide informal observations and ongoing coaching as appropriate and needed and, at a minimum, include the following:

(A) at least three informal observations that are 15 minutes or more in duration per semester of the internship, clinical teaching, or practicum assignment;

(B) the first informal observation must occur within the first six weeks of the clinical teaching or internship assignment and must be in-person. Additional informal observations may be conducted virtually, either synchronous or asynchronous;

(C) informal observations of practicum candidates may be virtual, either synchronous or asynchronous;

(D) are informed by written feedback provided during post-observation conferences; and

(E) include observation and feedback on targeted skills.

(6) Field supervisors must provide to a candidate who is a late hire as defined in §228.2 of this title informal observations as required in subsection (b)(5) of this section. Two of the required informal observations must be provided within the first eight weeks of the candidate's assignment start date and both informal observations must be in-person.

(7) Field supervisors of candidates in residency assignments shall provide informal observations and ongoing coaching that, at a minimum, include the following:

(A) at least four in person informal observations that are 15 minutes or more in duration per semester, totaling at least eight observations over the course of the year-long teacher residency placement. The first informal must occur within the first four weeks of the residency placement;

(B) are informed by written feedback provided during post-observation conferences; and

(C) provide observation and feedback on targeted skills, with opportunity to follow up on the candidate's development in the targeted skill.

(8) For candidates participating in an internship, the field supervisor shall provide a copy of all written feedback to the candidate's supervising campus administrator and assigned mentor. For candidates participating in a residency, the field supervisor shall provide a copy of all written feedback to the candidate's host teacher and campus supervisor.

(9) In a clinical teaching experience, the field supervisor shall collaborate with the candidate and cooperating teacher throughout the clinical teaching experience and request and document feedback about the candidate from the candidate's cooperating teacher at least three times throughout the clinical teaching experience.

(10) For a residency, the field supervisor shall collaborate with the candidate, campus supervisor, and the host teacher throughout the residency, including regular meetings and/or collaborative supports at least three times each semester with the campus supervisor and twice monthly with the host teacher. Meetings may be held virtually, and collaborative supports may include but are not limited to co-observation of candidates, co-coaching of candidates, and calibration for inter-rater reliability.

(11) For an internship, the field supervisor shall collaborate with the candidate and campus supervisor, or their designee, at least twice per semester. Collaboration may include but is not limited to co-observations (formal and informal), post-observation collaborative coaching, collaborative goal setting, or the provision of actionable feedback related to collaboratively established goals.

(12) For non-teacher candidates in a practicum, the field supervisor shall collaborate with the candidate and site supervisor throughout the practicum experience.

§228.103. Formal Observations for Candidates in Residency Assignments.

(a) An educator preparation program (EPP) must provide the first formal observation within the first four weeks of all residency assignments.

(b) For a residency described in §228.65 of this title (relating to Residency):

(1) an EPP must provide a minimum of two formal observations of 45 minutes each during the first semester of the residency and a minimum of two formal observations of 45 minutes each during the second semester of the residency. All formal observations must include a pre-observation and post-observation conference with the candidate; and

(2) all of the minimum formal observations must be in-person.

§228.105. Formal Observations for All Candidates for Initial Classroom Teacher Certification.

(a) Educator preparation programs shall ensure that the field supervisor conducts formal observations of the candidates completing a clinical experience.

(b) Each formal in-person observation must be at least 45 minutes in duration, must be conducted by the field supervisor, and must be on the candidate's site in a face-to-face setting.

(c) Each formal virtual observation must be:

(1) at least 45 minutes in length;

(2) conducted by the field supervisor;

(3) followed by a post-observation conference within 72 hours of the educational activity; and

(4) conducted through use of an unedited electronic transmission, video, or technology-based method.

(d) For each formal observation, whether in-person or virtual, the field supervisor shall:

(1) participate in an individualized pre-observation conference with the candidate;

(2) document educational practices observed;

(3) provide written feedback through an individualized, synchronous, and interactive post-observation conference with the candidate; and

(4) provide a copy of the written feedback to the candidate's cooperating teacher or mentor.

(e) Neither the pre-observation conference nor the post-observation conference needs to be onsite.

§228.107. Formal Observations for Candidates in Clinical Teaching Assignments.

(a) An educator preparation program (EPP) must provide the first formal observation within the first third of all clinical teaching assignments.

(b) For a clinical teaching assignment, an EPP must provide a minimum of two formal observations during the first half of the assignment and a minimum of two formal observations during the second half of the assignment.

(c) For an all-level clinical teaching assignment in more than one location or in an assignment that involves certification in more than one certification category that cannot be taught concurrently during the same period of the school day, a minimum of two formal observations must be provided during the first half of each assignment and a minimum of one formal observation must be provided during the second half of each assignment.

(d) For a clinical teaching assignment:

(1) at least two of the minimum formal observations must be in-person for each assignment; and

(2) if an EPP chooses to provide formal virtual observations, it must provide at least two formal virtual observations in addition to the two minimum formal in-person observations for each assignment.

§228.109. Formal Observations for Candidates in Internship Assignments.

(a) An educator preparation program (EPP) must provide the first formal observation within the first four weeks of all internship assignments. The first formal observation must be conducted in-person.

(b) For an internship under an intern certificate or an additional internship described in §228.73 of this title (relating to Internship):

(1) an EPP must provide a minimum of three formal observations during the first half of the internship and a minimum of two formal observations during the last half of the internship; and

(2) at least three of the minimum formal observations must be in-person.

(c) For a first-year internship under a probationary certificate or an additional internship described in §228.73 of this title:

(1) an EPP must provide a minimum of three formal observations during the first half of the assignment, and a minimum of two formal observations during the second half of the assignment; and

(2) at least two of the minimum formal observations must be in-person.

(d) If an internship under an intern certificate or an additional internship described in §228.73 of this title involves certification in more than one certification category that cannot be taught concurrently during the same period of the school day:

(1) an EPP must provide a minimum of three observations in each assignment;

(2) for each assignment, the EPP must provide at least two formal observations during the first half of the internship and one formal observation during the second half of the internship;

(3) at least two of the minimum formal observations must be in-person for each assignment; and

(4) if an EPP chooses to provide formal virtual observations, it must provide at least two formal virtual observations in addition to the two minimum formal in-person observations for each assignment.

(e) For a first-year internship under a probationary certificate or an additional internship described in §228.73 of this title that involves certification in more than one certification category that cannot be taught concurrently during the same period of the school day:

(1) an EPP must provide a minimum of three observations in each assignment;

(2) for each assignment, the EPP must provide at least two formal observations during the first half of the internship and one formal observation during the second half of the internship;

(3) at least two of the minimum formal observations must be in-person for each assignment; and

(4) if an EPP chooses to provide formal virtual observations, it must provide at least two formal virtual observations in addition to the two minimum formal in-person observations for each assignment.

§228.111. Formal Observations for Candidates Employed as Educational Aides.

For candidates employed as certified educational aides completing clinical teaching, an educator preparation program must provide a minimum of two formal observations during the first half of the assignment and a minimum of two formal observations during the second half of the assignment.

§228.113. Support and Formal Observations for Candidates Seeking Certification as Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12.

(a) For a candidate seeking a Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12 certificate, an educator preparation program (EPP) must provide guidance, assistance, and support by assigning a cooperating teacher and/or providing individual or group consultation. The EPP is responsible for providing training to cooperating teachers and/or consultation providers.

(b) An EPP shall collaborate with the program coordinator for the Texas School for the Blind and Visually Impaired Statewide Mentor Program to assign a TVI mentor for the TVI certification candidate. The Texas School for the Blind and Visually Impaired Statewide Mentor Program is responsible for providing training for all TVI mentors.

(c) Supervision of each TVI candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who is qualified and has been trained as a field supervisor in accordance with §228.101 of this title (relating to Field Supervisor Qualifications and Responsibilities).

(1) Formal observations of TVI candidates must be at least 135 minutes in duration in total throughout the clinical experience and must be conducted by the field supervisor.

(2) An EPP must provide a minimum of one formal observation within the first third of the clinical experience, one formal observation within the second third of the clinical experience, and one formal observation within the final third of the clinical experience.

(3) For each observation, the field supervisor shall:

(A) conduct an individualized pre-observation conference with the candidate before each observation;

(B) document educational practices observed during each observation; and

(C) provide written feedback through an individualized, synchronous, and interactive post-observation conference with the candidate following each observation.

(4) The field supervisor may provide formal observations, pre-observation conferences, and post-observation conferences either in a face-to-face setting or by the use of electronic transmission or other video or technology-based methods.

§228.115. Support and Formal Observations for Candidates Seeking Deafblind Supplemental: Early Childhood-Grade 12 Certification.

(a) For a candidate seeking a Deafblind Supplemental: Early Childhood-Grade 12 certificate, an educator preparation program (EPP) must provide guidance, assistance, and support by assigning a cooperating teacher and/or providing individual or group consultation. The EPP is responsible for providing training to cooperating teachers and/or consultation providers.

(b) An EPP shall collaborate with the Texas School for the Blind and Visually Impaired to assign a mentor for the candidate. The Texas School for the Blind and Visually Impaired is responsible for providing training for all mentors.

(c) Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who is qualified and has been trained as a field supervisor in accordance with §228.101 of this title (relating to Field Supervisor Qualifications and Responsibilities).

(1) Formal observations of candidates must be at least 135 minutes in duration in total throughout the clinical experience and must be conducted by the field supervisor.

(2) An EPP must provide a minimum of one formal observation within the first third of the clinical experience, one formal observation within the second third of the clinical experience, and one formal observation within the final third of the clinical experience.

(3) The field supervisor shall:

(A) conduct an individualized pre-observation conference with the candidate before each observation;

(B) document educational practices observed during each observation; and

(C) provide written feedback through an individualized, synchronous, and interactive post-observation conference with the candidate following each observation.

(4) The field supervisor may provide formal observations, pre-observation conferences, and post-observation conferences either in a face-to-face setting or by the use of electronic transmission or other video or technology-based methods.

§228.117. Support and Formal Observations for Candidates Other Than Classroom Teacher.

(a) Supervision of each candidate seeking certification in a class other than classroom teacher shall be conducted with the structured guidance and regular ongoing support of an experienced educator who is qualified and has been trained as a field supervisor in accordance with §228.101 of this title (relating to Field Supervisor Qualifications and Responsibilities).

(b) For candidates in a practicum:

(1) An educator preparation program (EPP) must provide a minimum of one formal observation within the first third of the practicum, one formal observation within the second third of the practicum, and one formal observation within the final third of the practicum.

(2) The three required formal observations must be at least 135 minutes in duration in total throughout the practicum and must be conducted by the field supervisor.

(3) For each formal observation, the field supervisor shall:

(A) participate in an individualized pre-observation conference with the candidate;

(B) document educational practices observed during the observation;

(C) provide written feedback through an individualized, synchronous, and interactive post-observation conference with the candidate; and

(D) provide a copy of the written feedback to the candidate's site supervisor.

(4) The field supervisor may conduct the formal observations, pre-observation conferences, and post-observation conferences either in-person or virtually.

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

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Cristina De La Fuente-Valadez
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SUBCHAPTER G. COMPLAINTS AND INVESTIGATIONS

19 TAC §228.121, §228.123

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements

a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering EPPs and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public though its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

§228.121. Complaints and Investigations Procedures.

(a) Purpose. An applicant for candidacy in an educator preparation program (EPP), an employee or former employee of an EPP, a cooperating teacher, a host teacher, a mentor, a site supervisor, or an administrator in a public or private school that serves as a site for clinical teaching, residency, internship, or practicum experiences may submit a complaint about an EPP for investigation and resolution.

(b) Complaint form. Texas Education Agency (TEA) staff shall develop a complaint form to standardize information received from an individual making a complaint against an EPP. The complaint form shall be available on the TEA website. All complaints filed against an EPP must be in writing on the complaint form. The written complaint must clearly state the facts that are the subject of the complaint and must state the measures the complainant has taken to attempt resolution of the complaint with the EPP. Anonymous complaints may not be investigated.

(c) Processing the complaint.

(1) TEA staff shall record all complaints in the TEA complaints tracking system. Each complaint, no matter the severity, shall be assigned a tracking number.

(2) The complaint shall be forwarded to the division responsible for educator preparation for further action, including assessing the complaint, providing a severity status and prioritizing the complaint accordingly, and determining jurisdiction.

(3) If TEA staff determines that the complaint is not within the State Board for Educator Certification's (SBEC's) jurisdiction, TEA staff shall notify the complainant that the complaint will be closed without action for lack of jurisdiction. TEA staff and the SBEC do not have jurisdiction over complaints related to contractual arrangements with

an EPP, commercial issues, obtaining a higher grade or credit for training, or seeking reinstatement to an EPP.

(4) If TEA staff determines the complainant knew or should have known about the events giving rise to a complaint more than two years before the earliest date the complainant filed a complaint with either TEA staff or the EPP, TEA staff may close the complainant without action.

(5) If a complainant has not exhausted all applicable complaint and appeal procedures that the EPP has established to address complaints, TEA staff may delay initiating an investigation until the EPP's complaint and appeal process is complete.

(d) Investigating the complaint.

(1) If TEA staff determines a complaint is within the SBEC's jurisdiction, TEA staff shall notify the respondent EPP that a complaint has been made, provide a summary of the allegations in the complaint, and request that the EPP respond to the complaint.

(2) TEA staff may request additional information from the individual and from the EPP.

(3) An EPP shall:

(A) cooperate fully with any SBEC investigation; and

(B) respond within 10 business days of receipt to requests for information regarding the complaint(s) and other requests for information from the TEA, except where:

(i) TEA staff imposes a different response date; or

(ii) the EPP is unable to meet the initial response date and requests and receives a different response date from TEA staff.

(C) If an EPP fails to comply with this paragraph, the SBEC may amend the complaint to reflect the violation and may deem admitted the violation of SBEC rules and/or Texas Education Code (TEC), Chapter 21, alleged in the original complaint.

(4) Resolving the complaint.

(A) Upon completion of an investigation, TEA staff shall notify both the individual and the EPP in writing of the findings of the investigation. If TEA staff finds that a violation occurred, the notice shall specify the statute and/or rule that was alleged to have been violated.

(B) Each party shall have 10 business days to present additional evidence or to dispute the findings of the investigation.

(C) After reviewing any additional evidence, if TEA staff finds that no violation has occurred, TEA staff shall close the investigation and notify both parties in writing.

(D) After reviewing any additional evidence, if TEA staff finds that the EPP has violated SBEC rules and/or TEC, Chapter 21, the following provisions apply.

(i) TEA staff shall notify the EPP in writing and specify for each violation the seriousness and extent of the violation, including whether the EPP has been found to have violated that statute and/or rule previously.

(ii) Within 10 business days of TEA staff notifying the EPP in writing that a violation has occurred, the EPP and TEA staff shall agree to a timely resolution of each violation. If the parties cannot agree on a resolution within 10 business days, TEA staff shall unilaterally propose a resolution and timeline.

(iii) If the EPP complies with the agreed or proposed resolution, the investigation is closed and the results recorded in accordance with subparagraph (E) of this paragraph. TEA staff shall provide the EPP written notice that the investigation is closed.

(iv) If the EPP does not comply with the agreed or proposed resolution within the timelines set out in the resolution, TEA staff shall make a recommendation that the SBEC impose sanctions affecting the EPP's accreditation status in accordance with §229.5 of this title (relating to Accreditation Sanctions and Procedures) and/or continuing approval status in accordance with §229.6 of this title (relating to Continuing Approval). The SBEC's decision shall be recorded in accordance with subparagraph (E) of this paragraph.

(v) The EPP shall be entitled to an informal review of the proposed recommendation for sanctions under the conditions and procedures set out in §229.7 of this title (relating to Informal Review of Texas Education Agency Recommendations).

(E) The final disposition of the complaint shall be recorded in the TEA complaints tracking system.

§228.123. Educator Preparation Program Responsibilities for Candidate Complaints.

(a) The educator preparation program (EPP) shall adopt and send to Texas Education Agency (TEA) staff, for inclusion in the EPP's records, a complaint procedure that requires the EPP to timely attempt to resolve complaints at the EPP level before a complaint is filed with TEA staff.

(b) The EPP shall post on its website a link to the TEA complaints website and information regarding how to file a complaint under the EPP's complaint policy.

(c) The EPP shall post a notification at all of its physical site(s) used by employees and candidates, in a conspicuous location, information regarding filing a complaint with TEA staff in accordance with §228.121(b) of this title (relating to Complaints and Investigations Procedures).

(d) Upon request of an individual, the EPP shall provide information in writing regarding filing a complaint under the EPP's complaint policy and the procedures to submit a complaint to TEA staff in accordance with §228.121(b) of this title.

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

Filed with the Office of the Secretary of State on December 18, 2023.

TRD-202304872
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§230.1, 230.21, 230.31, 230.101, and 230.105, and new §230.39, concerning professional educator preparation and certification. The proposed revisions would redefine *pilot exam*; specify the timeline by which a passing score on a certification exam can

be used for certification purposes; decrease the number of days to request a test limit waiver after an unsuccessful examination attempt; update the figure specifying the required pedagogy and content pedagogy certification exams for issuance of the probationary or standard certificate; remove certificate categories and examinations that are no longer operational; establish an Enhanced Standard certificate and fees for the proposed teacher residency preparation route specified in proposed new 19 TAC Chapter 228, Requirements for Educator Preparation Programs; and update the list of ineligible certification by examination certificates to include the proposed new Deafblind: Early Childhood-Grade 12 certificate. The proposed revisions would also include technical edits to comply with Texas Register formatting and style requirements.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 230, Subchapter A, General Provisions, specify the general guidelines regarding professional educator preparation and certification. The SBEC rules in 19 TAC Chapter 230, Subchapter C, Assessment of Educators, specify the testing requirements for initial certification and for additional certificates based on examination. The SBEC rules in 19 TAC Chapter 230, Subchapter D, Types and Classes of Certificates Issued, define the types, classes, and issuance requirements for certificates. The SBEC rules in 19 TAC Chapter 230, Subchapter G, Certificate Issuance Procedures, specify appropriate procedures for the issuance of educator certificates. These requirements ensure educators are qualified and professionally prepared to instruct the schoolchildren of Texas.

The following is a description of the proposed revisions to 19 TAC Chapter 230, Subchapters A, C, D, and G. The proposed revisions are reflective of the broader certification redesign efforts the SBEC has led since 2017 to develop rigorous and relevant certification exams in alignment with their statutory charge in TEC, §21.031, Purpose, to "ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state"; are responsive to associated rulemaking in the proposed repeal of and new 19 TAC Chapter 228, Requirements for Educator Preparation Programs, to implement a teacher residency preparation route and associated certificate; and implement House Bill (HB) 2256, 87th Texas Legislature, Regular Session, 2021.

Subchapter A. General Provisions

Proposed Amendment to 19 TAC §230.1

The proposed amendment would add §230.1(13) to define *enhanced standard certificate* to implement the certificate for the residency preparation route included in the 19 TAC Chapter 228 proposal. The proposed amendment to §230.1(18) would amend the definition for *pilot exam*. This proposed amendment would allow the SBEC to annually review, pilot, and collect data for certification exams to examine the impact of the exam's implementation on Texas candidates. The proposed amendment to §230.1(12) would align the definition for *educator preparation program* (EPP) with 19 TAC Chapter 228 and Chapter 229, Accountability System for Educator Preparation Programs. Additional technical edits would renumber the definitions to accommodate the addition of §230.1(13) and apply style requirements to cross references to statute, where applicable.

Subchapter C. Assessment of Educators

Proposed Amendment to 19 TAC §230.21(a)(3)(A)

The proposed amendment to §230.21(a)(3)(A) would provide technical edits to align with the titles of §232.17 and §232.19.

Proposed Amendment to 19 TAC §230.21(a)(5)(D)

The proposed amendment to 19 TAC §230.21(a)(5)(D)(i) would decrease the number of days a candidate can request a waiver after their fourth retake from 45 to 30 calendar days. The proposed amendment would strike 19 TAC §230.21(a)(5)(D)(ii) to remove the required delay before a candidate can reapply for a test limit waiver if the candidate's initial application was denied. This change would allow candidates to become certified sooner if they are able to pass the examination on their next attempt.

Proposed Amendment to 19 TAC §230.21(e)

The proposed amendment to §230.21(e) would update the testing requirements for educator certification indicated in Figure: 19 TAC §230.21(e).

The proposed amendment to §230.21(e) would specify that for issuance of a probationary or standard certificate in more than one certification category, a candidate must pass the appropriate pedagogy examination under Figure: 19 TAC §230.21(e) for any one of the certificates sought. This change would allow for educators to be issued probationary or standard certificates in more than one certification category by passing only one pedagogy certification exam. The current rule requires that for issuance of each individual certificate, educators must take and pass the aligned pedagogy exam, which means that educators pursuing certification in two certification categories through completion of the edTPA are required to take two edTPA certification exams. This proposed change would align with feedback from EPPs participating in the edTPA pilot that expressed concern about the expense and duplicative effort caused by the current rule.

Update to Figure Titles and Content Pedagogy Exam Requirements

The proposed amendment to Figure: 19 TAC §230.21(e) would update the column title from "Pedagogical Requirement(s)" to "Required Pedagogy Test(s)" to align the language of the title to the other test column in the figure, "Required Content Pedagogy Test(s)."

Published in the Proposed Rules section of this issue, the SBEC proposed amendments to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, that would create six new classroom teacher certificate categories: Core/Special Education with the Science of Teaching Reading/Special Education: Early Childhood-Grade 6; Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6; Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6; Core/English as a Second Language with the Science of Teaching Reading: Early Childhood-Grade 6; Core with the Science of Teaching Reading: Early Childhood-Grade 6; and Bilingual Special Education Supplemental: Early Childhood-Grade 12.

The proposed amendment to Figure: 19 TAC §230.21(e) would add certification exams, which are in development for the proposed certification fields. The proposed amendment would create examinations for the Core with the Science of Teaching Reading: Early Childhood-Grade 6; Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6; and Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6 certificates and set out a timeline for test development that would match the timeline for certificate issuance in the proposed amendments

to 19 TAC Chapter 233 to begin no earlier than September 1, 2027.

The proposed amendment would create examinations for the Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6 and the Core/English as a Second Language with the Science of Teaching Reading: Early Childhood-Grade 6 certificates and set out a timeline for test development that would match the timeline for the certificate issuance in the proposed amendments to 19 TAC Chapter 233 to begin no earlier than September 1, 2028.

The proposed set of Core: Early Childhood-Grade 6 certification exams aim to streamline exam content in the elementary grade band, removing the Fine Arts/Health/Physical Education subtest from the base Core Subjects assessment and proposing a set of redesigned assessments that integrate additional content areas, including English as a second language (ESL), special education, and bilingual education, with the goal of reducing the overall number of exams educators are required to take for certification. These redesigned exams are also informed by the redesign of 19 TAC Chapter 235, Classroom Teacher Certification Standards, pedagogy and English language arts and reading (ELAR) and math content pedagogy standards currently under development at the direction of the SBEC.

Finally, the proposed amendment would establish the required examinations for the Bilingual Special Education Supplemental: Spanish certificate, as required in HB 2256, 87th Texas Legislature, Regular Session, 2021. Based on stakeholder input, the proposed certificate would focus specifically on Spanish language bilingual education and would require candidates to demonstrate proficiency in the proposed 187 Bilingual Special Education Texas Examinations of Educator Standards (TExES), which will be operational beginning September 2027, and the proposed 165 Bilingual Educator Spanish Supplemental TExES, which will be operational beginning September 2026.

Similarly, the proposed amendment to the figure would specify the exam requirements for the certificates recently adopted by the SBEC, including the Special Education Specialist: Early Childhood-Grade 12 and Deafblind: Early Childhood-Grade 12, which will be operational for candidates on September 1, 2025, to align with the initial issuance dates for the new certificates. When operational, the tests and certificates will replace the Special Education: Early Childhood-Grade 12 and Special Education Supplemental certificates. Therefore, the proposed amendment would set August 31, 2025, as the last operational date for the Special Education: Early Childhood-Grade 12 exam.

The SBEC adopted updates to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, to include the creation of a certification category, Tamil: Early Childhood-Grade 12, and the proposed amendment to Figure: 19 TAC §230.21(e) would add a certification exam for Tamil: Early Childhood-Grade 12. The exam will become operational for candidates on September 1, 2025, to align with the date for issuance of the certificate in 19 TAC Chapter 233.

The proposed amendment to Figure: 19 TAC §230.21(e) would also add the last operational date of August 31, 2024, for the following exams: English Language Arts and Reading 7-12 and Physical Education EC-12. These examinations are being replaced with updated exams, and the proposed amendment would add a first operational date of September 1, 2024, for English Language Arts and Reading 7-12 and Physical Education EC-12.

The proposed amendment to Figure: 19 TAC §230.21(e) would add an implementation timeline of no earlier than September 1, 2027, for the following exams: Reading Specialist EC-12 and School Librarian EC-12. These exams are necessary due to proposed updates to the educator standards for the certificates in 19 TAC Chapter 239, Student Services Certificates, which are published in the Proposed Rules section of this issue. The proposed timeline would align with the test development timeline.

The proposed amendment to Figure: 19 TAC §230.21(e) would also transition to a new content pedagogy exam for Health: Early Childhood-Grade 12 on September 1, 2024. This amendment would update the exam based on current Texas Essential Knowledge and Skills and add the last operational date of August 31, 2024, for the current Health: Early Childhood-Grade 12 exam.

Updates to Pedagogy Exam Requirements

At the December 2022 SBEC meeting, the Board directed Texas Education Agency (TEA) staff to pursue rulemaking to implement teacher performance assessments (TPAs) as certification exams rather than as program requirements and to begin procurement processes related to the development of a Texas-specific TPA (TxTPA). In addition, the Board sought information on potential types of teacher candidates and preparation pathways that may be excluded from the TPA pedagogy exam requirement. During the April 2023 SBEC meeting, the Board confirmed the following options and timelines for implementing the pedagogy examinations for educator certification:

See table titled, *Timelines for Pedagogy Examinations for Educator Certification.*

Figure: 19 TAC Chapter 230 - Preamble

The proposed amendment to Figure: 19 TAC §230.21(e) would add a last operational date of August 31, 2026, for the 160 Pedagogy and Professional Responsibilities (PPR) EC-12 TExES exam. The addition of the last operational date for the PPR exam would provide a multi-year runway for EPPs to proactively make decisions regarding the appropriate TPA pedagogy exam for their program and prepare for the transition to that exam. The 160 PPR EC-12 exam would retire as of September 1, 2026. The proposed changes are responsive to stakeholder feedback that raised potential implementation challenges for EPPs if programs were required to implement edTPA as the pedagogy exam requirement first before other options were made available.

The proposed amendment to Figure: 19 TAC §230.21(e) would strike "pilot exam" for all edTPA exams to indicate that the exams would no longer be considered pilot exams under proposed §230.1(18) and would be fully operational.

These proposed changes implement a choice of one or two teacher performance assessments--edTPA or the TxTPA--as a required pedagogy exam beginning in the 2026-2027 academic year. The proposed amendment to 19 TAC §230.21(e) would specify that by September 1, 2026, the SBEC must update the pedagogy exam requirements as specified in the figure to include content and grade banded TxTPAs. This is mirrored in proposed updates to the testing figure, which would add a general TxTPA to the list of pedagogy exam options. The SBEC would engage in rulemaking to add additional specificity to the TxTPA options as they become available through the development process but no later than the date specified.

EPP and Candidate Choice in edTPA Exams

The proposed amendment to Figure: 19 TAC §230.21(e) would add the 2151 edTPA: Career and Technical Education exam as a pedagogy exam option for the following certificates beginning on September 1, 2024: Technology Education: Grades 6-12; Family and Consumer Sciences, Composite: Grades 6-12; Human Development and Family Studies: Grades 8-12; Hospitality, Nutrition, and Food Sciences: Grades 8-12; Agriculture, Food, and Natural Resources: Grades 6-12; Business and Finance: Grades 6-12; and Marketing: Grades 6-12. This proposed amendment would provide flexibility for EPPs and candidates to select the edTPA exam that best aligns with their given instructional context if the EPP chose to require candidates to take the edTPA rather than the PPR for Trade and Industrial Education exam.

For the Core Subjects with the Science of Teaching Reading (STR): Early Childhood-Grade 6 certificate, the proposed amendment to Figure: 19 TAC §230.21(e) would add the following eight edTPA exams as pedagogy exam options in addition to the existing 2110 edTPA: Elementary Education: Literacy with Mathematics Task 4 exam, beginning on September 1, 2024: 2001 edTPA: Elementary Literacy; 2002 edTPA: Elementary Mathematics; 2149 edTPA Elementary Education: Mathematics with Literacy Task 4; 2014 edTPA: Early Childhood Education; 2016 edTPA: Middle Childhood Mathematics; 2017 edTPA: Middle Childhood Science; 2018 edTPA: Middle Childhood English Language Arts; and 2019 edTPA: Middle Childhood History/Social Studies. The addition to the edTPA exams for certification in Core Subjects with STR: Early Childhood-Grade 6 would provide flexibility for EPPs and candidates to select the edTPA exam that best aligns with their given instructional context from the permitted exams. For example, a candidate teaching in a fourth-grade science classroom would have the option to take the edTPA: Middle Childhood Science exam. This change is informed by feedback from EPPs participating in the edTPA pilot, that the requirements of the edTPA Elementary Education: Literacy with Mathematics Task 4 were difficult to meet given the candidate's classroom setting. This change would allow flexible options for strong alignment between the classroom setting and edTPA exam for certification. Additionally, the proposed edTPA exam options would allow candidates to choose a 15-rubric exam, such as for edTPA Elementary Literacy, which is less than the 18-rubric edTPA Elementary Education: Literacy with Mathematics Task 4 exam. This proposed change would reduce the overall number of tasks that elementary candidates would be required to complete in the submission of their edTPA portfolio.

Alternatives to edTPA for CTE and Junior Reserve Officers' Training Corps (JROTC) Candidates

The proposed amendment to Figure: 19 TAC §230.21(e) would add the option for candidates seeking CTE certificates to take the 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES exam rather than an edTPA exam. In response to Board direction and stakeholder feedback, this amendment would remove the performance-based examination requirement from the CTE certificates, where candidates often meet certification requirements through previous work experience. The proposed implementation date would be September 1, 2024.

The proposed amendment to Figure: 19 TAC §230.21(e) would update the content pedagogy exam requirement for the Junior Reserve Officer Training Corps (JROTC): Grades 6-12 certificate to be the 370 Pedagogy and Professional Responsibilities (PPR) for Trade and Industrial Education 6-12 TExES exam. The addition of the 370 PPR for Trade and Industrial Education 6-12 exam as a pedagogy exam requirement for the JROTC: 6-12 certificate would allow for the continued administration of an aligned pedagogy exam after the last operational date of the 160 PPR exam. There is no specific edTPA exam for JROTC certification, but the requirements for the certification field align with the requirements for trade and industrial education fields as these candidates can attain certification based on a certificate issued by one of the military branches. The 370 PPR for Trade and Industrial Education 6-12 exam is the most appropriately aligned pedagogy exam for JROTC.

Remove Retired Exams and Certificates

The proposed amendment to Figure: 19 TAC §230.21(e) would also remove the following retired certificates and their associated exam requirements: Core Subjects: Early Childhood-Grade 6; Core Subjects: Grades 4-8; English Language Arts and Reading: Grades 4-8; and English Language Arts and Reading/Social Studies: Grades 4-8. Each of the certificates was discontinued and replaced by the new certificate name including "with the Science of Teaching Reading" and the required examinations in October 2020.

The proposed amendment to Figure: 19 TAC §230.21(e) would strike the following retired certification exams: 270 Pedagogy and Professional Responsibilities for Trade and Industrial 6-12; 153 Educational Diagnostician EC-12; 152 School Counselor EC-12; 117 English Language Arts and Reading: Grades 4-8; and 291 Core Subjects: EC-6.

Technical Edits

The proposed amendment to Figure: 19 TAC §230.21(e) would remove the section headers labeled "Certification Type (continued)" to support streamlining and readability of the figure.

Proposed Amendment to 19 TAC §230.21(f)

The proposed amendment to §230.21(f) would clarify a passing score on a certification exam can be used for certification for up to one year after the last operational date of the exam. This amendment would provide clarity to the field on the last date that an educator may be recommended for certification with a passing score on an exam that is no longer operational.

Subchapter D. Types and Classes of Certificates Issued

Proposed Amendment to 19 TAC §230.31

The proposed amendment to §230.31 would add §230.31(a)(9), which includes the proposed enhanced standard certificate to the types of certificates issued by the SBEC. Additionally, proposed new §230.31(e) would create an implementation date of September 1, 2024, for the issuance of the proposed enhanced standard certificate; would establish that the certificate type is only issued for the teacher class of certificates, is valid for five years, and is subject to renewal; and would require individuals to meet requirements as specified in proposed new §230.39, Enhanced Standard Certificates.

Proposed New 19 TAC §230.39

Proposed new §230.39 would describe the requirements for issuance of an enhanced standard certificate upon successful completion of a teacher residency, as prescribed in the 19 TAC Chapter 228 proposal and would include the requirements for renewal of the certificate.

Subchapter G. Certificate Issuance Procedures

Proposed Amendment to 19 TAC §230.101(a)

The proposed amendment to §230.101(a) would add the fee for the enhanced standard certificate in §230.101(a)(3) and the fee for on-time renewal in renumbered §230.101(a)(16).

Technical edits would also be made in cross references to statute, where applicable, to implement style requirements.

Proposed Amendment to 19 TAC §230.105

The proposed amendment to §230.105 would add the Deafblind Supplemental: Early Childhood-Grade 12 certificate to the list of certificates that are not eligible for certification by examination in §230.105(4) and would renumber subsequent provisions to §230.105(5) and (6). This amendment would emphasize the specialized skills, knowledge, and training required to receive the Deafblind Supplemental: Early Childhood-Grade 12 certificate and align with statutory requirements in TEC, §21.0485. The proposed amendment to §230.105 would add the enhanced standard certificate to the types of certificates a teacher may hold to be eligible to add an additional certificate via the certification by examination route.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that for the first five years the proposal is in effect, there is additional fiscal impact on state government and entities required to comply with the proposal. There is no additional fiscal impact on local government required to comply with the proposal.

The proposal would require a decrease in fees paid to TEA, as the proposal would consolidate multiple current certification exams into one exam. The SBEC collects $11 per exam administered. With the proposed exam consolidation for the Bilingual Spanish exams, there would be fewer exams administered and, therefore, fewer fees paid to the agency. Given current administration numbers for the two exams required for Bilingual Spanish certification, TEA staff would estimate a revenue decrease of $16,500 per FY beginning in FY 2027 per year. The proposal could also lead to a decrease in fees paid to the agency with the proposed redesign of the Core Subjects: EC-6 exams to incorporate special education, bilingual Spanish, and English as a second language, which would require one exam rather than two for certification in those areas. TEA staff is unable to calculate the loss in fees though, as these new offerings would be optional alongside the standalone versions of the exams and, therefore, cannot predict the number that would be administered annually.

EPPs, including institutions of higher education, may incur costs implementing the proposed exam requirements, though those costs are locally determined, as there are no required costs associated with EPP implementation of the exam requirements.

There are no additional costs or savings to entities and state government required to comply with the proposal.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required. The TEA staff has determined that there are no required costs associated with EPP implementation of the exam requirements.

COST INCREASE TO REGULATED PERSONS: The proposal does impose a cost on regulated persons and is subject to TGC, §2001.0045. However, the proposal is exempt from TGC, §2001.0045, as provided under that statute, because the proposal is necessary to protect the safety and welfare of the residents of this state. In addition, the proposal is necessary to ensure that certified Texas educators are competent to educate students.

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

GOVERNMENT GROWTH IMPACT The TEA prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would require a decrease in fees paid to the agency, as the proposed rules would consolidate multiple current certification exams into one exam. The SBEC collects $11 per exam administered. With the proposed exam consolidation, overall, there would be fewer exams administered and, therefore, fewer fees paid to the agency. The proposed rule would create a new regulation with the proposal of a new enhanced standard certification.

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

PUBLIC BENEFIT AND COST TO PERSONS: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years that the rule will be in effect the public benefit anticipated as a result of the proposal would be the increased teacher knowledge and skill in critical pedagogical and content pedagogical competencies, leading to the anticipated growth in teacher readiness to meet the needs of Texas's diverse student population. The TEA staff has determined there is an anticipated cost to persons required to comply with the proposal. The proposal would require a TPA for certification beginning in FY 2027. The proposal would include two options to meet these requirements, the edTPA and a Texas-specific TPA. The edTPA exam will increase the cost for the pedagogy certification exam by $195 per examination. The cost of the Texas-specific TPA has not yet been established. The edTPA and Texas-specific TPAs will be optional prior to FY 2027, so individuals will not be required to comply with or incur increased costs during the initial years the rules are in effect. Based on the 2020-2021 first attempt testing data, TEA estimates administering 24,466 TPAs annually in FY 2027 onward, leading to an estimated total additional cost to candidates of $4,770,870 annually, based on modeling that presumes that the cost of a Texas-specific TPA would be equitable to the current cost of an edTPA exam.

The proposal would also require the implementation of new certification exams at increased cost per exam due to the design of the exam, increasing the cost from $116 to $136 per exam. Based on first-time taker administration numbers, TEA staff estimate an overall increase in costs to candidates aligned with the required implementation year of the exam.

Given administration volume for English Language Arts and Reading 7-12, Health EC-12, and Physical Education: EC-12 exams, TEA staff estimates a cost increase of $91,120 per FY beginning in FY 2025.

Given administration volume for Special Education exams, TEA staff estimates a cost increase of $126,440 per FY beginning in FY 2026.

Given administration volume for Core Subjects EC-6, Reading Specialist, and School Librarian exams, TEA staff estimates a cost increase of $252,180 per FY beginning in FY 2028.

The Bilingual Spanish certification exams would be consolidated from two exams at $116 to one exam at $136. This represents a cost savings of $96 per exam. Given administration volume for Bilingual Spanish certification exams, TEA staff estimates a cost savings of $144,096 per FY beginning in FY 2027.

The proposed redesign of the Core Subjects: EC-6 exams to incorporate special education, bilingual Spanish, and English as a second language would be a cost savings to individuals, as it requires them to take one exam rather than two for certification in those areas. TEA staff is unable to calculate the cost savings, as these new offerings would be optional alongside the standalone versions of the exams and cannot predict the number that would be administered annually.

Overall, the estimated increase in cost by FY would include $91,120 in FY 2025; $217,560 in FY 2026; $4,844,334 in FY 2027; and $5,096,514 in FY 2028.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins December 29, 2023, and ends January 29, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal at the February 16, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §230.1

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, which may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; and TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code, §54.003.

§230.1. Definitions.

The following words and terms, when used in this chapter, Chapter 232 of this title (relating to General Certification Provisions), and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(2) Appropriate--Suitable for a particular purpose. The term denotes compliance with State Board for Educator Certification (SBEC) rules and with SBEC procedures and policies posted on the Texas Education Agency website that are related to the stated particular purpose.

(3) Candidate--An individual who has been formally or contingently admitted into an educator preparation program; also referred to as an enrollee or participant.

(4) Certificate--Any educator credential issued by the State Board for Educator Certification under the authority of [~~the~~] Texas Education Code, Chapter 21, Subchapter B.

(5) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has

defined characteristics and includes the following: superintendent, principal, classroom teacher, school counselor, school librarian, educational diagnostician, reading specialist, and master teacher.

(6) Charter school--A Texas public school operated by a charter holder under an open-enrollment charter school granted either by the State Board of Education (SBOE) or commissioner of education, whichever is applicable, pursuant to Texas Education Code, §12.101, identified with its own county district number.

(7) Classroom teacher--An educator who is employed by a school or district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical education instructional setting. This term does not include an educational aide or a full-time administrator.

(8) Content certification examination--A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's admission to an educator preparation program.

(9) Content pedagogy examinations--A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's certification as an educator.

(10) Continuing professional education--Professional development required for the renewal of standard and/or lifetime certificates that is designed to ensure improvement in both the performance of the educator and achievement of his or her students.

(11) Educator--An individual who is required to hold a certificate issued under [~~the~~] Texas Education Code, Chapter 21, Subchapter B.

(12) Educator preparation program--An entity approved by the State Board for Educator Certification to prepare and recommend candidates for certification in one or more educator certification classes [~~offer training and coursework that must adequately prepare candidates for educator certification and meet the standards and requirements of the board~~].

(13) Enhanced standard certificate--A type of certificate issued to an individual who has met all requirements as specified in §230.39(b) of this title (relating to Enhanced Standard Certificates) under the teacher class of certificates.

(14) [~~(13)~~] Examination--A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's admission to an educator preparation program, certification as an educator, continuation as an educator, or advancement as an educator.

(15) [~~(14)~~] Hearing impairment--As defined in [~~the~~] Texas Education Code, §21.048(d)(1), a hearing impairment so severe that the person cannot process linguistic information with or without amplification.

(16) [~~(15)~~] Initial certification--The first Texas educator certificate for a particular class issued to an individual as specified in §230.33 of this title (relating to Classes of Certificates).

(17) [~~(16)~~] Intern certificate--A type of certificate issued to a candidate who has passed all required content examinations and is completing requirements for certification through an approved educator preparation program.

(18) [~~(17)~~] Pilot exam--A certification exam that is subject to annual review by the State Board for Educator Certification [~~prior to September 1, 2022~~].

(19) [~~(18)~~] Private school--A non-public school whose educational program has been evaluated by a regional accrediting agency and whose program has met and is maintaining certain educational standards.

(20) [~~(19)~~] Probationary certificate--A type of certificate issued to a candidate who has passed all required examinations and is completing requirements for certification through an approved educator preparation program.

(21) [~~(20)~~] Professional class--A term that refers to certificates for duties other than classroom teacher (e.g., superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and master teachers).

(22) [~~(21)~~] Standard certificate--A type of certificate issued to an individual who has met all requirements for a given class of certification, as specified in §230.33 of this title (relating to Classes of Certificates).

(23) [~~(22)~~] Teacher--An individual who is required to hold a certificate issued under [~~the~~] Texas Education Code, Chapter 21, Subchapter B.

(24) [~~(23)~~] Teacher of record--An educator who is employed by a school or district and who teaches in an academic instructional setting or a career and technical instructional setting not less than an average of four hours each day and is responsible for evaluating student achievement and assigning grades.

(25) [~~(24)~~] Teacher service record--The official document used to record years of service and days used and accumulated under the state's former minimum sick leave program or the state's current personal leave program.

(26) [~~(25)~~] Texas Essential Knowledge and Skills (TEKS)--The Kindergarten-Grade 12 state curriculum in Texas adopted by the State Board of Education and used as the foundation of all state certification examinations.

(27) [~~(26)~~] Texas school district--A school district accredited and approved by the Texas Education Agency under [~~the~~] Texas Education Code, Chapter 11.

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

Filed with the Office of the Secretary of State on December 18, 2023.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

SUBCHAPTER C. ASSESSMENT OF EDUCATORS

19 TAC §230.21

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and

the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §§21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code (TOC) §54.003.

§230.21. Educator Assessment.

(a) A candidate seeking certification as an educator must pass the examination(s) required by [~~the~~] Texas Education Code (TEC), §21.048, and the State Board for Educator Certification (SBEC) in §233.1(e) of this title (relating to General Authority) and shall not retake an examination more than four times, unless the limitation is waived for good cause. The burden of proof shall be upon the candidate to demonstrate good cause.

(1) For the purposes of the retake limitation described by [~~the~~] TEC, §21.048, an examination retake is defined as a second or subsequent attempt to pass any examination required for the issuance of a certificate, including an individual core subject examination that is part of the overall examination required for the issuance of a Core Subjects certificate as described in §233.2 of this title (relating to Early Childhood; Core Subjects).

(A) A canceled examination score is not considered an examination retake.

(B) An examination taken by an educator during a pilot period is not considered part of an educator's five-time test attempt limit.

(C) Pursuant to TEC, §21.0491(d), the limit on number of test attempts does not apply to the trade and industrial workforce training certificate examination prescribed by the SBEC.

(D) A candidate who fails a computer- or paper-based examination cannot retake the examination before 30 days have elapsed following the candidate's last attempt to pass the examination.

(2) Good cause is:

(A) the candidate's highest score on an examination is within one conditional standard error of measurement (CSEM) of passing, and the candidate has completed 50 clock-hours of educational activities. CSEMs will be published annually on the Texas Education Agency (TEA) website;

(B) the candidate's highest score on an examination is within two CSEMs of passing, and the candidate has completed 100 clock-hours of educational activities;

(C) the candidate's highest score on an examination is within three CSEMs of passing, and the candidate has completed 150 clock-hours of educational activities;

(D) the candidate's highest score on an examination is not within three CSEMs of passing, and the candidate has completed 200 clock-hours of educational activities;

(E) if the candidate needs a waiver for more than one of the individual core subject examinations that are part of the overall examination required for the issuance of a Core Subjects certificate, the candidate has completed the number of clock-hours of educational activities required for each individual core subject examination as described in subparagraphs (A)-(D) of this paragraph up to a maximum of 300 clock-hours. The number of clock-hours for each examination may be divided equally based on the number of examinations in the waiver request, but the number of clock-hours for an examination shall not be less than 50; or

(F) if a CSEM is not appropriate for an examination, the TEA staff will identify individuals who are familiar and knowledgeable with the examination content to review the candidate's performance on the five most recent examinations, identify the deficit competency or competencies, and determine the number of clock-hours of educational activities required.

(3) Educational activities are defined as:

(A) institutes, workshops, seminars, conferences, interactive distance learning, video conferencing, online activities, undergraduate courses, graduate courses, training programs, in-service, or staff development given by an approved continuing professional education provider or sponsor, pursuant to §232.17 of this title (relating to Pre-Approved Continuing Professional Education Provider or Sponsor) and §232.19 of this title (relating to Approval of Private Companies, Private Entities, and Individuals as Continuing Professional Education Providers), or an approved educator preparation program (EPP), pursuant to Chapter 228, Subchapter B, [~~§228.10~~] of this title (relating to Approval of Educator Preparation Programs [~~Approval Process~~]); and

(B) being directly related to the knowledge and skills included in the certification examination competency or competencies in which the candidate answered less than 70 percent of competency

questions correctly. The formula for identifying a deficit competency is the combined total of correct answers for each competency on the five most recent examinations divided by the combined total of questions for each competency on the five most recent examinations.

(4) Documentation of educational activities that a candidate must submit includes:

(A) the provider, sponsor, or program's name, address, telephone number, and email address. The TEA staff may contact the provider, sponsor, or program to verify an educational activity;

(B) the name of the educational activity (e.g., course title, course number);

(C) the competency or competencies addressed by the educational activity as determined by the formula described in paragraph (3)(B) of this subsection;

(D) the provider, sponsor, or program's description of the educational activity (e.g., syllabus, course outline, program of study); and

(E) the provider, sponsor, or program's written verification of the candidate's completion of the educational activity (e.g., transcript, certificate of completion). The written verification must include:

(i) the provider, sponsor, or program's name;

(ii) the candidate's name;

(iii) the name of the educational activity;

(iv) the date(s) of the educational activity; and

(v) the number of clock-hours completed for the educational activity. Clock-hours completed before the most recent examination attempt or after a request for a waiver is submitted shall not be included. One semester credit hour earned at an accredited institution of higher education is equivalent to 15 clock-hours.

(5) To request a waiver of the limitation, a candidate must meet the following conditions:

(A) the candidate is otherwise eligible to take an examination. A candidate seeking a certificate based on completion of an EPP must have the approval of an EPP to request a waiver;

(B) beginning September 1, 2016, the candidate pays the non-refundable waiver request fee of $160;

(C) the candidate requests the waiver of the limitation in writing on forms developed by the TEA staff; and

(D) the request for the waiver is postmarked not earlier than:

(i) 30 [~~45~~] calendar days after an unsuccessful attempt at the fourth retake of an examination as defined in [~~the~~] TEC, §21.048; or

~~*(ii)* 90 calendar days after the date of the most recent denied waiver of the limitation request; or~~]

(ii) [~~(iii)~~] 90 [~~180~~] calendar days after the date of the most recent unsuccessful examination attempt that was the result of the most recently approved request for waiver of the limitation.

(6) The TEA staff shall administratively approve each application that meets the criteria specified in paragraphs (2)-(5) of this subsection.

(7) An applicant who does not meet the criteria in paragraphs (2)-(5) of this subsection may appeal to the SBEC for a final determination of good cause. A determination by the SBEC is final and may not be appealed.

(b) A candidate seeking a standard certificate as an educator based on completion of an approved EPP may take the appropriate certification examination(s) required by subsection (a) of this section only at such time as the EPP determines the candidate's readiness to take the examinations, or upon successful completion of the EPP, whichever comes first.

(c) The holder of a lifetime Texas certificate effective before February 1, 1986, must pass examinations prescribed by the SBEC to be eligible for continued certification, unless the individual has passed the Texas Examination of Current Administrators and Teachers (TECAT).

(d) The commissioner of education approves the satisfactory level of performance required for certification examinations, and the SBEC approves a schedule of examination fees and a plan for administering the examinations.

(e) The appropriate examination(s) required for certification are specified in the figure provided in this subsection. By September 1, 2026, the SBEC shall update the pedagogy examination requirements as specified in the figure provided in this subsection to include content and grade banded Texas-specific teacher performance assessments. For issuance of a probationary or standard certificate in more than one certification category, a candidate must pass the appropriate pedagogy examination specified in the figure provided in this subsection for any one of the certificates sought.
Figure: 19 TAC §230.21(e)
[~~Figure: 19 TAC §230.21(e)~~]

(f) Scores from examinations required under this title must be made available to the examinee, the TEA staff, and, if appropriate, the EPP from which the examinee will seek a recommendation for certification. Candidates may use passing scores on an examination required under this section for certification if the candidate is recommended for certification up to one year after the last operational date for the examination as prescribed in Figure: 19 TAC §230.21(e).

(g) The following provisions concern ethical obligations relating to examinations.

(1) An educator or candidate who participates in the development, design, construction, review, field testing, scoring, or validation of an examination shall not reveal or cause to be revealed the contents of the examination to any other person.

(2) An educator or candidate who administers an examination shall not:

(A) allow or cause an unauthorized person to view any part of the examination;

(B) copy, reproduce, or cause to be copied or reproduced any part of the examination;

(C) reveal or cause to be revealed the contents of the examination;

(D) correct, alter, or cause to be corrected or altered any response to a test item contained in the examination;

(E) provide assistance with any response to a test item contained in the examination or cause assistance to be provided; or

(F) deviate from the rules governing administration of the examination.

(3) An educator or candidate who is an examinee shall not:

(A) copy, reproduce, or cause to be copied or reproduced any test item contained in the examination;

(B) provide assistance with any response to a test item contained in the examination, or cause assistance to be provided;

(C) solicit or accept assistance with any response to a test item contained in the examination;

(D) deviate from the rules governing administration of the examination; or

(E) otherwise engage in conduct that amounts to cheating, deception, or fraud.

(4) An educator, candidate, or other test taker shall not:

(A) solicit information about the contents of test items on an examination that the educator, candidate, or other test taker has not already taken from an individual who has had access to those items, or offer information about the contents of specific test items on an examination to individuals who have not yet taken the examination;

(B) fail to pay all test costs and fees as required by this chapter or the testing vendor; or

(C) otherwise engage in conduct that amounts to violations of test security or confidentiality integrity, including cheating, deception, or fraud.

(5) A person who violates this subsection is subject to:

(A) sanction, including, but not limited to, disallowance and exclusion from future examinations either in perpetuity or for a period of time that serves the best interests of the education profession, in accordance with the provisions of [~~the~~] TEC, §21.041(b)(7), and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases); and/or

(B) denial of certification in accordance with the provisions of [~~the~~] TEC, §21.041(b)(7), and Chapter 249 of this title; and/or

(C) voiding of a score from an examination in which a violation specified in this subsection occurred as well as a loss of a test attempt for purposes of the retake limit in subsection (a) of this section.

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

Filed with the Office of the Secretary of State on December 18, 2023.

TRD-202304859
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 475-1497

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SUBCHAPTER D. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §230.31

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §§21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code (TOC) §54.003.

§230.31. Types of Certificates.

(a) "Type of certificate" means a designation of the period of validity for a certificate and includes the following certificate designations:

(1) standard, as specified in subsection (c) of this section;

(2) provisional, as specified in subsection (b) of this section;

(3) professional, as specified in subsection (b) of this section;

(4) one year, as specified in §230.113 of this title (relating to Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries);

(5) intern, as specified in §230.36 of this title (relating to Intern Certificates);

(6) probationary, as specified in §230.37 of this title (relating to Probationary Certificates);

(7) emergency, as specified in §230.73 of this title (relating to Validity of Emergency Permits); [~~and~~]

(8) educational aide, as specified in Subchapter E of this chapter (relating to Educational Aide Certificate); and [~~.~~]

(9) enhanced standard, as specified in §230.39 of this title (relating to Enhanced Standard Certificates).

(b) All provisional and professional educator certificates issued prior to September 1, 1999, shall be valid for the life of the individual unless suspended, surrendered in lieu of revocation, or revoked by lawful authority.

(c) Effective September 1, 1999, the standard certificate shall be issued for all classes of certificates and shall be valid for five years, subject to the requirements of Chapter 232, Subchapter A, of this title (relating to Certificate Renewal and Continuing Professional Education Requirements). The standard certificate is issued to individuals who have met all requirements for a given subject area or class of certification.

(d) Effective September 1, 2017, the educational aide certificate shall be valid for two years. Educational aide certificates issued effective September 1, 2017, will expire at the end of the two-year validity period. Individuals issued an educational aide certificate prior to September 1, 2017, as well as new applicants for the educational aide certificate, will be required to reapply for certification every two years and meet any other requirements for the educational aide certificate as specified in §230.65 of this title (relating to Requirements for Reissuance of Educational Aide Certificates).

(e) Effective September 1, 2024, the enhanced standard certificate shall be issued for the teacher class of certificates and shall be valid for five years, subject to the requirements of Chapter 232, Subchapter A, of this title. The enhanced standard certificate is issued to individuals who have met all requirements as specified in §230.39 of this title.

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

Filed with the Office of the Secretary of State on December 18, 2023.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 475-1497

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19 TAC §230.39

STATUTORY AUTHORITY. The new rule is proposed under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §§21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code (TOC) §54.003.

§230.39. Enhanced Standard Certificates.

(a) General provisions.

(1) Certificate classes. An enhanced standard certificate may be issued for the teacher class of certificate.

(2) Requirement to hold an enhanced standard certificate. A candidate who has completed a residency in accordance with §228.65 of this title (relating to Residency) must hold an enhanced standard certificate to be employed by a school district to teach the majority of the instructional day in an academic instructional setting and to evaluate student achievement and assign grades.

(b) Requirements for issuance. An enhanced standard certificate may be issued to an individual who meets the conditions and requirements prescribed in this subsection.

(1) Bachelor's degree. Except as otherwise provided in rules of the State Board for Educator Certification (SBEC) related to certain career and technical education certificates based on skill and experience, an individual must hold a bachelor's degree or higher from an accredited institution of higher education to be eligible for the enhanced standard certificate. An individual who has earned a degree outside the United States must provide an original, detailed

report or course-by-course evaluation for all college-level credits prepared by a foreign credential evaluation service recognized by the Texas Education Agency (TEA). The evaluation must verify that the individual holds, at a minimum, the equivalent of a bachelor's degree issued by an accredited institution of higher education in the United States.

(2) General certification requirements. The individual must meet the general certification requirements prescribed in §230.11 of this title (relating to General Requirements).

(3) Fee. The individual must pay the fee prescribed in §230.101 of this title (relating to Schedule of Fees for Certification Services).

(4) Fingerprints. The individual must submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and Texas Education Code (TEC), §22.0831.

(5) Residency. The individual must complete a residency in accordance with Chapter 228 of this title (relating to Requirements for Educator Preparation Programs), meet proficiency thresholders on teacher competencies as prescribed in §228.65(f) of this title, and be recommended by an approved educator preparation program by the application and issuance deadlines for the certificate.

(6) Content pedagogy examination. The individual must receive a passing score on comprehensive content pedagogy examinations prescribed by the SBEC as specified in §230.21 of this title (relating to Educator Assessment).

(c) Validation period. The enhanced standard certificate shall be valid for five years, subject to the requirements of Chapter 232, Subchapter A, of this title (relating to Certificate Renewal and Continuing Professional Education Requirements).

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

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Cristina De La Fuente-Valadez
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SUBCHAPTER G. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §230.101, §230.105

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §§21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code (TOC) §54.003.

§230.101. Schedule of Fees for Certification Services.

(a) An applicant for a certificate or a school district requesting a permit shall pay the applicable fee from the following list.

(1) Educational aide certificate:

(A) prior to September 1, 2017--$30; and

(B) after August 31, 2017--$15.

(2) Standard certificate--$75.

(3) Enhanced standard certificate--$75.

(4) [~~(3)~~] Probationary or intern certificate:

(A) prior to September 1, 2017--$50; and

(B) after August 31, 2017--$75.

(5) [~~(4)~~] Addition of certification based on completion of appropriate examination--$75.

(6) [~~(5)~~] Review of a credential issued by a jurisdiction other than Texas (nonrefundable):

(A) prior to September 1, 2016--$175; and

(B) after August 31, 2016--$160.

(7) [~~(6)~~] One-year certificate based on a credential issued by a jurisdiction other than Texas--$50.

(8) [~~(7)~~] Emergency permit (nonrefundable)--$55.

(9) [~~(8)~~] National criminal history check (nonrefundable)--The fee, posted on the Texas Education Agency website, shall include a $10 criminal history review fee in addition to the current cost of fingerprint scanning, processing, and obtaining national criminal history record information from the Texas Department of Public Safety, its contractors, and the Federal Bureau of Investigation. The same fee will be paid by current certified educators who are subject to a national criminal history check pursuant to [~~the~~] Texas Education Code, §§22.082, 22.0831, and 22.0836.

(10) [~~(9)~~] Review of the superintendent application for the substitution of managerial experience for the principal certificate requirement (nonrefundable)--$160.

(11) [~~(10)~~] On-time renewal of educational aide certificate:

(A) prior to September 1, 2017--$10; and

(B) after August 31, 2017--no charge.

(12) [~~(11)~~] Additional fee for late renewal of educational aide certificate:

(A) prior to September 1, 2017--$5; and

(B) after August 31, 2017--no charge.

(13) [~~(12)~~] Reactivation of an inactive educational aide certificate--$15.

(14) [~~(13)~~] Reinstatement following restitution of child support or student loan repayment for educational aide certificate--$20.

(15) [~~(14)~~] On-time renewal of a standard certificate--$20.

(16) On-time renewal of an enhanced standard certificate--$20.

(17) [~~(15)~~] Additional fee for late renewal of a standard certificate--$10.

(18) [~~(16)~~] Reactivation of an inactive standard certificate--$40; except for an inactivation pursuant to §232.9 of this title (relating to Inactive Status and Late Renewal).

(19) [~~(17)~~] Reinstatement following restitution of child support or student loan repayment--$50.

(20) [~~(18)~~] Visiting international teacher certificate--$75.

(21) [~~(19)~~] Request for preliminary criminal history evaluation (nonrefundable)--$50.

(b) The fee for correcting a certificate or permit when the error is not made by the Texas Education Agency shall be equal to the fee for the original certificate or permit.

(c) An individual registering to take certification tests shall pay the applicable fee(s) from the following list of categories:

(1) Selected Response-Only Assessments--$116.

(2) Single Subject Area Tests (801-809)--$58.

(3) Enhanced Selected-Response/Constructed-Response Assessments for Tests (801-809)--$70.

(4) Enhanced Selected-Response/Constructed-Response Assessments--$136.

(5) Enhanced Selected-Response/Constructed-Response Administrator and Student Services Assessments--$200.

(6) Performance-Based Assessments for teachers--$311.

(7) Performance-Based Assessments for teachers, retake per task--$111.

(d) An individual registering to take a content certification examination prior to admission to an educator preparation program [~~EPP~~] shall pay the applicable fee(s) from the following list of categories:

(1) Content Certification Examinations except American Sign Language (ASL)--$106.

(2) Essential Academic Skills Sub-Tests Retake (701-703)--$56.

(3) Content Certification Examinations for ASL Sub-Tests (784-785)--$56.

§230.105. Issuance of Additional Certificates Based on Examination.

A teacher who holds a valid provisional, professional, [~~or~~] standard, or enhanced standard classroom teaching certificate [~~classroom teaching certificate~~] or a valid temporary classroom teaching certificate issued under the provisions of Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States), or Chapter 245 of this title (relating to Certification of Educators from Other Countries), and a bachelor's degree or higher from an accredited institution of higher education may qualify for an additional teaching field or certification to teach at another level by passing the appropriate certification examination(s) for that subject. The teacher must submit the application to add certification based on an examination during the time the certificate is allowed to be issued by the State Board for Educator Certification. The application for the additional certification must be submitted during the validity period of the appropriate Texas classroom teaching certificate. If a teacher holds multiple teaching certificates, all teaching certificates must be active before adding certification by examination. The rule shall not be used to qualify a classroom teacher for:

(1) initial certification;

(2) the Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate;

(3) the Early Childhood: Prekindergarten-Grade 3 certificate;

(4) the Deafblind Supplemental: Early Childhood-Grade 12 certificate;

(5) [~~(4)~~] another class of certificate, as listed in Subchapter D of this chapter (relating to Types and Classes of Certificates Issued); or

(6) [~~(5)~~] certification for which no certification examination has been developed.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §233.2, §233.8

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §233.2 and §233.8, concerning categories of classroom teaching certificates. The proposed amendment to 19 TAC §233.2, Early Childhood; Core Subjects, would add five new core subjects-related certificates, and the proposed amendment to 19 TAC §233.8, Special Education, would add a new Bilingual Special Education Supplemental certificate.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, establish separate certificate categories within the certificate class for the classroom teacher. These categories identify the content area or special population the holder may teach, the grade levels the holder may teach, and the earliest date the certificate may be issued.

Following is a description of the proposed amendments.

§233.2. Early Childhood; Core Subjects.

The proposed amendment in §233.2 would add the following five new certificates as proposed new subsections (d)-(h): Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6; Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6; Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6; Core/English as a Second Language Supplemental with the Science of Teaching Reading: Early Childhood-Grade 6; and Core with the Science of Teaching Reading: Early Childhood-Grade 6.

The SBEC proposes the creation of these new certificates in response to stakeholder feedback and a longstanding goal to consolidate the total number of examinations individuals must take to become certified in various high-needs areas.

§233.8. Special Education.

The proposed amendment in §233.8 would add the Bilingual Special Education Supplemental certificate as proposed new subsection (a) to ensure there are teachers with special training in providing instruction to students of limited English proficiency with disabilities. To qualify for issuance of the Bilingual Special Education Supplemental certificate, individuals must complete an EPP, pass a certification examination, and successfully complete any other requirements prescribed by the SBEC.

The SBEC proposes deleting current §233.8(a), Core Subjects with Science of Teaching Reading/Special Education: Early Childhood-Grade 6, because this certificate would be replaced by proposed new §233.2(e), Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that for the first five years the proposal is in effect, there is no additional fiscal impact on state and local governments and that there are no additional costs to entities required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years that the rule will be in effect that the public benefit anticipated as a result of the proposal would be the continued issuance of classroom teaching certificates to eligible individuals. TEA staff has determined there is no anticipated cost to persons required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposed amendment would have no new data and reporting impact.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins December 29, 2023, and ends January 29, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal at the February 16, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, edu-

cational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; TEC, §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; TEC, §21.044(f), which provides that SBEC rules for obtaining a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under TEC, §21.044(e); TEC, §21.0442, which requires the SBEC to create an abbreviated educator preparation program (EPP) for trade and industrial workforce training; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC. TEC, §21.048(a), also specifies that the commissioner of education shall determine the satisfactory level of performance required for each certification examination and require a satisfactory level of examination performance in each core subject covered by the generalist certification examination; TEC, §21.048(a-2), which requires the SBEC to adopt rules to require individuals teaching any grade level from Prekindergarten-Grade 6 to demonstrate proficiency in the science of teaching reading; TEC, §21.0487, which requires the SBEC to establish a standard Junior Reserve Officer Training Corps teaching certificate; TEC, §21.0489, which requires the SBEC to create a Prekindergarten-Grade 3 certificate;

TEC, §21.04891, which requires the SBEC to create a Bilingual Special Education certificate; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; and TEC, §22.0831(f)(1) and (2), which state the SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4) and (6); 21.044(e) and (f); 21.0442; 21.048(a) and (a-2); 21.0487; 21.0489; 21.04891; 21.0491; and 22.0831(f).

§233.2. Early Childhood; Core Subjects.

(a) Early Childhood: Prekindergarten-Grade 3. The Early Childhood: Prekindergarten-Grade 3 certificate may be issued no earlier than January 1, 2020.

(b) Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6. The Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6 certificate may be issued no earlier than January 1, 2021.

(c) Core Subjects with Science of Teaching Reading: Grades 4-8. The Core Subjects with Science of Teaching Reading certificate: Grades 4-8 may be issued no earlier than January 1, 2021.

(d) Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6. The Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2027.

(e) Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6. The Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2027.

(f) Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6. The Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2028.

(g) Core/English as a Second Language Supplemental with the Science of Teaching Reading: Early Childhood-Grade 6. The Core/English as a Second Language Supplemental with the Science of Teaching Reading: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2028.

(h) Core with the Science of Teaching Reading: Early Childhood-Grade 6. The Core with the Science of Teaching Reading: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2027.

§233.8. Special Education.

(a) Bilingual Special Education Supplemental: Early Childhood-Grade 12: The Bilingual Special Education Supplemental: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2027.

~~[(a) Core Subjects with Science of Teaching Reading/Special Education: Early Childhood-Grade 6. The Core Subjects with Science of Teaching Reading/ Special Education: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2026.]~~

(b) Deafblind Supplemental: Early Childhood-Grade 12. The Deafblind: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2025.

(c) Special Education: Early Childhood-Grade 12. The Special Education: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2003.

(d) Special Education Specialist: Early Childhood-Grade 12. The Special Education Specialist: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2025.

(e) Special Education Supplemental. The Special Education Supplemental certificate may be issued no earlier than September 1, 2003.

(f) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12. The Teacher of the Deaf and Hard of Hearing: Early

Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005.

(g) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12. The Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005.

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

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CHAPTER 239. STUDENT SERVICES CERTIFICATES

SUBCHAPTER A. SCHOOL COUNSELOR CERTIFICATE

19 TAC §239.20

The State Board for Educator Certification (SBEC) proposes an amendment to 19 Texas Administrative Code (TAC) §239.20, concerning requirements for the issuance of the standard school counselor certificate. The proposed amendment would implement the statutory requirement of Senate Bill (SB) 798, 88th Texas Legislature, Regular Session, 2023, and would update the certificate issuance rules to remove the requirement that an individual must have two years of classroom teaching experience to receive a school counselor certificate.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 239, Student Services Certificates, Subchapter A, School Counselor Certificate, establish requirements for minimum admission, preparation, standards, certificate issuance, renewal, and transition and implementation dates for the school counselor certificate. These requirements ensure educators are qualified and professionally prepared to instruct the schoolchildren of Texas.

SB 798, 88th Texas Legislature, Regular Session, 2023, Requirements

SB 798, 88th Texas Legislature, Regular Session, 2023, took effect on September 1, 2023, and requires the SBEC to propose rules not later than January 1, 2024, to remove the requirement that a candidate for school counselor certification must have experience as a classroom teacher. The proposed amendment would comply with the deadline given in legislation to initiate SBEC rulemaking.

Following is a description of the proposed amendment to 19 TAC Chapter 239, Subchapter A, §239.20, that would update the school counselor certificate issuance rule and implement the provisions of SB 798.

§239.20. Requirements for the Issuance of the School Counselor Certificate.

The proposed amendment to 19 TAC §239.20(4) would strike the text in its entirety and comply with provisions in SB 798 to remove the requirement of two creditable years of teaching experience as a classroom teacher as a condition for issuance of the school counselor certificate. Additional minor technical edits would be made to reflect the deletion of this requirement.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that for the first five years that the proposal is in effect there is no additional fiscal impact on state and local governments and that there are no additional costs to entities required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal an existing regulation as SB 798 requires the SBEC to remove two years of classroom teaching experience as a requirement for issuance of the standard school counselor certificate.

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

PUBLIC BENEFIT AND COST TO PERSONS: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years that the rule will be in effect that the public benefit anticipated as a result of the proposal would be clarity around the rules regarding certificate issuance for school counselors. TEA staff has determined there is no anticipated cost to persons required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the pro-

posal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins December 29, 2023, and ends January 29, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal at the February 16, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.031(a), which charges the State Board for Educator Certification (SBEC) with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.040(2), which states that the SBEC shall, for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the board; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for issuance and renewal of an educator certificate; TEC, §21.041(b)(5), which requires the SBEC to provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to §21.052; TEC, §21.041(b)(9), which requires the SBEC to provide for continuing education requirements; TEC, §21.044(a)(2), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.0462, as added by Senate Bill 798, 88th Texas Legislature, Regular Session, 2023, which prohibits requiring candidates have experience as a classroom teacher; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC and requires the commissioner of education to determine the satisfactory level of performance required for each certification examination and each core subject covered by the generalist certification examination; TEC, §21.054, as amended by House Bill 2929, 88th Texas Legislature, Regular Session, 2023, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and directs the SBEC to propose rules relating to continuing professional education courses and programs for educators; and TEC, §22.0831(f), which states the board may propose rules to implement this section, including rules establishing: (1) deadlines for a person to submit fingerprints and photographs in compliance with this section; and (2) sanctions for a person's failure to comply with the requirements of this section, including suspension or revocation of a certificate or refusal to issue a certificate.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.031(a); 21.040(2); 21.041(a), (b)(1)-(5), and (9); 21.044(a)(2); 21.0462, as added by Senate Bill 798, 88th Texas Legislature, Regular Session, 2023; 21.048(a); 21.054, as amended by House Bill 2929, 88th Texas Legislature, Regular Session, 2023; and 22.0831(f).

§239.20. Requirements for the Issuance of the Standard School Counselor Certificate.

To be eligible to receive the standard School Counselor Certificate, a candidate must:

(1) successfully complete a school counselor preparation program that meets the requirements of §239.10 of this title (relating to Preparation Program Requirements) and §239.15 of this title (relating to Standards Required for the School Counselor Certificate);

(2) successfully complete the examination based on the standards identified in §239.15 of this title; and

(3) hold, at a minimum, a 48-hour master's degree in counseling from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.[; and]

[(4) have two creditable years of teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2).]

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

Filed with the Office of the Secretary of State on December 18, 2023.

TRD-202304864
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 475-1497

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TITLE 28. INSURANCE

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

CHAPTER 133. GENERAL MEDICAL PROVISIONS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §§133.10, 133.20, 133.200, and 133.502, concerning billing and reimbursement for certain workers' compensation-specific services, including designated doctor examinations, required medical examinations, work status reports, and maximum medical improvement (MMI) evaluations and impairment rating (IR) examinations by treating and referred doctors. The amendments implement Texas Labor Code Chapters 408 and 413, which govern workers' compensation benefits, including medical examinations required to establish benefit entitlements, and medical

review to ensure compliance with DWC rules for health care, including medical policies and fee guidelines. The DWC medical advisor recommends the amendments to the commissioner of workers' compensation under Labor Code §413.0511(b).

EXPLANATION. Amending §§133.10, 133.20, 133.200, and 133.502 is necessary to attract and retain designated doctors, required medical examination doctors, and doctors that perform MMI evaluations and IR examinations, by addressing billing and reimbursement issues, reducing disputes, and decreasing the administrative burden of participating in the program. Labor Code Chapter 408 entitles an employee that sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed. Specifically, the employee is entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. To help determine the health care that meets those standards, the designated doctor program established under Chapter 408 provides for commissioner-ordered medical examinations to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. Maintaining a viable program that ensures that injured employees can access examinations in a timely way is essential to meeting the statutory mandate of providing health care for injured employees.

Having too few doctors in the program has a negative impact on the doctors that remain in the system, on injured employees, and on insurance carriers. When there are too few doctors able to conduct the examinations needed to determine benefit levels, injured employees must often wait longer and travel further to attend an examination, which can delay dispute resolution and other essential processes. DWC last adjusted reimbursement rates for workers' compensation-specific services in January 2008 (33 TexReg 364). Over the past 14 years, DWC has experienced a decline in the numbers of doctors providing workers' compensation-specific services. This decline has been particularly pronounced among designated doctors certified under Labor Code §408.1225 and providing designated doctor examinations as Labor Code §408.0041 requires, and especially among licensed medical doctors and doctors of osteopathy. In December 2022, for the entire state of Texas, there were only 63 available medical doctors, 10 doctors of osteopathic medicine, 177 doctors of chiropractic, and no doctors of podiatry, dental science, or optometry. Yet in that month, there were 1,259 designated doctor appointments for those 250 designated doctors to cover.

DWC held stakeholder meetings in March, September, and December 2022 to discuss issues with declining participation in the designated doctor program, including issues with billing logistics and reimbursement rates. DWC invited public comments on three separate informal drafts posted on DWC's website in August 2022, November 2022, and June 2023. In addition, DWC conducted a stakeholder survey to gather information about anticipated implementation costs and benefits in September 2023. DWC considered the comments it received at the meetings and on the informal drafts when drafting this proposal.

In April 2023, after gathering data about the program and soliciting input from system participants about how to maintain and increase participation in the designated doctor program and allow better access to specialized examinations, DWC adopted amendments to Chapter 127 of this title, concerning designated doctor procedures and requirements, and §180.23 of this title, concerning division-required training for doctors. Those rules addressed certification, training, and procedures for designated doctors and were required to address administrative and logistical inefficiencies, and to improve access to examinations, to make participation in the program possible and attractive for more doctors. They were one part of the project to ensure the designated doctor program's viability, in compliance with the Labor Code. After their adoption, DWC saw a near-immediate increase in the numbers of doctors applying to the program, which was very encouraging.

However, the common theme throughout the input-gathering process about how to improve the program was billing and reimbursement for certain workers' compensation-specific services, especially designated doctor examinations. Nearly every comment DWC received mentioned some combination of issues about the fees for designated doctor examinations--that they were insufficient, had not been adjusted for inflation or other economic factors in over a decade, did not take into account missed appointments or the time spent reviewing injured employees' medical records, and other similar issues. In adopting the amendments to Chapter 127 and §180.23, DWC stated that billing and reimbursement issues would be addressed in a separate rule project. As a result, the changes in this rule proposal are another part of the project, and are necessary to account for past and future inflation, examination complexity, and other economic factors that affect participation in the designated doctor program.

The amendments to §§133.10, 133.20, 133.200, and 133.502 require an assignment number in the prior authorization field of the medical billing forms to identify designated doctor-associated billing. DWC expects the format of the assignment number to be 12345678DD01. The numbers on the left would be the DWC claim number. The "DD" would denote a designated doctor-associated examination. The numbers on the right would refer whether it is the first, second, third, and so forth, ordered examination for the claim. The assignment number is for identification purposes and does not create a preauthorization or utilization review requirement. The current rules do not provide a billing mechanism to distinguish designated doctor examinations or any additional testing or referral evaluations that result from a designated doctor examination. This produces confusion and delays in payment. For example, under Labor Code §408.1225, insurance carriers must pay for designated doctor examinations, and §127.10(c) of this title requires a designated doctor to perform additional testing and refer an injured employee to other health care providers when necessary to resolve the issue in question. Any required additional testing or referral is not subject to preauthorization requirements and cannot be denied retrospectively based on medical necessity, extent of injury, or compensability. However, if the insurance carrier cannot easily see that an examination is a designated doctor examination or a referral from a designated doctor examination, processing the bill could be unnecessarily delayed, which creates additional work and expense. Requiring an assignment number in the preauthorization field addresses this problem by linking the designated doctor examination and any additional testing or referral evaluations to the DWC-provided assignment number that distinguishes them as designated doctor examinations.

In addition, the amendments clarify that the 95-day period for timely submission of a designated doctor examination bill, where

the designated doctor has referred the injured employee for additional testing or evaluation, begins on the date of service for the additional testing or evaluation. This ensures that any delays in scheduling or performing the additional testing or evaluation do not penalize the designated doctor by making compliance with the billing timeline impossible, which could make the bill unpayable. It gives the designated doctor time to complete the examination report.

The amendments also correct a typographical error in a rule reference and include nonsubstantive editorial and formatting changes throughout that make updates for plain language and agency style to improve the rule's clarity.

Section 133.10. The amendments to §133.10 require an assignment number in the prior authorization field of the 1500 Health Insurance Claim Form Version 02/12 (CMS-1500), Uniform Bill 04 (UB-04), Statement of Pharmacy Services (DWC Form-066), and 2006 American Dental Association Dental Claim Form (ADA 2006) for DWC-ordered designated doctor examinations, and for additional testing or evaluation that a designated doctor refers. They also clarify the dates that apply to the additional testing or evaluation. Amending §133.10 is necessary to better identify that a bill is for a designated doctor examination, and to help associate a bill for additional testing or evaluation that occurs as a result of a designated doctor examination with the original designated doctor examination. These amendments will help insurance carriers and bill review agents identify these types of bills and associate them with the proper examination types, and they will increase the likelihood that the bills will be paid without unnecessary administrative delay.

Section 133.20. The amendments to §133.20 clarify that the 95-day period for timely submission of a bill for additional testing or evaluation under §127.10 of this title begins on the date of service of the additional testing or evaluation. They also require a designated doctor that refers an injured employee for additional testing or evaluation to provide the assignment number to the health care provider performing the testing or evaluation, and they require a designated doctor or a health care provider performing additional testing or evaluation to include the assignment number on the medical bill, to conform with amended §133.10. Amending §133.20 is necessary to ensure consistency in billing deadlines, to allow the designated doctor time to complete the designated doctor report after receiving the results from the additional testing or evaluation, and to prevent the designated doctor from being penalized unfairly if scheduling or performing the additional testing or evaluation takes more than a few weeks.

Section 133.200. The amendments to §133.200 correct an incorrect reference to §133.10. Amending §133.200 is necessary to ensure the reference's accuracy.

Section 133.502. The amendments to §133.502 apply the requirement to include the assignment number in the prior authorization field in §§133.10 and 133.20 to professional, institutional or hospital, dental, and pharmacy electronic medical bills. Amending §133.502 is necessary to ensure consistency in billing between paper and electronic formats, and to allow DWC to better identify designated doctor and designated doctor referral billing in the DWC database of medical charges.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Health and Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be minimal fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local and state government entities are only involved in enforcing or complying with the proposed amendments when acting in the capacity of a workers' compensation insurance carrier. Those entities will be impacted in the same way as an insurance carrier and will realize the same benefits from the updates in the rules. They include the State Office of Risk Management, the Texas Department of Transportation, the University of Texas System Administration, and the Texas A&M University System Administration.

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

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Deputy Commissioner Landrum expects that enforcing and administering the proposed amendments will have the public benefits of ensuring that the rules conform to Labor Code Chapters 408 and 413. The rules support continued access to health care and stability through consistent application of DWC's fee guidelines, adopted under the statutory mandate for fee guidelines based on the standardized Medicare reimbursement methodologies and payment policies for coding, billing, and reporting. They also have the public benefits of supporting the viability and efficient operation of the programs to provide workers' compensation-specific services that Labor Code Chapter 408 mandates, ensuring consistent standards for paper and electronic medical bills, maintaining an accurate statewide database of medical charges, payments, and treatment protocols for designated doctor-related examinations, reducing disputes, and ensuring compliance with DWC's rules. The amendments will reduce administrative burdens on system participants by reducing billing time, efforts following up on reimbursement, and medical dispute resolution, which should encourage current designated doctors to remain in the system and attract new ones, and ensure that DWC's rules are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code Chapters 408 and 413 because they do not impose requirements beyond what is necessary to comply with the statute. Labor Code Chapter 408 requires a functional designated doctor program that allows the commissioner to order a medical examination to resolve questions about an employee's injury. Under §408.021, that injured employee is entitled to all health care reasonably required by the nature of the compensable injury as and when needed, and determining the need relies on workers' compensation-specific services provided through the designated doctor and associated programs.

In addition, under §408.0251, insurance carriers must accept electronically submitted medical bills. DWC rules clarify what is needed for their submission and processing, and identify exceptions. DWC requires standard training and testing for designated doctors and doctors authorized to perform MMI and IR examinations to comply with the certification process mandated in Labor Code §408.1225. One of the functions a designated doctor and certified MMI and IR doctors must perform is correct billing. The statewide database that Labor Code §413.007 requires DWC to maintain requires accurate information about medical charges, actual payments, and treatment protocols, and the proposed

amendments requiring a unique assignment number to identify designated doctor-related examinations are needed to enable DWC to detect practices and patterns in the information, as the statute requires. Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines, including policies relating to coding, billing, and reporting. The fee guidelines must be fair and reasonable, and designed to ensure the quality of medical care and achieve medical cost control. Under Labor Code §413.053, the commissioner must establish standards of reporting and billing governing form and content.

As a result of these statutory requirements, the cost associated with implementing the assignment number in the prior authorization field for designated doctor-related activities, clarifying the date of service to ensure that designated doctors can get paid if there is a delay in scheduling additional testing or evaluation, correcting typos, and ensuring consistency with electronic billing does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The proposed amendments are necessary to ensure the viability of the designated doctor and associated programs by decreasing administrative burdens and other barriers to participation, ensure consistent and accurate billing and reporting electronically and on paper, and ensure that the reimbursement policies and guidelines comply with the requirements in Labor Code Chapter 413. The proposed amendments are expected to benefit stakeholders, including stakeholders located in rural communities, by ensuring that enough designated doctors and doctors authorized to perform MMI and IR examinations are available to serve them. In addition, the increased stability and certainty of payment, along with the decreased administrative burdens of being a designated doctor may enable more small and solo practitioners to participate as designated doctors, which would benefit them as well as the program. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. Instead, the proposed amendments are expected to reduce administrative burdens and costs to participate in the designated doctor and associated programs, and decrease the need for expensive and time-consuming medical billing dispute resolution. As a result, no additional rule amendments are required under Government Code §2001.0045.

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

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rules' applicability; and

- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments enhance efficiency and clarity, conform the language to current agency structure, practice, and related rules, and make editorial changes for plain language and agency style. They are expected to decrease administrative burdens for designated doctor and associated program participants, and do not change the people the rules affect or impose additional costs beyond what is necessary to comply with the statutes.

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

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on January 29, 2024. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal at a public hearing at 11 a.m., Central time, on January 23, 2024. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov//alert/event/index.html.

SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

28 TAC §133.10, §133.20

STATUTORY AUTHORITY. DWC proposes the amendments to §§133.10 and 133.20 under Labor Code §§408.004, 408.0041, 408.021, 408.023, 408.0251, 408.0252, 408.1225, 413.007, 413.011, 413.012, 413.015, 413.0511, 413.053, 402.00111, 402.00116, and 402.061.

Labor Code §408.004 provides that the commissioner may require an employee to submit to medical examinations to resolve any question about the appropriateness of the health care the employee receives, or at the request of the insurance carrier after the insurance carrier has tried and failed to get the employee's permission and concurrence for the examination. It also requires the insurance carrier to pay for those examinations, as well as the reasonable expenses incident to the employee in submitting to them.

Labor Code §408.0041 provides that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues.

Labor Code §408.021 entitles an employee that sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.0251 requires the commissioner of workers' compensation, in cooperation with the commissioner of insurance, to adopt rules about the electronic submission and processing of medical bills by health care providers to insurance carriers and establish exceptions. It also requires insurance carriers to accept electronically submitted medical bills in accordance with the rules, and it allows the commissioner of workers' compensation to adopt rules about the electronic payment of medical bills by insurance carriers to health care providers.

Labor Code §408.0252 provides that the commissioner of workers' compensation may, by rule, identify areas of this state in which access to health care providers is less available, and adopt appropriate standards, guidelines, and rules about the delivery of health care in those areas.

Labor Code §408.1225 requires the commissioner of workers' compensation to develop a process for certifying designated doctors, which requires DWC to evaluate designated doctors' educational experience, previous training, and demonstrated ability to perform the specific designated doctor duties in §408.0041. It also requires standard training and testing for designated doctors.

Labor Code §413.007 requires DWC to maintain a statewide database of medical charges, actual payments, and treatment protocols that may be used by the commissioner in adopting the medical policies and fee guidelines, and by DWC in administering the medical policies, fee guidelines, or rules. The database must contain information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols, and must be able to be used in a meaningful way to allow DWC to control medical costs.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as needed to meet occupational injury requirements. It requires the commissioner to adopt the most current methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services (CMS), including applicable payment policies relating to coding, billing, and reporting; and allows the commissioner to modify documentation requirements as needed to meet the requirements of §413.053. It also requires the commissioner, in determining the appropriate fees, to develop one or more conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of §413.011(d); and requires the commissioner to provide for reasonable fees for the evaluation and management of care as required by §408.025(c) and commissioner rules. The commissioner may not adopt the Medicare fee schedule or conversion factors or other payment adjustment factors based solely on those factors as developed by the federal CMS. Fee guidelines must be fair and reasonable, and designed to ensure the quality of medical care and achieve medical cost control. They may not provide for payment of a fee that exceeds the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. When establishing the fee guidelines, §413.011 requires the commissioner to consider the increased security of payment that Subtitle A, Title 5, Labor Code affords. It allows network contracts under Insurance Code §1305.006. It specifically authorizes the commissioner and the commissioner of insurance to adopt rules as necessary to implement §413.011.

Labor Code §413.012 requires the medical policies and fee guidelines to be reviewed and revised at least every two years to reflect fair and reasonable fees and to reflect medical treatment or ranges of treatment that are reasonable and necessary at the time the review and revision is conducted.

Labor Code §413.015 requires insurance carriers to pay appropriate charges for medical services under Subtitle A, Title 5, Labor Code, and requires the commissioner by rule to review and audit those payments to ensure compliance with the adopted medical policies and fee guidelines. The insurance carrier must pay the expenses of the review and audit.

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

Labor Code §413.053 requires the commissioner by rule to establish standards of reporting and billing governing both form and content.

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

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

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

CROSS-REFERENCE TO STATUTE. Sections 133.10 and 133.20 implement Labor Code §§408.0041 and 413.011, enacted by House Bill (HB) 2600, 77th Legislature, Regular Session (2001), and last amended in 2023 and 2007, respectively.

§133.10. Required Billing Forms/Formats.

(a) Health care providers, including those providing services for a certified workers' compensation health care network as defined

in Insurance Code Chapter 1305 or to political subdivisions with contractual relationships under Labor Code §504.053(b)(2), must [~~shall~~] submit medical bills for payment in an electronic format in accordance with §133.500 and §133.501 of this title (relating to Electronic Formats for Electronic Medical Bill Processing and Electronic Medical Bill Processing), unless the health care provider or the billed insurance carrier is exempt from the electronic billing process in accordance with §133.501 of this title.

(b) Except as provided in subsection (a) of this section, health care providers, including those providing services for a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 or to political subdivisions with contractual relationships under Labor Code §504.053(b)(2), must [~~shall~~] submit paper medical bills for payment on:

(1) the 1500 Health Insurance Claim Form Version 02/12 (CMS-1500);

(2) the Uniform Bill 04 (UB-04); or

(3) applicable forms prescribed for pharmacists, dentists, and surgical implant providers specified in subsections (c), (d), and (e) of this section.

(c) Pharmacists and pharmacy processing agents must [~~shall~~] submit bills using the division [~~Division~~] form DWC-066. A pharmacist or pharmacy processing agent may submit bills using an alternate billing form if:

(1) the insurance carrier has approved the alternate billing form prior to submission by the pharmacist or pharmacy processing agent; and

(2) the alternate billing form provides all information required on the division [~~Division~~] form DWC-066.

(d) Dentists must [~~shall~~] submit bills for dental services using the 2006 American Dental Association (ADA) Dental Claim form.

(e) Surgical implant providers requesting separate reimbursement for implantable devices must [~~shall~~] submit bills using:

(1) the form prescribed in subsection (b)(1) of this section when the implantable device reimbursement is sought under §134.402 of this title (relating to Ambulatory Surgical Center Fee Guideline); or

(2) the form prescribed in subsection (b)(2) of this section when the implantable device reimbursement is sought under §134.403 or §134.404 of this title (relating to Hospital Facility Fee Guideline--Outpatient and Hospital Facility Fee Guideline--Inpatient).

(f) All information submitted on required paper billing forms must be legible and completed in accordance with this section. The parenthetical information following each term in this section refers to the applicable paper medical billing form and the field number corresponding to the medical billing form.

(1) The following data content or data elements are required for a complete professional or noninstitutional medical bill related to Texas workers' compensation health care:

(A) patient's Social Security number [~~Number~~] (CMS-1500/field 1a) is required;

(B) patient's name (CMS-1500/field 2) is required;

(C) patient's date of birth and gender (CMS-1500/field 3) is required;

(D) employer's name (CMS-1500/field 4) is required;

(E) patient's address (CMS-1500/field 5) is required;

(F) patient's relationship to subscriber (CMS-1500, field 6) is required;

(G) employer's address (CMS-1500, field 7) is required;

(H) workers' compensation claim number assigned by the insurance carrier (CMS-1500/field 11) is required when known; [~~,~~] the billing provider must [~~shall~~] leave the field blank if the workers' compensation claim number is not known by the billing provider;

(I) date of injury and "431" qualifier (CMS-1500, field 14) are required;

(J) name of referring provider or other source is required when another health care provider referred the patient for the services; no [~~No~~] qualifier indicating the role of the provider is required (CMS-1500, field 17);

(K) referring provider's state license number (CMS-1500/field 17a) is required when there is a referring doctor listed in CMS-1500/field 17; the billing provider must [~~shall~~] enter the '0B' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX');

(L) referring provider's National Provider Identifier (NPI) number (CMS-1500/field 17b) is required when CMS-1500/field 17 contains the name of a health care provider eligible to receive an NPI number;

(M) diagnosis or nature of injury (CMS-1500/field 21) is required; [~~,~~] at least one diagnosis code and the applicable ICD indicator must be present;

(N) prior authorization number (CMS-1500/field 23) is required in the following situations: [~~when preauthorization,~~]

(i) Preauthorization, concurrent review, or voluntary certification was approved, and the insurance carrier provided an approval number to the requesting health care provider. Include the approval number in the prior authorization field (CMS-1500/field 23). [~~:~~]

(ii) The division ordered a designated doctor examination and provided an assignment number. Include the assignment number in the prior authorization field (CMS-1500/field 23).

(iii) The designated doctor referred the injured employee for additional testing or evaluation, and the division provided an assignment number. Include the assignment number in the prior authorization field (CMS-1500/field 23).

(O) date or dates [~~date(s)~~] of service (CMS-1500, field 24A) is required;

(i) If the designated doctor referred the injured employee for additional testing or evaluation, the "From" date is the date of the designated doctor examination, and the "To" date is the date of service of the additional testing or evaluation.

(ii) If the designated doctor did not refer the injured employee for additional testing or evaluation, the "From" and "To" dates are the date of the designated doctor examination.

(P) place of service code or codes [~~code(s)~~] (CMS-1500, field 24B) is required;

(Q) procedure/modifier code (CMS-1500, field 24D) is required;

(R) diagnosis pointer (CMS-1500, field 24E) is required;

(S) charges for each listed service (CMS-1500, field 24F) is required;

(T) number of days or units (CMS-1500, field 24G) is required;

(U) rendering provider's state license number (CMS-1500/field 24j, shaded portion) is required when the rendering provider is not the billing provider listed in CMS-1500/field 33; the billing provider must [~~shall~~] enter the '0B' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX');

(V) rendering provider's NPI number (CMS-1500/field 24j, unshaded portion) is required when the rendering provider is not the billing provider listed in CMS-1500/field 33 and the rendering provider is eligible for an NPI number;

(W) supplemental information (shaded portion of CMS-1500/fields 24d - 24h) is required when the provider is requesting separate reimbursement for surgically implanted devices or when additional information is necessary to adjudicate payment for the related service line;

(X) billing provider's federal tax ID number (CMS-1500/field 25) is required;

(Y) total charge (CMS-1500/field 28) is required;

(Z) signature of physician or supplier, the degrees or credentials, and the date (CMS-1500/field 31) is required, but the signature may be represented with a notation that the signature is on file and the typed name of the physician or supplier;

(AA) service facility location information (CMS-1500/field 32) is required;

(BB) service facility NPI number (CMS-1500/field 32a) is required when the facility is eligible for an NPI number;

(CC) billing provider name, address, and telephone number (CMS-1500/field 33) is required;

(DD) billing provider's NPI number (CMS-1500/Field 33a) is required when the billing provider is eligible for an NPI number; and

(EE) billing provider's state license number (CMS-1500/field 33b) is required when the billing provider has a state license number; the billing provider must [~~shall~~] enter the '0B' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX').

(2) The following data content or data elements are required for a complete institutional medical bill related to Texas workers' compensation health care:

(A) billing provider's name, address, and telephone number (UB-04/field 01) is required;

(B) patient control number (UB-04/field 03a) is required;

(C) type of bill (UB-04/field 04) is required;

(D) billing provider's federal tax ID number (UB-04/field 05) is required;

(E) statement covers period (UB-04/field 06) is required;

(F) patient's name (UB-04/field 08) is required;

(G) patient's address (UB-04/field 09) is required;

(H) patient's date of birth (UB-04/field 10) is required;

(I) patient's gender (UB-04/field 11) is required;

(J) date of admission (UB-04/field 12) is required when billing for inpatient services;

(K) admission hour (UB-04/field 13) is required when billing for inpatient services other than skilled nursing inpatient services;

(L) priority (type) of admission or visit (UB-04/field 14) is required;

(M) point of origin for admission or visit (UB-04/field 15) is required;

(N) discharge hour (UB-04/field 16) is required when billing for inpatient services with a frequency code of "1" or "4" other than skilled nursing inpatient services;

(O) patient discharge status (UB-04/field 17) is required;

(P) condition codes (UB-04/fields 18 - 28) are required when there is a condition code that applies to the medical bill;

(Q) occurrence codes and dates (UB-04/fields 31 - 34) are required when there is an occurrence code that applies to the medical bill;

(R) occurrence span codes and dates (UB-04/fields 35 and 36) are required when there is an occurrence span code that applies to the medical bill;

(S) value codes and amounts (UB-04/fields 39 - 41) are required when there is a value code that applies to the medical bill;

(T) revenue codes (UB-04/field 42) are required;

(U) revenue description (UB-04/field 43) is required;

(V) HCPCS/Rates (UB-04/field 44):

(i) HCPCS codes are required when billing for outpatient services and an appropriate HCPCS code exists for the service line item; and

(ii) accommodation rates are required when a room and board revenue code is reported;

(W) service date (UB-04/field 45) is required when billing for outpatient services;

(X) service units (UB-04/field 46) is required;

(Y) total charge (UB-04/field 47) is required;

(Z) date bill submitted, page numbers, and total charges (UB-04/field 45/line 23) is required;

(AA) insurance carrier name (UB-04/field 50) is required;

(BB) billing provider NPI number (UB-04/field 56) is required when the billing provider is eligible to receive an NPI number;

(CC) billing provider's state license number (UB-04/field 57) is required when the billing provider has a state license number; the billing provider must [~~shall~~] enter the license number and jurisdiction code (for example, '123TX');

(DD) employer's name (UB-04/field 58) is required;

(EE) patient's relationship to subscriber (UB-04/field 59) is required;

(FF) patient's Social Security number [~~Number~~] (UB-04/field 60) is required;

(GG) workers' compensation claim number assigned by the insurance carrier (UB-04/field 62) is required when known, the billing provider must [~~shall~~] leave the field blank if the workers' compensation claim number is not known by the billing provider;

(HH) preauthorization number (UB-04/field 63) is required when:

(i) preauthorization, concurrent review, or voluntary certification was approved, and the insurance carrier provided an approval number to the health care provider; or

(ii) a designated doctor referred the injured employee for additional testing or evaluation, and the division provided an assignment number to the designated doctor.

(II) principal diagnosis code and present on admission indicator (UB-04/field 67) are required;

(JJ) other diagnosis codes (UB-04/field 67A - 67Q) are required when these [~~there~~] conditions exist or subsequently develop during the patient's treatment;

(KK) admitting diagnosis code (UB-04/field 69) is required when the medical bill involves an inpatient admission;

(LL) patient's reason for visit (UB-04/field 70) is required when submitting an outpatient medical bill for an unscheduled outpatient visit;

(MM) principal procedure code and date (UB-04/field 74) is required when submitting an inpatient medical bill and a procedure was performed;

(NN) other procedure codes and dates (UB-04/fields 74A - 74E) are required when submitting an inpatient medical bill and other procedures were performed;

(OO) attending provider's name and identifiers (UB-04/field 76) are required for any services other than nonscheduled transportation services, the billing provider must [~~shall~~] report the NPI number for an attending provider eligible for an NPI number and the state license number by entering the '0B' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX');

(PP) operating physician's name and identifiers (UB-04/field 77) are required when a surgical procedure code is included on the medical bill; [~~,~~] the billing provider must [~~shall~~] report the NPI number for an operating physician eligible for an NPI number and the state license number by entering the '0B' qualifier and the license type, license number, and jurisdiction code (for example, 'MDF1234TX'); and

(QQ) remarks (UB-04/field 80) is required when separate reimbursement for surgically implanted devices is requested.

(3) The following data content or data elements are required for a complete pharmacy medical bill related to Texas workers' compensation health care:

(A) dispensing pharmacy's name and address (DWC-066/field 1) is required;

(B) date of billing (DWC-066/field 2) is required;

(C) dispensing pharmacy's National Provider Identification (NPI) number (DWC-066/field 3) is required;

(D) billing pharmacy's or pharmacy processing agent's name and address (DWC-066/field 4) is required when different from the dispensing pharmacy (DWC-066/field 1);

(E) invoice number (DWC-066/field 5) is required;

(F) payee's federal employer identification number (DWC-066/field 6) is required;

(G) insurance carrier's name (DWC-066/field 7) is required;

(H) employer's name and address (DWC-066/field 8) is required;

(I) injured employee's name and address (DWC-066/field 9) is required;

(J) injured employee's Social Security number [~~Number~~] (DWC-066/field 10) is required;

(K) date of injury (DWC-066/field 11) is required;

(L) injured employee's date of birth (DWC-066/field 12) is required;

(M) prescribing doctor's name and address (DWC-066/field 13) is required;

(N) prescribing doctor's NPI number (DWC-066/field 14) is required;

(O) workers' compensation claim number assigned by the insurance carrier (DWC-066/field 15) is required when known; [~~,~~] the billing provider must [~~shall~~] leave the field blank if the workers' compensation claim number is not known by the billing provider;

(P) dispensed as written code (DWC-066/field 19) is required;

(Q) date filled (DWC-066/field 20) is required;

(R) generic National Drug Code (NDC) code (DWC-066/field 21) is required when a generic drug was dispensed or if dispensed as written code '2' is reported in DWC-066/field 19;

(S) name brand NDC code (DWC-066/field 22) is required when a name brand drug is dispensed;

(T) quantity (DWC-066/field 23) is required;

(U) days supply (DWC-066/field 24) is required;

(V) amount paid by the injured employee (DWC-066/field 26) is required if applicable;

(W) drug name and strength (DWC-066/field 27) is required;

(X) prescription number (DWC-066/field 28) is required;

(Y) amount billed (DWC-066/field 29) is required;

(Z) preauthorization number (DWC-066/field 30) is required when:

(i) preauthorization, voluntary certification, or an agreement was approved, and the insurance carrier provided an approval number to the requesting health care provider; or [~~and~~]

(ii) a designated doctor referred the injured employee for additional testing or evaluation, and the division provided an assignment number to the designated doctor.

(AA) for billing of compound drugs, refer to the requirements in §134.502 of this title (relating to Pharmaceutical Services).

(4) The following data content or data elements are required for a complete dental medical bill related to Texas workers' compensation health care:

(A) type of transaction (ADA 2006 Dental Claim Form/field 1);

(B) preauthorization number (ADA 2006 Dental Claim Form/field 2) is required when:

(i) preauthorization, concurrent review, or voluntary certification was approved, and the insurance carrier provided an approval number to the health care provider; or

(ii) a designated doctor referred the injured employee for additional testing or evaluation, and the division provided an assignment number to the designated doctor.

(C) insurance carrier name and address (ADA 2006 Dental Claim Form/field 3) is required;

(D) employer's name and address (ADA 2006 Dental Claim Form/field 12) is required;

(E) workers' compensation claim number assigned by the insurance carrier (ADA 2006 Dental Claim Form/field 15) is required when known; [,] the billing provider must [~~shall~~] leave the field blank if the workers' compensation claim number is not known by the billing provider;

(F) patient's name and address (ADA 2006 Dental Claim Form/field 20) is required;

(G) patient's date of birth (ADA 2006 Dental Claim Form/field 21) is required;

(H) patient's gender (ADA 2006 Dental Claim Form/field 22) is required;

(I) patient's Social Security number [~~Number~~] (ADA 2006 Dental Claim Form/field 23) is required;

(J) procedure date (ADA 2006 Dental Claim Form/field 24) is required;

(K) tooth number or numbers or letter or letters [~~number(s) or letter(s)~~] (ADA 2006 Dental Claim Form/field 27) is required;

(L) procedure code (ADA 2006 Dental Claim Form/field 29) is required;

(M) fee (ADA 2006 Dental Claim Form/field 31) is required;

(N) total fee (ADA 2006 Dental Claim Form/field 33) is required;

(O) place of treatment (ADA 2006 Dental Claim Form/field 38) is required;

(P) treatment resulting from (ADA 2006 Dental Claim Form/field 45) is required; [,] the provider must [~~shall~~] check the box for occupational illness/injury;

(Q) date of injury (ADA 2006 Dental Claim Form/field 46) is required;

(R) billing provider's name and address (ADA 2006 Dental Claim Form/field 48) is required;

(S) billing provider's NPI number (ADA 2006 Dental Claim Form/field 49) is required if the billing provider is eligible for an NPI number;

(T) billing provider's state license number (ADA 2006 Dental Claim Form/field 50) is required when the billing provider is a licensed health care provider; the billing provider must [~~shall~~] enter the license type, license number, and jurisdiction code (for example, 'DS1234TX');

(U) billing provider's federal tax ID number (ADA 2006 Dental Claim Form/field 51) is required;

(V) rendering dentist's NPI number (ADA 2006 Dental Claim Form/field 54) is required when different than the billing provider's NPI number (ADA 2006 Dental Claim Form/field 49) and the rendering dentist is eligible for an NPI number;

(W) rendering dentist's state license number (ADA 2006 Dental Claim Form/field 55) is required when different than the billing provider's state license number (ADA 2006 Dental Claim Form/field 50); [,] the billing provider must [~~shall~~] enter the license type, license number, and jurisdiction code (for example, 'MDF1234TX'); and

(X) rendering provider's and treatment location address (ADA 2006 Dental Claim Form/field 56) is required when different from the billing provider's address (ADA Dental Claim Form/field 48).

(g) If the injured employee does not have a Social Security number [~~Number~~] as required in subsection (f) of this section, the health care provider must leave the field blank.

(h) Except for facility state license numbers, state license numbers submitted under subsection (f) of this section must be in the following format: license type, license number, and jurisdiction state code (for example 'MDF1234TX').

(i) In reporting the state license number under subsection (f) of this section, health care providers should select the license type that most appropriately reflects the type of medical services they provided to the injured employees. When a health care provider does not have a state license number, the field is submitted with only the license type and jurisdiction code (for example, DMTX). The license types used in the state license format must be one of the following:

(1) AC for Acupuncturist;

(2) AM for Ambulance Services;

(3) AS for Ambulatory Surgery Center;

(4) AU for Audiologist;

(5) CN for Clinical Nurse Specialist;

(6) CP for Clinical Psychologist;

(7) CR for Certified Registered Nurse Anesthetist;

(8) CS for Clinical Social Worker;

(9) DC for Doctor of Chiropractic;

(10) DM for Durable Medical Equipment Supplier;

(11) DO for Doctor of Osteopathy;

(12) DP for Doctor of Podiatric Medicine;

(13) DS for Dentist;

(14) IL for Independent Laboratory;

(15) LP for Licensed Professional Counselor;

(16) LS for Licensed Surgical Assistant;

(17) MD for Doctor of Medicine;

(18) MS for Licensed Master Social Worker;

(19) MT for Massage Therapist;

(20) NF for Nurse First Assistant;

(21) OD for Doctor of Optometry;

(22) OP for Orthotist/Prosthetist;

(23) OT for Occupational Therapist;

(24) PA for Physician Assistant;

(25) PM for Pain Management Clinic;

(26) PS for Psychologist;

(27) PT for Physical Therapist;

(28) RA for Radiology Facility; or

(29) RN for Registered Nurse.

(j) When resubmitting a medical bill under subsection (f) of this section, a resubmission condition code may be reported. In reporting a resubmission condition code, the following definitions apply to the resubmission condition codes established by the Uniform National Billing Committee:

(1) W3 - Level 1 Appeal means a request for reconsideration under §133.250 of this title (relating to Reconsideration for Payment of Medical Bills) or an appeal of an adverse determination under Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage);

(2) W4 - Level 2 Appeal means a request for reimbursement as a result of a decision issued by the division, an independent review organization [~~Independent Review Organization~~], or a network [~~Network~~] complaint process; and

(3) W5 - Level 3 Appeal means a request for reimbursement as a result of a decision issued by an administrative law judge or judicial review.

(k) The inclusion of the appropriate resubmission condition code and the original reference number is sufficient to identify a resubmitted medical bill as a request for reconsideration under §133.250 of this title or an appeal of an adverse determination under Chapter 19, Subchapter U of this title provided the resubmitted medical bill complies with the other requirements contained in the appropriate section.

(l) This section is effective for medical bills submitted on or after June 1, 2024 [~~April 1, 2014~~].

§133.20. Medical Bill Submission by Health Care Provider.

(a) The health care provider must [~~shall~~] submit all medical bills to the insurance carrier except when billing the employer in accordance with subsection (j) of this section.

(b) Except as provided in Labor Code §408.0272(b), (c), or (d), a health care provider must [~~shall~~] not submit a medical bill later than the 95th day after the date the services are provided.

(1) If a designated doctor refers an injured employee for additional testing or evaluation under §127.10 of this title, the 95-day period for timely submission of the bill begins on the date of service of the additional testing or evaluation.

(2) In accordance with subsection (c) of the statute, the health care provider must [~~shall~~] submit the medical bill to the correct workers' compensation insurance carrier no [~~not~~] later than the 95th day after the date the health care provider is notified of the health care provider's erroneous submission of the medical bill.

(3) A health care provider who submits a medical bill to the correct workers' compensation insurance carrier must [~~shall~~] include a copy of the original medical bill submitted, a copy of the explanation of benefits (EOB) if available, and sufficient documentation to support why one or more of the exceptions for untimely submission of a medical bill under §408.0272 should be applied. The medical bill submitted by the health care provider to the correct workers' compensation insurance carrier is subject to the billing, review, and dispute processes established by Chapter 133, including §133.307(c)(2)(A) - (H) of this title (relating to MDR of Fee Disputes), which establishes the generally acceptable standards for documentation.

(c) A health care provider must [~~shall~~] include correct billing codes from the applicable division [~~Division~~] fee guidelines in effect on the date or dates [~~date(s)~~] of service when submitting medical bills.

(d) The health care provider that provided the health care must [~~shall~~] submit its own bill, unless:

(1) the health care was provided as part of a return-to-work [~~return to work~~] rehabilitation program in accordance with the division [~~Division~~] fee guidelines in effect for the dates of service;

(2) the health care was provided by an unlicensed individual under the direct supervision of a licensed health care provider, in which case the supervising health care provider must [~~shall~~] submit the bill;

(3) the health care provider contracts with an agent for purposes of medical bill processing, in which case the health care provider agent may submit the bill; or

(4) the health care provider is a pharmacy that has contracted with a pharmacy processing agent for purposes of medical bill processing, in which case the pharmacy processing agent may submit the bill.

(e) A medical bill must be submitted:

(1) for an amount that does not exceed the health care provider's usual and customary charge for the health care provided in accordance with Labor Code §§413.011 and 415.005; and

(2) in the name of the licensed health care provider that provided the health care or that provided direct supervision of an unlicensed individual who provided the health care.

(f) Health care providers must [~~shall~~] not resubmit medical bills to insurance carriers after the insurance carrier has taken final action on a complete medical bill and provided an EOB [~~explanation of benefits~~] except in accordance with §133.250 of this chapter (relating to Reconsideration for Payment of Medical Bills).

(g) Health care providers may correct and resubmit as a new bill an incomplete bill that has been returned by the insurance carrier.

(h) Not later than the 15th day after receipt of a request for additional medical documentation, a health care provider must [~~shall~~] submit to the insurance carrier:

(1) any requested additional medical documentation related to the charges for health care rendered; or

(2) a notice the health care provider does not possess requested medical documentation.

(i) The health care provider must [~~shall~~] indicate on the medical bill if documentation is submitted related to the medical bill.

(j) The health care provider may elect to bill the injured employee's employer if the employer has indicated a willingness to pay the medical bill or bills [~~bill(s)~~]. Such billing is subject to the following:

(1) A health care provider who elects to submit medical bills to an employer waives, for the duration of the election period, the rights to:

(A) prompt payment, as provided by Labor Code §408.027;

(B) interest for delayed payment as provided by Labor Code §413.019; and

(C) medical dispute resolution as provided by Labor Code §413.031.

(2) When a health care provider bills the employer, the health care provider must [~~shall~~] submit an information copy of the bill to the insurance carrier, which clearly indicates that the information copy is not a request for payment from the insurance carrier.

(3) When a health care provider bills the employer, the health care provider must bill in accordance with the division's [~~Division's~~] fee guidelines and §133.10 of this chapter (relating to Required Billing Forms/Formats).

(4) A health care provider must [~~shall~~] not submit a medical bill to an employer for charges an insurance carrier has reduced, denied, or disputed.

(k) A health care provider must [~~shall~~] not submit a medical bill to an injured employee for all or part of the charge for any of the health care provided, except as an informational copy clearly indicated on the bill, or in accordance with subsection (l) of this section. The information copy must [~~shall~~] not request payment.

(l) The health care provider may only submit a bill for payment to the injured employee in accordance with:

(1) Labor Code §413.042;

(2) Insurance Code §1305.451; or

(3) §134.504 of this title (relating to Pharmaceutical Expenses Incurred by the Injured Employee).

(m) A designated doctor must include the assignment number on the medical bill in accordance with §133.10 of this title (relating to Required Billing Forms/Formats).

(n) A designated doctor who refers the injured employee for additional testing or evaluation under §127.10 must provide the assignment number to the health care provider performing the testing or evaluation. The health care provider performing the testing or evaluation must include the assignment number on the medical bill in accordance with §133.10.

(o) This section is effective for medical bills submitted on or after June 1, 2024.

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

Filed with the Office of the Secretary of State on December 15, 2023.

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Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 804-4703

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SUBCHAPTER C. MEDICAL BILL PROCESSING/AUDIT BY INSURANCE CARRIER

28 TAC §133.200

STATUTORY AUTHORITY. DWC proposes the amendment to §133.200 under Labor Code §§413.053, 402.00111, 402.00116, and 402.061.

Labor Code §413.053 requires the commissioner by rule to establish standards of reporting and billing governing both form and content.

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

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

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

CROSS-REFERENCE TO STATUTE. Section 133.200 implements Labor Code §413.053, enacted by HB 752, 73rd Legislature, Regular Session (1993), and amended in 2005.

§133.200. Insurance Carrier Receipt of Medical Bills from Health Care Providers.

(a) On [~~Upon~~] receipt of medical bills submitted in accordance with §133.10 [~~§133.10(a)(1) and (2)~~] of this chapter (relating to Required Billing [~~Medical~~] Forms/Formats), an insurance carrier must [~~shall~~] evaluate each medical bill for completeness as defined in §133.2 of this chapter (relating to Definitions).

(1) Insurance carriers must [~~shall~~] not return medical bills that are complete, unless the bill is a duplicate bill.

(2) Within 30 days after the day it receives a medical bill that is not complete as defined in §133.2 of this chapter, an insurance carrier must [~~shall~~]:

(A) complete the bill by adding missing information already known to the insurance carrier, except for the following:

(i) dates of service;

(ii) procedure or modifier [~~procedure/modifier~~] codes;

(iii) number of units; and

(iv) charges; or

(B) return the bill to the sender, in accordance with subsection (c) of this section.

(3) The insurance carrier may contact the sender to get [~~obtain~~] the information necessary to make the bill complete, including the information specified in paragraph (2)(A)(i) - (iv) of this subsection. If the insurance carrier gets [~~obtains~~] the missing information and completes the bill, the insurance carrier must [~~shall~~] document the name and telephone number of the person who supplied the information.

(b) An insurance carrier must [~~shall~~] not return a medical bill except as provided in subsection (a) of this section. When returning a medical bill, the insurance carrier must [~~shall~~] include a document

identifying the reasons [~~reason(s)~~] for returning the bill. The reasons [~~reason(s)~~] related to the procedure or modifier codes must [~~code(s) shall~~] identify the reasons [~~reason(s)~~] by line item.

(c) The proper return of an incomplete medical bill in accordance with this section fulfills the insurance carrier's obligations with regard to the incomplete bill.

(d) An insurance carrier must [~~shall~~] not combine bills submitted in separate envelopes as a single bill or separate single bills spanning several pages submitted in a single envelope.

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

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SUBCHAPTER G. ELECTRONIC MEDICAL BILLING, REIMBURSEMENT, AND DOCUMENTATION

28 TAC §133.502

STATUTORY AUTHORITY. DWC proposes §133.502 under Labor Code §§408.0251, 413.053, 402.00111, 402.00116, and 402.061.

Labor Code §408.0251 requires the commissioner of workers' compensation, in cooperation with the commissioner of insurance, to adopt rules about the electronic submission and processing of medical bills by health care providers to insurance carriers and establish exceptions. It also requires insurance carriers to accept electronically submitted medical bills in accordance with the rules, and it allows the commissioner of workers' compensation to adopt rules about the electronic payment of medical bills by insurance carriers to health care providers.

Labor Code §413.053 requires the commissioner by rule to establish standards of reporting and billing governing both form and content.

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

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

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

CROSS-REFERENCE TO STATUTE. Section 133.502 implements Labor Code §408.0251, enacted by HB 7, 79th Legislature, Regular Session (2005).

§133.502. Electronic Medical Billing Supplemental Data Requirements.

(a) In addition to the data requirements and standards adopted under §133.500(a) of this title (relating to Electronic Formats for Electronic Medical Bill Processing), all professional, institutional or hospital [~~institutional/hospital~~], and dental electronic medical bills submitted before January 1, 2012, must contain:

(1) the telephone number of the submitter;

(2) the workers' compensation claim number assigned by the insurance carrier or, if that number is not known by the health care provider, a default value of "UNKNOWN";

(3) the injured employee's Social Security number [~~Number~~] as the subscriber member identification number;

(4) the injured employee's date of injury;

(5) the rendering health care provider's state provider license number;

(6) the referring health care provider's state provider license number;

(7) the billing provider's state provider license number, if the billing provider has a state provider license number;

(8) the attending physician's state medical license number, when applicable;

(9) the operating physician's state medical license number, when applicable;

(10) the claim supplemental information, when electronic documentation is submitted with an electronic medical bill; and

(11) the resubmission condition code, when the electronic medical bill is a duplicate, request for reconsideration, or other resubmission.

(b) In reporting the injured employee Social Security number [~~Number~~] and the state license numbers under subsection (a) of this section, health care providers must follow the data content and format requirements contained in §133.10 of this title (relating to Required Billing Forms/Formats).

(c) In addition to the data requirements contained in the standards adopted under §133.500(c) of this title, all professional, institutional or hospital [~~institutional/hospital~~], and dental electronic medical bills submitted on or after January 1, 2012, must contain:

(1) the telephone number of the submitter;

(2) the workers' compensation claim number assigned by the insurance carrier or, if that number is not known by the health care provider, a default value of "UNKNOWN";

(3) the injured employee's date of injury;

(4) the claim supplemental information, when electronic documentation is submitted with an electronic medical bill; [~~and~~]

(5) the resubmission condition code, when the electronic medical bill is a duplicate, request for reconsideration, or other resubmission; and

(6) for a designated doctor and a health care provider performing a test or evaluation as a result of a designated doctor's referral, the assignment number in the prior authorization field.

(d) In addition to the data requirements contained in the standards adopted under §133.500 of this title, all pharmacy electronic medical bills must contain:

(1) the dispensing pharmacy's National Provider Identification number; [and]

(2) the prescribing doctor's National Provider Identification number; and

(3) for a health care provider performing a test or evaluation as a result of a designated doctor's referral, the assignment number in the prior authorization field.

(e) In reporting the resubmission condition code under this section, the resubmission condition codes must [shall] have the definitions specified in §133.10(j) of this title.

(f) This section does not apply to paper medical bills submitted for payment under §133.10(b) of this title.

(g) This section is effective June 1, 2024 [August 1, 2011].

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

Filed with the Office of the Secretary of State on December 15, 2023.

TRD-202304808
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

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

SUBCHAPTER C. MEDICAL FEE GUIDELINES

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes: to repeal 28 TAC §§134.235, 134.239, and 134.240; amend 28 TAC §§134.209, 134.210, and 134.250; and proposes new 28 TAC §§134.235, 134.239, 134.240, and 134.260, concerning medical fee guidelines for certain workers' compensation-specific services, including designated doctor examinations, required medical examinations, work status reports, and maximum medical improvement (MMI) evaluations and impairment rating (IR) examinations by treating and referred doctors. The repeals, amendments, and new sections (collectively, "changes") implement Texas Labor Code Chapters 408 and 413, which govern workers' compensation benefits, including medical examinations required to establish benefit entitlements, and medical review to ensure compliance with DWC rules for health care, including medical policies and fee guidelines. The DWC medical advisor recommends the changes to the commissioner of workers' compensation under Labor Code §413.0511(b).

EXPLANATION. The changes adjust the billing methodology and reimbursement rates for certain workers' compensation-specific services, including designated doctor examinations, required medical examinations, work status reports, and MMI evaluations and IR examinations by treating and referred doctors. They adjust the fees once by applying the Medicare Economic Index (MEI) percentage adjustment factor for the period 2009 - 2024, and then after the initial adjustment, adjust the fees annually on January 1 by applying the MEI percentage adjustment factor in §134.203(c)(2) which is how most other fees are adjusted annually in the system. They round the fees to whole dollars to simplify calculations and reduce errors. They eliminate unnecessary billing modifiers, eliminate a required sequence for modifiers, and replace the diagnosis-related estimate and range of motion billing methods with a single method of billing. They also create a $100 missed appointment fee and a $300 specialist fee. In addition, they eliminate tiering. For designated doctors and required medical examination doctors, all issues addressed within one examination will be paid at the established fee and not reduced.

The changes include restructuring and reorganization to move the requirements for each type of examination into a section that is specific to that type of examination, which will help to reduce the need for system participants to look in multiple different rules to find out what their obligations are. To that end, the changes repeal and replace: §134.235 to address billing and reimbursement for required medical examinations, §134.239 to clarify that the requirements for billing for work status reports align across the ordered examinations, and §134.240 to address billing and reimbursement for designated doctor examinations. The changes amend and restructure §134.250, concerning MMI and IR examinations by treating doctors, to conform with the other sections; and add new §134.260, concerning MMI and IR examinations by referred doctors, to clarify the specific provisions that apply to examinations that are conducted by authorized doctors as a result of a referral from a treating doctor under §130.1 of this title, concerning certification of MMI and evaluation of permanent impairment.

The changes are necessary to attract and retain doctors that perform certain workers' compensation-specific services, including designated doctor examinations, required medical examinations, work status reports, and MMI evaluations and IR examinations by treating and referred doctors, by addressing billing and reimbursement issues, reducing disputes, and by decreasing the administrative burden of participating in the program. Labor Code Chapter 408 entitles an employee that sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed. Specifically, the employee is entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. To help determine the health care that meets those standards, the treating doctor manages and coordinates the injured employee's health care for the compensable injury, including referring the employee to a doctor authorized to determine MMI and to assign IRs when needed. The designated doctor program established under Chapter 408 provides for commissioner-ordered medical examinations to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. Maintaining a viable program that ensures that injured employees can access examinations in a timely way is essential to meeting the statutory mandate of providing health care for injured employees.

Having too few doctors in the program has a negative impact on the doctors that remain in the system, injured employees, and insurance carriers. When there are too few doctors able to conduct

the examinations needed to determine benefit levels, injured employees must often wait longer and travel further to attend an examination, which can delay dispute resolution and other essential processes. DWC last adjusted reimbursement rates for workers' compensation-specific services in January 2008 (33 TexReg 364). Over the past 14 years, DWC has experienced a decline in the numbers of doctors providing workers' compensation-specific services. This decline has been particularly pronounced among designated doctors certified under Labor Code §408.1225 and providing designated doctor examinations as Labor Code §408.0041 requires, and especially among licensed medical doctors and doctors of osteopathy. In December 2022, for the entire state of Texas, there were only 63 available medical doctors, 10 doctors of osteopathic medicine, 177 doctors of chiropractic, and no doctors of podiatry, dental science, or optometry. Yet in that month, there were 1,259 designated doctor appointments for those 250 designated doctors to cover.

DWC held stakeholder meetings in March, September, and December 2022 to discuss issues with declining participation in the designated doctor program, including issues with billing logistics and reimbursement rates. DWC invited public comments on three separate informal drafts posted on DWC's website in August 2022, November 2022, and June 2023. In addition, DWC conducted a stakeholder survey to gather information about anticipated implementation costs and benefits in September 2023. DWC considered the comments it received at the meetings and on the informal drafts when drafting this proposal.

In April 2023, after gathering data about the program and soliciting input from system participants about how to maintain and increase participation in the designated doctor program and allow better access to specialized examinations, DWC adopted amendments to Chapter 127 of this title, concerning designated doctor procedures and requirements, and §180.23 of this title, concerning division-required training for doctors. Those rules addressed certification, training, and procedures for designated doctors and were required to address administrative and logistical inefficiencies, and to improve access to examinations, to make participation in the program possible and attractive for more doctors. They were one part of the project to ensure the designated doctor program's viability, in compliance with the Labor Code. After their adoption, DWC saw a near-immediate increase in the numbers of doctors applying to the program, which was very encouraging.

However, the common theme throughout the input-gathering process about how to improve the program was billing and reimbursement for certain workers' compensation-specific services, especially designated doctor examinations. Nearly every comment DWC received mentioned some combination of issues about the fees for designated doctor examinations--that they were insufficient, had not been adjusted for inflation or other economic factors in over a decade, did not take into account missed appointments or the time spent reviewing injured employees' medical records, and other similar issues. In adopting the amendments to Chapter 127 and §180.23, DWC stated that billing and reimbursement issues would be addressed in a separate rule project. As a result, the changes in this rule proposal are another part of the project, and are necessary to account for past and future inflation, examination complexity, and other economic factors that affect participation in the designated doctor program.

Labor Code Chapter 408 governs workers' compensation benefits. It entitles an injured employee that sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed. It requires a variety of workers' compensation-specific services, including required medical examinations; designated doctor examinations; MMI evaluations and IR examinations; and return-to-work and evaluation of medical care examinations.

Labor Code Chapter 413, Subchapter B, Medical Services and Fees, requires in part that the commissioner of workers' compensation adopt health care reimbursement policies and guidelines, develop one or more conversion factors or other payment adjustment factors, and provide for reasonable fees for the evaluation and management of care. Fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. Medical policies and guidelines must be designed to ensure the quality of medical care and to achieve effective medical cost control; designed to enhance a timely and appropriate return to work; and consistent with §§413.013, 413.020, 413.052, and 413.053.

The changes are necessary to comply with the mandates for administering the workers' compensation benefit and fee system in Labor Code Chapters 408 and 413. The proposal also includes nonsubstantive editorial and formatting changes throughout that make updates for plain language and agency style to improve the rule's clarity.

Section 134.209. The amendments to §134.209 add references to new §134.260 and clarify that the new and amended sections apply to workers' compensation-specific codes, services, and programs provided on or after June 1, 2024. Amending §134.209 is necessary to conform §134.209 to the new and amended sections and ensure that the rules are accurate.

Section 134.210. The amendments to §134.210 clarify that reimbursement for a missed appointment under §134.240 does not qualify for the 10% incentive payment for services performed in designated workers' compensation underserved areas. The amendments provide that fees established in §§134.235, 134.240, 134.250, and 134.260 of this title will be:

- adjusted once by applying the MEI percentage adjustment factor for the period 2009 - 2024;

- adjusted annually by applying the MEI percentage adjustment factor in §134.203(c)(2);

- rounded to whole dollars; and

- effective on January 1 of each new calendar year.

The amendments clarify that, for services provided under §§134.235, 134.240, 134.250, or 134.260, health care providers must bill and be reimbursed the maximum allowable reimbursement (MAR).

In addition, the amendments simplify the modifiers that health care providers must use when billing professional medical services for correct coding, reporting, billing, and reimbursement based on procedure codes. The amendments add modifier 25 and specify that it must be added to Current Procedural Terminology (CPT) code 99456 for designated doctor examinations involving one or more of the diagnoses listed in §127.130(b)(9)(B) - (I) of this title, including traumatic brain injuries, spinal cord injuries and diagnoses, severe burns, complex regional pain syndrome, joint dislocation, one or more fractures with vascular injury, one or more pelvis fractures, multiple rib fractures, complicated infectious diseases requiring hospitalization or prolonged intravenous antibiotics, chemical exposure, and heart or car-

diovascular conditions. The amendments add modifier 52 and specify that it must be added to CPT code 99456 when DWC ordered the designated doctor to perform an examination of an injured employee, and the injured employee failed to attend the examination. The amendments correct an error that listed the incorrect CPT code for multiple IRs. The amendments delete the RE, SP, TC, and WP modifiers. The amendments realign the "V" modifiers that must be added to CPT code 99455 by deleting V1 and V2 and replacing the more subjective descriptors ("minimal," "self-limited," "minor," "low to moderate," and "moderate to high severity") with references to CPT code standards. For example, per the amendments, modifier V3, treating doctor evaluation of MMI, must now be added to CPT code 99455 when the office visit level of service is equal to CPT code 99213. The amendments also include CPT code 97546 for modifiers WC (work conditioning) and WH (work hardening).

Amending §134.210 is necessary to decrease administrative burdens by eliminating unnecessary billing modifiers and eliminating a required sequence for modifiers, to update the reimbursement rates in compliance with DWC's statutory obligations to maintain the workers' compensation benefit system and set reasonable reimbursement policies and guidelines, and to attract and retain doctors in the system. As fees were last adjusted in 2008, an increase to account for the intervening years of inflation is indicated, and the amendment to §134.210 that adjusts fees annually to account for future inflation is necessary to align with the annual updates in §134.203 of this chapter, concerning the medical fee guideline for professional services.

Section 134.235. New §134.235 renames the section "Required Medical Examinations" to capture the types of examinations more accurately than just the previous title of "Return to Work/Evaluation of Medical Care." It contains statutory references, requires that each examination and its individual billable components be reimbursed separately, and describes the billing methods and reimbursement amounts for a required medical examination (RME) doctor examining an injured employee for MMI or IR. Those billing methods and requirements were previously in §134.250 of this title, but have been moved to new §134.235 to allow RME doctors to find their billing requirements in one section. In addition, new §134.235 describes what the MMI or IR examination must include, specifies increased reimbursement rates for MMI evaluations and IR examinations for musculoskeletal and non-musculoskeletal body areas, and, for testing that is not outlined in the American Medical Association (AMA) guides, requires billing and reimbursement for the appropriate testing CPT code or codes according to the applicable fee guideline in addition to the fees for the MMI and IR examinations. New §134.235 sets increased rates for examinations to determine extent of injury, disability, return to work, other similar issues, and appropriateness of health care. In addition, for required medical examination doctors, all issues addressed within one examination will be paid at the established fee and not reduced. Finally, new §134.235 sets billing and reimbursement requirements for when the RME doctor refers testing to a specialist. It also requires documentation of the referral.

Repealing §134.235 and adopting new §134.235 is necessary to consolidate RME doctors' billing and reimbursement requirements into one section to increase efficiency and ease of use and decrease the possibility of errors, to update the reimbursement rates in compliance with DWC's statutory obligations to maintain the workers' compensation benefit system and set reasonable reimbursement policies and guidelines, and to attract and retain doctors in the system.

Section 134.239. New §134.239 states that work status reports may not be billed or reimbursed separately when they are completed as a component of an ordered examination. Repealing §134.239 and adopting new §134.239 is necessary to update references to conform with the restructured sections and clarify the language. The change does not affect how work status reports are billed in practice.

Section 134.240. New §134.240 specifies billing and reimbursement requirements for designated doctor examinations. It contains statutory references, provides for a $100 missed appointment fee, requires that each examination and its individual billable components be reimbursed separately, and describes the billing methods and reimbursement amounts for a designated doctor examination. In addition, new §134.240 sets the total MAR for an MMI or IR examination, describes what the MMI or IR examination must include and how it must be billed and reimbursed, specifies increased reimbursement rates for MMI evaluations and IR examinations for musculoskeletal and non-musculoskeletal body areas, and, for testing that is not outlined in the AMA guides, requires billing and reimbursement for the appropriate testing CPT code or codes according to the applicable fee guideline in addition to the fees for the MMI and IR examinations. New §134.240 sets increased rates for examinations to determine extent of injury, disability, return to work, and other similar issues. New §134.240 also sets billing and reimbursement requirements for when the designated doctor refers testing to a specialist, and it requires documentation of the referral. It also specifies that the 95-day period for timely submission of the designated doctor bill for the examination begins on the date of service of the additional testing or evaluation, and that the designated doctor and any referral health care providers must include the DWC-provided assignment number in the prior authorization field, per §133.10(f)(1)(N) of this title. In addition, for designated doctors, all issues addressed within one examination will be paid at the established fee and not reduced. Finally, new §134.240 sets a $300 specialist fee in addition to the examination fee for certain specialized diagnoses.

Based on feedback from many designated doctors in the system, DWC included the missed appointment fee to compensate, at least in part, designated doctors that schedule an examination appointment with an injured employee, do the required medical record review, prepare for the examination, travel to the appointment, and then have the injured employee not attend the appointment. In the current system, those designated doctors would not be compensated for that missed appointment or the work they performed to prepare for it. The missed appointment fee acknowledges the work the designated doctors are required to do to prepare for an examination.

The specialist fee also acknowledges designated doctors' time and effort spent in gaining specialty certifications and expertise. It reimburses board-certified physicians that participate in the designated doctor program and examine injured employees with certain complex injuries or diagnoses. DWC expects that the specialist fee will help increase the numbers of board-certified physicians in the program, which will reduce delays in examinations for employees with complex injuries or diagnoses and contribute to overall system health and efficiency.

Repealing §134.240 and adopting new §134.240 is necessary to consolidate designated doctors' billing and reimbursement requirements into one section to increase efficiency and ease of

use and decrease the possibility of errors. It is also necessary to put in place a missed appointment fee to compensate designated doctors for the time and expense they incur in reviewing medical records and traveling to the exam location when the injured employee does not attend the examination; and to set a specialist fee for examinations that require particular board certifications and expertise. In addition, repealing §134.240 and adopting new §134.240 is necessary to update the reimbursement rates in compliance with DWC's statutory obligations to maintain the workers' compensation benefit system and set reasonable reimbursement policies and guidelines. It is also necessary to attract and retain doctors in the system.

Section 134.250. The amendments to §134.250 rename the section "Maximum Medical Improvement Evaluations and Impairment Rating Examinations by Treating Doctors" to reflect the restructuring in this rule. The amendments move the requirements for required medical examinations into new §134.235, for designated doctors into new §134.240, and for referred doctors into new §134.260. The amendments make §134.250 specific to treating doctors, so treating doctors will be able to find their billing requirements in one section. They specify the billing methods and reimbursement requirements for MMI and IR examinations, and they permit a treating doctor that is not authorized to assign an IR to refer the injured employee to an authorized doctor for the examination and certification of MMI and IR, specifying that the referred doctor must bill under §134.260. In addition, the amendments to §134.250 specify increased reimbursement rates for MMI evaluations and IR examinations for musculoskeletal and non-musculoskeletal body areas, and, for testing that is not outlined in the AMA guides, require billing and reimbursement for the appropriate testing CPT code or codes according to the applicable fee guideline in addition to the fees for examination by the treating doctor. Finally, the amendments increase the reimbursement rate for a treating doctor reviewing the certification of MMI and assignment of IR performed by another doctor (referred doctor). Amending §134.250 is necessary to consolidate treating doctors' billing and reimbursement requirements into one section to increase efficiency and ease of use and decrease the possibility of errors, to update the reimbursement rates in compliance with DWC's statutory obligations to maintain the workers' compensation benefit system and set reasonable reimbursement policies and guidelines, and to attract and retain doctors in the system.

Section 134.260. New §134.260 concerns MMI evaluations and IR examinations by referred doctors. It describes what the MMI or IR examination must include, specifies increased reimbursement rates for MMI evaluations and IR examinations for musculoskeletal and non-musculoskeletal body areas, and, for testing that is not outlined in the AMA guides, requires billing and reimbursement for the appropriate testing CPT code or codes according to the applicable fee guideline in addition to the fees for the MMI and IR examinations. Adopting new §134.260 is necessary to consolidate referred doctors' billing and reimbursement requirements into one section to increase efficiency and ease of use and decrease the possibility of errors, to update the reimbursement rates in compliance with DWC's statutory obligations to maintain the workers' compensation benefit system and set reasonable reimbursement policies and guidelines, and to attract and retain doctors in the system.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Health and Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be minimal fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local and state government entities are only involved in enforcing or complying with the proposed amendments when acting in the capacity of a workers' compensation insurance carrier. Those entities will be impacted in the same way as an insurance carrier and will realize the same benefits from the updates in the rules. They include the State Office of Risk Management, the Texas Department of Transportation, the University of Texas System Administration, and the Texas A&M University System Administration.

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

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the changes are in effect, Deputy Commissioner Landrum expects that enforcing and administering them will have the public benefits of reducing administrative burdens by eliminating unnecessary billing modifiers, eliminating a required sequence for modifiers, replacing the diagnosis-related estimate and range of motion billing methods with a single method of billing, and restructuring and editing the rules to make them more user-friendly and easier to comply with, which promotes transparent and efficient regulation.

Deputy Commissioner Landrum also expects that enforcing and administering the rules will have the public benefits of maintaining and bolstering a workers' compensation benefit system that has enough participating doctors and does not produce unnecessary delays in health care or in resolving medical disputes, compensating participating doctors fairly and in accordance with the Labor Code's statutory mandates for fee guidelines, and ensuring that the rules conform to Labor Code Chapters 408 and 413.

Labor Code §413.011 requires that the commissioner adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. Labor Code §413.012 requires DWC to review medical policies and fee guidelines at least every two years to reflect fair and reasonable fees and medical treatment or ranges of treatment that are reasonable and necessary at the time the review and revision is conducted. DWC reviewed billing methodologies and reimbursement amounts to ensure that these medical policies and fee guidelines align with the need to attract and retain an adequate number of qualified designated doctors, RME doctors, and MMI and IR certified doctors participating in the workers' compensation system. DWC analyzed designated doctor and RME order data, and billing information for the certification of MMI and IR by treating and referred doctors, to determine the cost of the proposed amendments to the workers' compensation system.

Injured employees will benefit from the rules because the fee increases and annual MEI adjustments will encourage additional doctors to participate in the workers' compensation system as designated doctors, RME doctors, and MMI and IR certified doctors, which will increase injured employees' access to these services.

Insurance carriers, certified self-insurers, and employers will benefit from having a larger and more stable pool of participating doctors to support access to high-quality health care and return-to-work initiatives. They will also benefit from the predictability and consistency of the annual MEI adjustments, reduced administrative burdens, reduced medical fee dispute actions, and general system health.

Health care providers will benefit from the reimbursement modifications in the rules. The increase in reimbursement reflects the increased costs for providing workers' compensation-specific services, including designated doctor examinations, required medical examinations, work status reports, and MMI evaluations and IR examinations by treating and referred doctors, as well as from annual inflation and economic changes. Health care providers performing these services will benefit from the annual MEI adjustments that ensure that economic changes will be reflected annually. Designated doctors will also benefit from the simplified billing requirements, increased certainty of payment from the clarification of when the 95-day billing period begins, and decreased need for medical fee disputes about the payment of designated doctor bills and bills from testing and referral health care providers associated with the designated doctor examination.

Deputy Commissioner Landrum expects that, for each year of the first five years, the changes will impose an economic cost on persons required to comply with them. Based on DWC's statutory responsibilities to maintain programs to provide workers' compensation-specific services, including designated doctor examinations, required medical examinations, work status reports, and MMI evaluations and IR examinations by treating and referred doctors, and to periodically review and update medical policies and fee guidelines, and based on the feedback that DWC collected from stakeholders, DWC estimates the following costs from the changes.

For the affected programs, DWC estimates that based on calendar year (CY) 2022 activity, the total system impact from the changes will be about $9 million over CY 2022 reimbursement. That includes a one-time initial adjustment in rates based on the accrued changes in the MEI since the rates were last adopted, plus costs associated with removing tiering, adding the missed appointment fee, and adding the specialist fee. For the past five years, the annual change in the MEI has ranged from 1.4% to 4.6%, averaging 2.8%. Based on this estimated average future year over previous year percentage, DWC estimates the increase in reimbursement to be a little more than $1 million per year. To help offset costs for teaching and training staff on the changes, DWC expects to provide free training presentations with specific billing examples after the rule is adopted but before it becomes effective.

Insurance carriers and certified self-insurers will incur costs from the MEI initial adjustment for inflation for the period 2009 - 2024, from the annual MEI adjustment, from removing tiering and adding the missed appointment and specialist fees, and from any modifications to their bill processing systems necessary to implement the changes. DWC expects that any needed system updates to accommodate the changed amounts will incur low, if any, costs because insurance carriers must already adjust for annual changes in Medicare billing, and the changes in the rules use the same annual MEI. Having a consistent, predictable annual adjustment makes programming and maintaining billing systems simpler and more efficient. DWC also anticipates that the benefits from reduced administrative burdens, such as billing clarity in being able to identify claims with associated designated doctor examinations easily, reduced medical fee dispute actions, a larger and more consistent pool of participating doctors, and improved general system health, will help offset the cost burden.

Health care providers will incur costs to modify their systems and train employees on the billing changes. Based on stakeholder feedback about implementation costs, DWC estimates that health care providers will need about a week and a half to update software and train staff, resulting in a one-time cost of about $400, but DWC expects that the anticipated savings of about $2,000 per year far outweighs the implementation cost. Stakeholders stated that the anticipated savings include reduced billing time and efforts following up on reimbursement, the MEI increase and ability to file claims electronically, getting paid for missed appointments, avoiding denial of payment for timely filing when referral testing is delayed, reduced medical fee dispute resolution expenses, and reduced administrative and supply costs. They also noted that the increased reimbursements bring the Texas program more in line with the current economic climate and other states, and expect that the changes will help retain and attract more health care providers.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the changes may have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses and rural communities. Most of the potential cost from these rules impacts insurance carriers. DWC identified 145 insurance carriers that had more than $0 but less than $6 million total direct written premium nationally for workers' compensation insurance. These insurance carriers writing workers' compensation insurance in Texas meet the definition of a small business under Government Code §2006.001(2)(C). As a result, DWC estimates that the changes may affect 145 small or micro businesses.

In addition, most rural political subdivisions self-insure their workers' compensation responsibilities individually or as part of a pool, so their impacts and benefits will be similar to the insurance carriers'. The data readily available from the Texas Demographic Center and the United States Census Bureau divides the Texas population into "places" and counties. For census purposes, "place" includes census designated places, consolidated cities, and incorporated places. There are often multiple places in a county, and some places span multiple counties, so the reports DWC collects from political subdivisions that self-insure their workers' compensation liabilities may include places that span different counties. As a result, to get the best estimate of affected rural communities, DWC looked at the Texas Demographic Center's January 2023 estimated county populations. Government Code Chapter 487 defines "rural county" at various population levels, ranging from a maximum population of 125,000 to 150,000. But Government Code Chapter 490G defines "rural county" in part as a county with a population of less than 60,000. Insurance Code Chapter 845 defines "rural area" as a county with a population of 50,000 or less. Using the most inclusive definition, of the 254 Texas counties, 222 have a population of less than 150,000, and all of those contain one or more self-insuring political subdivisions. As a result, DWC estimates that the changes may affect 222 rural counties on some level.

The primary objectives of this proposal are to attract and retain doctors to participate in the designated doctor program and the MMI and IR certification program, as well as doctors providing required medical examinations, by revising and simplifying billing requirements, increasing fees for the various examination types and adjusting for previous and future inflation, and adding monetary incentives for participation of board-certified physicians in the designated doctor program. DWC considered the following alternatives to minimize any adverse impact on small and micro businesses and rural communities while accomplishing the proposal's objectives:

(1) Not proposing the changes. DWC considered not proposing the changes but rejected that option. Doctors participating in the workers' compensation system have consistently told DWC that the reimbursement rates are too low and make it difficult or impossible for them to continue to participate. The decrease in the numbers of participating doctors from 2009 - 2023 demonstrates the need to increase reimbursement rates to keep pace with inflation and other economic pressures. This demonstrated experience, combined with DWC's statutory mandate for reasonable fee guidelines, means that not proposing the changes is not a viable option.

(2) Proposing a different requirement for small and micro businesses or rural communities. DWC considered proposing a different requirement for small and micro businesses or rural communities but rejected that option. Given the number of insurance carriers writing workers' compensation policies in Texas that qualify as small businesses based on their premium volume, and the fact that many doctors operate as sole practitioners or in small offices, proposing a different requirement for small and micro businesses or rural communities would mean that the different requirement would likely be the rule, not the exception. That situation would defeat the purposes of adopting the rule in promoting system health through stability and consistency. In addition, such an exception would create an unlevel playing field, where health care providers performing the same work would be subject to different standards and different fees, which could conceivably drive health care providers out of the system instead of attracting and retaining them.

(3) Exempting small or micro businesses or rural communities from the proposed requirement that could create the adverse impact. DWC considered exempting small or micro businesses or rural communities from all or part of the rules but rejected that option. Like the second option, this would create a situation where the exception would be the rule, and would defeat the purposes of adopting the rule in the first place; and would create an unlevel playing field that could drive health care providers out of the system instead of attracting and retaining them. Exempting insurance carriers and system providers could also adversely impact the care that Labor Code §408.021 guarantees an employee that sustains a compensable injury by decreasing the available health care providers' numbers to such a degree that workers' compensation-specific services are not reasonably available. Such an exemption would also be inconsistent with Labor Code §413.011, which requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed rule is necessary to implement legislation. The proposed rule implements Labor Code Chapters 408 and 413, which mandate workers' compensation benefits and medical services and fees, including §§408.004, 408.0041, and 413.011.

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

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rules' applicability; and

- will not positively or adversely affect the Texas economy.

DWC made these determinations because the changes enhance efficiency and clarity; conform the language to current agency structure, practice, and related rules; and make editorial changes for plain language and agency style. They do not change the people the rule affects. The additional costs the changes impose are necessary to comply with the Labor Code's mandates in Chapters 408 and 413 for health care for injured employees that DWC administer programs for workers' compensation-specific services and that DWC adopt fee guidelines and billing and reimbursement policies that are fair and reasonable, account for economic indicators in health care, and are designed to ensure the quality of medical care and achieve medical cost control.

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

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on January 29, 2024. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal at a public hearing at 11:00 a.m., Central time, on January 23, 2024. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov//alert/event/index.html.

28 TAC §§134.209, 134.210, 134.235, 134.239, 134.240, 134.250, 134.260

STATUTORY AUTHORITY. DWC proposes amended §§134.209, 134.210, and 134.250; and new §§134.235, 134.239, 134.240, and 134.260 under Labor Code §§408.004, 408.0041, 408.021, 408.023, 408.0251, 408.0252, 408.1225, 413.007, 413.011, 413.012, 413.015, 413.0511, 413.053, 402.00111, 402.00116, and 402.061.

Labor Code §408.004 provides that the commissioner may require an employee to submit to medical examinations to resolve any question about the appropriateness of the health care the employee receives, or at the request of the insurance carrier after the insurance carrier has tried and failed to get the employee's permission and concurrence for the examination. It also requires the insurance carrier to pay for those examinations, as well as the reasonable expenses incident to the employee in submitting to them.

Labor Code §408.0041 provides that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work; or other similar issues.

Labor Code §408.021 entitles an employee that sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.0251 requires the commissioner of workers' compensation, in cooperation with the commissioner of insurance, to adopt rules about the electronic submission and processing of medical bills by health care providers to insurance carriers and establish exceptions. It also requires insurance carriers to accept electronically submitted medical bills in accordance with the rules, and it allows the commissioner of workers' compensation to adopt rules about the electronic payment of medical bills by insurance carriers to health care providers.

Labor Code §408.0252 provides that the commissioner of workers' compensation may, by rule, identify areas of this state in which access to health care providers is less available, and adopt appropriate standards, guidelines, and rules about the delivery of health care in those areas.

Labor Code §408.1225 requires the commissioner of workers' compensation to develop a process for certifying designated doctors, which requires DWC to evaluate designated doctors' educational experience, previous training, and demonstrated ability to perform the specific designated doctor duties in §408.0041. It also requires standard training and testing for designated doctors.

Labor Code §413.007 requires DWC to maintain a statewide database of medical charges, actual payments, and treatment protocols that may be used by the commissioner in adopting the medical policies and fee guidelines, and by DWC in administering the medical policies, fee guidelines, or rules. The database must contain information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols, and must be able to be used in a meaningful way to allow DWC to control medical costs.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as needed to meet occupational injury requirements. It requires the commissioner to adopt the most current methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services (CMS), including applicable payment policies relating to coding, billing, and reporting; and allows the commissioner to modify documentation requirements as needed to meet the requirements of §413.053. It also requires the commissioner, in determining the appropriate fees, to develop one or more conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of §413.011(d); and requires the commissioner to provide for reasonable fees for the evaluation and management of care as required by §408.025(c) and commissioner rules. The commissioner may not adopt the Medicare fee schedule or conversion factors or other payment adjustment factors based solely on those factors as developed by the federal CMS. Fee guidelines must be fair and reasonable, and designed to ensure the quality of medical care and achieve medical cost control. They may not provide for payment of a fee that exceeds the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. When establishing the fee guidelines, §413.011 requires the commissioner to consider the increased security of payment that Subtitle A, Title 5, Labor Code affords. It allows network contracts under Insurance Code §1305.006. It specifically authorizes the commissioner and the commissioner of insurance to adopt rules as necessary to implement §413.011.

Labor Code §413.012 requires the medical policies and fee guidelines to be reviewed and revised at least every two years to reflect fair and reasonable fees and to reflect medical treatment or ranges of treatment that are reasonable and necessary at the time the review and revision is conducted.

Labor Code §413.015 requires insurance carriers to pay appropriate charges for medical services under Subtitle A, Title 5, Labor Code, and requires the commissioner by rule to review and audit those payments to ensure compliance with the adopted medical policies and fee guidelines. The insurance carrier must pay the expenses of the review and audit.

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

and model used by the Medicare system as needed to meet occupational injury requirements.

Labor Code §413.053 requires the commissioner by rule to establish standards of reporting and billing governing both form and content.

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

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

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

CROSS-REFERENCE TO STATUTE. Sections 134.209, 134.210, 134.235, 134.239, 134.240, 134.250, and 134.260 implement Labor Code §§408.004, 408.0041 and 413.011, amended and enacted by House Bill 2600, 77th Legislature, Regular Session (2001), and last amended in 2007, 2023, and 2007, respectively.

§134.209. Applicability.

(a) Sections 134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, 134.250, and 134.260 [~~134.250~~] of this title apply to workers' compensation specific codes, services, and programs provided in the Texas workers' compensation system, other than:

(1) professional medical services described in §134.203 of this title;

(2) prescription drugs or medicine;

(3) dental services;

(4) the facility services of a hospital or other health care facility; and

(5) medical services provided through a workers' compensation health care network certified under [~~pursuant to~~] Insurance Code Chapter 1305, except as provided in §134.1 of this title and Insurance Code Chapter 1305.

(b) Sections 134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, [~~and~~] 134.250, and 134.260 of this title apply to workers' compensation specific codes, services, and programs provided on or after June 1, 2024 [~~September 1, 2016~~].

(c) If a court of competent jurisdiction holds that any provision of §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, 134.250, and 134.260 [~~134.250~~] of this title or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application and the provisions of §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, 134.250, and 134.260 [~~134.250~~] of this title are severable.

(d) When billing for a treating doctor examination to define the compensable injury, refer to §126.14 of this title.

§134.210. Medical Fee Guideline for Workers' Compensation Specific Services.

(a) Specific provisions contained in the Labor Code or division rules, including this chapter, [~~shall~~] take precedence over any conflicting provision adopted or used [~~utilized~~] by the Centers for Medicare and Medicaid Services (CMS) in administering the Medicare program. Independent review organization decisions on [~~regarding~~] medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title, which are made on a case-by-case basis, take precedence, in that case only, over any division rules and Medicare payment policies.

(b) Payment policies relating to coding, billing, and reporting for workers' compensation specific codes, services, and programs are as follows:

(1) Health care providers must [~~shall~~] bill their usual and customary charges using the most current Level I Current Procedural Terminology (CPT) and Level II Healthcare Common Procedure Coding System (HCPCS) codes. Health care providers must [~~shall~~] submit medical bills in accordance with the Labor Code and division rules.

(2) Modifying circumstance must [~~shall~~] be identified by use of the appropriate modifier following the appropriate Level I (CPT codes) and Level II HCPCS codes. Where HCPCS modifiers apply, insurance carriers must [~~shall~~] treat them in accordance with Medicare and Texas Medicaid rules. In addition [~~Additionally~~], division-specific modifiers are identified in subsection (f) [~~(e)~~] of this section. When two or more modifiers apply [~~are applicable~~] to a single HCPCS code, indicate each modifier on the bill.

(3) A 10% [~~10 percent~~] incentive payment must [~~shall~~] be added to the maximum allowable reimbursement (MAR) for services outlined in §§134.220, 134.225, 134.235, 134.240, 134.250, and 134.260 [~~134.250~~] of this title and subsection (d) of this section that are performed in designated workers' compensation underserved areas in accordance with §134.2 of this title. However, reimbursement for a missed appointment under §134.240 does not qualify for the 10% incentive payment.

(4) Fees established in §§134.235, 134.240, 134.250, and 134.260 of this title will be:

(A) adjusted once by applying the Medicare Economic Index (MEI) percentage adjustment factor for the period 2009 - 2024.

(B) adjusted annually by applying the MEI percentage adjustment factor identified in §134.203(c)(2).

(C) rounded to whole dollars by dropping amounts under 50 cents and increasing amounts from 50 to 99 cents to the next dollar. For example, $1.39 becomes $1 and $2.50 becomes $3.

(D) effective on January 1 of each new calendar year.

(c) When there is a negotiated or contracted amount that complies with Labor Code §413.011, reimbursement must [~~shall~~] be the negotiated or contracted amount that applies to the billed services.

(d) When billing for services in §§134.215, 134.220, 134.225, or 134.230, and there is no negotiated or contracted amount that complies with Labor Code §413.011, reimbursement must [~~shall~~] be the least of the:

(1) MAR amount;

(2) health care provider's usual and customary charge[~~, unless directed by division rule to bill a specific amount~~]; or

(3) fair and reasonable amount consistent with the standards of §134.1 of this title.

(e) For services provided under §§134.235, 134.240, 134.250, or 134.260, health care providers must bill and be reimbursed the MAR.

(f) [(e)] The following division modifiers must [shall] be used by health care providers billing professional medical services for correct coding, reporting, billing, and reimbursement of the procedure codes.

(1) 25--This modifier must be added to CPT code 99456 when the division ordered the designated doctor to perform an examination of an injured employee with one or more of the diagnoses listed in §127.130(b)(9)(B) - (I) of this title.

(2) 52--This modifier must be added to CPT code 99456 when the division ordered the designated doctor to perform an examination of an injured employee, and the injured employee failed to attend the examination.

(3) [(1)] CA, Commission on Accreditation of Rehabilitation Facilities (CARF) accredited programs--This modifier must [shall] be used when a health care provider bills for a return-to-work [return to work] rehabilitation program that is CARF accredited.

(4) [(2)] CP, chronic pain management program--This modifier must [shall] be added to CPT code 97799 to indicate chronic pain management program services were performed.

(5) [(3)] FC, functional capacity--This modifier must [shall] be added to CPT code 97750 when a functional capacity evaluation is performed.

(6) [(4)] MR, outpatient medical rehabilitation program--This modifier must [shall] be added to CPT code 97799 to indicate outpatient medical rehabilitation program services were performed.

(7) [(5)] MI, multiple impairment ratings--This modifier must [shall] be added to CPT code 99456 [99455] when the designated doctor is required to complete multiple impairment ratings calculations.

(8) [(6)] NM, not at maximum medical improvement (MMI)--This modifier must [shall] be added to the appropriate MMI CPT code to indicate that the injured employee has not reached MMI when the purpose of the examination was to determine MMI.

[(7) RE, return to work (RTW) and/or evaluation of medical care (EMC)--This modifier shall be added to CPT code 99456 when a RTW or EMC examination is performed.]

[(8) SP, specialty area--This modifier shall be added to the appropriate MMI CPT code when a specialty area is incorporated into the MMI report.]

[(9) TC, technical component--This modifier shall be added to the CPT code when the technical component of a procedure is billed separately.]

(9) [(10)] VR, review report--This modifier must [shall] be added to CPT code 99455 to indicate that the service was the treating doctor's review of reports [report(s)] only.

(10) [(11)] V3, [V1, level of MMI for] treating doctor evaluation of MMI--This modifier must [shall] be added to CPT code 99455 when the office visit level of service is equal to CPT code 99213 [a "minimal" level].

(11) [(12)] V4, [V2, level of MMI for] treating doctor evaluation of MMI--This modifier must [shall] be added to CPT code 99455 when the office visit level of service is equal to CPT code 99214 ["self limited or minor" level].

(12) [(13)] V5, [V3, level of MMI for] treating doctor evaluation of MMI--This modifier must [shall] be added to CPT code 99455 when the office visit level of service is equal to CPT code 99215 ["low to moderate" level].

[(14) V4, level of MMI for treating doctor--This modifier shall be added to CPT code 99455 when the office visit level of service is equal to "moderate to high severity" level and at least 25 minutes duration.]

[(15) V5, level of MMI for treating doctor--This modifier shall be added to CPT code 99455 when the office visit level of service is equal to "moderate to high severity" level and at least 45 minutes duration.]

(13) [(16)] WC, work conditioning--This modifier must [shall] be added to CPT codes [code] 97545 and 97546 to indicate work conditioning was performed.

(14) [(17)] WH, work hardening--This modifier must [shall] be added to CPT codes [code] 97545 and 97546 to indicate work hardening was performed.

[(18) WP, whole procedure--This modifier shall be added to the CPT code when both the professional and technical components of a procedure are performed by a single health care provider.]

(15) [(19)] W1, case management for treating doctor--This modifier must [shall] be added to the appropriate case management billing code activities when performed by the treating doctor.

(16) [(20)] W5, designated doctor examination for impairment or attainment of MMI--This modifier must [shall] be added to the appropriate examination code performed by a designated doctor when determining impairment caused by the compensable injury and in attainment of MMI.

(17) [(21)] W6, designated doctor examination for extent--This modifier must [shall] be added to the appropriate examination code performed by a designated doctor when determining extent of the injured employee's compensable injury.

(18) [(22)] W7, designated doctor examination for disability--This modifier must [shall] be added to the appropriate examination code performed by a designated doctor when determining whether the injured employee's disability is a direct result of the work-related injury.

(19) [(23)] W8, designated doctor examination for return to work--This modifier must [shall] be added to the appropriate examination code performed by a designated doctor when determining the ability of the injured employee to return to work.

(20) [(24)] W9, designated doctor examination for other similar issues--This modifier must [shall] be added to the appropriate examination code performed by a designated doctor when determining other similar issues.

§134.235. Required Medical Examinations.

(a) Required medical examination doctors (RME doctors) must perform examinations in accordance with Labor Code §§408.004, 408.0041, 408.0043, and 408.0045 and division rules.

(b) Each examination and its individual billable components will be billed and reimbursed separately.

(c) When conducting an insurance carrier-requested examination to determine impairment or attainment of maximum medical improvement (MMI), the RME doctor must bill, and the insurance carrier must reimburse, using CPT code 99456, with the modifiers and at the rates specified in paragraphs (c)(2) - (3).

(1) The total maximum allowable reimbursement (MAR) for a MMI or impairment rating (IR) examination is equal to the MMI evaluation reimbursement plus the reimbursement for the body area or

areas evaluated for the assignment of an IR. The MMI or IR examination must include:

(A) the examination;

(B) consultation with the injured employee;

(C) review of the records and films;

(D) the preparation and submission of reports (including the narrative report and responding to the need for further clarification, explanation, or reconsideration), calculation tables, figures, and worksheets; and

(E) tests used to assign the IR, as outlined in the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides), as stated in the Labor Code and Chapter 130 of this title.

(2) RME doctors must only bill and be reimbursed for an MMI or IR examination if they are an authorized doctor in accordance with the Labor Code and Chapter 130 and §180.23 of this title.

(A) If the RME doctor determines that MMI has not been reached, the RME doctor must bill, and the insurance carrier must reimburse, the MMI evaluation portion of the examination in accordance with subsections (c)(1) and (c)(3) of this section. The RME doctor must add modifier "NM."

(B) If the RME doctor determines that MMI has been reached and there is no permanent impairment because the injury was sufficiently minor, and an IR evaluation was not warranted, the RME doctor must only bill, and the insurance carrier must only reimburse, the MMI evaluation portion of the examination in accordance with subsections (c)(1) and (c)(3) of this section.

(C) If the RME doctor determines MMI has been reached and an IR evaluation is performed, the RME doctor must bill, and the insurance carrier must reimburse, both the MMI evaluation and the IR evaluation portions of the examination in accordance with this subsection.

(3) MMI. MMI evaluations will be reimbursed at $449 adjusted per §134.210(b)(4).

(4) IR. For IR examinations, the RME doctor must bill, and the insurance carrier must reimburse, the components of the IR evaluation. Indicate the number of body areas rated in the units column of the billing form.

(A) For musculoskeletal body areas, the RME doctor may bill for a maximum of three body areas.

(i) Musculoskeletal body areas are:

(I) spine and pelvis;

(II) upper extremities and hands; and

(III) lower extremities (including feet).

(ii) For musculoskeletal body areas:

(I) the reimbursement for the first musculoskeletal body area is $385 adjusted per §134.210(b)(4); and

(II) the reimbursement for each additional musculoskeletal body area is $192 adjusted per §134.210(b)(4).

(B) For non-musculoskeletal body areas, the RME doctor may bill, and the insurance carrier must reimburse, for each non-musculoskeletal body area examined.

(i) Non-musculoskeletal body areas are:

(I) body systems;

(II) body structures (including skin); and

(III) mental and behavioral disorders.

(ii) For a complete list of body system and body structure non-musculoskeletal body areas, refer to the appropriate AMA Guides.

(iii) The reimbursement for the assignment of an IR in a non-musculoskeletal body area is $192 adjusted per §134.210(b)(4).

(C) If the examination for the determination of MMI or the assignment of IR requires testing that is not outlined in the AMA Guides, the RME doctor must bill, and the insurance carrier must reimburse, the appropriate testing CPT code or codes according to the applicable fee guideline in addition to the fees for the examination by the RME doctor outlined in subsection (c) of this section.

(d) When conducting an insurance carrier-requested examination to determine the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the compensable injury, the ability of the injured employee to return to work, other similar issues, or appropriateness of medical care, the RME doctor must bill, and the insurance carrier must reimburse, using CPT code 99456 and at the rates specified in paragraphs (d)(1) - (5).

(1) Extent of injury. The reimbursement rate for determining the extent of the injured employee's compensable injury is $642 adjusted per §134.210(b)(4).

(2) Disability. The reimbursement rate for determining whether the injured employee's disability is a direct result of the work-related injury is $642 adjusted per §134.210(b)(4).

(3) Return to work. The reimbursement rate for determining the ability of the injured employee to return to work is $642 adjusted per §134.210(b)(4).

(4) Other similar issues. The reimbursement rate for determining other similar issues is $642 adjusted per §134.210(b)(4).

(5) Appropriateness of health care. The reimbursement rate for appropriateness of health care as defined in §126.6 (concerning Required Medical Examination) and Labor Code §408.004 is $642 adjusted per §134.210(b)(4).

(e) When the RME doctor refers testing to a specialist, the referral health care provider must bill, and the insurance carrier must reimburse, the appropriate CPT code or codes for the tests required for the assignment of IR, according to the applicable division fee guideline. Documentation of the referral is required.

§134.239. Billing for Work Status Reports.

Work status reports described by §129.5 of this title may not be billed or reimbursed separately when completed as a component of an ordered examination.

§134.240. Designated Doctor Examinations.

(a) Designated doctors must perform examinations in accordance with Labor Code §§408.004, 408.0041, and 408.151 and division rules.

(b) The designated doctor must bill, and the insurance carrier must reimburse, for a missed appointment when the injured employee does not attend a properly scheduled or rescheduled examination under 28 TAC §127.5(h) - (j).

(1) The designated doctor may bill for the missed appointment fee when:

(A) the injured employee does not attend a scheduled appointment; and

(B) the designated doctor waits at the examination location for at least 30 minutes after the scheduled appointment time.

(2) When billing for the missed appointment, the designated doctor must bill CPT code 99456 with modifier "52."

(3) Reimbursement for a missed appointment is $100 adjusted per §134.210(b)(4).

(4) Reimbursement for a missed appointment under this section does not qualify for the 10% incentive payment under §134.2 of this chapter.

(c) Each examination and its individual billable components will be billed and reimbursed separately.

(d) When conducting a designated doctor examination, the designated doctor must bill, and the insurance carrier must reimburse, using CPT code 99456 and with the modifiers and rates specified in subsection (d)(1) - (7).

(1) The total maximum allowable reimbursement (MAR) for a maximum medical improvement (MMI) or impairment rating (IR) examination is equal to the MMI evaluation reimbursement plus the reimbursement for the body area or areas evaluated for the assignment of an IR. The MMI or IR examination must include:

(A) the examination;

(B) consultation with the injured employee;

(C) review of the records and films;

(D) the preparation and submission of reports (including the narrative report and responding to the need for further clarification, explanation, or reconsideration), calculation tables, figures, and worksheets; and

(E) tests used to assign the IR, as outlined in the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides), as stated in the Labor Code and Chapter 130 of this title.

(2) A designated doctor must only bill and be reimbursed for an MMI or IR examination if they are an authorized doctor in accordance with the Labor Code and Chapter 130 and §180.23 of this title.

(A) If the designated doctor determines that MMI has not been reached, the MMI evaluation portion of the examination must be billed and reimbursed in accordance with subsection (d) of this section. The designated doctor must add modifier "NM."

(B) If the designated doctor determines that MMI has been reached and there is no permanent impairment because the injury was sufficiently minor, an IR evaluation is not warranted and only the MMI evaluation portion of the examination must be billed and reimbursed in accordance with subsection (d) of this section.

(C) If the designated doctor determines MMI has been reached and an IR evaluation is performed, both the MMI evaluation and the IR evaluation portions of the examination must be billed and reimbursed in accordance with subsection (d) of this section.

(3) MMI. MMI evaluations will be reimbursed at $449 adjusted per §134.210(b)(4), and the designated doctor must apply the additional modifier "W5."

(4) IR. For IR examinations, the designated doctor must bill, and the insurance carrier must reimburse, the components of the IR evaluation. The designated doctor must apply the additional modifier "W5." Indicate the number of body areas rated in the units column of the billing form.

(A) For musculoskeletal body areas, the designated doctor may bill for a maximum of three body areas.

(i) Musculoskeletal body areas are:

(I) spine and pelvis;

(II) upper extremities and hands; and

(III) lower extremities (including feet).

(ii) For musculoskeletal body areas:

(I) the reimbursement for the first musculoskeletal body area is $385 adjusted per §134.210(b)(4); and

(II) the reimbursement for each additional musculoskeletal body area is $192 adjusted per §134.210(b)(4).

(B) For non-musculoskeletal body areas, the designated doctor must bill, and the insurance carrier must reimburse, for each non-musculoskeletal body area examined.

(i) Non-musculoskeletal body areas are defined as follows:

(I) body systems;

(II) body structures (including skin); and

(III) mental and behavioral disorders.

(ii) For a complete list of body system and body structure non-musculoskeletal body areas, refer to the appropriate AMA Guides.

(iii) The reimbursement for the assignment of an IR in a non-musculoskeletal body area is $192 adjusted per §134.210(b)(4).

(iv) The test or tests required by Chapter 127 of this title for the assignment of IR, as outlined in the AMA Guides, must be billed using the appropriate CPT code or codes and reimbursed under the applicable division fee guideline in addition to the fees outlined in subsection (b) and (d)(1) - (3) of this section.

(C) If the examination for the determination of MMI or the assignment of IR requires testing authorized by Chapter 127 of this title that is not outlined in the AMA Guides, the appropriate CPT code or codes must be billed, and the insurance carrier must reimburse, according to the applicable division fee guideline, in addition to the fees outlined in subsections (d)(1) - (3) and (d)(4)(A) - (B) of this section.

(D) When multiple IRs are required as a component of a designated doctor examination under this title, the designated doctor must bill for the number of body areas rated, and the insurance carrier must reimburse, $64 adjusted per §134.210(b)(4) for each additional IR calculation.

(E) When the division requires the designated doctor to complete multiple IR calculations, the designated doctor must apply the additional modifier "MI."

(5) Extent of injury. The reimbursement rate for determining the extent of the employee's compensable injury is $642 adjusted per §134.210(b)(4), and the designated doctor must apply the additional modifier "W6."

(6) Disability. The reimbursement rate for determining whether the injured employee's disability is a direct result of the work-related injury is $642 adjusted per §134.210(b)(4), and the designated doctor must apply the additional modifier "W7."

(7) Return to work. The reimbursement rate for determining the ability of the injured employee to return to work is $642 adjusted per §134.210(b)(4), and the designated doctor must apply the additional modifier "W8."

(8) Other similar issues. The reimbursement rate for determining other similar issues is $642 adjusted per §134.210(b)(4), and the designated doctor must apply the additional modifier "W9" when examining issues similar to those described in subsection (d)(1) - (6).

(e) Required testing or evaluation under §127.10 of this title must be billed using the appropriate CPT codes. Reimbursement will be according to §134.203 or other applicable division fee guideline in addition to the examination fee. If a designated doctor refers an injured employee for additional testing or evaluation under §127.10 of this title:

(1) The 95-day period for timely submission of the designated doctor bill for the examination begins on the date of service of the additional testing or evaluation.

(2) The dates of service (CMS-1500/field 24A) are as follows: the "From" date is the date of the designated doctor examination, and the "To" date is the date of service of the additional testing or evaluation.

(3) The designated doctor and any referral health care providers must include the DWC-provided assignment number in the prior authorization field (CMS-1500/field 23) in accordance with §133.10(f)(1)(N).

(f) When the designated doctor refers an injured employee to a specialist for additional testing or evaluation under §127.10 of this title, the referral health care provider must bill:

(1) using the appropriate CPT codes, and the insurance carrier must reimburse, according to §134.203 or other applicable division fee guideline in addition to the examination fee;

(2) using the assignment number provided by the designated doctor; and

(3) attaching the required documentation.

(g) When the division orders the designated doctor to perform an examination of an injured employee with one or more of the diagnoses listed in §127.130(b)(9)(B) - (I) of this title:

(1) The designated doctor must add modifier "25" to the appropriate examination code.

(2) The designated doctor must add modifier "25" once per bill when addressing issues on the same day, regardless of the number of diagnoses or the number of issues the division ordered the designated doctor to examine.

(3) The designated doctor must bill, and the insurance carrier must reimburse, $300 adjusted per §134.210(b)(4) in addition to the examination fee.

§134.250. Maximum Medical Improvement Evaluations and Impairment Rating Examinations by Treating Doctors.

[~~Maximum medical improvement (MMI) and/or impairment rating (IR) examinations shall be billed and reimbursed as follows:~~]

(a) [~~(1)~~] The total maximum allowable reimbursement (MAR) for a maximum medical improvement (MMI) or impairment rating (IR) [~~an MMI/IR~~] examination is [~~shall be~~] equal to the MMI evaluation reimbursement plus the reimbursement for the body area or areas [~~area(s)~~] evaluated for the assignment of an IR. The MMI or IR [~~MMI/IR~~] examination must [~~shall~~] include:

(1) [~~(A)~~] the examination;

(2) [~~(B)~~] consultation with the injured employee;

(3) [~~(C)~~] review of the records and films;

(4) [~~(D)~~] the preparation and submission of reports (including the narrative report[~~,~~] and responding to the need for further clarification, explanation, or reconsideration), calculation tables, figures, and worksheets; and

(5) [~~(E)~~] tests used to assign the IR, as outlined in the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides), as stated in the Labor Code and Chapter 130 of this title.

(b) [~~(2)~~] Treating doctors must [~~A health care provider shall~~] only bill and be reimbursed for an MMI and IR [~~MMI/IR~~] examination if they are [~~the doctor performing the evaluation (i.e., the examining doctor) is~~] an authorized doctor in accordance with the Labor Code and Chapter 130 and §180.23 of this title.

(1) If the treating doctor determines that MMI has not been reached, the treating doctor must bill, and the insurance carrier must reimburse, the MMI evaluation portion of the examination in accordance with subsection (c)(1) and (2) of this section.

(2) If the treating doctor determines MMI has been reached and there is no permanent impairment because the injury was sufficiently minor, an IR evaluation is not warranted and the treating doctor must bill, and the insurance carrier must reimburse, only the MMI evaluation portion of the examination in accordance with subsection (c)(1) and (2) of this section.

(3) If the treating doctor determines MMI has been reached and an IR evaluation is performed, the treating doctor must bill, and the insurance carrier must reimburse, both the MMI evaluation and the IR evaluation portions of the examination in accordance with subsection (c) of this section.

(4) If the treating doctor is not authorized to assign an IR, the treating doctor may refer the injured employee to an authorized doctor for the examination and certification of MMI and IR. The referred doctor must bill under §134.260 of this chapter.

[~~(A) If the examining doctor, other than the treating doctor, determines MMI has not been reached, the MMI evaluation portion of the examination shall be billed and reimbursed in accordance with paragraph (3) of this section. Modifier "NM" shall be added.~~]

[~~(B) If the examining doctor determines MMI has been reached and there is no permanent impairment because the injury was sufficiently minor, an IR evaluation is not warranted and only the MMI evaluation portion of the examination shall be billed and reimbursed in accordance with paragraph (3) of this section.~~]

[~~(C) If the examining doctor determines MMI has been reached and an IR evaluation is performed, both the MMI evaluation and the IR evaluation portions of the examination shall be billed and reimbursed in accordance with paragraphs (3) and (4) of this section.~~]

[~~(3) The following applies for billing and reimbursement of an MMI evaluation.~~]

[~~(A) An examining doctor who is the treating doctor shall bill using CPT code 99455 with the appropriate modifier.~~]

~~(i)~~ ~~Reimbursement shall be the applicable established patient office visit level associated with the examination.~~]

[(ii) Modifiers "V1," "V2," "V3," "V4," or "V5" shall be added to the CPT code to correspond with the last digit of the applicable office visit.]

[(B) If the treating doctor refers the injured employee to another doctor for the examination and certification of MMI (and IR); and the referral examining doctor has:]

[(i) previously been treating the injured employee, then the referral doctor shall bill the MMI evaluation in accordance with paragraph (3)(A) of this section; or]

[(ii) not previously treated the injured employee, then the referral doctor shall bill the MMI evaluation in accordance with paragraph (3)(C) of this section.]

[(C) An examining doctor, other than the treating doctor, shall bill using CPT code 99456. Reimbursement shall be $350.]

[(4) The following applies for billing and reimbursement of an IR evaluation.]

[(A) The health care provider shall include billing components of the IR evaluation with the applicable MMI evaluation CPT code. The number of body areas rated shall be indicated in the units column of the billing form.]

[(B) When multiple IRs are required as a component of a designated doctor examination under this title, the designated doctor shall bill for the number of body areas rated and be reimbursed $50 for each additional IR calculation. Modifier "MI" shall be added to the MMI evaluation CPT code.]

(c) The following applies for billing and reimbursement of an MMI or IR evaluation by a treating doctor.

(1) CPT code. The treating doctor must bill using CPT code 99455 with the appropriate modifier. Modifiers "V3," "V4," or "V5" must be added to CPT code 99455 to correspond with the last digit of the applicable office visit.

(2) MMI. MMI evaluations must be reimbursed based on the applicable established patient office visit level associated with the examination under §134.203 of this chapter.

(3) IR. For IR examinations, the treating doctor must bill, and the insurance carrier must reimburse, the components of the IR evaluation. Indicate the number of body areas rated in the units column of the billing form.

(A) [(C)] For musculoskeletal body areas, the treating [examining] doctor may bill for a maximum of three body areas.

(i) Musculoskeletal body areas are [defined as follows]:

(I) spine and pelvis;

(II) upper extremities and hands; and

(III) lower extremities (including feet).

(ii) For musculoskeletal body areas:

(I) the reimbursement for the first musculoskeletal body area is $385 adjusted per §134.210(b)(4); and

(II) the reimbursement for each additional musculoskeletal body area is $192 adjusted per §134.210(b)(4)

[(ii) The MAR for musculoskeletal body areas shall be as follows:]

[(I) $150 for each body area if the diagnosis related estimates (DRE) method found in the AMA Guides fourth edition is used.]

[(II) If full physical evaluation, with range of motion, is performed:]

[(-a-) $300 for the first musculoskeletal body area; and]

[(-b-) $150 for each additional musculoskeletal body area.]

[(iii) If the examining doctor performs the MMI examination and the IR testing of the musculoskeletal body area(s), the examining doctor shall bill using the appropriate MMI CPT code with modifier "WP." Reimbursement shall be 100 percent of the total MAR.]

[(iv) If, in accordance with §130.1 of this title, the examining doctor performs the MMI examination and assigns the IR, but does not perform the range of motion, sensory, or strength testing of the musculoskeletal body area(s), then the examining doctor shall bill using the appropriate MMI CPT code with CPT modifier "26." Reimbursement shall be 80 percent of the total MAR.]

[(v) If a health care provider, other than the examining doctor, performs the range of motion, sensory, or strength testing of the musculoskeletal body area(s), then the health care provider shall bill using the appropriate MMI CPT code with modifier "TC." In accordance with §130.1 of this title, the health care provider must be certified. Reimbursement shall be 20 percent of the total MAR].

(B) [(D)] For non-musculoskeletal body areas, the treating doctor must bill, and the insurance carrier must reimburse, for each non-musculoskeletal body area examined. [Non-musculoskeletal body areas shall be billed and reimbursed using the appropriate CPT code(s) for the test(s) required for the assignment of IR.]

(i) Non-musculoskeletal body areas are defined as follows:

(I) body systems;

(II) body structures (including skin); and

(III) mental and behavioral disorders.

(ii) For a complete list of body system and body structure non-musculoskeletal body areas, refer to the appropriate AMA Guides.

(iii) The reimbursement for the assignment of an IR in a non-musculoskeletal body area is $192 adjusted per §134.210(b)(4)

[(iii) When the examining doctor refers testing for non-musculoskeletal body area(s) to a specialist, then the following shall apply:]

[(I) The examining doctor (e.g., the referring doctor) shall bill using the appropriate MMI CPT code with modifier "SP" and indicate one unit in the units column of the billing form. Reimbursement shall be $50 for incorporating one or more specialists' report(s) information into the final assignment of IR. This reimbursement shall be allowed only once per examination.]

[(II) The referral specialist shall bill and be reimbursed for the appropriate CPT code(s) for the tests required for the assignment of IR. Documentation is required.]

[(iv) When there is no test to determine an IR for a non-musculoskeletal condition:]

~~*[(I)* The IR is based on the charts in the AMA Guides. These charts generally show a category of impairment and a range of percentage ratings that fall within that category.]~~

~~*[(II)* The impairment rating doctor must determine and assign a finite whole percentage number rating from the range of percentage ratings.]~~

~~*[(III)* Use of these charts to assign an IR is equivalent to assigning an IR by the DRE method as referenced in subparagraph (C)(ii)(I) of this paragraph.]~~

~~*[(v)* The MAR for the assignment of an IR in a non-musculoskeletal body area shall be $150].~~

(d) [~~(5)~~] If the examination for the determination of MMI or [~~and/or~~] the assignment of IR requires testing that is not outlined in the AMA Guides, the treating doctor must bill, and the insurance carrier must reimburse, the appropriate testing CPT code or codes according to the applicable fee guideline [~~code(s) shall be billed and reimbursed~~] in addition to the fees for the examination by the treating doctor outlined in subsection (c) [~~paragraphs (3) and (4)~~] of this section.

(e) [~~(6)~~] The treating doctor is required to review the certification of MMI and assignment of IR performed by another doctor, as stated in the Labor Code and Chapter 130 of this title. The treating doctor must [~~shall~~] bill using CPT code 99455 with modifier "VR" to indicate a review of the report only, and the insurance carrier must reimburse $64 adjusted per §134.210(b)(4) [~~shall be reimbursed $50~~].

§134.260. Maximum Medical Improvement Evaluations and Impairment Rating Examinations by Referred Doctors.

(a) The total maximum allowable reimbursement (MAR) for a maximum medical improvement (MMI) or impairment rating (IR) examination is equal to the MMI evaluation reimbursement plus the reimbursement for the body area or areas evaluated for the assignment of an IR. The MMI or IR examination must include:

(1) the examination;

(2) consultation with the injured employee;

(3) review of the records and films;

(4) the preparation and submission of reports (including the narrative report and responding to the need for further clarification, explanation, or reconsideration), calculation tables, figures, and worksheets; and

(5) tests used to assign the IR, as outlined in the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides), as stated in the Labor Code and Chapter 130 of this title.

(b) Referred doctors must only bill and be reimbursed for an MMI or IR examination if they are an authorized doctor in accordance with the Labor Code and Chapter 130 and §180.23 of this title.

(1) If the referred doctor determines that MMI has not been reached, the referred doctor must bill, and the insurance carrier must reimburse, the MMI evaluation portion of the examination in accordance with subsection (c)(1) and (2) of this section. The referred doctor must add modifier "NM."

(2) If the referred doctor determines that MMI has been reached and there is no permanent impairment because the injury was sufficiently minor and IR evaluation is not warranted, the referred doctor must bill, and the insurance carrier must reimburse, only the MMI evaluation portion of the examination in accordance with subsection (c)(1) and (2) of this section.

(3) If the referred doctor determines MMI has been reached and an IR evaluation is performed, the referred doctor must bill, and the insurance carrier must reimburse, both the MMI evaluation and the IR examination portions of the examination in accordance with subsection (c) of this section.

(c) The following applies for billing and reimbursement of an MMI or IR evaluation by a referred doctor.

(1) CPT code. The referred doctor must bill using CPT code 99456 with the appropriate modifier.

(2) MMI. MMI evaluations will be reimbursed at $449 adjusted per §134.210(b)(4).

(3) IR. For IR examinations, the referred doctor must bill, and the insurance carrier must reimburse, the components of the IR evaluation. Indicate the number of body areas rated in the units column of the billing form.

(A) For musculoskeletal body areas, the referred doctor may bill for a maximum of three body areas.

(i) Musculoskeletal body areas are:

(I) spine and pelvis;

(II) upper extremities and hands; and

(III) lower extremities (including feet).

(ii) For musculoskeletal body areas:

(I) the reimbursement for the first musculoskeletal body area is $385 adjusted per §134.210(b)(4); and

(II) the reimbursement for each additional musculoskeletal body area is $192 adjusted per §134.210(b)(4).

(B) For non-musculoskeletal body areas, the referred doctor must bill, and the insurance carrier must reimburse, for each non-musculoskeletal body area examined.

(i) Non-musculoskeletal body areas are:

(I) body systems;

(II) body structures (including skin); and

(III) mental and behavioral disorders.

(ii) For a complete list of body system and body structure non-musculoskeletal body areas, refer to the appropriate AMA Guides.

(iii) The reimbursement for the assignment of an IR in a non-musculoskeletal body area is $192 adjusted per §134.210(b)(4).

(d) If the examination for the determination of MMI or the assignment of IR requires testing that is not outlined in the AMA Guides, the referred doctor must bill, and the insurance carrier must reimburse, the appropriate testing CPT code or codes according to the applicable fee guideline in addition to the fees for the examination by the referred doctor outlined in subsection (c) of this section.

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

Filed with the Office of the Secretary of State on December 15, 2023.

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Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 804-4703

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28 TAC §§134.235, 134.239, 134.240

STATUTORY AUTHORITY. DWC proposes the repeal of §§134.235, 134.239, and 134.240 under Labor Code Chapter 408; Chapter 413, Subchapter B; and §§402.00111, 402.00116, and 402.061.

Labor Code Chapter 408 governs workers' compensation benefits. It entitles an injured employee that sustains a compensable injury to all health care reasonably required by the nature of the injury as and when needed. It requires a variety of workers' compensation-specific services, including required medical examinations; designated doctor examinations; MMI evaluations and IR examinations; and return-to-work and evaluation of medical care examinations.

Labor Code Chapter 413, Subchapter B, Medical Services and Fees, requires in part that the commissioner of workers' compensation adopt health care reimbursement policies and guidelines, develop one or more conversion factors or other payment adjustment factors, and provide for reasonable fees for the evaluation and management of care. Fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. Medical policies and guidelines must be designed to ensure the quality of medical care and to achieve effective medical cost control; designed to enhance a timely and appropriate return to work; and consistent with §§413.013, 413.020, 413.052, and 413.053.

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

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

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

CROSS-REFERENCE TO STATUTE. Repealing §§134.235, 134.239, and 134.240 implements Labor Code Chapters 408 and 413.

§134.235. Return to Work/Evaluation of Medical Care.

§134.239. Billing for Work Status Reports.

§134.240. Designated Doctor Examinations.

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

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For further information, please call: (512) 804-4703

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER C. TEXAS OPIOID ABATEMENT FUND PROGRAM

34 TAC §16.222

The Comptroller of Public Accounts proposes the repeal of §16.222, concerning references, because this section is no longer needed.

This section, which specifies which statutes apply to the statewide opioid settlement agreement, was included in this subchapter because the statutes relating to the statewide opioid settlement agreement and the statutes relating to infrastructure and broadband funding originally used some of the same section numbers and were contained in subchapters that were both entitled "Subchapter R." However, in 2023, the legislature cleared up this issue by renumbering the statutes relating to infrastructure and broadband funding and placing them in new Subchapter S, while keeping the statutes relating to the statewide opioid settlement agreement in Subchapter R.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed rule repeal is in effect, the repeal: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed rule repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed rule repeal would benefit the public by improving the clarity of the chapter. There would be no anticipated significant economic cost to the public. The proposed rule repeal would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Amanda Lopez, Director, Opioid Abatement Fund Council, P.O. Box 13528 Austin, Texas 78711 or to the email address: OAFC.Public@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeal is proposed under Government Code, §403.511, which authorizes the comptroller to adopt rules necessary to implement Government Code, Chapter 403, Subchapter R, concerning statewide opioid settlement agreements.

The repeal implements Government Code, Chapter 403, Subchapter R.

§16.222. References.

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

Filed with the Office of the Secretary of State on December 15, 2023.

TRD-202304834
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 475-2220

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34 TAC §16.222

The Comptroller of Public Accounts proposes new §16.222, concerning hospital district allocations.

The new section governs the Texas Opioid Abatement Council's allocation and distribution of money received from statewide opioid settlement agreements to all hospital districts in Texas under Government Code, §403.508(a)(2), as enacted by Senate Bill 1827, 87th Legislature, R.S., 2021.

Subsection (a) requires the council to make periodic distributions of money allocated to hospital districts.

Subsection (b) describes when money will be distributed to hospital districts by the council.

Subsection (c) provides that the total amount of each distribution of money to hospital districts will be determined by the council.

Subsection (d) explains how the initial distribution of money will be allocated to hospital districts.

Subsection (e) describes how subsequent distributions of money will be allocated to hospital districts.

Subsection (f) lists the specific hospital districts that will be distributed money only from the initial distribution by the council and the amount of money each of the listed hospital districts will receive from the initial distribution.

Subsection (g) lists the specific hospital districts that will be distributed money during the initial and subsequent distributions by the council and the percentage that will be used to calculate the distribution to each of the listed hospital districts.

Subsection (h) allows the council to round amounts of money allocated to individual hospital districts down to the nearest whole dollar. It also requires the council to retain any remaining money caused by rounding for future allocation to hospital districts.

Subsection (i) sets forth the requirements for hospital districts to receive a distribution of money from the council.

Subsection (j) requires money received by a hospital district to be used by the hospital district to remediate the opioid crisis, including providing assistance in one or more of the categories described in §16.201(b) of this subchapter (treatment and coordination of care, prevention and public safety; recovery support services; or workforce development and training); or if a court order or settlement agreement requires the money to be used for one or more specific purposes, for a permissible use provided by that court order or settlement agreement.

Subsection (k) allows the council to cancel a distribution of money to a hospital district and retain the money for future allocation to hospital districts if the hospital district does not satisfy the requirements to receive a distribution of money from the council under subsection (i).

Subsection (l) requires a hospital district that receives a distribution of money from the council to submit periodic reports to the council's director to ensure compliance with the permitted uses of the money distributed. It also allows the council's director to determine the frequency, format, and requirements of the reports.

Subsection (m) allows the council to monitor a hospital district that receives money under this section to ensure compliance with the permissible uses of the money distributed.

Subsection (n) allows the council to require a hospital district to refund to the council all or a portion of the money received by the hospital district under this section and to retain the refunded money for future allocation to hospital districts if the council finds that the hospital district that received a distribution of money under this section failed to comply with the requirements of this section.

Subsection (o) provides that, except as otherwise provided in this section, this section and §16.200 of this subchapter are the only provisions in this subchapter that apply to the allocation of money to hospital districts under Government Code, §403.508(a)(2).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rule would have no significant fiscal impact on the state government, units of local government in the aggregate, or individuals. The proposed new rule would benefit the public by implementing the current statute. There would be no significant anticipated economic cost to the public. The proposed new rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Amanda Lopez, Director, Opioid Abatement Fund Council, P.O. Box 13528 Austin, Texas 78711 or to the email address: OAFC.Public@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is proposed under Government Code, §403.511, which authorizes the comptroller to adopt rules necessary to implement Government Code, Chapter 403, Subchapter R, concerning statewide opioid settlement agreements.

The new section implements Government Code, Chapter 403, Subchapter R.

§16.222. Hospital District Allocations.

(a) The council shall make periodic distributions of money allocated to hospital districts under Government Code, §403.508(a)(2).

(b) The council shall distribute money under subsection (a) of this section when, based on the total amount of money to be distributed, the smallest amount of the money that would be allocated to an individual hospital district equals at least $1,000. Additionally, the council may, at the council's discretion, distribute money under subsection (a) of this section when, based on the total amount of money to be distributed, an individual hospital district would receive less than $1000.

(c) The total amount of each distribution of money under subsection (a) of this section shall be determined by the council.

(d) The initial distribution of money under subsection (a) of this section shall be allocated as follows:

(1) to the hospital districts listed in subsection (f) of this section in the dollar amounts listed in that subsection; and

(2) the remainder to the hospital districts listed in subsection (g) of this section in amounts determined by multiplying the percentages listed in that subsection by the remaining amount to be distributed.

(e) Any subsequent distributions of money under subsection (a) of this section shall be allocated to the hospital districts listed in subsection (g) of this section in amounts determined by multiplying the percentages listed in that subsection by the amount to be distributed.

(f) Group One:
Figure: 34 TAC §16.222(f)

(g) Group Two:
Figure: 34 TAC §16.222(g)

(h) Amounts allocated under subsections (d)(2) and (e) of this section may be rounded down to the nearest whole dollar. Any remaining money caused by rounding shall be retained for future allocation to hospital districts under this section.

(i) Prior to, and as a condition of, receiving a distribution of money under subsection (a) of this section, a hospital district listed in subsection (f) or (g) of this section must, for each distribution:

(1) submit to the director a resolution from the hospital district's governing body that:

(A) designates, by name and title, an authorized official who has the authority to act on behalf of the hospital district in all matters related to the distribution, including the authority to sign all official documents related to the distribution;

(B) affirms that the hospital district will use all money received by the hospital district under this section:

(i) to remediate the opioid crisis, including providing assistance in one or more of the categories described in §16.201(b) of this subchapter; or

(ii) if a court order or settlement agreement requires the money to be used for one or more specific purposes, for a permissible use provided by that court order or settlement agreement; and

(C) affirms that, in the event of loss or misuse of grant funds, the hospital district shall return all funds to the council;

(2) submit to the director in a form acceptable to the director:

(A) the authorized official's title, mailing address, telephone number, and email address;

(B) the hospital district's physical address; and

(C) any other documents or information required by the director, including any documents or information required for the secure transfer of money to the hospital district or required by a court order or settlement agreement that applies to all or a portion of the money being distributed;

(3) if there is a change of authorized official, submit to the director a new resolution from the hospital district's governing body that contains the information required under paragraph (1) of this subsection;

(4) notify the director as soon as practicable of any change in the information provided under paragraph (2) of this subsection;

(5) be in compliance with subsection (j) of this section for any prior distributions; and

(6) be in compliance with the reporting requirements in subsection (l) of this section for any prior distributions.

(j) Money received by a hospital district under this section must be used by the hospital district for the purposes described in subsection (i)(1)(B) of this section.

(k) If a hospital district does not satisfy the requirements to receive a distribution under subsection (i) of this section, the distribution to that hospital district may be cancelled and, if cancelled, the money shall be retained by the council for future allocation to hospital districts under this section.

(l) A hospital district that receives a distribution of money under this section must submit periodic reports to the director to ensure that the hospital district complies with subsection (j) of this section. The frequency, format, and requirements of the reports shall be determined at the discretion of the director.

(m) The council may monitor a hospital district that receives money under this section to ensure that the hospital district complies with subsection (j) of this section.

(n) If the council finds that a hospital district that receives a distribution of money under this section has failed to comply with the requirements of this section, the council may require the hospital district to refund to the council all or a portion of the money received by the hospital district under this section. Money refunded to the council under this subsection shall be retained by the council for future allocation to hospital districts under this section.

(o) Except as otherwise provided in this section, this section and §16.200 of subchapter title are the only provisions in this subchapter that apply to the allocation of money to hospital districts under Government Code, §403.508(a)(2).

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

Filed with the Office of the Secretary of State on December 15, 2023.

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.4

The Texas Board of Criminal Justice (board) proposes amendments to §151.4, concerning Public Presentations and Comments to the Texas Board of Criminal Justice. The proposed amendments provide additional contact information for individuals with disabilities who have special accommodation needs to reach the board office, and minor word changes. The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.007, which requires the board to provide the public with a reasonable opportunity to speak on any issue under the jurisdiction of the board; §492.013, which authorizes the board to adopt rules; §§551.001-.146, which establishes guidelines for open meetings; Texas Penal Code §30.06, which creates an offense of trespass by license holder with a concealed handgun, and establishes exceptions and defenses for such; and §30.07, which creates an offense of trespass by license holder with an openly carried handgun, and establishes exceptions and defenses for such.

Cross Reference to Statutes: None.

§151.4. Public Presentations and Comments to the Texas Board of Criminal Justice.

(a) Policy. The Texas Board of Criminal Justice (TBCJ or board) is committed to providing access and opportunity for public presentations and comments as provided by this section. Individuals not employed by or under contract with the Texas Department of Criminal Justice (TDCJ), who wish to have items placed on the board's posted agenda, shall follow the procedures set forth in subsection (g) of this section. Public presentations and comments shall be:

(1) subject to the requirements and restrictions of this section;

(2) pertinent to issues under the jurisdiction of the board, as determined by the board chairperson and the TDCJ general counsel; and

(3) pertinent to policies, procedures, standards, and rules of the TDCJ. Disputes that are appropriately the subject of the employee grievance system, the employee disciplinary system, the inmate [~~offender~~] grievance system, the inmate [~~offender~~] disciplinary system, or comments regarding pending litigation shall be addressed through those processes.

(b) Definitions.

(1) Public presentations are presentations made by the public to the TBCJ regarding topics posted on a board meeting agenda that has been filed with and published by the *Texas Register* and as provided for in subsection (c) of this section.

(2) Public comments are comments made by the public on non-posted agenda topics and as provided for in subsection (d) of this section.

(c) Public presentations. Individuals who desire to make public presentations to the TBCJ on posted agenda topics shall provide, on the date of the meeting, a completed registration card to onsite board office staff at least 10 minutes prior to the meeting's posted start time. Registration cards shall be made available at the entry to the room where the board's scheduled meeting will be held.

(1) Pre-registration is available for public presentations through first class mail at P.O. Box 13084, Austin, Texas 78711, or email at tbcj@tdcj.texas.gov. Pre-registration shall be received by the board office staff at least four calendar days prior to the posted meeting date of the presentation. In addition to the information required in subsection (c)(2) of this section, pre-registration submissions shall include appropriate contact information, such as a daytime phone number or email address, for the individual who is registering to speak.

(2) Registration cards and pre-registration submissions shall include:

(A) the name of the individual who will make the presentation;

(B) a statement as to whether the individual is being remunerated for the presentation and if so, by whom; and if applicable, the name of the individual or entity on whose behalf the presentation will be made;

(C) a statement as to whether the presenter has registered as a lobbyist in relation to the agenda topic being addressed;

(D) a reference to the agenda topic on which the individual wants to present;

(E) an indication as to whether the presenter will speak for or against the proposed agenda topic; and

(F) a statement verifying that all information that will be presented is factual, true, and correct to the best of the speaker's knowledge.

(3) The TBCJ chairperson shall have discretion in setting reasonable limits on the time allocated for public presentations on posted agenda topics. If several individuals have registered to address the board on the same agenda topic, it shall be within the discretion of the board chairperson to request that those individuals select a representative amongst themselves to express such remarks or limit their presentations to an expression of support for views previously articulated.

(4) The TBCJ chairperson shall provide an opportunity for public presentations to occur prior to the board taking action on the topic denoted on the presenter's registration card. If an individual who is registered to speak on a posted agenda item is not present when called upon, that individual's opportunity to speak prior to action being taken on that topic shall be forfeited.

(5) A presenter may submit documentation pertaining to the public presentation to the board office staff. Documents shall be submitted at least three calendar days prior to the posted meeting date when the presentation is to occur. Such documentation shall then be distributed to the board. Any documentation submitted after the above-referenced date will not be distributed to the board until after the presentation. A minimum of 12 copies of any such documentation shall be submitted to the board office staff or distribution may not occur.

(d) Public comments.

(1) Twice a year, at the second and fourth regular called meetings of the board, an opportunity shall be provided for public comment on issues that are not part of the TBCJ's posted agenda but are within the board's jurisdiction. Special called meetings are not counted toward the requirement of this subsection.

(2) Individuals who desire to make public comments to the TBCJ at these meetings shall provide, on the date of the meeting, a completed registration card to onsite board office staff at least 10 minutes prior to the meeting's posted start time. Registration cards shall be made available at the entry to the room where the board's scheduled meeting will be held.

(3) Pre-registration is available for public comments through first class mail at P.O. Box 13084, Austin, Texas 78711, or email at tbcj@tdcj.texas.gov. Pre-registration shall be received by board office staff no earlier than the first day of the month preceding the board meeting for which the registration is intended and at least four calendar days prior to the posted meeting date when the comments are to occur. In addition to the information required in subsection (d)(4) of this section, pre-registration submissions shall include appropriate contact information, such as a daytime phone number or email address, for the individual who is registering to speak.

(4) Registration cards and pre-registration submissions shall include:

(A) the name of the individual who will make the comments;

(B) a statement as to whether the individual is being remunerated for the comments and if so, by whom; and, if applicable, the name of the individual or entity on whose behalf the comments will be made;

(C) a statement as to whether the presenter has registered as a lobbyist in relation to the topic being addressed;

(D) the topic on which the individual shall speak and whether the individual will speak for or against the topic; and

(E) a statement verifying that all information that will be presented is factual, true, and correct to the best of the speaker's knowledge.

(5) The TBCJ chairperson shall have discretion in setting reasonable limits on the time allocated for public comments. If several individuals have registered to address the board on the same topic, it shall be within the discretion of the board chairperson to request that those individuals select a representative amongst themselves to express such comments [~~,~~] or limit their comments to an expression of support for views previously articulated.

(6) Public comments shall be heard just prior to the conclusion of the board meeting, with deviation from this practice within the discretion of the board chairperson. If an individual who is registered to speak on a non-posted topic is not present when called upon, that individual shall be called once more following all other registered speakers. If that individual is not present at that time, their opportunity to speak at that meeting shall be forfeited.

(7) A presenter may submit documentation pertaining to the public comments to the board office staff. Documentation shall be submitted at least three calendar days prior to the posted meeting date when the comments are to occur. Such documentation shall then be distributed to the board. Any documentation submitted after the above-referenced date will not be distributed to the board until after the comments. A minimum of 12 copies of any such documentation shall be submitted to the board office staff or distribution may not occur.

(e) Disability accommodations. Individuals with disabilities who have special communication or accommodation needs and who plan to attend a meeting may contact the board office at 512-475-3250,tbcj@tdcj.texas.gov, or P.O. Box 13084, Austin, Texas 78711. Requests for accommodation shall be made at least two days prior to a posted meeting. The TBCJ shall make every reasonable effort to accommodate these needs.

(f) Conduct and decorum. The TBCJ shall receive public presentations and comments as authorized by this section, subject to the following additional guidelines:

(1) Due to requirements of the *Open Meetings Act,* questions shall only occur on public presentations as defined in subsection (b) of this section as they are associated with posted agenda topics. Questions shall be reserved for board members and staff recognized by the board chairperson.

(2) Presentations and comments shall remain pertinent to the issues denoted on the registration cards.

(3) An individual who is determined by the board chairperson to be disrupting a meeting shall immediately cease the disruptive activity or leave the meeting room if ordered to do so by the board chairperson. If the disruptive activity continues, the individual may be subject to removal from the meeting room.

(4) A presenter may not assign a portion of his or her allotted presentation time to another speaker.

(5) Signs and placards shall not be carried or displayed in the meeting room.

(g) Requests for issues to be placed on an agenda. Individuals not employed by or under contract with the TDCJ who wish to propose an agenda item for discussion at a TBCJ meeting shall address the request in writing to the chairperson, Texas Board of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, or email at tbcj@tdcj.texas.gov.

Such requests shall be titled "Proposed Agenda Topic" and shall be submitted no later than the first day of the month preceding the board meeting for which the request is intended. Such requests are subject to the requirements of the registration card in subsection (c) of this section. The decision as to whether to calendar a matter for discussion before the TBCJ, a board committee, a board liaison, or with a designated staff member shall be within the discretion of the board chairperson. Public presentations on topics placed on a board agenda, at the request of an individual, shall be in accordance with subsection (c) of this section.

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

Filed with the Office of the Secretary of State on December 18, 2023.

TRD-202304852
Kristen Worman
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 28, 2024
For further information, please call: (936) 437-6700

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37 TAC §151.6

The Texas Board of Criminal Justice (board) proposes amendments to §151.6, concerning Petition for the Adoption of a Rule. The proposed amendments ensure that an economic impact statement will also include the projection of the impact of the rule on rural communities, which mirrors language in Gov't Code §2006.002, *Adoption of Rules with Adverse Economic Effect.* The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; §492.016, which requires the board to develop and implement policies to encourage the use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures; §2001.021, which requires state agencies to prescribe the form for a petition and the procedure for its submission, consideration, and disposition; and Chapter 2008, which authorizes a state agency to engage in negotiated rulemaking.

Cross Reference to Statutes: None.

§151.6. Petition for the Adoption of a Rule.

(a) Policy. It is the policy of the Texas Board of Criminal Justice (TBCJ) to encourage public input in the TBCJ rulemaking process.

(b) Submission of the Petition.

(1) Any person may petition a state agency to adopt a rule as defined by the *Texas Administrative Procedure Act,* Chapter 2001 of the Texas Government Code.

(2) A petition for a rule under Title 37 of the Texas Administrative Code shall be mailed to the general counsel of the Texas Department of Criminal Justice (TDCJ) at P.O. Box 4004, Huntsville, Texas 77342.

(3) The petition shall be in writing, contain the petitioner's name and address, and describe the rule and the reason for making such petition. If the general counsel determines that further information is necessary, the general counsel may require that the petitioner resubmit the petition and that it contain:

(A) A brief explanation of the proposed rule;

(B) The text of the proposed rule indicating the words to be added or deleted from the current text, if any;

(C) A statement of the statutory or other authority under which the rule is to be promulgated;

(D) Whether there will be an economic impact on persons or on small or microbusinesses required to comply with the proposed rule;

(E) If an adverse economic impact of the proposed rule on small or microbusinesses is identified, the petition shall also contain:

(i) An economic impact statement which estimates the number of small businesses subject to the proposed rule, projects the economic impact of the rule on small businesses or rural communities, and describes alternative methods of achieving the purpose of the proposed rule; and

(ii) A regulatory flexibility analysis as defined in Texas Government Code § 2006.002; and

(F) The public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity that could result from the failure to adopt the proposed rule.

(4) In addition to the petition, the person may submit a proposal for the adoption of the proposed rule through negotiated rulemaking. The proposal shall identify the potential participants for the negotiated rulemaking committee, possible third party facilitators, and a timeline for the process.

(c) Consideration and Disposition of the Petition.

(1) Except as provided in subsection (d) of this rule, the chairman, in consultation with the general counsel, shall consider and reject or approve petitions submitted.

(2) Within 60 days after receipt of the petition by the general counsel, or within 60 days after receipt by the general counsel of a resubmitted petition in accordance with subsection (b)(3) of this rule, the chairman, in consultation with the general counsel, shall deny the petition or institute rulemaking procedures in accordance with established TDCJ procedures and the *Texas Administrative Procedure Act.* The chairman, in consultation with the general counsel, may deny parts of the petition or institute rulemaking procedures on parts of the petition.

(3) The TBCJ may initiate a negotiated rulemaking process pursuant to Texas Government Code, Chapter 2008, upon the filing of a petition to initiate the rulemaking proceeding under subsection (b) of this rule.

(4) If the chairman, in consultation with the general counsel, denies the petition, the general counsel shall give the petitioner written notice of the denial and the reasons for the denial.

(d) Subsequent Petitions to Adopt the Same or Similar Rule. The general counsel may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

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

Filed with the Office of the Secretary of State on December 18, 2023.

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Kristen Worman
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 28, 2024
For further information, please call: (936) 437-6700

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37 TAC §151.25

The Texas Board of Criminal Justice (board) proposes amendments to §151.25, concerning Tobacco and Vapor Products. The proposed amendments are minor word changes. The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments are minor word changes.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments are minor word changes. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and §494.010, which establishes requirements for designated locations for the use of tobacco products by employees.

Cross Reference to Statutes: None.

§151.25. Tobacco and Vapor Products.

(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) A correctional facility is a secure facility operated by or under contract with the Texas Department of Criminal Justice (TDCJ).

(2) A designated outdoor use area is a location where the use of tobacco and vapor products is authorized.

(3) An employee is a person employed by the TDCJ on a full-time, part-time, or temporary basis, including contract employees.

(4) An intern is an individual who performs work for the TDCJ on a temporary basis with or without pay, and whose work:

(A) provides training or supplements training given in an educational environment;

(B) provides experience for the benefit of the individual performing the work; and

(C) is performed under the close supervision of TDCJ staff.

(5) A person conducting official state business is any individual on TDCJ property for the purpose of conducting any form of official state business.

(6) TDCJ property includes land, buildings, private offices, and vehicles owned, leased, or under contract by the TDCJ, excluding state-owned individual dwellings.

(7) Tobacco products are cigars, cigarettes, snuff, or any other similar goods prepared for smoking, chewing, dipping, or any other such personal use.

(8) Vapor products are electronic cigarettes (e-cigarettes) or any other device that uses a mechanical heating element, battery, or electronic circuit to deliver vapor that may include nicotine to the individual inhaling from the device, or any substance used to fill or refill the device.

(9) A visitor is any non-TDCJ employee on TDCJ property for any purpose other than conducting official state business.

(10) A volunteer is an individual who has been approved to perform volunteer services for the TDCJ.

(b) This rule is applicable to all employees, interns, volunteers, persons conducting official state business, and visitors to TDCJ property.

(c) The TDCJ is committed to providing a safe and healthy environment and working conditions for employees, interns, volunteers, visitors, and inmates [~~offenders~~]. TDCJ employees, interns, volunteers, visitors, and persons on TDCJ property conducting official state business are authorized to possess and use tobacco or vapor products in accordance with this section.

(d) The use of tobacco or vapor products inside TDCJ property is strictly prohibited. Designated outdoor use areas shall be at a sufficient distance from any place at which employees regularly perform duties to ensure that no employee who abstains from the use of tobacco or vapor products is physically affected by the use of the products at the designated outdoor use areas. Tobacco or vapor product use in the designated outdoor use areas shall not affect the safety of any employee, intern, volunteer, visitor, or inmate [~~offender~~]. Employees are permitted to use tobacco or vapor products in designated outdoor use areas while on break and during their lunch period.

(1) Administrative Offices.

(A) Employees, interns, volunteers, visitors, and persons conducting official state business are permitted to carry and store tobacco and vapor products while in administrative offices that are not located within a correctional facility. The use of tobacco or vapor products is only allowed at designated outdoor use areas or in personal vehicles and any used tobacco or vapor products shall be disposed of in the receptacles provided or in personal vehicles. For administrative offices located in a correctional facility, procedures are set forth in subsection (d)(2) of this section.

(B) The senior administrator of an administrative office building shall designate outdoor use areas and ensure the areas are at least 15 feet from any entryway to the building, preferably removed from the view of passing traffic. If the building owner or ordinance requires a greater distance, the senior administrator shall comply.

(2) Secure Correctional Facilities within the Correctional Institutions and Parole Divisions.

(A) Employees, interns, volunteers, visitors, and persons conducting official state business are prohibited from carrying and storing tobacco and vapor products while in secure correctional facilities. The use of tobacco or vapor products is only allowed in designated outdoor use areas or in personal vehicles and any used tobacco or vapor products shall be disposed of in the receptacles provided or in personal vehicles.

(B) The unit warden shall designate outdoor use areas and ensure the areas are at least 15 feet from the facility's main entrance.

(e) Violation of this rule may result in disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees." Interns, volunteers, visitors, and persons conducting official state business who violate this rule may be asked to leave the property at the discretion of the senior supervisor onsite.

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

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Kristen Worman
General Counsel
Texas Department of Criminal Justice
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For further information, please call: (936) 437-6700

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37 TAC §151.71

The Texas Board of Criminal Justice (board) proposes amendments to §151.71, concerning Marking of Texas Department of Criminal Justice Vehicles. The proposed amendments provide an additional exemption to include vehicles used primarily for administrative purposes and assigned to TDCJ officials holding administrative positions, as determined by the executive director, for which confidentiality is necessary to prevent undue risk of danger or injury to TDCJ officials operating those vehicles or damage to the vehicle, and other minor word changes. The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and Texas Transportation Code §§721.002-.003, which establish guidelines and provide exemptions for inscription requirements on state-owned motor vehicles.

Cross Reference to Statutes: None.

§151.71. Marking of Texas Department of Criminal Justice Vehicles.

(a) Except as provided in subsections (b) and (c) of this rule, all Texas Department of Criminal Justice (TDCJ) vehicles shall be inscribed in accordance with Texas Transportation Code § 721.002 and § 721.003.

(b) The purposes for not inscribing TDCJ vehicles are to legitimately maintain anonymity for law enforcement purposes, to avoid damage to a vehicle or danger to staff that could occur if the vehicle were identified as a TDCJ vehicle, and to avoid hindrance of TDCJ efforts in an emergency, such as an escape, attempted escape, or riot. Accordingly, the following vehicles are exempt from inscription:

(1) vehicles used for surveillance, undercover work, or investigation of law or TDCJ policy violations by the Office of the Inspector General or any other investigatory unit within the TDCJ;

(2) vehicles used primarily for administrative purposes and assigned to TDCJ officials holding administrative positions, as determined by the executive director, for which confidentiality is necessary to prevent undue risk of danger or injury to TDCJ officials operating those vehicles or damage to the vehicle;

(3) [~~(2)~~] vehicles assigned to officials holding administrative positions whose jobs require response to emergency situations involving inmates [~~offenders~~]; and

(4) [~~(3)~~] vehicles used to conduct home visits of offenders under supervision of the TDCJ.

(c) The TDCJ shall establish a procedure for determining whether a vehicle is subject to an exemption in subsection (b) of this rule. If the executive director determines that a vehicle should be exempt but does not fit into an exemption under subsection (b) of this rule, the executive director may authorize the non-inscription of the vehicle subject to ratification at the next regularly scheduled meeting of the Texas Board of Criminal Justice (TBCJ). Ratification may be by inclusion under consent items on the TBCJ meeting agenda at such meeting as described above.

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

Filed with the Office of the Secretary of State on December 18, 2023.

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Kristen Worman
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 28, 2024
For further information, please call: (936) 437-6700

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CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION SUBCHAPTER D. OTHER RULES

37 TAC §152.51

The Texas Board of Criminal Justice (board) proposes amendments to §152.51, concerning Authorized Witnesses to the Execution of an Inmate Sentenced to Death. The proposed amendments remove the requirement for witnesses to be on the approved inmate's visitor list; add a requirement that an inmate submit a request in writing to the death row unit warden to have a TDCJ chaplain or the inmate's spiritual advisor present inside the execution chamber within 30 days of being notified of an execution date and explain in writing what actions the inmate requests the spiritual advisor to perform; added that the spiritual advisor shall have an established ongoing spiritual relationship with the inmate demonstrated by regular communications or in-person visits prior to the inmate's scheduled execution date, or must be currently employed as a TDCJ chaplain; removed language that required the spiritual advisor shall be a bona fide pastor or comparable official, such as a minister, priest, or rabbi, of the condemned inmate's elected religion; and clarify other current practices. The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments clarify procedures related to the attendance of an inmate's spiritual advisor or TDCJ chaplain.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments clarify procedures related to the attendance of an inmate's spiritual advisor or TDCJ chaplain. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and Texas Code of Criminal Procedure Art. 43.20, which establishes persons that may be present at an execution.

Cross Reference to Statutes: None.

§152.51. Authorized Witnesses to the Execution of an Inmate [~~Offender~~] Sentenced to Death

(a) Purpose. The purpose of this rule is to specify those adults, 18 years of age or older, who are authorized to witness the scheduled execution of an inmate [~~offender~~] who has been sentenced to death.

(b) Victim Witnesses. Five close relatives of the victim and a spiritual advisor may be victim witnesses. The total number of victim witnesses shall not exceed six, unless the provision in paragraph 3 of

this subsection applies, at which time the number of victim witnesses shall not exceed seven.

(1) "Close relative of the victim" means the following persons in relation to the victim for whose death the inmate [~~offender~~] has been scheduled for execution:

(A) The spouse of the victim at the time of the victim's death;

(B) A parent or stepparent of the victim;

(C) An adult brother, sister, child, or stepchild of the victim; or

(D) An individual who had a close relationship with the victim or has a close relationship with a relative of the victim, with the recommendation of the Victim Services Division (VSD) director and approval of the Correctional Institutions Division (CID) director.

(2) If there are fewer than five close relatives of the victim scheduled to attend, others may be permitted to attend the execution as follows:

(A) Close relatives of a victim for whose death the inmate [~~offender~~] has been convicted but not sentenced to death;

(B) Close relatives of a victim for whose death the inmate [~~offender~~] is unequivocally responsible, with the recommendation of the VSD director and approval of the CID director; and

(C) The surviving [~~Surviving~~] victim of a crime for which the inmate [~~offender~~] has been convicted and sentenced to death, with the recommendation of the VSD director and approval of the CID director.

(3) If there are multiple victims involved in [~~relating to~~] the offense for which the inmate [~~offender~~] has been convicted and sentenced to death, the total number of witnesses shall be increased to seven.

(4) The spiritual advisor shall be a licensed or certified [~~bona fide~~] pastor or comparable official, such as a minister, priest, or rabbi, of the victim's or close relatives' religion.

(c) Inmate [~~Offender~~] Witnesses. Individuals that may be inmate [~~offender~~] witnesses are as follows:

(1) Five of the inmate's relatives or friends and a spiritual advisor may [~~, if requested by the condemned offender, are eligible to~~] attend the execution of the condemned inmate [~~offender~~] if:

(A) The [~~condemned~~] inmate [~~offender~~] provides a list of witnesses [~~and the name or type of spiritual advisor requested to attend the execution~~] to the death row supervisor or warden's designee at least 14 days prior to the date of execution; [~~and~~]

(B) The witnesses [~~requested~~] are [~~on the offender's approved Visitors List and are~~] 18 years of age or older;[~~.~~]

(C) The inmate submits a request in writing to the death row unit warden to have a TDCJ chaplain or the inmate's spiritual advisor present inside the execution chamber within 30 days of being notified of an execution date and must explain in writing what actions the inmate requests the spiritual advisor to perform while inside the execution chamber; and

(D) The spiritual advisor must be currently employed as a TDCJ chaplain or have an established ongoing spiritual relationship with the inmate as shown by regular communications or in-person visits with the inmate prior to the inmate's scheduled execution date.

(2) If the inmate wants to change the witnesses previously designated, and the request is made less than 14 days before the execution, the inmate shall submit the request in writing through the death row unit warden to the CID director, who shall approve or disapprove the changes.

~~[(2) If less than 14 days prior to the scheduled execution the condemned offender requests to change the names of previously submitted witnesses or requested spiritual advisor, the offender shall submit a request in writing to the CID director who shall approve or disapprove the changes.]~~

~~[(3) The spiritual advisor shall be a bona fide pastor or comparable official, such as a minister, priest, or rabbi, of the condemned offender's elected religion.]~~

(d) Other Witnesses. Persons [~~The only persons~~] other than those listed in subsections [~~subsection~~] (b) and (c) who are authorized to witness an execution are:

(1) Texas Department of Criminal Justice (TDCJ) staff or law enforcement staff as deemed necessary by the CID director;

(2) Members of the Texas Board of Criminal Justice;

(3) The Inspector General [~~general~~] or designee, and staff of the Office of the Inspector General [~~assigned staff~~] as deemed necessary by the Inspector General [~~inspector general~~];

(4) TDCJ chaplains;

(5) The Walker County judge;

(6) The Walker County sheriff;

(7) Media pool representatives consisting of:

(A) One reporter from the Huntsville Item;

(B) One reporter from the Associated Press;

(C) Three additional print media or broadcast media representatives selected from a list of applicants maintained by the TDCJ Communications Department [~~Public Information Office~~]; and

(8) Any other person approved by the TDCJ CID director.

(e) Prohibition of Attendance. Any inmate [~~offender~~] currently confined within the TDCJ is specifically denied authorization to witness the execution of another inmate [~~an offender~~].

(f) Victim Notification.

(1) The VSD shall maintain a list of scheduled executions and will include any [~~subsequent updates regarding~~] significant changes pertaining to the execution, such as dates or court rulings. The Executive Clemency Section of the Board of Pardons and Paroles will provide a list of scheduled executions to the VSD in an expedient manner.

(2) The VSD is responsible for notifying the victim(s) or close relatives of the victim of the scheduled execution date, time, and location, upon request. Victim(s) [~~It is the responsibility of the victim(s)~~] or close relatives shall [~~to~~] notify the VSD of any address or telephone number changes and of their intent to attend.

(3) The relatives of the victim, and surviving victims, shall be identified and approved by the VSD.

(4) It is the responsibility of the VSD to notify the CID director, no later than five days prior to the scheduled execution date, of the names and relationships to the victim [~~contact numbers~~] for the victim's witnesses and support persons who plan to attend.

(5) The VSD shall contact the relatives of the victim, and surviving victims, and provide information regarding the written procedures affecting their participation.

(g) Requirements for the Execution Chamber. The room provided for the execution shall be arranged so that:

(1) There is sight and sound separation between any inmate [~~offender~~] witnesses and any victim witnesses; and

(2) There is sound separation between the condemned inmate [~~offender~~] and those in attendance, except arrangements shall be provided to allow those in attendance to hear the statements of the condemned inmate [~~offender~~].

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

Filed with the Office of the Secretary of State on December 18, 2023.

TRD-202304856
Kristen Worman
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 28, 2024
For further information, please call: (936) 437-6700

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CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.15

The Texas Board of Criminal Justice (board) proposes amendments to §159.15, concerning the GO KIDS Initiative. The proposed amendments are minor word changes. The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments are minor word changes.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments are minor word changes. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.001, which establishes that the board governs TDCJ; and §492.013, which authorizes the board to adopt rules.

Cross Reference to Statutes: None.

§159.15. GO KIDS Initiative.

(a) The Texas Department of Criminal Justice (TDCJ) Giving Offenders' Kids Incentive and Direction to Succeed (GO KIDS) initiative identifies programs within the TDCJ and resources at local, state, and national levels to help the children of those persons under criminal justice supervision in Texas.

(b) A directory identifying these programs and resources is available on the TDCJ website (www.TDCJ.texas.gov) in the "inmate [~~offender~~] information" section. In addition, direct links to selected GO KIDS collaborators are included.

(c) A TDCJ GO KIDS coordinator is available to answer inquiries on the initiative. Inquiries should be addressed to the GO KIDS coordinator, TDCJ Rehabilitation Programs Division, P.O. Box 99, Huntsville, Texas 77342-0099.

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

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Kristen Worman
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Texas Department of Criminal Justice
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PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

37 TAC §217.1

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §217.1, Minimum Standards for Enrollment and Initial Licensure. This proposed amended rule conforms with the amendments made to Texas Occupations Code §1701.3095 and §1701.451(a)(3)(B)(X) made by Senate Bill 252 (88R) and Texas Occupations Code §1701.310 made by House Bill 2183 (88R).

Mr. John P. Beauchamp, Interim Executive Director, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effect on state or

local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.3095, §1701.310, and §1701.451. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no anticipated cost to small businesses, microbusinesses, or individuals as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

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

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register.* Comments may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, Interim Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.3095, Licensing of Certain Veterans Who Are Legal Permanent Residents, §1701.310, Appointment of County Jailer; Training Required, §1701.451, Preemployment Procedure, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

The amended rule as proposed is in compliance with Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.3095, Licensing of Certain Veterans Who Are Legal Permanent Residents, §1701.310, Appointment of County Jailer; Training Required, §1701.451, Preemployment Procedure, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

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

§217.1. Minimum Standards for Enrollment of Initial Licensure.

(a) In order for an individual to enroll in any basic licensing course the provider must have on file documentation, acceptable to the Commission, that the individual meets eligibility for licensure.

(b) The commission shall issue a license to an applicant who meets the following standards:

(1) minimum age requirement:

(A) for peace officers and public security officers, is 21 years of age; or 18 years of age if the applicant has received:

(i) an associate's degree; or 60 semester hours of credit from an accredited college or university; or

(ii) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(B) for jailers and telecommunicators is 18 years of age;

(2) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level;

(B) holds a high school diploma; or

(C) for enrollment purposes in a basic peace officer academy only, has an honorable discharge from the armed forces of the United States after at least 24 months of active duty service.

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) has never been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;

(7) has never been convicted or placed on community supervision in any court of an offense involving family violence as defined under Chapter 71, Texas Family Code;

(8) for peace officers, is not prohibited by state or federal law from operating a motor vehicle;

(9) for peace officers, is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation completed by the enrolling or appointing entity into the applicant's personal history. A background investigation shall include, at a minimum, the following:

(A) An enrolling entity shall:

(i) require completion of the Commission-approved personal history statement; and

(ii) verify that the applicant meets each individual requirement for licensure under this rule based on the personal history statement and any other information known to the enrolling entity; and

(iii) contact all previous enrolling entities.

(B) In addition to subparagraph (A) of this paragraph, a law enforcement agency or law enforcement agency academy shall:

(i) require completion of the Commission-approved personal history statement; and

(ii) meet all requirements enacted in Occupations Code 1701.451, including submission to the Commission of a form confirming all requirements have been met. An in-person review of personnel records is acceptable in lieu of making the personnel records available electronically if a hiring agency and a previous employing law enforcement agency mutually agree to the in-person review.

(11) examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face to face interview conducted after the instruments have been scored. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of the appointment by the agency;

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by Texas Occupations Code § 501.004. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has never received a dishonorable discharge from the armed forces of the United States;

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) is a U.S. citizen or is a legal permanent resident of the United States, if the person is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge and presents evidence satisfactory to the commission that the person has applied for United States citizenship.

(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) A person must meet the training and examination requirements:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course(s);

(B) a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) a commission approved academic alternative program, taken through a licensed academic alternative provider and at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s) or training recognized under Texas Occupations Code §1701.310;

(3) training for the public security officer license consists of the current basic peace officer course(s);

(4) training for telecommunicator license consists of telecommunicator course; and

(5) passing any examination required for the license sought while the exam approval remains valid.

(f) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency; or

(3) on failure to comply with the terms stipulated in the provisional license approval.

(g) The commission may issue a temporary jailer license, consistent with Texas Occupations Code §1701.310. A jailer appointed on a temporary basis shall be enrolled in a basic jailer licensing course on or before the 90th day after their temporary appointment. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license may not be renewed, except that the sheriff may petition the commission to extend the temporary appointment for a period not to exceed six months. A temporary jailer license [~~and~~] expires:

(1) 12 months from the original appointment date; [~~or~~]

(2) at the end of a six-month extension, if granted; of

(3) [~~(2)~~] on completion of training and passing of the jailer licensing examination.

(h) A person who has previously been issued a temporary jailer license and separated from that position may be subsequently appointed on a temporary basis as a county jailer at the same or a different county jail only if the person was in good standing at the time the person separated from the position.

(i) A person who has cumulatively served as a county jailer on a temporary basis for two years may continue to serve for the remainder of that temporary appointment, not to exceed the first anniversary of the date of the most recent appointment. The person is not eligible for an extension of that appointment or for a subsequent appointment on a temporary basis as a county jailer at the same or a different county jail until the first anniversary of the date the person separates from the temporary appointment during which the person reached two years of cumulative service.

(j) A person whose county jailer license has become inactive may be appointed as a county jailer on a temporary basis.

(k) [~~(h)~~] The commission may issue a temporary telecommunicator license, consistent with Texas Occupations Code §1701.405. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary telecommunicator license. A temporary telecommunicator license expires:

(1) 12 months from the original appointment date; or

(2) on completion of training and passing of the telecommunicator licensing examination. On expiration of a temporary license, a person is not eligible for a new temporary telecommunicator license for one year.

(l) [~~(i)~~] A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(m) [~~(j)~~] The effective date of this section is June 1, 2022.

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

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 206. MANAGEMENT

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Chapter 206, Subchapter A, Organization and Responsibilities, §206.1 and §206.2; Subchapter B, Public Meetings and Hearings, §206.22 and §206.23; Subchapter C, Procedure for Petition to Adopt Rules, §206.41; Subchapter E, Advisory Committees, §206.92 and §206.93; Subchapter F, Department Vehicle Fleet Management, §206.111; Subchapter G, Electronic Signatures, §206.131; and Subchapter H, Risk-Based Monitoring and Preventing Fraudulent Activity, §206.151. The department proposes new Subchapter E, Advisory Committees, §206.101. The department is also adopting the repeal of Subchapter D, Procedures in Contested Cases, §§206.61 - 206.73. The proposed amendments and proposed new section in Chapter 206 would bring the rules into alignment with statute; remove language that is redundant with statute; clarify existing requirements; modernize language; improve readability through the use of consistent terminology; clarify or delete unused, archaic, or inaccurate definitions, terms, and references; and more specifically describe the department's methods and procedures, including its process for internal risk monitoring regarding the department's internal users of the department's Registration and Title System (RTS).The proposed repeal of Subchapter D of Chapter 206 would enable the board of the Texas Department of Motor Vehicles (board) to consolidate all of the department's contested case rules into proposed new Chapter 224, Adjudicative Practice and Procedure. In this issue of the *Texas Register,* the department proposes new Chapter 224, which would include all of the department's adjudicative practice and procedure rules in one chapter.

EXPLANATION. The department is conducting a review of its rules in Chapter 206 in compliance with Government Code, §2001.039. Notice of the department's plan to review Chapter 206 is published in this issue of the *Texas Register.* As a part of the rule review, the department is adopting necessary amendments and repeals, as detailed in the following paragraphs.

Subchapter A. Organization and Responsibilities

The proposed amendments to Subchapter A would clarify the authority of the executive director and remove rules that are redundant with statute. The proposed amendments to §206.1 would cite to the statutory provision under which the executive director receives authority to delegate certain duties or responsibilities to department staff and would clarify that such delegation must be consistent with applicable law.

The proposed amendments to §206.2(a) would clarify that the executive director hires and oversees the department's general

counsel, to align the rule with Transportation Code, §1001.041 and §1001.0411. The proposed amendment to §206.2(a)(3) would remove unnecessary limitations on the executive director's powers to delegate to staff. The proposed amendment to §206.2(b) would remove unnecessary language regarding the Texas Open Meetings Act because the subsection already references Government Code, Chapter 551. A proposed amendment to §206.2 would strike §206.2(c) because it is duplicative of Transportation Code, §1001.004.

Subchapter B. Public Meetings and Hearings

In Subchapter B, proposed amendments to §206.22 would delete subsection (f) and remove a cross-reference to subsection (f) because its provisions on contested cases would be combined with the department's other rules on contested cases in proposed new Chapter 224, Adjudicative Practice and Procedure. Proposed amendments to §206.22(b) and (c) would simplify and clarify the language, in addition to revising existing terminology for consistency with other department rules and with current practice. For example, when closed session is expected to last at least an hour, the board chairman allows open comments prior to going into closed session, instead of taking open comments at the end of the posted agenda. A proposed amendment to §206.22(c) would delete the words "with disabilities" because anyone who has special communication or accommodation needs who plans to attend a board meeting may request auxiliary aids or services. Proposed amendments to §206.22(d) would clarify that the public is authorized to make public comments, rather than presentations, at board meetings.

Proposed amendments to §206.23(b) would clarify and streamline the language without changing its meaning. Proposed amendments to §206.23(c) and (d) would provide that the executive director or the executive director's designee may represent the department in a public hearing as well as the board chair or presiding officer. Proposed amendments to §206.23(d) would remove the term "with disabilities" to clarify that anyone with special communication or accommodation needs who plans to attend board hearings may contact the department to request auxiliary aids or services. The proposed amendments to §206.23(d) would also specify that if a hearing is conducted by the department's executive director or designee rather than the board, persons requesting auxiliary aids or services may contact the department's public affairs officer.

Subchapter C. Procedure for Petition to Adopt Rules

Proposed amendments to Subchapter C, §206.41 would clarify the procedure for submitting to the department a petition to adopt rules under Texas Government Code, §2001.021, and the required content of a petition. Proposed amendments to §206.41 would also remove unnecessary language.

Subchapter D. Procedures in Contested Cases

The proposed repeal of Subchapter D, Procedures in Contested Cases, would delete the subchapter to enable the consolidation of all the department's contested case rules into proposed new Chapter 224, Adjudicative Practice and Procedure. Chapter 224 would contain modified portions of Subchapter D, as applicable. Due to the proposed repeal of Subchapter D, the remaining subchapters in Chapter 206 would be re-lettered.

Subchapter E. Advisory Committees

This subchapter is proposed to be re-lettered as Subchapter D as current Subchapter D is proposed for repeal and the subsequent subchapters are proposed to be re-lettered accordingly.

Proposed amendments to §206.92 would the delete the definition of "division director" because the term is not used elsewhere in the subchapter, and would renumber the subsequent paragraphs in §206.92 accordingly. A proposed amendment would move the language from §206.93(c) to §206.93(b) regarding the prohibition against board members serving as advisory committee members. Proposed amendments to §206.93(b) and the proposed deletion of §206.93(c) would streamline and clarify the qualifications and appointment requirements for advisory committee members into one subsection. The proposed deletion of §206.93(c) would also remove language that is redundant with Transportation Code, §1001.031(b). Proposed amendments to §206.93 would re-letter the remaining subsections of §206.93 due to the proposed deletion of §206.93(c). Proposed amendments to §206.93(g) and (h), which are proposed to be re-lettered to subsections (f) and (g), would remove unnecessary statutory titles. A proposed amendment would delete §206.93(i) because proposed new §206.101 would clarify the requirements and parameters for public comment during advisory committee meetings. Proposed amendments to §206.93(k), which is proposed to be re-lettered to subsection (i), would clarify that both the executive director and the board shall consider an advisory committee's written recommendations in developing policy, and would remove redundant language describing advisory committee communications. The proposed deletion of §206.93(m) would remove unnecessary language that is duplicative of Texas Government Code, §2110.008.

Proposed new §206.101 would clarify the requirements and parameters for public comment during advisory committee meetings. Proposed new §206.101 would closely parallel the requirements for public comments during board meetings in existing §206.93(i) and §206.22 (relating to Public Access to Board Meetings). Proposed new §206.101 would allow each public commenter three minutes to comment on any advisory committee agenda item or in an open comment period on any topic within the scope of the specific advisory committee. Proposed new §206.101(c) would set out the procedures for a member of the public to request a disability accommodation for an advisory committee meeting with the same process described in §206.22(c) for board meetings. Proposed new §206.101(d) would set requirements for conduct and decorum at advisory committee meetings to assist the acting advisory committee chair in maintaining order, which would be the same as the requirements for conduct and decorum at board meetings under §206.22(d). Proposed new §206.101(e) would allow the acting advisory committee chair to waive any requirements of §206.101 as necessary to allow the advisory committee or the department to perform their responsibilities. It would thereby allow the acting advisory committee chairs to remain responsive to the need for public comment while preventing proposed new §206.101 from unnecessarily encumbering the public comment process. Proposed new §206.101 does not include written public comment for advisory committee meetings to streamline the process and provide a consistent method of receiving comments, and to ensure that advisory committee members are able to ask follow-up questions of the commenters.

Subchapter F. Department Vehicle Fleet Management

This subchapter is proposed to be re-lettered as Subchapter E as current Subchapter D is proposed for repeal and the subsequent subchapters are proposed to be re-lettered accordingly.

An amendment to §206.111 is proposed to clarify that a written documented finding must be signed by the executive director to

support an assignment of a department vehicle to an individual employee on an everyday basis.

Subchapter G. Electronic Signatures

This subchapter is proposed to be re-lettered as Subchapter F as current Subchapter D is proposed for repeal and the subsequent subchapters are proposed to be re-lettered accordingly.

Amendments to §206.131 are proposed to rename the title of the subchapter from "Electronic Signatures" to "Digital Certificates" for accuracy and consistency. A proposed amendment to §206.131(d)(2)(A) would clarify that one form of acceptable identity verification is an unexpired personal identification certificate with a photograph. A proposed amendment to §206.131(d)(2)(B) would delete a concealed handgun license as an acceptable form of identification because such license is no longer required by law. Proposed amendments to §206.131(d)(2)(E) and (G) would correct the name of the federal agency that issues a form I-94. A proposed amendment to §206.131(g) would clarify that the rule refers to digital certificates. Proposed amendments to §206.131(i) would substitute the word "certificate" for "signature" to increase consistency and accuracy.

Subchapter H. Risk-Based Monitoring and Preventing Fraudulent Activity

This subchapter is proposed to be re-lettered as Subchapter G because current Subchapter D is proposed for repeal and the subsequent subchapters are proposed to be re-lettered accordingly.

Amendments to §206.151 are proposed to clarify and specify the division's internal risk-based monitoring system required by Transportation Code, §520.004(4). The proposed amendments would subject the department's internal users of RTS to periodic examination to determine whether to assign the RTS user a classification of priority or non-priority. Priority levels determine the minimum number of inspections the department would like to conduct on the internal RTS user each year. The inspections are conducted to determine whether there is evidence of fraud by the RTS user. The proposed amendments would base the classification of priority or non-priority on certain factors, including the RTS user's transaction volume, the RTS user's past violations of department rules and procedures within the past five years, title error investigations performed by the department on titles issued by the RTS user, public complaints received against the RTS user, and discrepancies in data reflecting the RTS user's transactions. The proposed amendments would also provide that RTS users who are classified as a priority shall be inspected not less than twice per year, and a RTS user classified as a non-priority shall be inspected not less than once per year. The proposed amendments further provide that the inspections may be virtual, on premises at the RTS user's location, or a combination of both.

Additional non-substantive amendments are proposed throughout Chapter 206 to correct punctuation, grammar, and capitalization.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments and repeals as proposed are in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposed amendments or repeals. Executive Director Daniel Avitia has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Avitia has also determined that for each year of the first five years the proposed amended sections and repeals are in effect, the anticipated public benefit as a result of enforcing or administering the amendments and repeals will be the simplification, clarification, and streamlining of agency rules.

Anticipated Cost to Comply with the Proposal. Mr. Avitia anticipates that there will be no costs to comply with the proposed amendments and repeals.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments and repeals will not have an adverse economic impact on small businesses, micro-businesses, and rural communities because there are no anticipated economic costs for persons required to comply with the proposed amendments and repeals. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments and repeals are in effect, no government program would be created or eliminated. Implementation of the proposed amendments and repeals would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments and repeals do not create a new regulation; however, they expand an existing regulation regarding the department's internal risk-based monitoring system of internal users of RTS. While the repeal of Subchapter D of Chapter 206 is proposed, proposed new Chapter 224, Adjudicative Practice and Procedure, would contain modified portions of Subchapter D, as applicable. Lastly, the proposed amendments and repeals do not affect the number of individuals subject to Chapter 206's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on January 28, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §206.1, §206.2

STATUTORY AUTHORITY. The department proposes amendments to Chapter 206 under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Transportation Code, §1001.041, which requires the executive director to appoint deputies, assistants and other personnel, including a general counsel; Transportation Code, §1001.0411(b), which allows the executive director to delegate duties or responsibilities; Transportation Code, §1001.0411(c), which requires the executive director to hire and oversee a general counsel to advise the department; and Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Government Code, §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003, and 1004.

§206.1. Delegation.

The Board of the Texas Department of Motor Vehicles (board) may, consistent with applicable law, delegate any agency function to the executive director. The executive director may, consistent with applicable law, [~~further~~] delegate duties or responsibilities pursuant to Transportation Code, §1001.0411 [~~such functions to one or more employees of the department~~].

§206.2. Texas Department of Motor Vehicles.

(a) Executive director.

(1) To assist in discharging the duties and responsibilities of the executive director, the executive director may organize, appoint, and retain administrative staff.

(2) The executive director shall:

(A) serve the board in an advisory capacity, without vote;

(B) submit to the board quarterly, annually, and biennially, detailed reports of the progress of the divisions and a detailed statement of expenditures;

(C) hire, promote, assign, reassign, transfer, and, consistent with applicable law and policy, terminate staff necessary to accomplish the roles and missions of the department; and

(D) hire and oversee a general counsel to advise the department; and

(E) [~~(D)~~] perform other responsibilities as required by law or assigned by the board.

(3) The executive director may, consistent with applicable law, delegate one or more of the functions listed under paragraph (2) [~~(2)(B- (D)~~] of this subsection to the staff of the department.

(b) Department staff. The staff of the department, under the direction of the executive director, is responsible for:

(1) implementing the policies and programs of the board by:

(A) formulating and applying operating procedures; and

(B) prescribing such other operating policies and procedures as may be consistent with and in furtherance of the roles and missions of the department;

(2) providing the chair and board members administrative support necessary to perform their respective duties and responsibilities;

(3) preparing an agenda under the direction of the chair and providing notice of board meetings and hearings as required by [~~the Texas Open Meetings Act,~~] Government Code, Chapter 551; and

(4) performing all other duties as prescribed by law or as assigned by the board.

[~~(c) Divisions. The executive director shall organize the department into divisions reflecting the various functions and duties assigned to the department.~~]

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

43 TAC §206.22, §206.23

STATUTORY AUTHORITY.

The department proposes amendments to Chapter 206 under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Transportation Code, §1001.0411(b), which allows the executive director to delegate duties or responsibilities; Transportation Code, §1004.002, which requires the board and the department to develop and implement policies that provide the public with a reasonable opportunity to appear before the board or the department and to speak on any issue under the jurisdiction of the board or the department; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Government Code, §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003, and 1004.

§206.22. Public Access to Board Meetings.

(a) Posted agenda items. A person may speak before the board on any matter on a posted agenda by submitting a request, in a form and manner as prescribed by the department, prior to the matter being taken up by the board. A person speaking before the board on an agenda item will be allowed an opportunity to speak:

(1) prior to a vote by the board on the item; and

(2) for a maximum of three minutes, except as provided in subsections (d)(6)[,] and (e)[, ~~and (f)~~] of this section.

(b) Open comment period.

(1) At [~~the conclusion of the posted agenda of~~] each regular board [~~business~~] meeting, the board shall allow an open comment period[, ~~not to exceed one hour,~~] to receive public comment on any other matter that is under the jurisdiction of the board.

(2) A person wanting [~~desiring~~] to speak to the board [~~appear~~] under this subsection shall complete a registration form, as provided by the department, prior to the beginning of the open comment period.

(3) Except as provided in subsections (d)(6) and (e) of this section, each person shall be allowed to speak for a maximum of three minutes [~~for each presentation~~] in the order in which requests to speak were received [~~the speaker is registered~~].

(c) Disability accommodation. Persons [~~with disabilities,~~] who have special communication or accommodation needs and who plan to attend a meeting, may contact the department in Austin to request auxiliary aids or services. Requests shall be made at least two days before a meeting. The department shall make every reasonable effort to accommodate these needs.

(d) Conduct and decorum. The board shall receive public input as authorized by this section, subject to the following guidelines.

(1) Questioning of speakers [~~those making presentations~~] shall be reserved to board members and the department's administrative staff.

(2) Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

(3) Comments [~~Presentations~~] shall remain pertinent to the issue being discussed.

(4) A person who disrupts a meeting shall leave the meeting room and the premises if ordered to do so by the chair.

(5) Time allotted to one speaker may not be reassigned to another speaker.

(6) The time allotted for [~~presentations or~~] comments under this section may be increased or decreased by the chair, or in the chair's absence, the vice chair, as may be appropriate to assure opportunity for the maximum number of persons to appear.

(e) Waiver. Subject to the approval of the chair, a requirement of this section may be waived in the public interest if necessary for the performance of the responsibilities of the board or the department.

~~[(f) Contested Cases. The parties to a contested case under review by the board shall be allowed an opportunity to provide an oral presentation to the board, subject to the following limitations and conditions.]~~

~~[(1) Each party shall be allowed a maximum of 15 minutes for their oral presentation.]~~

~~[(2) No party is allowed to provide a rebuttal or a closing statement.]~~

~~[(3) Any party that is intervening in support of another party shall share that party's time; however, this provision is limited to intervenors of record from the State Office of Administrative Hearings proceeding.]~~

~~[(4) Time spent by a party responding to any board questions is not counted against their time.]~~

~~[(5) The parties to a contested case under review by the board shall limit their oral presentation and discussion to evidence in the State Office of Administrative Hearings' administrative record.]~~

~~[(6) During an oral presentation, a party to a contested case before the board may orally claim that a presenting party talked about evidence that is not contained in the State Office of Administrative Hearing's administrative record; time spent discussing such claims is not counted against the objecting party's time.]~~

~~[(7) A party must timely comply with the requirements of §215.59 of this title (relating to Request for Oral Presentation) before it is authorized to provide an oral presentation to the board.]~~

§206.23. Public Hearings.

(a) The board may hold public hearings:

(1) to consider adoption of rules;

(2) in accordance with the programs operated by the department; and

(3) to provide, when deemed appropriate by the board or when otherwise required by law, for public input regarding any other issue under the jurisdiction of the board.

(b) The executive director or designee may hold [~~conduct~~] public hearings [~~held~~] under subsection (a)(2) and (3) of this section.

(c) Public hearings shall be conducted in a manner that maximizes public access and input while maintaining proper decorum and orderliness, and shall be governed by the following guidelines:

(1) Questioning of those making presentations shall be reserved to board members, the executive director, the executive director's designee, or if applicable, the presiding officer.

(2) Organizations, associations, or groups are encouraged to present their commonly held views and same or similar comments through a representative member where possible.

(3) Presentations shall remain pertinent to the issue being discussed.

(4) A person who disrupts a public hearing shall leave the hearing room and the premises if ordered to do so by the chair, the executive director, the executive director's designee, or, if applicable, the presiding officer.

(5) Time allotted to one speaker may not be assigned to another speaker.

(d) Persons [~~with disabilities,~~] who have special communication or accommodation needs and who plan to attend a hearing to be held by the board, may contact the department in Austin to request auxiliary aids or services. For [~~In the case of~~] a hearing conducted by the executive director or designee, [~~department,~~] those persons may contact the public affairs officer, whose address and telephone number appear in the public notice for the [~~that~~] hearing, to request auxiliary aids or services. Requests shall be made at least two days before the hearing. The department shall make every reasonable effort to accommodate these needs.

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

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SUBCHAPTER C. PROCEDURE FOR PETITION TO ADOPT RULES

43 TAC §206.41

STATUTORY AUTHORITY.

The department proposes amendments to Chapter 206 under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and Government Code, §2001.021(b), which requires state agencies to adopt rules that prescribe the form and procedures for a petition for rulemaking.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Government Code, §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003, and 1004.

§206.41. Petition.

Any interested person may petition the department requesting the adoption of a rule. The [~~Such~~] petition must be in writing [~~directed~~] to the executive director [~~at the department's headquarters building in Austin~~] and [~~shall~~] contain the person's physical address in Texas, [~~and~~] a clear and concise statement of the substance of the requested [~~proposed~~] rule, and [~~together with~~] a brief explanation of the purpose of the requested rule [~~to be accomplished through such adoption~~]. Within 60 days after receipt, the department will either deny the petition in writing, stating its reasons therefore, or will initiate rulemaking proceedings in accordance with [~~the Administrative Procedure Act (~~] Government Code, Chapter 2001, Subchapter B[~~)~~]

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

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SUBCHAPTER D. PROCEDURES IN CONTESTED CASES

43 TAC §§206.61 - 206.73

STATUTORY AUTHORITY.

The department proposes repeals to Chapter 206 under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. The proposed repeals would implement Government Code, §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003, and 1004.

§206.61. Scope and Purpose.

§206.62. Definitions.

§206.63. Filing of Petition.

§206.64. Content of Petition.

§206.65. Examination by Executive Director.

§206.66. Initiation of Contested Cases, Service of Notice of Hearing, Standard of Review, and Burden of Proof.

§206.67. Discovery.

§206.68. Evidence.

§206.69. Withdrawal or Amendment of Proposal for Decision.

§206.70. Filing of Exceptions and Replies.

§206.71. Form of Exceptions and Replies.

§206.72. Motions for Rehearing.

§206.73. Extension of Time for Final Order.

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

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SUBCHAPTER D. ADVISORY COMMITTEES

43 TAC §§206.92, 206.93, 206.101

STATUTORY AUTHORITY.

The department proposes new and amendments to Chapter 206 and proposed new §206.101 under Transportation Code, §643.155, which authorizes the department to adopt rules to create a rules advisory committee consisting of the public, the department, and representatives of motor carriers transporting household goods using small, medium, and large equipment; Transportation Code, §1001.031, which requires the board to establish advisory committees; Transportation Code, §1001.0411(b), which allows the executive director to delegate duties or responsibilities; Transportation Code, §1002.001,

which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Transportation Code, §1004.002, which requires the board and the department to develop and implement policies that provide the public with a reasonable opportunity to appear before the board or the department and to speak on any issue under the jurisdiction of the board or the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.021(b), which requires state agencies to adopt rules that prescribe the form and procedures for a petition for rulemaking; and Government Code, Chapter 2110, which sets out the requirements for advisory committees and requires that the agency make rules to establish the purpose and tasks of the committee and the manner in which the committee will report to the agency.

CROSS REFERENCE TO STATUTE. The proposed new and amendments would implement Government Code, §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003, and 1004.

§206.92. Definitions.

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

(1) Advisory committee--Any committee created by the board to make recommendations to the board or to the executive director pursuant to Transportation Code, §1001.031 and §643.155.

(2) Board--The board of the Texas Department of Motor Vehicles.

(3) Department--The Texas Department of Motor Vehicles.

[~~(4) Division director--The chief administrative officer in charge of a division of the department.~~]

(4) [~~(5)~~] Executive director--The chief executive officer of the Texas Department of Motor Vehicles.

(5) [~~(6)~~] Member--An appointed member of an advisory committee created under this subchapter.

(6) [~~(7)~~] Presiding officer--The presiding officer of an advisory committee elected by the membership of the advisory committee created under this subchapter.

§206.93. Advisory Committee Operations and Procedures.

(a) Role of advisory committee. The role of an advisory committee under this subchapter is to provide advice and recommendations to the board or executive director. Advisory committees shall meet and carry out their functions upon a request from the department or board for advice and recommendations on any issues.

(b) Appointment and qualifications of advisory committee members. The board shall appoint members to an advisory committee in accordance with Transportation Code, §643.155 and §1001.031(b) by selecting potential members from a list provided to the board by the executive director. Board members shall not serve as advisory committee members. Each advisory committee shall elect from its members a presiding officer, who shall report the advisory committee's recommendations to the board or the executive director in accordance with subsection (i) of this section. The executive director may designate a division or divisions of the department to participate with, or to provide subject-matter expertise, guidance, or administrative support to the advisory committee as necessary.

[~~(c) Member qualifications. Members shall have knowledge about and interests in, and represent a broad range of viewpoints about, the work of the committee or applicable division(s). Board members shall not serve as advisory committee members.~~]

(c) [~~(d)~~] Composition of advisory committees. In making appointments to the advisory committees, the board shall, to the extent practical, ensure representation of members from diverse geographical regions of the state.

(d) [~~(e)~~] Committee size and quorum requirements. An advisory committee shall be composed of a reasonable number of members not to exceed 24 as determined by the board. A simple majority of advisory committee members will constitute a quorum. An advisory committee may only deliberate on issues within the jurisdiction of the department or any public business when a quorum is present.

(e) [~~(f)~~] Terms of service. Advisory committee members will serve terms of four years. A member will serve on the committee until the member resigns, is dismissed or replaced by the board, or the member's term expires.

(f) [~~(g)~~] Member training requirements. Each member of an advisory committee must receive training regarding [~~the Open Meetings Act,~~] Government Code, Chapter 551; and [~~the Public Information Act,~~] Government Code, Chapter 552.

(g) [~~(h)~~] Compliance with Open Meetings [~~Act~~]. The advisory committee shall comply with [~~the Open Meetings Act,~~] Government Code, Chapter 551.

[~~(i) Public input and participation. The advisory committee shall accept public comments made in person at advisory committee meetings or submitted in writing. Public comments made in writing should be submitted to the advisory committee five business days in advance of the advisory committee meeting with sufficient copies for all members.~~]

(h) [~~(j)~~] Reporting recommendations. Recommendations of the advisory committee shall be reported to the board at a board meeting prior to board action on issues related to the recommendations. The recommendations shall be in writing and include any necessary supporting materials. The presiding officer of the advisory committee or the presiding officer's designee may appear before the board to present the committee's advice and recommendations. This subsection does not limit the ability of the advisory committee to provide advice and recommendations to the executive director as necessary.

(i) [~~(k)~~] Board and executive director use of advisory committee recommendations. In developing department policies, the board and the executive director shall consider the written recommendations [~~and reports~~] submitted by advisory committees.

(j) [~~(l)~~] Reimbursement. The department may, if authorized by law and the executive director, reimburse advisory committee members for reasonable and necessary travel expenses.

[~~(m) Expiration dates for advisory committees. Unless a different expiration date is established by the board for the advisory committee, each advisory committee is abolished on the fourth anniversary of its creation by the board.~~]

§206.101. Public Access to Advisory Committee Meetings.

(a) Posted agenda items. A person may speak before an advisory committee on any matter on a posted agenda by submitting a request, in a form and manner as prescribed by the department, prior to the matter being taken up by the advisory committee. A person speaking before an advisory committee on an agenda item will be allowed an opportunity to speak:

(1) prior to a vote by the advisory committee on the item; and

(2) for a maximum of three minutes, except as provided in subsections (d)(6) and (e) of this section.

(b) Open comment period.

(1) At each regular advisory committee meeting, the advisory committee shall allow an open comment period, not to exceed one hour, to receive public comment on any other matter that is within the scope of the specific advisory committee under §206.94(a) of this title (relating to Motor Vehicle Industry Regulation Advisory Committee (MVIRAC)), §206.95(a) of this title (relating to Motor Carrier Regulation Advisory Committee (MCRAC)), §206.96(a) of this title (relating to Vehicle Titles and Registration Advisory Committee (VTRAC)), §206.97(a) of this title (relating to Customer Service and Protection Advisory Committee (CSPAC)), or §206.98(a) of this title (relating to Household Goods Rules Advisory Committee (HGRAC)).

(2) A person wanting to make a comment under this subsection shall complete a registration form, as provided by the department, prior to the beginning of the open comment period.

(3) Except as provided in subsections (d)(6) and (e) of this section, each person shall be allowed to speak for a maximum of three minutes for each comment in the order in which the requests to speak were received.

(c) Disability accommodation. Persons who have special communication or accommodation needs and who plan to attend a meeting, may contact the department in Austin to request auxiliary aids or services. Requests shall be made at least two days before a meeting. The department shall make every reasonable effort to accommodate these needs.

(d) Conduct and decorum. An advisory committee shall receive public input as authorized by this section, subject to the following guidelines:

(1) questioning of speakers shall be reserved to advisory committee members and the department's administrative staff;

(2) organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible;

(3) comments shall remain pertinent to the issue being discussed;

(4) a person who disrupts an advisory committee meeting shall leave the meeting room and the premises if ordered to do so by the acting advisory committee chair;

(5) time allotted to one speaker may not be reassigned to another speaker; and

(6) the time allotted for comments under this section may be increased or decreased by the acting advisory committee chair, as may be appropriate to assure opportunity for the maximum number of persons to appear.

(e) Waiver. Subject to the approval of the acting advisory committee chair, a requirement of this section may be waived in the public interest if necessary for the performance of the responsibilities of the advisory committee or the department.

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

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SUBCHAPTER E. DEPARTMENT VEHICLE FLEET MANAGEMENT

43 TAC §206.111

STATUTORY AUTHORITY.

The department proposes amendments to Chapter 206 under Transportation Code, §1001.0411(b), which allows the executive director to delegate duties or responsibilities; Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Government Code, §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003, and 1004.

§206.111. Restrictions on Assignment of Vehicles.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Department--The Texas Department of Motor Vehicles.

(2) Division director--The chief administrative officer in charge of a division of the department.

(3) Executive Director--The executive director of the Texas Department of Motor Vehicles or the executive director's designee not below the level of division director.

(b) Motor pool. Each department vehicle, with the exception of a vehicle assigned to a field employee, shall be assigned to the department's motor pool and be available for checkout.

(c) Regular vehicle assignment. The department may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the executive director makes a signed, written documented finding that the assignment is critical to the needs and mission of the department.

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

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SUBCHAPTER F. DIGITAL CERTIFICATES [~~ELECTRONIC SIGNATURES~~]

43 TAC §206.131

STATUTORY AUTHORITY.

The department proposes amendments to Chapter 206 under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Government Code, §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003, and 1004.

§206.131. Digital Certificates.

(a) General. This section prescribes the requirements that govern the issuance, use, and revocation of digital certificates issued by the Texas Department of Motor Vehicles (department) for electronic commerce in eligible department programs. The provisions of 1 TAC Chapter 203, Subchapter B govern this section in the event of a conflict between that subchapter and a provision of this section.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Business entity--An entity recognized by law through which business is conducted with the department, including a sole proprietorship, partnership, limited liability company, corporation, joint venture, educational institution, governmental agency, or non-profit organization.

(2) Certificate holder--An individual to whom a digital certificate is issued.

(3) Digital certificate--A certificate, as defined by 1 TAC §203.1, issued by the department for purposes of electronic commerce.

(4) Digital signature--Has the same meaning assigned by 1 TAC §203.1.

(5) Division director--The chief administrative officer of a division of the department.

(c) Program authorization. A division director may authorize the use of digital signatures for a particular program based on whether the applicable industries or organizations are using such technology, the frequency of document submission, and the appropriateness for the program. The solicitation documentation for eligible programs will include the information that digital signatures may be used.

(d) Application and issuance of digital certificate.

(1) A request for a digital certificate shall be in writing and shall be signed by the individual authorized by the business entity to request a digital certificate.

(2) The department may request information necessary to verify the identity of the individual requestor or the identity of the individual to whom the certificate is to be issued. To verify identity under this paragraph a person shall present:

(A) an unexpired Texas driver's license or unexpired personal identification certificate with a photograph;

(B) an unexpired [~~concealed handgun license or~~] license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(C) an unexpired United States passport;

(D) a United States citizenship (naturalization) certificate with identifiable photograph;

(E) an unexpired United States Customs and Border Protection [~~Bureau of Citizenship and Immigration Services~~] document that:

(i) was issued for a period of at least one year;

(ii) is valid for not less than six months from the date it is presented to the department with a completed application; and

(iii) contains verifiable data and an identifiable photograph;

(F) an unexpired United States military identification card for active duty, reserve, or retired personnel with an identifiable photograph; or

(G) a foreign passport with a valid or expired visa issued by the United States Department of State with an unexpired United States Customs and Border Protection [~~Bureau of Citizenship and Immigration Services~~] Form I-94:

(i) that was issued for a period of at least one year, is marked valid for a fixed duration, and is valid for not less than six months from the date it is presented to the department with a completed application; or

(ii) that is marked valid for the duration of the person's stay and is accompanied by appropriate documentation.

(3) The department may take actions necessary to confirm that the individual who signed the request is authorized to act on behalf of the business entity, including requiring the individual requestor or the person authorizing the request to personally appear at the department location responsible for the issuing of the certificate.

(4) The department shall issue a digital certificate only to an individual. Information identifying the business entity that authorized the issuance of the certificate may be embedded in the digital certificate.

(e) Refusal to issue a digital certificate. The department shall not issue a digital certificate if the identity of the individual to whom the certificate is to be issued, or the identity of the individual requesting the certificate on behalf of a business entity, cannot be established. The department will not issue a digital certificate if the business entity on whose behalf the request is allegedly being made does not authorize its issuance.

(f) Responsibilities of certificate holder. A certificate holder shall:

(1) maintain the security of the digital certificate;

(2) use the certificate solely for the purpose for which it was issued; and

(3) renew the certificate in a timely manner, if continued use is intended.

(g) Responsibilities of business entity. A business entity is responsible for:

(1) determining what individual may request a certificate for the business entity;

(2) determining to what individual a certificate is to be issued; and

(3) requesting within a reasonable time the revocation of the business entity's digital certificate if the security of the certificate has been compromised or if the business entity is changing its certificate holder.

(h) Revocation of certificate. The department shall revoke a digital certificate:

(1) upon receipt of a written request for revocation of the business entity's digital certificate, signed by an individual authorized to act on behalf of the business entity for which it was issued;

(2) for suspension or debarment of the individual or business entity; or

(3) if the department has reason to believe that continued use of the digital certificate would present a security risk.

(i) Use of digital certificate.

(1) A digital certificate [~~signature~~] issued by the department shall only be used for the purpose of digitally signing electronic documents filed with the department. Use of a [~~A~~] digital certificate [~~signature~~] is binding on the individual to whom the certificate was issued and the represented business entity, as if the document were signed manually.

(2) The department may use the digital certificate to identify the certificate holder when granting or verifying access to secure computer systems used for electronic commerce.

(j) Forms. The department may prescribe forms to request, modify, or revoke a digital certificate.

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

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SUBCHAPTER G. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY

43 TAC §206.151

STATUTORY AUTHORITY. The department proposes amendments to Chapter 206 under Transportation Code, §520.004, which requires the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel; Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Government Code, §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003, and 1004.

§206.151. Internal Risk-Based Monitoring System.

(a) All users of the Registration and Title System (RTS) at the Texas Department of Motor Vehicles (department) are subject to periodic examination by the department. As a result of the examination, the department will assign each RTS user a classification of priority or non-priority for the purposes of prioritizing inspections to determine whether there is evidence of fraud by the user. In classifying an RTS user, the department may consider factors including, but not limited to:

(1) the RTS user's transaction volume;

(2) the RTS user's past violations of the department's rules and procedures within the last five years;

(3) title error investigations performed by the department on titles issued by the RTS user;

(4) public complaints received by the department against the RTS user; and

(5) discrepancies in data reflecting the RTS user's transactions.

(b) It is the department's goal to inspect each RTS user as follows:

(1) if the RTS user is classified as priority, the RTS user will be inspected not less than twice per year; or

(2) if the RTS user is classified as non-priority, the RTS user will be inspected not less than once per year.

(c) Inspections under this section may be virtual, on premises at the RTS user's location, or a combination of both.

[~~The department shall establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel, including:~~]

[~~(1) establishing a risk-based system of monitoring the department's regional service centers;~~]

[~~(2) developing criteria to determine varying risk levels for the department's internal fraud monitoring functions to strategically allocate resources and personnel;~~]

[~~(3) reviewing the department's methods for collecting and evaluating related information; and~~]

[~~(4) developing and providing training to department staff.~~]

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

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CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §215.1 and §215.2; repeal of Subchapter B, Adjudicative Practice and Procedure, §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.35 - 215.49, 215.55, 215.56, 215.58 - 215.63; amendments to Subchapter C. Licenses, Generally, §§215.82, 215.83, 215.87, and 215.89; in Subchapter D. Franchised Dealers, Manufacturers, Distributors, and Converters, amendments to §§215.101, 215.103 - 215.111, 215.113, 215.115 - 215.217, and 215.119, repeal of §215.112, and new proposed §§215.102, 215.120, and §215.121; in Subchapter E. General Distinguishing Numbers, proposes amendments to §§215.131 - 215.133; 215.135 -215.142; 215.144, 215.145, 215.147 - 215.152, 215.154, 215.155, 215.160, and 215.161, repeal of §215.146, and new §215.134 and §215.143; proposes amendments to Subchapter F. Lessors and Lease Facilitators, §§215.171 - 215.180; proposes repeal of Subchapter G. Warranty Performance Obligations, §§215.201 - 215.210; proposes amendments to Subchapter H. Advertising, §§215.242, 215.244, 215.249, 215.250, 215.257, 215.261, 215.268, and 215.270; proposes repeal of Subchapter I. Practice and Procedure for Hearings Conducted by The State Office of Administrative Hearings, §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, 215.314 - 215.317; and in Subchapter J. Administrative Sanctions, proposes amendments and partial repeal of §215.500, and repeal of §§215.501, 215.502, and 215.505.

The proposed amendments are necessary to modify language to be consistent with statutes and other chapters in Title 43 of the Texas Administrative Code; to delete language describing actions for which the department does not have rulemaking authority; to clarify the purpose of a rule by amending the rule title and language; to modify language to be consistent with current practice including use of records or electronic systems; to amend certain application requirements consistent with regulatory best practices; to increase temporary tag allocations for new franchised dealers based on department experience; to improve readability through the use of consistent terminology; to clarify or delete unused, archaic, or inaccurate definitions, terms, references or other language; to implement statutory changes; to deter fraud or abuse by expanding fingerprint requirements to other license types issued under Transportation Code, Chapter 503; to clarify existing requirements, and to modernize language and improve readability. Amendments are proposed to implement SB 422, 88th Legislature, Regular Session (2023), which amended Occupations Code, §§55.004, 55.0041, and 55.005 affecting licensing of military service members.

New sections are proposed to document and clarify current licensing application requirements, procedures for issuing industry license plates, and sanctions relating to manufacturers, distributors, converters, franchised dealers, and to document and clarify application requirements and procedures for issuing industry license plates to drive-away operators.

Repeals are proposed to move an existing rule to the designated subchapter for that license type; to move adjudicative rules to proposed new Chapter 224, which is proposed to include all department adjudicative practice and procedure rules; and to implement statutory changes in Senate Bill (SB) 604, 86th Legislature, Regular Session (2019). Certain subchapters are proposed for relettering because preceding subchapters are being proposed for repeal. The title of one subchapter is proposed to be amended to describe the types of licenses to which the subchapter applies. Proposed new Chapter 224 is also published in this issue of the *Texas Register.*

In 2019, the Sunset Commission recommended the board establish advisory committees and adopt rules regarding standard advisory committee structure and operating criteria. The board adopted rules in 2019 and advisory committees have since provided valuable input on rule proposals considered by the board for proposal or adoption. In September 2023, the department provided an early draft of these rules to two department advisory committees, the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) and the Customer Service and Protection Advisory Committee (CSPAC). Committee members voted on formal motions and provided informal comments on other provisions. Input from both committees was incorporated in proposed §§215.83, 215.102, 215.103, 215.132, 215.144, 215.244, and 215.250.

EXPLANATION. The department is conducting a review of its rules under Chapter 215 in compliance with Government Code, §2001.039. Notice of the department's plan to review is also published in this issue of the *Texas Register.* As a part of the review, the department is proposing necessary amendments and repeals, as detailed in the following paragraphs.

Subchapter A. General Provisions

A proposed amendment to §215.1 and §215.2(a) would delete a stray reference to Transportation Code, Chapter 1000, which does not exist. Proposed amendments to §215.1 would delete an incomplete list of license types regulated by the department, delete the word "motor" from the phrase "motor vehicle," and add the word "industry" to more accurately reflect the scope of the department's responsibility to encompass all vehicles including trailers and all license types under Occupations Code, Chapter 2301, and Transportation Code, Chapter 503. A proposed amendment to §215.1 would clarify the scope of the rules in Chapter 215, which is to describe licensing requirements and rules governing the operation of license holders, recognizing that other chapters also prescribe policies and procedures that apply to the motor vehicle industry.

Proposed amendments to §215.2(b) would delete definitions for terms used in contested cases because rules that use these terms are proposed for repeal in this chapter and are included in proposed new Chapter 224, Adjudicative Practice and Procedure, which is published in this same issue of the *Texas Register.* The definitions proposed for deletion include the terms ALJ, executive director, final order authority, hearing officer, motion for rehearing authority, and SOAH, and the remaining definitions would be renumbered accordingly. Proposed amendments in

renumbered §215.2(b)(1) would clarify that only a board member or a person employed by the department may be authorized to serve as a board delegate as provided under Occupations Code, §2301.154. A proposed amendment to renumbered §215.2(b)(2) would add a definition for "day" and is necessary for standardization and consistency throughout the chapter. Proposed amendments to §215.2(b)(3) would substitute the term "division" for "department" to correctly refer to the responsible organizational unit in the department and would substitute the term "department staff" for "personnel" for clarity and consistency. A proposed amendment to renumbered §215.2(b)(4) would add a reference to Transportation Code, Chapter 503, which defines the types of general distinguishing numbers that the department may issue. A proposed amendment to renumbered §215.2(b)(5) would clarify that any state agency other than the department is included in the definition of a governmental agency. A proposed amendment to renumbered §215.2(b)(6) would add a new definition for standard license plate. This definition is necessary to differentiate a standard license plate issued to a dealer under Transportation Code, §503.061 from a personalized prestige license plate issued to a dealer under Transportation Code, §503.0615, recognizing that each plate has a different term and cost prescribed in statute and is obtained from the department through a different process.

Subchapter B. Adjudicative Practice and Procedure

All sections of Subchapter B, Adjudicative Practice and Procedure, are proposed for repeal because the substance of each rule and any proposed amendments would be incorporated into proposed new Chapter 224. Adjudicative Practice and Procedure. The proposed repeal includes §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.35 - 215.49, 215.55, 215.56, 215.58 - 215.63.

Subchapter C. Licenses, Generally

This subchapter is proposed to be relettered as Subchapter B as the current Subchapter B is proposed for repeal.

Proposed amendments would delete §215.82(a) and (b) and reletter the remaining subsections as necessary, because §215.82(a) and (b) refer to an archaic process that the department no longer follows. A license holder is not required to request a duplicate license from the department; rather, a license holder may print a license copy on demand in the electronic system designated by the department for licensing. Proposed amendments to §215.82(c) would delete the subsection designation and substitute "standard" for "metal" to identify which plate type applies to the replacement process. Proposed amendments to §215.82(c) would also clarify that the same process applies for obtaining a replacement sticker, and that a request for a replacement license plate or sticker must be submitted electronically in the department-designated system.

Proposed amendments to §215.83(a)(1) and (d) would clarify that an application for a new license, a license amendment, or a license renewal must be filed electronically. A proposed amendment to §215.83(a)(3) would specify which electronic payment forms are accepted. Paper checks are no longer accepted because fee payment must be completed before an application may be submitted and processed. A proposed amendment to §215.83(b) would clarify that an authorized representative who files an application on behalf of an applicant or license holder may be required to provide written proof of authority to act. A proposed amendment to §215.83(c) would clarify that a pending new license number will not be released to a person who is not an applicant, license holder, or authorized representative, unless that person files a written request under Government Code, Chapter 552. Once a license is approved and issued, the license number may be published on the department's website or otherwise provided in response to an inquiry consistent with Government Code, §552.11765 and other requirements in Government Code, Chapter 552.

A proposed amendment to §215.83(d)(2) would delete an archaic reference to an envelope postmark for a renewal application to comport with §215.133(c), which requires a license application be submitted electronically in the department's designated licensing system.

Proposed amendments to §215.83(e) would delete redundant language and combine the language in §215.83(e) and §215.83(f) for consistency and ease of understanding without changing the meaning. Other proposed amendments would reletter the remaining subsections and internal references accordingly.

Proposed amendments to relettered §215.83(i) would add the phrase "military service members or" in multiple places in subparagraphs (1), (2), and (3). These proposed amendments are necessary to implement SB 422, which added military service members who hold out-of-state licenses as persons eligible for special business or occupational authorization or licensing consideration. A proposed amendment to relettered §215.83(i) would clarify that the requirements and procedures authorized under Texas law do not modify or alter rights under federal law.

In relettered §215.83(i)(1), proposed amendments would delete two duplicative references to Occupations Code, §55.0041. Also, in relettered §215.83(i)(1), a proposed amendment would substitute the phrase "being stationed" for "residency" to clarify that eligibility for special licensing consideration for both the military member and military spouse is based on the military member being stationed in Texas, rather than on the spouse's residency.

Additional amendments to relettered §215.83(i)(3) are proposed to implement SB 422. Proposed amendments would change the word "may" to "shall" and would add the phrase "within 30 days" to set a deadline by which the department must issue a license to a military service member or spouse. This change is necessary to implement changes to Occupations Code, §55.005(a) from SB 422, which requires a state agency to issue a license no later than the 30th day after an application is filed. Issuing a license within 30 days would also fulfill the requirement of Occupations Code, §55.0041, as amended by SB 422, that the department provide confirmation within 30 days that the military service member or military spouse is authorized to engage in the licensed business or occupation. Another proposed amendment to relettered §215.83(i)(3) would add the phrase "modified or" to recognize that provisions of Occupations Code, Chapter 55 may require the department to modify standard licensing processes when processing an application for a military service member or military spouse and to clarify that the department's licensing process for military service members and military spouses will be in accordance with all Occupations Code, Chapter 55 requirements.

A proposed amendment to relettered §215.83(j) would add a reference to Government Code, §2001.054 for ease of reference. An amendment to relettered §215.83(k) increases the time from 10 to 15 days in which a license holder may dispute whether a renewal application was timely received by the department.

A proposed amendment to relettered §215.83(n) substitutes the term "standard" for "metal" to more accurately describe the type of dealer's license plate addressed in this subsection and adds the phrase "is canceled" to clarify that a standard dealer's license plate expires on the date a dealer's GDN is canceled under Transportation Code, §503.038.

A proposed amendment to §215.84(a) would insert an introductory paragraph with a statutory cite to Occupations Code, §2301.002 to enable a person to more easily determine whether the section applies and to clarify the basic statutory prohibition against brokering and would reletter the remaining subparagraphs accordingly. Proposed amendments to relettered §215.84(b) would add two clarifying phrases "in the definition of broker" and "acting as a" to clarify language related to the term broker and to be more consistent with the statute and delete duplicate phrasing to improve readability. Proposed amendments to relettered §215.84(c) would add the term "franchised" in §215.84(c)(3) to more accurately describe the type of dealer to which a buyer referral service, program, or club may refer a potential new vehicle buyer, would correct punctuation in relettered §215.84(c), and would move a requirement from §215.84(d) regarding compliance with advertising rules to relettered §215.84(c)(7) for completeness and ease of reference, and would update a reference to the relettered subchapter containing the advertising rules. Proposed amendments to relettered §215.84(d) would clarify that §215.84 does not apply to a person who is not a broker as defined in Occupations Code, §2301.002, and would delete a redundant phrase "or entity" as entities are included in the definition of "person" in Occupations Code, §2301.002. A proposed amendment would delete current §215.84(d) because the content of that the subsection is incorporated into proposed relettered §215.84(c)(7).

Proposed amendments to §215.85(b) would correct punctuation and move language from §215.85(c) to §215.85(b)(7) for completeness and clarity without changing the meaning. A proposed amendment to §215.85(c) would delete the redundant subsection moved to §215.85(b)(7). Proposed amendments to §215.85(d) would reletter the subsection to (c) and delete redundant terms "licensed" and "independent motor vehicle" from this subsection.

Proposed amendments to §215.87 would substitute the term "standard" for the phrase "metal dealer's" in the rule title and in §215.87(a) - (c) to more accurately describe the type of dealer's license plate addressed in this subsection. A proposed amendment to §215.87(a) would add a list of license types eligible to request a standard license plate for completeness and clarity. A proposed amendment to §215.87(b) would clarify that a standard license plate expires when the associated license is canceled. A proposed amendment to §215.87(c) would clarify that a license holder may be required to pay tax when ordering a standard plate as required under Tax Code, §152.027. Another proposed amendment would create new §215.87(d) to describe the process a dealer must use to apply for or renew a personalized prestige plate issued under Transportation Code, §501.0615.

Proposed amendments to §215.89(a) and (b) would delete the redundant "or department" because the word "board" is defined to include department staff to whom the board delegates a duty. A proposed amendment to §215.89(a)(2) would add a reference to Transportation Code, §503.034, which authorizes the department to deny a new or renewal application for a dealer general distinguishing number or a Wholesale Motor Vehicle Auction general distinguishing number if the applicant is guilty of conduct that would result in the cancellation of the general distinguishing number under Transportation Code, §503.038. A proposed amendment to §215.89(b)(6) would add the phrase "or other legal entity" for completeness because legal entities other than a corporation can fail to maintain authority to conduct business in Texas. Proposed amendments to §215.89(b)(10) would add "final" and substitute the "after" for "through" for clarity and consistency with department contested case procedures.

Subchapter D. Franchised Dealers, Manufacturers, Distributors, and Converters

This subchapter is proposed to be relettered as Subchapter C as current Subchapter B is proposed for repeal and the subsequent subchapters are proposed to be relettered accordingly.

Proposed amendments to §215.101 would delete an incorrect reference to a non-existent Transportation Code, Chapter 1000 and add the license types to which this subchapter applies for clarity.

Proposed new §215.102 would describe application requirements for manufacturers, distributors, converters, and franchised dealers for new, renewal, and amendment license applications including the requirement to attach documents, pay required fees, and submit applications electronically on a prescribed form in the department's designated licensing system. Occupations Code, §2301.257 and §2301.258 authorize the department to prescribe the application form and require any information necessary to determine the applicant's qualifications to adequately serve the public. Occupations Code, §2301.651(b) gives the board authority to deny an application for an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity that would be cause for denying a license. Fees are prescribed by statute in Occupations Code, §2301.264. Proposed new §215.102(c) would require a license holder renewing or amending a license to review current license information, update information that has changed, provide related supporting information or documents for any change or new requirement, and allow the department to implement its responsibilities under Occupations Code §§2301.251, 2301.252, 2301.256-2301.260, 2301.303, and 2301.304. Proposed new §215.101(a-d) would include requirements that apply to all four license types. Proposed new §215.101(e)(1) would describe the information that must be submitted in the application, denoting any differences by license type. Proposed new §215.101(e)(2) would describe the documents that must be attached to the application, denoting any differences by license type. Proposed information and attachment requirements vary for each license type based on statutory requirements and related consumer fraud or public safety considerations resulting from the license holder's operation, business model including distribution methods, and the specific new products manufactured or offered for sale. These proposed requirements incorporate best practice recommendations from the American Association of Motor Vehicle Administrators (AAMVA) regarding internet sales. Proposed new §215.101(e)(3) would describe the fees that must be paid when an applicant applies online for a license. To prevent consumer fraud and abuse, proposed new §215.101(f) would state that a license applicant may not use a name or assumed name that could be confused with a governmental entity, or could be deceptive or misleading to the public. Proposed new §215.101(g) would set out the process through which a manufacturer or distributor may add a new line make to an existing license during the license period.

Proposed amendments to §215.103(a) would substitute "performs" for the phrase "will only perform" and add the phrase "and not new motor vehicle sales" to clarify that the franchised dealer activity that may not be performed at a service-only facility is new motor vehicle sales. The phrase "and nonwarranty" would be deleted because the department does not regulate non-warranty repair services. Similarly, the last sentence in §215.103(a) is proposed for deletion as Occupations Code, Chapter 2301 does not require warranty repair services to be performed only at a licensed dealer location. This proposed change would provide franchised dealers with more flexibility in performing warranty repair services. Proposed amendments to §215.103(b) would delete a redundant word and change the term "line" to "line-make" for consistency. A proposed amendment to §215.103(d) would delete the word "only" as the word is not required by statute and the franchised dealer may prefer to have contracting flexibility to obtain more attractive commercial terms.

Proposed amendments to §215.104(a) and §215.104(b)(3) would delete unnecessary words to improve readability without changing meaning. Proposed amendments throughout §215.104 would update and modernize the amendment process by requiring a franchised dealer to submit an amendment application electronically in the system designated for licensing. A proposed amendment in §215.104(a)(1) would clarify that amendment application attachments must be legible and accurate electronic images, and a proposed amendment in §215.104(a)(2) would add a reference to the new proposed Chapter 224, which would include procedures related to processing protests of a franchised dealer's application. A proposed amendment in §215.104(b)(3) would modernize and standardize the process through which a publicly held corporation informs the department of an ownership change by requiring that the corporation file an amendment application electronically when a person or entity acquires a 10% ownership share. A proposed amendment to §215.104(c)(5) would delete an archaic requirement for a franchised dealer to notify the department if the dealer's facsimile number has changed, and renumber accordingly. A proposed amendment to §215.104(d)(1) would replace "oversees" with "is in charge of" for consistency and clarity without a change to the meaning of the provision. Proposed amendments to §215.104(e) and §215.104(f) would add "franchised" and delete the phrase "licensed new motor vehicle," for consistency in describing a dealer under this subchapter and would add the word "amendment" to describe the type of application required to process the change described to the franchised dealer's license.

Proposed amendments to §215.105(b) and §215.105(c) would add "franchised" and delete the phrase "licensed new motor vehicle" for consistency in describing a dealer under this subchapter. A proposed amendment to §215.105(d) would clarify and modernize the process for a franchised dealer to file a protest by specifying that a franchised dealer with standing to protest must file a timely protest electronically in the department-designated system for licensing and pay the required fee.

A proposed amendment to §215.106(a)(1) would clarify that a notice of protest must be received by 5:00 p.m. Central Time, which will be either Central Standard Time or Central Daylight Time as applicable. A proposed amendment to §215.106(a)(2) would modernize the protest process by requiring the notice of protest to be filed in the department's designated electronic filing system, and a proposed amendment to §215.106(a)(3) would clarify that the fee must be paid at the time the application is submitted. A proposed amendment to §215.106(b)(2) would clarify that the protest will be rejected if payment is not made or is later dishonored.

A proposed amendment to §215.108 would add the word "franchised" and delete the phrase "licensed new motor vehicle," for consistency in describing a dealer under this subchapter.

A proposed amendment to §215.109 would add the word "franchised" and delete the phrase "licensed new motor vehicle," for consistency in describing a dealer under this subchapter. A proposed amendment to §215.109(4) would require a franchised dealer to submit a dealership replacement application electronically in the department system designated for licensing.

Proposed amendments to §215.110(a) would split the subsection into three separate sections lettered (a) through (c), would modify internal references in relettered (b) and (c) from "subsection" to "section" to reflect the new organization, and would reletter current subsection (b) to subsection (d) accordingly. Proposed amendments to §215.110(a) and relettered §215.110(d) would add the word "franchised" or "franchised dealer" and delete the phrase "licensed new motor vehicle," for consistency in describing a dealer under this subchapter. Proposed amendments in §215.110(a) would remove unnecessary language and clarify that the applicant must submit legible and accurate electronic images of the franchise agreement pages that identify the parties, the parties' signatures, each line-make listed in the application, and the address of the franchised dealership's physical location. A proposed amendment to relettered §215.110(b) would clarify that an applicant may submit temporary evidence of franchise electronically, and proposed amendments to relettered §215.110(c) would clarify that an applicant is required to provide the designated franchise agreement pages to the department before a license may be issued.

Proposed amendments to §215.111 would organize the existing language into two subsections to improve readability. A proposed amendment to new §215.111(a) clarifies that a manufacturer or distributor must provide notice of termination or discontinuation as required under Occupations Code, §2301.453 and would remove language that duplicates the statute. A proposed amendment to new §215.111(b) would require a franchised dealer to file a written notice of protest electronically in the department's designated system for licensing.

SB 604, 86th Legislature, Regular Session (2019), eliminated the department's authority to approve a vehicle show or exhibition under Occupations Code, §2301.358, effective September 1, 2019. As a result, §215.112 is proposed for repeal as the §215.112(a) expressly limits applicability of the rule to motor home shows that require department approval.

A proposed amendment to the title of §215.113 would correct the spelling of "Franchised" as the statutory term in Occupations Code, §2301.002 is "franchised dealer." Proposed amendments to §215.113(a) - (c) and (f) would add the word "franchised" and delete the phrase "new motor vehicle," for consistency in describing a dealer under this subchapter. Proposed amendments to §215.113(a), (d), and (e) would require the notice of protest to be filed electronically in the department's designated system for licensing. Proposed amendments to §215.113(c) would substitute the more general Occupations Code subchapter designation for the specific section series reference so any future statutory changes will not require a rule change and would add a reference to the subchapter in proposed new Chapter 224 which ap-

plies to this subsection. Proposed amendments to §215.113(f) would add a reference to the subchapter in proposed new Chapter 224, which applies to this subsection, would delete archaic language as contested case hearing scheduling is determined by the State Office of Administrative Hearings (SOAH) and its procedural rules, and would substitute the word "issued" for "rendered" for consistency.

A proposed amendment to the title of §215.115 adds the phrase "Vehicle Sales" to describe the scope of the section more accurately. Proposed amendments to §215.115(a), (b), (d) and (f) would delete the phrase "a representative of" as the phrase is unnecessary. Proposed amendments to §215.115(a), (b), and (f) would add language to allow a record to be submitted to the department electronically upon request. Proposed amendments to §215.115(b) would correct preposition use to improve readability without changing the meaning.

A proposed amendment to title of §215.116 would add the term "Franchised Dealership" to describe the scope of this section more accurately. A proposed amendment to §215.116(a) would add the descriptor "franchised" to the term dealer and delete duplicate language without changing meaning.

Proposed amendments to §215.117 would improve the readability of the section without changing the meaning.

Proposed new §215.120 would set out the requirements for manufacturers, distributors and converters using license plates issued by the department. Proposed new §215.120(a) would specify when a manufacturer, distributor, or converter may apply for a standard license plate and proposed new §215.120(a) and (b) would specify the type of vehicle and purposes for which a license plate may be used. Proposed new §215.120(c) would explain where the license plate is to be placed on the vehicle. Proposed new §215.120(d) would contain the record requirements for these plates. Proposed new §215.120(e) and (f) would explain what a manufacturer, distributor or converter is required to do if a license plate is lost, stolen, or damaged. Proposed new §215.120(g) would require license plate records be available for inspection or review if requested by the department. Proposed new §215.120(h) would specify the criteria the department will use to evaluate a request for additional standard license plates. Proposed new §215.120(i) would require a manufacturer, distributor, or converter to return department-issued license plates to the department within 10 days of the associated license being closed, canceled, or revoked.

Proposed new §215.121 would set out the powers of the board and department to sanction a manufacturer, distributor, or converter. Proposed new §215.121(a) would describe existing administrative sanctions that the board or department may take if a manufacturer, distributor, or converter violates a law or rule enforced by the department. Proposed new §215.121(b) would describe which actions may result in a sanction.

Subchapter E. General Distinguishing Numbers

This subchapter is proposed to be relettered as Subchapter D as current Subchapter B is proposed for repeal and the subsequent subchapters are proposed to be relettered accordingly. An amendment to the title of this subchapter is proposed to reflect that the scope of the chapter also includes in-transit licenses issued to drive-a-way operators under Transportation Code, §503.023.

Proposed amendments to §215.131 would add a reference to Transportation Code, Chapters 1001-1005 and would clarify that provisions in this subchapter apply to general distinguishing numbers and drive-a-way operator in-transit licenses issued by the department.

Proposed amendments to §215.132 would delete an unused definition for charitable organization, delete an unnecessary definition for license, and add a definition for municipality, which is defined by reference to Local Government Code, Chapter 1. Proposed amendments would renumber the remaining provisions accordingly.

A proposed amendment to §215.133 would retitle the section to "Application Requirements for a Dealer or a Wholesale Motor Auction" to accurately reflect the scope of the section. A proposed amendment to §215.133(a) would add a reference to a wholesale motor vehicle auction and delete a redundant word. Proposed amendments to §215.133(c) would add multiple references to wholesale motor vehicle auction throughout, add a reference to §215.83, and clarify an existing requirement for a license holder to pay any outstanding civil penalties owed the department under a final order before renewing a GDN. Proposed amendments to §215.133(c)(1) would clarify existing application requirements in §215.133(c)(1)(C); add new §215.133(c)(1)(D), which requires an applicant to provide a contact name and contact details for a person who can provide business information about the applicant so the department knows who to contact for related questions; reletter the remaining subparagraphs; add in §215.133(c)(1)(I) the requirement for a telephone number for a dealer's temporary tag database account administrator; and correct in §215.133(c)(1)(O) the name of a form. Proposed amendments to §215.133(c)(2) would clarify in §215.133(c)(2)(D) by adding "unexpired" and deleting "current" in the related clauses and substituting the modern phrase "military identification card" for armed forces identification and would add the word "business" in §215.133(c)(2)(G) to clarify the phrase premises photos. Proposed amendments to §215.133(c)(3) would delete a redundant phrase in §215.133(c)(3)(A), add a reference in §215.133(c)(3)(B) to applicable taxes, and substitute "standard" for "metal" for a more precise description of a dealer plate. In §215.133(d), proposed amendments would add a fingerprint requirement for wholesale motor vehicle auction GDNs to allow the department to evaluate the criminal histories of applicants and update the title of a §211.6. Proposed amendments to §215.133(e) would delete "dealer" to clarify that all GDNs must follow the assumed name requirements in that subsection and would add the phrase "a name or" to denote that an applicant cannot use either a business name or an assumed name that is confusing, deceptive, or otherwise misleading to the public. Proposed new §215.133(j) would clarify that a person holding an independent motor vehicle GDN and performing salvage activities must apply for a National Motor Vehicle Title Information System (NMVTIS) Identification number and provide that number to the department in the application, to allow the department to verify that the applicant meets federal registration requirements and is qualified to perform salvage activities; the next subsection is proposed to be relettered accordingly.

Proposed new §215.134 would define the application requirements for a drive-a-way operator in-transit license. Proposed new §215.134(a) would set out the requirement for a license. Proposed new §215.134(b) would require an applicant to complete an application form prescribed by the department and submit it through the department's designated electronic system. Proposed new §215.134(c) would requires a license holder renewing or amending a license to verify current infor-

mation and provide related information and documents for any changes to the license, as well as pay required fees. Proposed new §215.134(d) would instruct a new applicant how to register in the department-designated licensing system. Proposed new §215.134(e)(1) would describe the information that must be submitted in the application for a drive-a-way operator in-transit license. Proposed new §215.134(e)(2) would describe the documents that must be attached to the application based on statutory requirements and related consumer fraud or public safety considerations resulting from the license holder's operation or business model. Proposed new §215.134(e)(3) would describe the fees that must be paid when an applicant applies for a license. Proposed new §215.134(f) would require a license applicant to comply with fingerprint requirements to allow the department to confirm an applicant's identity and perform a more comprehensive review of the applicant's criminal record. Proposed new §215.134(g) would protect the public by requiring an in-transit license holder to not use a business name or assumed name that would be confusing, deceptive, or misleading to prevent consumer fraud and abuse.

Proposed amendments to §215.135(a) and (b) would substitute "municipality" for "city" as municipality is a defined term in the Local Government Code, Chapter 1, and is proposed to be a defined term in §215.132. A proposed amendment to §215.135(a) would update a reference to the title of §215.140. Proposed amendments to §§215.135(b) and (c) would correct punctuation. A proposed amendment to §215.135(d) would require a GDN holder to notify the department of a new, closed or relocated business location by filing an amendment electronically in the system designated by the department for licensing.

Proposed amendments to §215.137(a) would substitute "GDN" for "license" and delete "dealership" for consistency in terminology. Proposed amendments to §215.137(c) would rephrase a sentence for clarity and consistency without changing the meaning.

Proposed amendments to the title of §215.138 and throughout the section would delete "metal" or "assigned metal dealer's" to describe a dealer license plate for specificity and consistency. A proposed amendment to §215.138(a) would delete the requirement to attach a plate to a license plate holder and would instead refer a license holder to §217.27 for plate placement requirements. Minor edits are proposed in §215.138(b) for clarity and would not change the meaning. Proposed amendments would combine the definition of light truck in §215.138(e) and rule language in §215.138(f) into relettered §215.138(e) for clarity, and the remaining sections would be relettered accordingly. Proposed amendments to relettered §215.138(h) would clarify that a dealer must keep records of all license plates issued by the department for dealer use, including both standard and personalized prestige plates. Proposed amendments to relettered §215.138(i) and (j) would clarify the procedures for reporting a license plate that is lost, stolen, or damaged. Proposed new §215.138(k) would require that a dealer's license plate record be available for inspection or to submit to the department electronically upon request to allow the department to inspect dealers for potential misuse of license plates. Proposed new §215.138(l) would require a dealer to return to the department all plates, stickers, and related receipts within 10 days, consistent with the requirements of Transportation Code §503.038.

Proposed amendments to the title of §215.139 and throughout the section and attached graphics would delete "metal" and add "standard" to describe a dealer plate more accurately and consistently. In §215.139(d) and in §215.139(f)(2), proposed minor edits would improve readability without changing meaning. In the attached graphic to §215.139(f)(1), proposed amendments would correct the number of plates that a dealer selling 50 to 99 vehicles during the previous 12 months is eligible to request and add a missing category for a dealer selling 100 to 200 vehicles during the previous 12 months. These proposed amendments would correct inadvertent errors made when the graphic was last published. The proposed amendments would delete §215.139(h) as an unnecessary disclaimer because other proposed amendments to §215.87(d) and §215.138(h) would explicitly address procedures relating to personalized prestige dealer plates.

A proposed amendment to §215.140 would add a subsection letter (a) to distinguish premises requirements for GDN dealers from premises requirements for wholesale motor vehicle auctions, which are proposed in new subsection (b). Proposed amendments to §215.140(a)(1)(B) and §215.140(a)(2) would clarify that the dealer's business hours must be posted in a manner and location that is accessible to the public to meet the requirements of Transportation Code, §503.032. Proposed amendments to §215.140(a)(5)(F) would clarify that an established and permanent location must be capable of receiving U.S. mail and must have an assigned emergency services property address to allow the department to verify the physical location. A proposed amendments to §215.140(a)(5)(F) would delete "metal" to describe the dealer's license plate more consistently. A proposed amendment to §215.140(a)(11)(B)(ii) would clarify that a display area must be reserved exclusively for the dealer's inventory. Proposed amendments to §215.140(a)(11)(B)(iv) and (vii) would clarify that a barrier that cannot be readily removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds. This weight guideline is consistent with Occupation Health and Safety Administration guidelines for the maximum weight that one person may safely lift without assistance. Proposed amendments to §215.140(a)(11)(C) would clarify by replacing "dealer" with "GDN holder" and would add a requirement for a GDN holder to disclose in an application or license amendment the location of a storage lot, if the lot is not located at the licensed business address. The department must be able to determine where a storage lot is located, so the department can inspect the lot to ensure compliance with department rules. The proposed changes in §215.140(11) are necessary to prevent fraud and consumer abuse and to protect public health and safety. A proposed amendment to §215.140(a)(12) would delete an exclusion for salvage pool operators as this exclusion is not consistent with public welfare and to ensure that no member of the public is misled about the status or condition of a salvage vehicle. If a dealer is selling both motor vehicles and salvage vehicles, each salvage vehicle should be clearly and conspicuously marked. A proposed amendment to §215.140(a)(14) would move the requirement to post a dealer's GDN and bond notice in each location to the end of the paragraph to improve clarity without changing meaning. Proposed new §215.140(b) would add premises requirements for wholesale motor vehicle auctions consistent with the requirements of Transportation Code, §503.032.

Proposed amendments to §215.141(a) would reorder language for consistency with §215.141(b) and add a reference to a cease-and-desist order, which is an action the board is authorized to take under Occupations Code, §2301.153 and §2301.802. Proposed amendments to §215.141(b)(1) would add a reference to the relevant statute and a reference to the

requirement to post a bond notice and would delete an archaic reference to a bond amount. Proposed new §215.141(b)(2) would address the fact that the failure of a license holder to meet or maintain the established and permanent place of business premises requirements is one of the most common violations requiring a sanction under this subchapter; the remaining paragraphs would be renumbered accordingly. Proposed amendments to relettered §215.141(b)(4) would clarify that a license holder under this subchapter may be sanctioned for either failing to provide electronic records, or for refusing or failing to comply with a department request to review records at the licensed business location. Proposed new §215.141(b)(4)(D) would add the Certificate of Occupancy, Certificate of Compliance, business license or permit, or other official documentation confirming compliance with county and municipal laws or ordinances for a vehicle business at the licensed physical location as records the department may request to confirm compliance with Transportation Code requirements. Proposed amendments would reletter the remaining subsections to accommodate proposed new §215.141(b)(4)(D). A proposed amendment to relettered §215.141(b)(6) would delete a redundant reference to §215.140 as a reference to that section is proposed in §215.141(b)(2) and would remove subsection delineations within §215.141(b)(6) because they would be unnecessary. Proposed amendments to relettered §215.141(b)(8) would clarify that a license holder under this subchapter may be sanctioned if the license holder fails to submit a license amendment in the electronic system designated by the department to change an address, including the address of a storage lot, within 10 days of the change. A proposed amendment to relettered §215.141(b)(9) would clarify that a license holder under this subchapter may be sanctioned if a person fails to submit a license amendment in the electronic system designated by the department to notify the department of a change in name or change in management or ownership within 10 days of the change. The proposed amendments to §§215.141(b)(8) and (9) would incentivize licensees to make timely updates to their information through the department's electronic system. Proposed amendments to relettered §215.141(b)(12) and (13) would delete "metal" from the description of license plate consistent with statutory language in Transportation Code, Chapter 503. A proposed amendment to relettered §215.141(b)(16) would delete an incorrect reference to non-existent Transportation Code, Chapter 1000. A proposed amendment to relettered §215.141(b)(17) would clarify by adding a reference to §211.3. A proposed amendment to relettered §215.141(b)(20) would clarify that providing a false or forged document to the department may result in a sanction. A proposed amendment to relettered §215.141(b)(22) would clarify that providing a false or forged identity document, photograph, image, or document to the department is a material misrepresentation and may result in a sanction. Proposed new §215.141(b)(25) would clarify that a license holder's failure to comply with the requirements for dealer's issuance of temporary tags under §215.150 may result in a sanction. Proposed amendments to relettered §215.141(b)(28) would delete an archaic effective date and clarify by adding the title of the statutory provision referenced. Proposed new §215.141(b)(29) adds failure to issue a refund as ordered by the board or department as an action that may result in a sanction, to ensure that the board is able to enforce its refund orders. Proposed new §215.141(b)(30) would add failure to acquire or maintain a certificate, business license, permit, or other documents confirming compliance with county or municipal laws or ordinances for a vehicle business as an action that may result in a sanction, as a license holder must comply with county and local laws to have and maintain an established and permanent place of business. An established and permanent place of business is a requirement for GDN holders under Transportation Code §503.032 and wholesale motor vehicle auctions under Transportation Code §503.030.

Proposed new §215.143 would set out the requirements for drive-away operator in-transit license plates. Proposed new §215.143(a) would specify when a drive-a-way operator may apply for an in-transit standard license plate. Proposed new §215.143(b) would explain when and where the license plate is to be placed on the vehicle. Proposed new §215.143(c) would contains the record requirements for these plates. Proposed §215.143(d) and (e) would explain what a drive-a-way operator is required to do if a license plate is lost, stolen, or damaged. Proposed new §215.143(f) would require that license plate records be available for inspection or review if requested by the department. Proposed new §215.143(g) would specify the criteria the department will use to evaluate a request for additional in-transit standard license plates. Proposed new §215.143(h) would require a drive-a-way operator to return department-issued license plates to the department within 10 days of the associated license being closed, canceled, or revoked.

A proposed amendment to the title of §215.144 would add "Vehicle" to the title to describe the scope more accurately as pertaining to vehicle records. Proposed amendments to §215.144(a) would add a reference to a wholesale motor vehicle auction and delete a redundant phrase. A proposed amendment to §215.144(b) would add a reference to records that must be kept by an independent mobility motor vehicle dealer for ease of reference. A proposed amendment to §215.144(c) would delete unnecessary punctuation. Proposed amendments to §215.144(d) would simplify the language for the requirement that a dealer must reply within 15 days of receiving a department records request regardless of the method in which the department makes the request and would correct a reference from division to department for consistency. Proposed amendments to §215.144(e)(7) would delete an archaic reference to the title of a tax receipt form and substitute the general phrase "county tax assessor-collector receipt marked paid," as the form of the receipt may vary by county. Proposed amendments to §215.144(e)(8) would add clarity by improving sentence structure, clarifying that records must be kept for both the purchase and the sale of a vehicle, deleting a reference to an archaic form, and adding requirements to keep a copy of the purchaser's photo identification, the odometer disclosure statement signed by the buyer, and the rebuilt salvage disclosure, if applicable. These additional record requirements §§215.144(e)(8)(L) - (N) are necessary to prevent consumer harm and reduce potential for fraud. Proposed amendments to §215.144(e)(9) would rephrase the existing requirement for readability without changing the meaning. Proposed amendments to §215.144(f)(2) would add a reference to a statutory exemption and update the language consistent with current statutory requirements that any willing county tax-assessor-collector may process a title or registration request. Proposed amendments to §215.144(f)(3) would change the presumed reasonable time for a dealer to apply for a title and registration from 20 working days to 30 days and add references to title processing to clarify that the same presumed time limit applies to both titling and registration dealer responsibilities. A proposed amendment to §215.144(g)(1) changes the presumed reasonable time for a dealer to act for out-of-state sales from 20 working days to 30 days; "days"

is proposed to be defined under §215.2(b)(2) as calendar days. Proposed amendments to §215.144(h) would update the language consistent with current statutory requirements that any willing county tax-assessor-collector may process a title or registration request. Proposed amendments to §215.144(j) would delete the unnecessary phrase "a representative of" to describe the department, would simplify the language in §215.144(j)(2) regarding the requirement that a wholesale motor vehicle auction must reply within 15 days of receiving a department records request regardless of the method in which the department makes the request, and would update a citation to the federal odometer disclosure requirements in §215.144(j)(3)(F). A proposed amendment to §215.144(k) would delete the unnecessary phrase "a representative of" in describing the department. Proposed amendments to §215.144(l) would update the subsection title to refer to the department's electronic titling and registration system for clarity and delete unnecessary punctuation.

A proposed amendment to §215.145(a) would delete a duplicative word. Proposed amendments to §215.145(b) would clarify that a dealer must submit a license amendment electronically in the department's designated licensing system. Proposed amendments to §215.145(c) - (f) would remove redundant language or restate language to improve readability without changing the meaning. Another proposed amendment to §215.145(f) would modernize the provision by adding a reference to filing a GDN application electronically in the department's designated licensing system. A proposed amendment to §215.145(g) would delete unnecessary punctuation and correct the title of a referenced statute.

The entirety of §215.146 is proposed for repeal as this rule would be incorporated into new proposed §215.120, relating to License Plates.

Proposed amendments to §215.147(a) would correct a reference to the driver license and delete an archaic reference to a concealed handgun license. A proposed amendment to §215.147(b) would substitute "dealer's" for "license holder's" for consistency in terminology and does not change the meaning. A proposed amendment to §215.147(c) would add "Vehicle" for consistency with a proposed title change to §215.144, relating to Vehicle Records.

Proposed amendments to §215.148 would add references to Transportation Code, Chapter 503, and proposed new Chapter 224, Adjudicative Practice and Procedure, would update a proposed title change to §215.144, and would remove redundant and unnecessary words and punctuation.

Proposed amendments to §215.149 would change the title to "Sales of New Mobility Motor Vehicles" to reflect the section scope and add references to "new" mobility motor vehicles for clarity.

A proposed amendment to §215.150(a) would add "or lease" to clarify that a dealer may issue a temporary tag for a vehicle leased to a customer. A proposed amendment to §215.150(b)(1) would update a reference to proposed new Chapter 224, Adjudicative Practice and Procedure. Proposed amendments to §215.150(c) would change word order to "buyer's temporary tag" for consistency.

A proposed amendment to §215.151(a) would add "governmental agency" to the list of entities that must display temporary tags on the rear of a vehicle in operation. As a result, §215.151(b) is proposed for deletion and the remaining subsections are proposed to be relettered accordingly. Proposed amendments to relettered §215.151(c) would delete duplicate language from a referenced statute and add a statutory reference for allowed uses of a converter's temporary tag for completeness and ease of reference.

Proposed amendments to §215.152(a) and (b) would delete an unnecessary phrase as a governmental agency is defined in §215.2 to include federal, state, and local agencies. Proposed amendments in §215.152(f) would increase the allotment of temporary tags for a franchised dealer from 600 to 1,000 based on the department's historical experience. Since maximum tag limits were put in place, the department has been monitoring temporary tag usage and processing requests for additional temporary tags. The one dealer category that has consistently required more temporary tags to be allocated is a new franchised dealer, so increasing the initial amount allocated to this dealer type is necessary to ensure a new franchise dealer has the requisite number of tags necessary to support daily operations. Proposed amendments in §215.152(i) would clarify the process and procedure for requesting additional temporary tags and for appealing a denial of a request, but do not change existing process or procedure. Another amendment to §215.152(i) would clarify that temporary tag allotments do not carry over to subsequent years.

A proposed amendment to §215.154(a) would add "or lease" to clarify that a dealer may issue a dealer's temporary tag for a vehicle the dealer is authorized to lease. A proposed amendment to §215.154(c) would deletes "metal" and adds "standard or personalized prestige" to accurately describe the plate types the dealer may use. A proposed amendment to §215.154(d)(2)(B) would add a reference to §215.138(d) for clarity and ease of reference. Proposed amendments to §215.154(e) and (g) would delete these two subsections as the language in these subsections duplicates §215.138, which is proposed to be added for reference in §215.154(d)(2)(B), and the remaining subsections would be relettered accordingly.

Proposed amendments to §215.155(a) would clarify that a buyer's temporary tag may only be displayed on a vehicle from the selling dealer's inventory, would reorganize and combine the content in §215.155(a) and (b) in a numbered list for clarity and readability, and would add "or lease" to clarify that a dealer may issue a dealer's temporary tag for a vehicle the dealer is authorized to lease. Proposed new §215.155(b) would clarify that in accordance with Texas Transportation Code §503.063, a buyer's temporary tag must be issued and provided to a buyer of a vehicle that is to be titled but not registered and would clarify that the temporary tag must not be displayed on the vehicle in these circumstances. This clarification is necessary to facilitate title-only vehicle sales for vehicles that will not be driven on Texas roads. A proposed amendment to §215.155(c) would delete "metal" for consistency. Proposed amendments to §215.155(e) would delete unnecessary punctuation and phrasing without changing the meaning. Proposed amendments to §215.155(f) and proposed new §215.155(g) would reorganize and rephrase language in §215.155(f) to improve clarity and readability without changing the meaning.

A proposed amendment to §215.160(b) would increase the required font size from 11 pt to 14 pt in the rebuilt vehicle acknowledgment or vehicle disclosure form to increase legibility. A proposed amendment in §215.160(c) would require a separate signature on the acknowledgment or disclosure form. Proposed amendments in §215.160(d) would reorder language to improve clarity and would update a referenced section title. The proposed

amendments increasing the required font size and requiring a signature are necessary to protect consumers and prevent consumer harm.

Proposed amendments to §215.161 would update the title to add "Provider" as the requirements in this section relate to motor vehicle licensing education course providers. Proposed new §215.161(f) would clarify that the department does not offer an approved licensing education course.

Subchapter F. Lessors and Lease Facilitators

This subchapter is proposed to be relettered as Subchapter E as current Subchapter B is proposed for repeal and the following subchapters are proposed to be relettered accordingly.

Proposed amendments to §215.171 would update statutory references including references to relevant Transportation Code chapters.

Proposed amendments to §215.173(a) would edit language and provide a statutory reference for clarity and to improve readability.

The proposed amendments to §215.174 would modernize the provision by implementing the requirements necessary for the department's electronic licensing system. Proposed amendments to §215.174(a) would add a reference to §215.83 and clarify that applications, including supporting documentation and fees, are to be submitted electronically in the department's licensing system. Proposed new §215.174(b) would require a license holder renewing or amending a license to verify current information and provide related information and documents for any changes to the license as well as pay required fees, to ensure that licensees provide the department with updated information through the electronic licensing system. Proposed new §215.174(c) would instruct a new applicant how to register in the department-designated licensing system. Proposed new §215.174(d) would describe the information that must be submitted in the application, and the remaining subsections would be relettered accordingly. Proposed amendments to relettered §215.174(e) would specify the supporting documentation that an applicant for a vehicle lessor's license must provide to allow the department to thoroughly investigate the applicant and its business practices. The proposed amendments to relettered §215.174(e) would clarify that a document submitted as part of a vehicle lessor's license application must be a legible and accurate electronic image, describe the business organization documents required, add current identity document requirements, and require a vehicle lessor not located in Texas to provide a list of vehicle lessor licenses in other states, if applicable, and any other information required to evaluate the application under current law. Proposed amendments to relettered §215.174(f) would specify the supporting documentation that an applicant for a vehicle lease facilitator's license must provide to allow the department to thoroughly investigate the applicant and its business practices. The proposed amendments to relettered §215.174(f) would clarify that a document submitted as part of a vehicle lease facilitator's license application must be a legible and accurate electronic image, describe the business organization documents required, add current identity document requirements, delete a requirement for a vehicle lease facilitator to update a vehicle lessor list, and require a vehicle lease facilitator to provide any other information required to evaluate the application under current law. Proposed new §215.174(g) would protect the public by prohibiting a vehicle lessor or vehicle lease facilitator from using a business name or assumed name that would be confusing, deceptive, or misleading to prevent consumer fraud and abuse. Proposed new §215.174(h) would clarify an existing requirement that during the license term, a vehicle lessor or vehicle lease facilitator must update the list of authorized vehicle lease facilitators or vehicle lessors, as applicable, and notify the department within 10 days of a change by electronically submitting a license amendment in the system designated by the department for licensing.

Proposed amendments to §215.175(b)(5) and (6) would clarify that a vehicle lessor or vehicle lease facilitator must notify the department of a change in address, name, assumed name, or change in management or ownership by electronically submitting a license amendment in the system designated by the department for licensing. A proposed amendment to §215.175(b)(7) would update a statutory reference. A proposed amendment to §215.175(b)(8) would update a subchapter designation to match the proposed relettering. Proposed amendments to §215.175(b)(13) would delete the term "willfully" to make any omission of material information sanctionable conduct and would clarify that a material misrepresentation includes providing a false or forged identity document or a false or forged photograph, electronic image, or document. Proposed amendments to §215.175(c) and (d) would clarify that the vehicle lessor and the vehicle lease facilitator must notify the department by electronically submitting a license amendment in the system designated by the department for licensing.

A proposed amendment to §215.176 would add "business" to the title of the section and a proposed amendment in §215.176(b) would substitute "municipality" for "city" for consistency with the term proposed to be defined in §215.132.

A proposed amendment to the title of §215.177 would add "Premises Requirements" to describe the scope of the section. A proposed amendment to §215.177(a) would remove unnecessary words. A proposed amendment to §215.177(a)(1)(A) would enhance a license holder's responsiveness to the public by adding a requirement that the business telephone be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine, and that a caller must be able to speak to a natural person or leave a message during these hours. Proposed amendments to §215.177(a)(1)(B) would clarify that "chairs" is interpreted as two chairs and by clarifying that a vehicle lessor or vehicle facilitator's office must have internet access to ensure a license holder has the minimum level of facilities necessary to provide adequate service the public. Proposed amendments to §215.177(a)(1)(C) would further ensure facilities for the public by requiring that a vehicle lessor or vehicle facilitator's office have a permanent roof, requiring the office to be in a building open to the public, requiring the physical address to have an assigned emergency services property address, and stating that the office may not be virtual or provided by a subscription for office space or office services. Proposed amendments to §215.177(a)(1)(E) and (F) would make minor editing changes that do not change the meaning of the subparagraph. Proposed amendments to §215.177(a)(2) would protect the public from being misled or confused by a licensee's signage by adding "business" to clarify that the requirements are for a business sign, requiring that the business name used on the sign be substantially similar to the name of the licensed entity, and adding criteria to determine whether the sign is conspicuous and permanent. Proposed amendments to §215.177(a)(3) clarify premises lease requirements and modernize the language. The proposed amendments in §215.177(a) are consistent with

the minimum requirements for a retail dealer, deter fraud, and protect consumers. A proposed amendment would delete the requirements in §215.177(b) for out-of-state vehicle lessors who do not deal directly with the public as these requirements are unnecessary and unenforceable, and the remaining following subsections would be relettered accordingly.

Proposed amendments to §215.178(a)(1) would add "complete" to describe records for consistency, delete an archaic requirement to keep records for prior periods at a location in the same county or within 25 miles of the license location, and simplify the language regarding the requirement that a dealer must reply within 15 days of receiving a request for records from the department regardless of the method in which the department makes the request. Proposed amendments to §215.178(b) would make multiple edits throughout the subsection to improve clarity and readability and would revise the requirement to provide a vehicle lease facilitator's employees' home addresses to a more relevant requirement to provide a work address. Proposed new §215.178(c) would be added to describe the vehicle lessor's record requirements if a leased vehicle is later sold, and the following subsections are relettered accordingly. Proposed amendments to relettered §215.178(d) would consist of minor edits throughout to improve clarity and readability and would not change the meaning. Proposed amendments to relettered §215.178(f) would delete redundant language and clarify that a letter of representation or appointment between a vehicle lessor and a vehicle lease facilitator must be executed and maintained by each party. Proposed amendments to relettered §215.178(g) would modernize the rule by adding the option for a vehicle lessor or a vehicle lease facilitator to send records to the department electronically and would make minor edits to improve readability.

Proposed amendments throughout §215.179 would modernize the rule by specifying that a vehicle lessor or vehicle facilitator must submit a notice of a change to a license electronically in the system designated by the department for licensing, would remove redundant or unnecessary language, and would update the title of a referenced section of this chapter.

A proposed amendment to §215.180 would substitute a subchapter designation for a list of sections so a future statutory change will not require a rule change.

Subchapter G. Warranty Performance Obligations

All sections of Subchapter G. Warranty Performance Obligations are proposed for repeal because the substance of each rule and any proposed amendments are incorporated into proposed new Chapter 224, Adjudicative Practice and Procedure. The proposed repeal includes §§215.201 - 215.210.

Subchapter H. Advertising

This subchapter is proposed to be relettered as Subchapter F as current Subchapters B and G are proposed for repeal and the remaining subchapters are proposed to be relettered accordingly.

A proposed amendment to §215.242 would substitute "deemed" for "considered" for consistency.

Proposed amendments to §215.244(11) would delete an unnecessary definition for a license holder and renumber the remaining definitions. A proposed amendment to renumbered §215.244(17) would clarify and specify that the communication referred to in the rule is a notice of opportunity to cure.

A proposed amendment to the title of §215.249 would substitutes "or" for "/" for clarity. A proposed amendment to §215.249(c) would delete "the State of" for consistency.

Proposed amendments to §215.250(a) would delete "new or used" as unnecessary and add a requirement for a dealer to disclose a market adjustment if one is added to the sales price so that the public is aware of the pricing. Proposed amendments to §215.250(b) would rephrase for clarity that fees and charges expressly allowed by law do not have to be included in a featured sales price.

A proposed amendment to §215.257 would clarify that the term "authorized dealer" or similar term may not be used unless a dealer holds both a franchised dealer license and a franchised dealer GDN.

Proposed amendments to the title and text of §215.261 would substitute "or" for "/" for clarity and style consistency.

A proposed amendment to §215.264(c) would substitute "other disclosure or deal term" for the lengthy list of disclosures and deal terms in this section for clarity and brevity. Proposed amendments to §215.264(f) and (h) would delete references to specific paragraphs within a referenced subsection as the paragraph references are unnecessary.

Proposed amendments to §215.268 would delete language and substitute terms for consistency and would not change the meaning of the rule.

Proposed amendments to §215.270(b) would identify the referenced notice as an opportunity to cure for clarity and update a reference to the proposed new Notice of Department Decision section in proposed new Chapter 224.

Subchapter I. Practice and Procedure for Hearings Conducted by The State Office of Administrative Hearings

All sections of Subchapter I, Practice and Procedure for Hearings Conducted by The State Office of Administrative Hearings, are proposed for repeal because the substance of each rule and any proposed amendments are incorporated into proposed new Chapter 224 Adjudicative Practice and Procedure. The proposed repeal includes §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, 215.314 - 215.317.

Subchapter J. Administrative Sanctions

This subchapter is proposed to be relettered as Subchapter G, because current Subchapters B, G, and I are proposed for repeal and the remaining subchapter is being proposed to be relettered accordingly.

A proposed amendment to the title of §215.500 would delete "and Procedures" as the procedures from this section are proposed for repeal and are proposed to be included in new Chapter 224, Adjudicative Practice and Procedure. Proposed amendments to §215.500(a) would delete the (a) designation and correct a reference to a referenced rule section. The remaining subsections are proposed for repeal and are proposed to be included in proposed new Chapter 224: §§215.501, 215.502, and §215.505.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposal will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Monique Johnston, Director of the Motor Vehicle

Division (MVD), has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Johnston also determined that, for each year of the first five years the proposal is in effect, several significant public benefits are anticipated, and certain applicants and license holders may incur costs to comply with the proposal. The department prioritized the public benefits associated with reducing fraud and related crime and improving public health and safety, while carefully considering potential costs to GDN dealers consistent with board and department responsibilities.

Proposed amendments to §§215.102, 215.133, 215.134, and 215.174 may require applicants and license holders to provide more information in the application. While some applicants may be required to spend more time completing an application or providing additional information Ms. Johnston has determined these costs will be offset by the reduced risk of applicants and holders incurring financial penalties due to noncompliance with applicable federal, state, or local statutes or property owner requirements which will benefit both license holders and the public. Importantly, this information allows the department to investigate an applicant more thoroughly and is consistent with the department's obligations to detect and deter fraud in the application process to prevent consumer harm.

In proposed amendments to §§215.102, 215.133, 215.134, and 215.174, an applicant or license holder may not use a name or assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public. Ms. Johnston estimates that a small number of current license holders may have to change a confusing, deceptive, or misleading business name or assumed name and may incur related secretary of state or county filing fees or signage cost. The Secretary of State filing fee to amend a business name is $150. Department research suggests the cost for an exterior sign will vary between $30 to $167, with an average expected cost of about $80. The department recognizes that these costs may vary widely based on business owner style and design preferences. The department's civil penalty guidelines for license holders who violate statutory provisions range $500 to $10,000 per violation. Ms. Johnston has determined that the signage cost will be offset by the reduced risk of these license holders incurring financial penalties due to noncompliance with laws and regulations and will benefit the public by informing the public and preventing consumer harm.

Proposed amendments to §§215.120, 215.138, and 215.143 require license holders that purchase industry license plates to return plates, stickers, and receipts when the associated license is closed. In Fiscal Year 2019, license holders started returning industry plates when a license was closed. Since then, more than 10,150 industry plates have been returned to the department, significantly reducing the potential for fraudulent plate use. Department research suggest that the average cost to mail a plate is §9.65. Ms. Johnston has determined that the cost for a license holder to mail or return a plate to the department after the associated license is closed is reasonable and necessary to reduce potential fraud.

Proposed amendments to §215.133 and §215.134 add fingerprint requirements for wholesale motor vehicle auction GDN and drive-a-way operator in-transit license applicants and holders. Fingerprint requirements allow the department to verify the identity of license applicants, preventing fraudulent applications under false or stolen identities, while giving the department access to more accurate and comprehensive criminal history record information to use in evaluating fitness for licensure under its criminal offense guidelines in §211.3. These new fingerprint requirements benefit the public by preventing bad actors with a history of criminal offenses that directly relate to the duties and responsibilities of a license holder from obtaining licenses from the department and using those licenses to perpetrate fraudulent and criminal actions, or otherwise taking advantage of the position of trust created by the license. Ms. Johnston anticipates that there will be no additional costs on regulated persons to comply with the fingerprint requirements under this proposal as the new section does not establish fees for fingerprinting or processing criminal background checks. Fees for fingerprinting and access to criminal history reports are established by DPS under the authority of Texas Government Code Chapter 411.

Proposed amendments to §215.144 require a dealer to keep copies of the purchaser's photo identification, the odometer disclosure statement signed by the buyer, and the rebuilt salvage disclosure, if applicable in the vehicle sales file. Ms. Johnston anticipates that while most bona fide dealers already comply with these requirements, a few dealers may have to add two to three additional pages to the sales file. Department research suggests that the cost of a copy ranges from $0.14 to $0.22 per page. She has determined that these costs are necessary to prevent fraud and protect consumers.

Proposed amendments to §215.160 require a dealer offering a rebuilt vehicle for sale to use a minimum 14-point font size in the disclosure statement and for the disclosure statement to have a separate buyer signature. Ms. Johnston anticipates that many bona fide dealers already comply with these requirements, however, some dealers may have to adjust existing forms. These formatting changes may be performed easily at little or no cost using available free word processing software or at a print shop. Department research suggests that the cost of reformatting this disclosure ranges from $10 to $48. Ms. Johnston has determined that these costs are necessary to prevent fraud and protect consumers.

Proposed changes to §215.177 require a vehicle lessor or vehicle lease facilitator to ensure that the business telephone is answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine, and requires that the office have internet access. Ms. Johnston anticipates that while most bona fide vehicle lessors or vehicle lease facilitators already comply with these requirements, a few vehicle lessors or vehicle lease facilitators may have to purchase a mobile phone with a data plan to comply. Department research suggests that this cost ranges from $15 to $90 per month. Ms. Johnston has determined that these requirements are reasonable minimum standards as the department and the public must be able to communicate with a license holder, and these requirements are necessary to prevent fraud and consumer harm.

Proposed amendments to §215.140 require GDN applicants and holders to disclose the physical address of a storage lot if the address is different than the physical address of the licensed location. Applicants for a new GDN will not incur an additional fee. Current dealer GDN holders will incur a $25 statutorily required license amendment fee to add or change the physical address of a storage lot. Ms. Johnston has determined that the public benefit derived from the department's more thorough fitness for licensure investigation, reduction in fraud, and enforcement of

department statutes and rules substantially outweighs this cost and are necessary.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002, the department has determined that this proposal may have an adverse economic effect or disproportionate economic impact on small or micro businesses. The department has determined that the proposed amendments will not have an adverse economic effect on rural communities because rural communities are exempt from the requirement to hold a GDN under Transportation Code §503.024.

The cost analysis in the Public Benefit and Cost Note section of this proposal determined that proposed amendments may result in additional costs for certain license holders. Based on data from the Comptroller and the Texas Workforce Commission, the department estimates that most license holders are small or micro-businesses. The department has tried to minimize costs to license holders. The new proposed requirements are designed to be the minimum standards that will prevent fraud in the application process, prevent consumer abuse, and protect public health and safety. These requirements do not include requirements that will cause a license holder to incur unnecessary or burdensome costs, such as employing additional persons.

Under Government Code §2006.002, the department must perform a regulatory flexibility analysis. The department considered the alternatives of not adopting amendments, exempting small and micro-business license holders from these amendments, and adopting a limited version of these amendments for small and micro-business applicants and license holders. The department rejects all three options. The department reviewed licensing records, including records for license holders who have been denied access to the temporary tag system, and determined that small and micro-business license holders are largely the bad actors perpetrating fraud in the application process. The department, after considering the purpose of the authorizing statutes, does not believe it is feasible to waive or limit the requirements of the proposed amendments for small or micro-business GDN dealers. Also, Government Code §2006.002(c-1) does not require the department to consider alternatives that might minimize possible adverse impacts on small businesses and micro-businesses if the alternatives would not be protective of the health and safety of the state.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed repeal and amendments are in effect the amendments will not create or eliminate a government program; will not require the creation of new employee positions and will not require the elimination of existing employee positions; will not require an increase or decrease in future legislative appropriations to the department; will require an increase in fees paid to the department by certain license holders who are required to file a license amendment to add an address; will expand existing regulations, delete some existing regulations, and make other existing regulations more flexible as described in the explanation section of this proposal; will repeal existing regulations to improve overall organization of department rules in conjunction with the proposal of new Chapter 224 published in this issue of the *Texas Register;* will not increase or decrease the number of individuals subject to the rule's applicability; and will positively affect the Texas economy by deterring fraud and preventing consumer harm.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. Central Time on January 28, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §215.1, §215.2

STATUTORY AUTHORITY. The department proposes amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. These proposed revisions would implement Government Code, Chapters 411 and 2001;

Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 503 and 1002.

STATUTORY AUTHORITY. The department proposes amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who proposes to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These proposed revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.1. Purpose and Scope.

Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1001 [~~1000~~]-1005 require the Texas Department of Motor Vehicles to license and regulate the [~~motor~~]vehicle industry [~~dealers, manufacturers, distributors, converters, representatives, vehicle lessors and vehicle lease facilitators, in order~~] to ensure a sound system of distributing and selling [~~motor~~] vehicles; provide for compliance with manufacturers' warranties; and to prevent fraud, unfair practices, discrimination, impositions, and other abuses of the people of this state in connection with the distribution and sale of [~~motor~~] vehicles. This chapter describes licensing requirements and the rules governing. [~~prescribes the policies and procedures for the regulation of the motor vehicle industry.~~]

§215.2. Definitions; Conformity with Statutory Requirements.

(a) The definitions contained in Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1001 [~~1000~~]-1005 govern this chapter. In the event of a conflict, the definition or procedure referenced in Occupations Code, Chapter 2301 controls.

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

[~~(1) ALJ--An Administrative Law Judge of the State Office of Administrative Hearings.~~]

(1) [~~(2)~~] Board--The Board of the Texas Department of Motor Vehicles, including department staff [~~any personnel~~] to whom the board delegates a [~~any~~] duty [~~assigned~~].

(2) Day--The word "day" refers to a calendar day.

(3) Director--The director of the division [~~department~~] that regulates the distribution and sale of motor vehicles, including any department staff [~~personnel~~] to whom the director delegates a [~~any~~] duty assigned under this chapter.

[~~(4) Executive director--The executive director of the Texas Department of Motor Vehicles.~~]

[~~(5) Final order authority--The person(s) with authority under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; or board rules to issue a final order.~~]

(4) [~~(6)~~] GDN--General distinguishing number, a license issued under Transportation Code, Chapter 503.

(5) [~~(7)~~] Governmental agency--A state agency other than the department, all [~~All other state and~~] local governmental agencies, and all agencies of the United States government, whether executive, legislative, or judicial.

(6) Standard license plate--A motor vehicle license plate issued by the department to a license holder for use by the license holder that is not a personalized prestige dealer's license plate issued under Transportation Code §503.0615.

~~[(8) Hearing officer--An ALJ, a hearings examiner, or any other person designated, employed, or appointed by the department to hold hearings, administer oaths, receive pleadings and evidence, issue subpoenas to compel the attendance of witnesses, compel the production of papers and documents, issue interlocutory orders and temporary injunctions, make findings of fact and conclusions of law, issue proposals for decision, and recommend or issue final orders.]~~

~~[(9) Motion for rehearing authority--The person(s) with authority under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; or board rules to decide a motion for rehearing.]~~

~~[(10) SOAH--The State Office of Administrative Hearings.]~~

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

Filed with the Office of the Secretary of State on December 14, 2023.

TRD-202304782
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

43 TAC §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, 215.58 - 215.63

STATUTORY AUTHORITY. The department proposes repeals to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These repeals would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

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

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SUBCHAPTER B. LICENSES, GENERALLY

43 TAC §§215.82 - 215.85, 215.87, 215.89

STATUTORY AUTHORITY. The department proposes amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who proposes to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These proposed revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.82. Duplicate [~~Licenses and~~] Plates and Stickers.

[~~(a) A request for a duplicate license must:~~]

[~~(1) be made on a department-approved form;~~]

[~~(2) state the reason for the duplicate license; and~~]

[~~(3) be accompanied by the required duplicate license fee.~~]

[(b) A license holder may receive one duplicate license at no charge if the license holder:]

[(1) did not receive the original license; and]

[(2) makes the request within 45 days of the date the license was mailed to the license holder.]

[(c)] A license holder may receive a replacement standard [metal] dealer's, converter's, drive-a-way in-transit, or manufacturer's license plate or assigned sticker, as[if] applicable, at no charge if the license holder:

(1) did not receive the applicable standard [metal dealer's] license plate or sticker; [and]

(2) makes the request within 45 days of the date the applicable standard[metal dealer's] license plate or sticker was mailed to the license holder; and [on a department approved form.]

(3) submits a request electronically in the system designated by the department for licensing.

§215.83. License Applications, Amendments, or Renewals.

(a) An application for a new license, license amendment, or license renewal filed with the department must be:

(1) filed electronically in the department-designated licensing system on a form approved by the department;

(2) completed by the applicant, license holder, or authorized representative who is an employee, a licensed attorney, or a certified public accountant;

(3) accompanied by the required fee, paid by [check,] credit card[,] or by electronic funds transfer, drawn from an account held by the applicant or license holder, or drawn from a trust account of the applicant's attorney or certified public accountant; and

(4) accompanied by proof of a surety bond, if required.

(b) An authorized representative of the applicant or license holder who files an application with the department on behalf of an applicant or license holder may be required to provide written proof of authority to act on behalf of the applicant or license holder.

(c) The department will not provide information regarding the status of an application, application deficiencies, or pending new license numbers to a person other than a person listed in subsection (a)(2) of this section, unless that person files a written request under Government Code, Chapter 552.

(d) Prior to the expiration of a license, a license holder or authorized representative must electronically file with the department a sufficient license renewal application. Failure to receive notice of license expiration from the department does not relieve the license holder from the responsibility to timely file a sufficient license renewal application. A license renewal application is timely filed if[:]

[(1)] the department receives a sufficient license renewal application on or before the date the license expires[; or].

[(2) a legible postmark on the envelope transmitting the sufficient license renewal application clearly indicates that the license holder or authorized representative mailed the license renewal application on or before the date the license expires.]

(e) An application for a new license, [or] license amendment, or license renewal filed with the department must be sufficient. An application is sufficient if the application:

(1) includes all information and documentation required by the department; and

(2) is filed in accordance with subsection (a) of this section.

[(f) A license renewal application received by the department is sufficient if:

(1) the renewal application form is completed by the license holder or authorized representative of the license holder who is an employee, an unpaid agent, a licensed attorney, or certified public accountant;

(2) accompanied by the required license renewal application fee payment; and

(3) accompanied by proof of a surety bond, if required.]

(f) [(g)] If an applicant, license holder, or authorized representative does not provide the information or documentation required by the department, the department will issue a written notice of deficiency. The information or documentation requested in the written notice of deficiency must be received by the department within 20 calendar days of the date of the notice of deficiency, unless the department issues a written extension of time. If an applicant, license holder, or authorized representative fails to respond or fully comply with all deficiencies listed in the written notice of deficiency within the time prescribed by this subsection, the application will be deemed withdrawn and will be administratively closed.

(g) [(h)] The department will evaluate a sufficient application for a new license, license amendment, or license renewal in accordance with applicable rules and statutes to determine whether to approve or deny the application. If the department determines that there are grounds for denial of the application, the department may pursue denial of the application in accordance with Subchapter G [J] of this chapter (relating to Administrative Sanctions).

(h) [(i)] The department will process an application for a new license, license amendment, or license renewal filed by a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55. A license holder who fails to timely file a sufficient application for a license renewal because that license holder was on active duty is exempt from any increased fee or penalty imposed by the department for failing to renew the license in a timely manner.

(i) [(j)] A military service member or military spouse may engage in a business or occupation for which a department issued license is required if the military service member or military spouse meets the requirements of Occupations Code, §55.0041 and this section. This section establishes requirements and procedures authorized or required by Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(1) [To meet the requirements of Occupations Code, §55.0041, a] A military service member or military spouse must submit to the department:

(A) notice of the military service member or military spouse's intent to engage in a business or occupation in Texas for which a department issued license is required;

(B) proof of the military service member or military spouse's being stationed [residency] in Texas and a copy of the military service member or military spouse's military identification card[, as required by Occupations Code, §55.0041(b)(2)]; and

(C) documentation demonstrating that the military service member or military spouse is licensed and in good standing in another jurisdiction for the relevant business or occupation.

(2) Upon receipt of the notice and documentation required by paragraphs (1)(B) and (1)(C) of this subsection, the department shall:

(A) confirm with the other licensing jurisdiction that the military service member or military spouse is currently licensed and in good standing for the relevant business or occupation; and

(B) conduct a comparison of the other jurisdiction's license requirements, statutes, and rules with the department's licensing requirements to determine if the requirements are substantially equivalent.

(3) If the department confirms that a military service member or military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements, the department shall [~~may~~] issue a license to the military service member or military spouse for the relevant business or occupation within 30 days. The license is subject to requirements in Chapter 215 of this title and Occupations Code, Chapter 2301 in the same manner as a license issued under the standard application process, unless modified or exempted under Occupations Code, Chapter 55.

(j) [~~(k)~~] A license holder who timely files a sufficient license renewal application in accordance with subsection (d) of this section may continue to operate under the expired license until the license renewal application is determined in accordance with Government Code §2001.054.

(k) [~~(l)~~] A license holder who fails to timely file a sufficient license renewal application in accordance with subsection (d) of this section is not authorized to continue licensed activities after the date the license expires. A license holder may dispute a decision that a license renewal application was not timely or sufficient by submitting evidence to the department demonstrating that the license renewal application was timely and sufficient. Such evidence must be received by the department within 15 [~~10 calendar~~] days of the date the department issues notice that a timely or sufficient license renewal application was not received by the department.

(l) [~~(m)~~] The department shall accept a late license renewal application up to 90 days after the date the license expires. In accordance with subsection (k) [~~(l)~~] of this section, the license holder is not authorized to continue licensed activities after the date the license expires until the department approves the late license renewal application. If the department grants a license renewal under this section, the licensing period begins on the date the department issues the renewed license. The license holder may resume licensed activities upon receipt of the department's written verification or upon receipt of the renewed license.

(m) [~~(n)~~] If the department has not received a late license renewal application within 90 days after the date the license expires, the department will close the license. A person must apply for and receive a new license before that person is authorized to resume activities requiring a license.

(n) [~~(o)~~] A [~~metal~~] dealer's standard license plate issued in accordance with Transportation Code, Chapter 503, Subchapter C expires on the date the associated license expires, is canceled, or when a license renewal application is determined, whichever is later.

§215.84. Brokering, New Motor Vehicles.

(a) Unless excluded from the definition of "Broker" in Occupations Code, §2301.002, a person may not act, offer to act, or claim to be a broker.

(b) [~~(a)~~] For purposes of this chapter [~~subchapter~~], the phrase "arranges or offers to arrange a transaction," as used in the definition of broker in Occupations Code, §2301.002, includes the practice of arranging or offering to arrange a transaction involving the sale of a new motor vehicle for a fee, commission, or other valuable consideration. Advertising is not acting as a broker [~~brokering~~], provided the person's business primarily is [~~includes the business of~~] broadcasting, printing, publishing, or advertising for others in their own names.

(c) [~~(b)~~] A buyer referral service, program, plan, club, or any other entity that accepts a fee for arranging a transaction involving the sale of a new motor vehicle is a broker. The payment of a fee to such entity is aiding and abetting brokering. However, a referral service, program, plan, club, or other entity that forwards a referral to a franchised dealership may lawfully operate in a manner that includes all of the following conditions: [.]

(1) There is no exclusive market area offered to a dealer by the program. All dealers are allowed to participate in the program on equal terms.

(2) Participation by a dealer in the program is not restricted by conditions, such as limiting the number of line-makes or discrimination by size of dealership or location. The total number of participants in the program may be restricted if the program is offered to all dealers at the same time, with no regard to the line-make.

(3) All participants pay the same fee for participation in the program. The program fee shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by the franchised dealer.

(4) A person is not to be charged a fee on a per referral fee basis or any other basis that could be considered a transaction-related fee.

(5) The program does not set or suggest to the dealer any price of a motor vehicle or a trade-in.

(6) The program does not advertise or promote its plan in a manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(7) A program must comply with Subchapter F of this chapter (related to Advertising).

(d) [~~(c) Subsections (a)-(c) of this~~] This section does [~~do~~] not apply to a [~~any~~] person [~~or entity~~] who is not a [~~exempt from the~~] broker as defined [~~definition~~] in Occupations Code, §2301.002.

[~~(d) All programs must comply with Subchapter H of this chapter (relating to Advertising).~~]

§215.85. Brokering, Used Motor Vehicles.

(a) Transportation Code, §503.021 prohibits a person from engaging in business as a dealer, directly or indirectly, including by consignment without a GDN. Except as provided by this section, "directly or indirectly" includes the practice of arranging or offering to arrange a transaction involving the sale of a used motor vehicle for a fee, commission, or other valuable consideration. A person who is a bona fide employee of a dealer holding a GDN and acts for the dealer is not a broker for the purposes of this section.

(b) A buyer referral service, program, plan, club, or any other entity that accepts a fee for arranging a transaction involving the sale of a used motor vehicle is required to meet the requirements for and obtain a GDN, unless the referral service, program, plan, or club is operated in the following manner: [.]

(1) There is no exclusive market area offered to a dealer by the program. All dealers are allowed to participate in the program on equal terms.

(2) Participation by a dealer in the program is not restricted by conditions, such as limiting the number of line-makes or discrimination by size of dealer [~~ship~~] or location. The total number of participants in the program may be restricted if the program is offered to all dealers at the same time, with no regard to the line-make.

(3) All participants pay the same fee for participation in the program. The program fee shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by the dealer.

(4) A person is not to be charged a fee on a per referral fee basis or any other basis that could be considered a transaction-related fee.

(5) The program does not set or suggest to the dealer any price of a motor vehicle or a trade-in.

(6) The program does not advertise or promote its plan in a manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(7) A program complies with Subchapter F of this chapter (relating to Advertising).

[~~(c) All programs must comply with Subchapter H of this chapter (relating to Advertising).~~]

(c) [~~(d)~~] A [~~licensed~~] dealer holding a GDN pursuant to Transportation Code, §503.029(a)(6)(B), may pay a referral fee in cash or value to an individual who has purchased a vehicle from the [~~licensed~~] dealer within the four-year period preceding the referral. The fee may be paid contingent upon either the new referred individual:

(1) purchasing a vehicle from the [~~independent motor vehicle~~] dealer; or

(2) the referral of a new potential purchaser.

§215.87. License and Standard [~~Metal Dealer's~~] License Plate Terms and Fees.

(a) Except as provided by other law, the term of a license or standard [~~metal dealer's~~] license plate issued by the department to a dealer, converter, drive-a-way operator, distributor, or manufacturer under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 is two years.

(b) A standard [~~metal dealer's~~] license plate issued by the department expires on the date the associated license expires or is canceled.

(c) The fee for a license or standard [~~metal dealer's~~] license plate is computed by multiplying the applicable annual fee by the number of years of the license term. The entire [~~amount of the~~] fee including any tax owed under Tax Code §152.027 is due at the time of application for the license or license renewal.

(d) A dealer may apply for a personalized prestige plate issued under Transportation Code §503.0615 by completing a department form, providing a copy of a department-issued license, and submitting payment to a county tax assessor-collector. A personalized prestige plate may be renewed in an electronic system designated by the department.

§215.89. Fitness.

(a) In determining a person's fitness for a license issued or to be issued by the department under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, the board [~~or department~~] will consider:

(1) the requirements of Occupations Code, Chapter 53;

(2) the provisions of Occupations Code, §2301.651 and Transportation Code §503.034;

(3) any specific statutory licensing criteria or requirements;

(4) mitigating factors; and

(5) other evidence of a person's fitness, as allowed by law, including the standards identified in subsection (b) of this section.

(b) The board [~~or department~~] may determine that a person is unfit to perform the duties and discharge the responsibilities of a license holder and may, following notice and an opportunity for hearing, deny a person's license application or revoke or suspend a license if the person:

(1) fails to meet or maintain the qualifications and requirements of licensure;

(2) is convicted, or considered convicted under Occupations Code §53.021(d), by any local, state, federal, or foreign authority of an offense that directly relates to the duties or responsibilities of the licensed occupation as described in §211.3 of this title (relating to Criminal Offense Guidelines) or is convicted, or considered convicted under Occupations Code §53.021(d), of an offense that is independently disqualifying under Occupations Code §53.021;

(3) omits information or provides false, misleading, or incomplete information on an initial application, renewal application, or application attachment, for a license or other authorization issued by the department or by any local, state, or federal regulatory authority;

(4) is found to have violated an administrative or regulatory requirement based on action taken on a license, permit, or other authorization, including disciplinary action, revocation, suspension, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or any local, state, or federal regulatory authority;

(5) is insolvent or fails to obtain or maintain financial resources sufficient to meet the financial obligations of the license holder;

(6) is a corporation or other legal entity that fails to maintain its charter, certificate, registration, or other authority to conduct business in Texas;

(7) is assessed a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or a local, state, or federal regulatory authority, for violation of a requirement governing or impacting the distribution or sale of a vehicle or a motor vehicle, or the acquisition, sale, repair, rebuild, reconstruction, or other dealing of a salvage motor vehicle or nonrepairable motor vehicle, and fails to comply with the terms of a final order or fails to pay the penalty pursuant to the terms of a final order;

(8) was or is a person described in §211.2 of this title (relating to Application of Subchapter) whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment;

(9) has an ownership, organizational, managerial, or other business arrangement, that would allow a person the power to direct or cause the direction of the management, policies, and activities, of an applicant or license holder, whether directly or indirectly, when the person could be considered unfit, ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority, has been subject to disciplinary action, including suspension, revocation, denial, corrective

action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or any local, state, or federal regulatory authority;

(10) is found in a [~~an~~] final order issued after [~~through~~] a contested case hearing to be unfit or acting in a manner detrimental to the system of distribution or sale of motor vehicles in Texas, the economy of the state, the public interest, or the welfare of Texas residents [~~citizens~~].

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER C. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §§215.101 - 215.106, 215.108 - 215.111, 215.113, 215.115 - 215.117, 215.120, 215.121

STATUTORY AUTHORITY. The department proposes amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These proposed revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.101. Purpose and Scope.

This subchapter implements Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1001 [~~1000~~] - 1005, and applies to franchised dealers, manufacturers, distributors, and converters.

§215.102. Application Requirements.

(a) No person may engage in business, serve in the capacity of, or act as a manufacturer, distributor, converter, or franchised dealer in Texas unless that person holds a license.

(b) A license application shall be on a form prescribed by the department and properly completed by the applicant. A license application shall include all required information, supporting documents, and fees and shall be submitted to the department electronically in a system designated by the department for licensing.

(c) A license holder renewing or amending its license must verify current license information, provide related information and documents for any new license requirements or changes to the license, and pay required fees including any outstanding civil penalties owed the department under a final order.

(d) An applicant for a new license must register for an account in the department-designated licensing system by selecting the licensing system icon on the dealer page of the department website. An applicant must designate the account administrator and provide the name

and email address for that person, and provide the business telephone number, name, business type, and social security number or employer identification number, as applicable. The applicant's licensing account administrator must be an owner, officer, manager, or bona fide employee.

(e) Once registered, an applicant may apply for a new license and must provide the following:

(1) Required information:

(A) type of license requested;

(B) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number (if applicable), and website address (if applicable);

(C) contact name, email address, and telephone number of the person submitting the application;

(D) contact name, email address, and telephone number of a person who can provide information about business operations and the motor vehicle products or services offered;

(E) the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a publicly traded company;

(F) the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

(G) the name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

(H) criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, including offense description, date, and location;

(I) military service status;

(J) licensing history required to evaluate fitness for licensure under §215.89 of this title (relating to Fitness);

(K) if applying for a manufacturer, distributor, or converter license:

(i) financial resources, business integrity and experience, facilities and personnel for serving franchised dealers;

(ii) a description of the business model or business process and product and services used or offered sufficient to allow the department to determine if the license type applied for is appropriate under Texas law; and

(iii) number of standard license plates requested.

(L) if applying for a manufacturer or distributor license:

(i) if the applicant or any entity controlled by the applicant owns an interest in a Texas motor vehicle dealer or dealership, controls a Texas dealer or dealership, or acts in the capacity of a Texas dealer;

(ii) a statement regarding the manufacturer's compliance with Occupations Code Chapter 2301, Subchapter I and §§2301.451-2301.476;

(iii) if a franchise agreement for each line-make being applied for exists which states the obligations of a Texas franchised dealer to the applicant and the obligations of the applicant to the Texas franchised dealer; and

(iv) the terms of the contract under which the distributor will act for the manufacturer.

(M) if applying for a manufacturer license, the line-make information including the world manufacturer identifier assigned by the National Highway Traffic Safety Administration, line-make name, and vehicle type;

(N) if applying for a distributor license:

(i) the manufacturer for whom the distributor will act;

(ii) whether the manufacturer is licensed in Texas;

(iii) the person in this state who is responsible for compliance with the warranty covering the motor vehicles to be sold; and

(iv) whether a franchise agreement for each line-make being applied for exists which states the obligations of a Texas franchised dealer to the applicant and the obligations of the applicant to the Texas franchised dealer.

(O) if applying for a converter license:

(i) a name and description for each conversion package; and

(ii) the manufacturer or distributor and line-make of the underlying new motor vehicle chassis to be converted.

(P) if applying for a franchised dealer license:

(i) reason for the new application;

(ii) dealership location on a system-generated map;

(iii) if the dealership is under construction and expected completion date;

(iv) information about the performance of sales or warranty services at the location; and

(v) information necessary to obtain a franchised dealer GDN under §215.133 of this title (relating to General Distinguishing Number).

(Q) signed Certificate of Responsibility, which is a form provided by the department; and

(R) any other information required by the department to evaluate the application under current law and board rules.

(2) A legible and accurate electronic image of each applicable required document:

(A) the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, if applicable;

(B) each assumed name certificate on file with the Secretary of State or county clerk;

(C) at least one of the following unexpired identity documents for each natural person listed in the application:

(i) driver license;

(ii) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;

(iii) license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(iv) passport; or

(v) United States armed forces identification.

(D) if applying for a manufacturer, distributor, or converter license, a written description of the business model or business process and brochures, photos, or other documents describing products and services sufficient to allow the department to identify a motor vehicle product type and the appropriate license required under Texas law;

(E) if applying for a manufacturer or distributor license:

(i) a list of each franchised dealer in Texas including the dealer's name and physical address, or if offers for sale or sales of motor vehicle in Texas will solely be over the internet, a list of each out-of-state dealer authorized by the manufacturer or distributor to sell a product online to a Texas resident including the dealer's name, physical address, and dealer license number issued by the state in which the dealer is located; and

(ii) a list of motor vehicle product line-makes manufactured or distributed for sale;

(F) if applying for a manufacturer license:

(i) a list of authorized distributors or representatives; and

(ii) a franchised dealer's preparation and delivery obligations before delivery of a new vehicle to a retail purchaser and the schedule of compensation to be paid to the franchised dealer;

(G) if applying for a distributor license, either:

(i) a copy of the distribution agreement between a manufacturer and distributor; or

(ii) a completed department-provided questionnaire containing the information required under Occupations Code, §2301.260, and signed by the applicant as true and complete.

(H) if applying for a franchise dealer license, pages of the executed franchise agreement containing at minimum the following:

(i) the legal business name of each party;

(ii) authorized signature of each party;

(iii) authorized dealership location;

(iv) list of motor vehicle line-makes and vehicle types to be sold or serviced; and

(v) a department Evidence of Relocation form signed by the manufacturer or distributor (if applicable); and

(I) any other documents required by the department to evaluate the application under current law and board rules.

(3) Required fees:

(A) the license fee as prescribed by law; and

(B) the fee as prescribed by law for each plate requested by the applicant.

(f) An applicant operating under a name other than the applicant shall use the name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use a name or assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(g) A manufacturer or distributor may add a new line-make to an existing license during the license period by submitting a license amendment application and providing brochures, photos, or other documents describing the new line-make sufficient to allow the department to identify the line-make and vehicle product type. A license amendment to add a line-make to a manufacturer or distributor license must be approved by the department before the new line-make may be added to a franchised dealer's license.

§215.103. Service-only Facility.

(a) A service-only facility is a location occupied and operated by a franchised dealer that is a completely separate, noncontiguous site, from the franchised dealer's new motor vehicle sales and service or sales only location, where the franchised dealer performs [~~will only perform~~] warranty [~~and nonwarranty~~] repair services and not new motor vehicle sales. [~~Except as allowed in subsection (d) of this section, warranty repair services may only be performed at either a licensed dealership or a licensed service-only facility.~~]

(b) A franchised dealer must obtain a license to operate a service-only facility. A dealer may not obtain a service-only facility license to service a [~~particular~~] line-make [~~line~~] of new motor vehicles, unless that dealer is franchised and licensed to sell that line-make.

(c) A service-only facility is a dealership subject to protest under Occupations Code, Chapter 2301.

(d) Upon the manufacturer's or distributor's prior written approval, which cannot be unreasonably withheld, [~~only~~] a franchised dealer of the manufacturer or distributor may contract with another person as a subcontractor to perform warranty repair services that the dealer is authorized to perform under a franchise agreement with a manufacturer or distributor. Payment shall be made by the franchised dealer to the subcontractor and not by the manufacturer or distributor to the subcontractor.

(e) A person with whom a franchised dealer contracts to perform warranty repair services is not eligible to obtain a service-only facility license and may not advertise the performance of warranty repair services in any manner to the public.

§215.104. Changes to Franchised Dealer's License.

(a) In accordance with Occupations Code, §2301.356, a franchised dealer must file an application to amend the franchised dealer's license [~~in order~~] to request [~~inclusion of~~] an additional line-make at the dealer's currently licensed showroom. The amendment application must be filed electronically in a system designated by the department for licensing.

(1) In accordance with §215.110 of this title (relating to Evidence of Franchise), the franchised dealer must attach to the amendment application a legible and accurate electronic image [~~copy~~] of:

(A) the executed franchise agreement;

(B) the required excerpt from the executed franchise agreement; or

(C) an evidence of franchise form completed by the manufacturer, distributor, or representative.

(2) The amendment application for an additional franchise at the showroom is considered an original application and is subject to protest, in accordance with Occupations Code, Chapter 2301, this chapter, and Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

(b) A franchised dealer may propose to sell or assign to another any interest in the licensed entity, whether a corporation or otherwise, provided the physical location of the licensed entity remains the same.

(1) The franchised dealer shall notify the department in writing within 10 days of the sale or assignment of interest by filing an application to amend the franchised dealer's license electronically in a system designated by the department for licensing.

(2) If the sale or assignment of any portion of the business results in a change of business entity, then the purchasing entity or assignee must apply for and obtain a new license in the name of the new business entity.

(3) A publicly-held corporation must file an amendment application [~~needs only to inform the department of a change in ownership~~] if one person or entity acquires 10% or greater interest in the licensed entity.

(c) A franchised dealer is required to file an amendment application electronically in a system designated by the department for licensing within 10 days of a license change, including:

(1) deletion of a line-make from the dealer's license;

(2) a change of assumed name on file with the Office of the Secretary of State or county clerk;

(3) a change of mailing address;

(4) a change of telephone number; or

[~~(5) a change of facsimile number; or~~]

(5) [~~(6)~~] a change of email address.

(d) A franchised dealer is required to file a business entity amendment application electronically in a system designated by the department for licensing within 10 days of an entity change, including:

(1) a change in management, dealer principal, or change of other person who oversees [~~is in charge of~~] a franchised dealer's business activities, including a managing partner, officer, director of a corporation, or similar person; or

(2) a change of legal entity name on file with the Office of the Secretary of State.

(e) If a franchised [~~licensed new motor vehicle~~] dealer changes or converts from one type of business entity to another type of business entity without changing ownership of the dealership, the submission of a franchise agreement in the name of the new entity is not required in conjunction with an amendment application. The franchise agreement on file with the department prior to the change or conversion of the dealer's business entity type applies to the successor entity until the parties agree to replace the franchise agreement. This subsection does not apply to a sole proprietorship or general partnership.

(f) If a franchised dealer adopts a plan of conversion under a state or federal law that allows one legal entity to be converted into another legal entity, only an amendment application [~~to amend the license~~] is necessary to be filed with the department. The franchise agreement on file with the department continues to apply to the converted entity. If a license holder becomes another legal entity by any means other than by conversion, a new application is required, subject to subsection (e) of this section.

(g) In addition to obtaining permission from the manufacturer or distributor, a franchised dealer shall obtain department approval prior to opening a supplemental location or relocating an existing location by filing an amendment application electronically in a system designated by the department for licensing. A franchised dealer must notify the department electronically in a system designated by the department for licensing when closing an existing location.

§215.105. Notification of License Application; Protest Requirements.

(a) The provisions of this section are not applicable to an application filed with the department for a franchised dealer license as a result of the purchase or transfer of an existing entity holding a current franchised dealer's license that does not involve a physical relocation of the purchased or transferred line-makes.

(b) Upon receipt of an application for a franchised [~~new motor vehicle~~] dealer's license, including an application filed with the department by reason of the relocation of an existing dealership, the department shall give notice of the filing of the application to each franchised dealer that may have standing to protest the application.

(c) If it appears to the department that there are no franchised dealers with standing to protest, then no notice shall be given.

(d) A person holding a franchised dealer's license for the sale of the same line-make of a new motor vehicle as proposed for sale in the subject application and that has standing to protest the application may file with the department a notice of protest opposing the granting of a license by timely filing a protest electronically in the system designated by the department for licensing, and paying the required fee.

(e) A franchised dealer that wishes to protest the application shall give notice in accordance with Occupations Code, Chapter 2301.

(1) The notice of protest shall be in writing and shall be signed by an authorized officer or other official authorized to sign on behalf of the protesting dealer filing the notice.

(2) The notice of protest shall state the statutory basis upon which the protest is made and assert how the protesting dealer meets the standing requirements under §215.119 of this title (relating to Standing to Protest) to protest the application.

(3) The notice of protest shall state that the protest is not made for purposes of delay or for any other purpose except for justifiable cause.

(4) If a protest is filed against an application for the establishment of a dealership or for addition of a line-make at an existing dealership, the notice of protest shall state under which provision of Occupations Code, Chapter 2301 the protest is made.

§215.106. Time for Filing Protest.

(a) A notice of protest must be:

(1) received by the department not later than 5:00 p.m. Central [~~Standard~~] Time (CST or CDT, as applicable) on the date 15 days from the date of mailing of the department's notification to the license holder of the filing of the application;

(2) filed in [~~with the department by United States mail, facsimile, hand delivery, or through~~] the department's designated electronic filing system [~~when available; however, a notice of protest may not be filed by email~~]; and

(3) [~~accompanied by the required filing fee~~] submitted with the filing fee paid. [~~If the filing fee does not accompany the notice of protest, the fee must be received by the department not later than 5:00 p.m. CST on the date 20 days from the date of mailing of the department's notification to the license holder of the filing of the application~~].

(b) The department will reject a notice of protest if:

(1) the complete notice of protest is not filed within 15 days from the date of mailing of the department's notification to the license holder of the filing of the application; or

(2) the required filing fee is not paid when the protest is submitted in the department's designated electronic filing system or is later dishonored [remitted within 20 days from the date of mailing of the department's notification to the license holder of the filing of the application.

§215.108. Addition or Relocation of Line-make.

An application to amend an existing franchised [new motor vehicle] dealer's license for the addition of another line-make at the existing dealership or for the relocation of a line-make to the existing dealership shall be deemed an "application to establish a dealership" insofar as the line-make to be added is concerned, and shall be subject to the provisions of §215.105 of this title (relating to Notification of License Application; Protest Requirements) and §215.106 of this title (relating to Time for Filing Protest).

§215.109. Replacement Dealership.

An application for a franchised [new motor vehicle] dealer's license for a dealership intended as a replacement for a previously existing dealership shall be deemed an application for a "replacement dealership" required to be established in accordance with Occupations Code, §2301.453 and shall not be subject to protest under the provisions of §215.105 of this title (relating to Notification of License Application; Protest Requirements), provided that:

(1) the application states that the applicant is intended as a replacement dealership and identifies the prior dealership to be replaced;

(2) the manufacturer or distributor of the line-make gives notice to the department and to other dealers franchised for the same line-make that meet the provisions of Occupations Code, §2301.652(b) and (c);

(3) the notice under paragraph (2) of this subsection is given within 60 days following the closing of the prior dealership;

(4) the application is filed electronically in the system designated by the department for licensing, [with the department] not later than one year following the closing of the prior dealership; and

(5) the location of the applicant's proposed dealership is not more than two miles from the location of the prior dealership.

§215.110. Evidence of Franchise.

(a) Upon application for a franchised [new motor vehicle] dealer's license or an amendment of an existing franchised [new motor vehicle] dealer's license to add a line-make, the applicant must submit a legible and accurate electronic image [photocopy] of the [pages of the] franchise agreement [(s)] pages that reflect:

(1) the parties [to the agreement(s)],

(2) the authorized signatures of the parties [to the agreement(s)], [and]

(3) each line-make listed in the application, and

(4) the address of the franchised dealership's physical location.

(b) To meet this requirement temporarily for the purpose of application processing, a form prescribed by the department and completed by the manufacturer or distributor may be electronically submitted with the application in lieu of the information described in this [sub] section.

(c) The applicant must submit the required [photocopies of the] franchise agreement [agreement(s)] pages described in this [sub] section immediately upon the applicant's receipt of the franchise agreement [(s)] as the department will not issue a license without verifying that the franchise agreement has been executed.

(d) [(b)] Upon application to relocate a franchised [new motor vehicle] dealership, the franchised dealer applicant must submit a form prescribed by the department and completed by the manufacturer or distributor that identifies the license holder and the new franchised dealership location.

§215.111. Notice of Termination or Discontinuance of Franchise and Time for Filing Protest.

(a) A manufacturer or distributor must give notice of termination or discontinuance of a dealer's franchise to a franchised dealer and the department [shall be given by a manufacturer or distributor] in accordance with Occupations Code, §2301.453 [not less than 60 days prior to the effective date of the franchise termination or discontinuance].

(b) A dealer must file a written notice of protest of the franchise termination or discontinuance [by a dealer] pursuant to Occupations Code, §2301.453 [shall be in writing and shall be filed with the department] electronically in the system designated by the department for licensing, prior to the effective date of the franchise termination or discontinuance stated in the notice from the manufacturer or distributor.

§215.113. Manufacturer Ownership of Franchised Dealer; Good Cause Extension; Dealer Development.

(a) In the absence of a showing of good cause, an application for a franchised [new motor vehicle] dealer's license of which a manufacturer or distributor owns any interest in or has control of the dealership entity must be submitted to the department electronically in the system designated by the department for licensing no later than 30 days before:

(1) the opening of the dealership;

(2) close of the buy-sell agreement; or

(3) the expiration of the current license.

(b) If a manufacturer or distributor applies for a franchised [new motor vehicle] dealer's license of which the manufacturer or distributor holds an ownership interest in or has control of the dealership entity in accordance with Occupations Code, §2301.476(d) - (f), the license application must contain a sworn statement from the manufacturer or distributor that the dealership was purchased from a franchised dealer and is for sale at a reasonable price and under reasonable terms and conditions, and that the manufacturer or distributor intends to sell the dealership to a person not controlled or owned by the manufacturer or distributor within 12 months of acquiring the dealership, except as provided by subsection (h) of this section.

(c) A request for an extension of the initial 12-month [12 month] period for manufacturer or distributor ownership or control of a franchised [new motor vehicle] dealership, in accordance with Occupations Code, §2301.476(e), must be submitted to the department in accordance with subsection (a) of this section along with a sufficient application to renew the new motor vehicle dealer's license. The request must contain a detailed explanation, including appropriate documentary support, to show the manufacturer's or distributor's good cause for failure to sell the dealership within the initial 12-month [12 month] period. The director will evaluate the request and determine whether the license should be renewed for a period not to exceed 12 months or deny the renewal application. If the renewal application is denied, the manufacturer or distributor may request a hearing

on the denial in accordance with Occupations Code, Chapter 2301, Subchapter [§§2301.701 - 2301.713] and the matter will be referred to SOAH for a hearing under Chapter 224, Subchapter C of this title (relating to Motor Vehicle, Salvage Vehicle, and Trailer Industry License Enforcement).

(d) Requests for extensions after the first extension is granted, as provided by Occupations Code, §2301.476(e), must be submitted at least 120 days before the expiration of the current license electronically in the system designated by the department for licensing. Upon receipt of a subsequent request, the department [board] will initiate a hearing in accordance with Occupations Code, Chapter 2301, Subchapter O [§§2301.701 - 2301.713], at which the manufacturer or distributor will be required to show good cause for the failure to sell the dealership. The manufacturer or distributor has the burden of proof and the burden of going forward on the sole issue of good cause for the failure to sell the dealership.

(e) The department will give notice of the hearing described in subsection (d) of this section to all other franchised dealers holding franchises for the sale and service or service only of the same line-make of new motor vehicles that are located in the same county in which the dealership owned or controlled by the manufacturer or distributor is located or in an area within 15 miles of the dealership owned or controlled by the manufacturer or distributor. Such dealers, if any, will be allowed to intervene and protest the granting of the subsequent extension. Notices of intervention by dealers afforded a right to protest under Occupations Code, §2301.476(e) must be filed with the department electronically in the system designated by the department within 15 days of the date of mailing of the notice of hearing, and a copy must be provided to the manufacturer or distributor. The department will reject a notice of intervention if the notice is not filed at least 30 days before:

(1) the opening of the dealership;

(2) close of the buy-sell agreement; or

(3) the expiration of the current license.

(f) A hearing under subsection (d) of this section will be referred to SOAH for a hearing under Chapter 224, Subchapter C of this title (relating to Contested Cases Between Motor Vehicle Industry License Holders or Applicants). [conducted as expeditiously as possible, but not later than 120 days after receipt of the subsequent request for extension from the manufacturer or distributor. An ALJ will prepare a written decision and proposed findings of fact and conclusions of law as soon as possible, but not later than 60 calendar days after the hearing is closed.] The franchised [new motor vehicle] dealer's license that is the subject of the hearing will continue in effect until a final decision on the request for a subsequent extension is issued [rendered] by the board.

(g) The procedures described in subsections (d) - (f) of this section will be followed for all extensions requested by the manufacturer or distributor after the initial extension.

(h) An application for a new motor vehicle dealer's license of which a manufacturer or distributor owns any interest in the dealership entity in accordance with Occupations Code, §2301.476(g) must contain sufficient documentation to show that the applicant meets the requirements of Occupations Code, §2301.476(g).

§215.115. Manufacturer, Distributor, and Converter Vehicle Sales Records.

(a) A manufacturer or distributor must maintain, for a minimum period of 48 months, a record of each vehicle sold to any person in this state. The manufacturer or distributor shall make the record available during business hours for inspection and copying by [a representative of] the department or be available to submit electronically to the department upon request.

(b) A converter must maintain, for a minimum period of 48 months, a record of each vehicle converted for [to] a [any] person in this state, including [to] a Texas franchised dealer. The converter shall make the record available during business hours for inspection and copying by [a representative of] the department or be available to submit electronically to the department upon request.

(c) A manufacturer, distributor, or converter is required to maintain at its licensed location a record reflecting each purchase, sale, or conversion for a minimum period of 24 months. Records for prior time periods may be kept off-site.

(d) Within 15 days of receipt of a request sent by mail or electronic document transfer from [a representative of] the department, a manufacturer, distributor, or converter must submit a copy of specified records to the address listed in the request.

(e) Records required to be maintained and made available to the department must include the following:

(1) the date of sale or conversion of the motor vehicle;

(2) the VIN;

(3) the name and address of the person purchasing the motor vehicle [dealer or converter];

(4) a copy of or a record with the information contained in the manufacturer's certificate of origin or title;

(5) information regarding the prior status of the motor vehicle such as the Reacquired Vehicle Disclosure Statement;

(6) the repair history of any motor vehicle subject to a warranty complaint;

(7) technical service bulletin or equivalent advisory; and

(8) any audit of a franchised dealership.

(f) Any record required by the department may be maintained in an electronic format, if the electronic record can be printed at the licensed location upon request [for the record] by [a representative of] the department or be available to submit electronically to the department upon request.

§215.116. Franchised Dealership Lease or Sublease Listing.

A franchised dealer that lists its dealership for lease or sublease to mitigate damages in accordance with Occupations Code, §2301.4651(e) is required to list [for lease or sublease]:

(1) the entire real property if the termination or discontinuance effectively terminates all line-makes and all franchises for the entire dealership; or

(2) only that portion of the real property associated with the terminated line-make or franchise, if the termination or discontinuance does not affect all line-makes and all franchises of the dealership.

§215.117. Market Value Property Appraisal.

(a) An appraiser performing a [A] market value property appraisal [assessment made] in accordance with Occupations Code, §2301.482(c) must be a Texas- [requires three general] certified real estate appraiser [appraisers certified by the State of Texas].

(b) Necessary real estate and necessary construction are each determined by the applicable property use agreement.

(c) The [To determine] market value of property in accordance with Occupations Code, §2301.482(c), is the [an] average of the market value property appraisals [will be calculated from the independent

~~market value property assessment determinations~~] of the three [~~general~~] certified real estate appraisers.

§215.120. License Plates.

(a) A manufacturer, distributor, or converter may apply for a manufacturer or converter standard license plate for use on a new unregistered vehicle of the same vehicle type assembled or modified in accordance with Transportation Code §503.064 or §503.0618, as applicable:

(1) when applying for a new or renewal license, or

(2) by submitting a plate request application electronically in the system designated by the department.

(b) A manufacturer may use a manufacturer's standard plate to test a prototype motor vehicle on a public street or highway including a commercial motor vehicle prototype designed to carry a load. A manufacturer's standard plate may not be used on a commercial motor vehicle prototype or new commercial motor vehicle to carry a load for which the manufacturer or other person receives compensation.

(c) A manufacturer, distributor, or converter shall attach a license plate to the rear of a vehicle in accordance with §217.27 of this title (relating to Vehicle Registration Insignia).

(d) A manufacturer, distributor, or converter shall maintain a record of each license plate issued to the manufacturer, distributor, or converter by the department. The record of each license plate issued must contain:

(1) the license plate number;

(2) the year and make of the vehicle to which the license plate is affixed;

(3) the VIN of the vehicle; and

(4) the name of the person in control of the vehicle to which the license plate is affixed.

(e) If a manufacturer, distributor, or converter cannot account for a license plate or a license plate is damaged, the manufacturer, distributor, or converter must:

(1) document the license plate as "void" in plate record in subsection (c); and

(2) within three days of discovering that the license plate is missing or damaged, report the license plate as lost, stolen, or damaged electronically in the system designated by the department; and

(3) if found after reported missing, cease use of the license plate.

(f) A license plate is no longer valid for use after the manufacturer, distributor, or converter reports to the department that the plate is lost, stolen, or damaged. A manufacturer, distributor, or converter must render a void plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and once marked, must destroy or recycle the license plate, or return the license plate to the department within 10 days.

(g) The license holder's license plate record must be available for inspection and copying by the department during normal business hours or be available to submit electronically to the department upon request.

(h) In evaluating requests for additional standard license plates, the department will consider the business justification provided by a license holder including the following:

(1) the number of vehicles assembled or modified;

(2) the highest number of motor vehicles in inventory in the prior 12 months;

(3) the size and type of business;

(4) how the license holder typically uses the plates;

(5) the license holder's record of tracking and reporting missing or damaged plates to the department; and

(6) any other factor the Department in its discretion deems necessary to support the number of plates requested.

(i) a license holder must return a department-issued license plate to the department within 10 days of the license holder closing the associated license or the associated license being revoked, canceled, or closed by the department.

§215.121. Sanctions.

(a) The board or department may take the following actions against a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) deny an application;

(2) revoke a license;

(3) suspend a license;

(4) assess a civil penalty;

(5) issue a cease and desist order; or

(6) take other authorized action.

(b) The board or department may take action described in subsection (a) of this section if a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) fails to maintain records required under this chapter;

(2) refuses or fails to timely comply with a request for records made by a representative of the department;

(3) sells or offers to sell a motor vehicle to a retail purchaser other than through a licensed or authorized dealer;

(4) fails to submit a license amendment application in the electronic system designated by the department for licensing to notify the department of a change of the license holder's physical address, mailing address, telephone number, or email address within 10 days of the change;

(5) fails to timely submit a license amendment application in the electronic system designated by the department for licensing to notify the department of a license holder's business or assumed name change, deletion of a line-make, or management or ownership change;

(6) fails to notify the department or pay or reimburse a franchised dealer as required by law;

(7) misuses or fails to display a license plate as required by law;

(8) is a manufacturer or distributor and fails to provide a manufacturer's certificate for a new vehicle;

(9) fails to remain regularly and actively engaged in the business of manufacturing, assembling, or modifying a new motor vehicle of the type and line make for which a license has been issued by the department;

(10) violates a provision of Occupations Code, Chapter 2301; Transportation Code Chapters 501-503 or 1001-1005; a board order or rule; or a regulation of the department relating to the manufacture, assembly, sale, lease, distribution, financing, or insuring

of vehicles, including advertising rules under Subchapter H of this chapter (relating to Advertising);

(11) is convicted of an offense that directly relates to the duties or responsibilities of the occupation in accordance with §211.3 of this title (relating to Criminal Offense Guidelines);

(12) is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a license;

(13) omits information or makes a material misrepresentation in any application or other documentation filed with the department including providing a false or forged identity document or a false or forged photograph, electronic image, or other document;

(14) fails to remit payment as ordered for a civil penalty assessed by the board or department;

(15) violates any state or federal law or regulation relating to the manufacture, distribution, modification, or sale of a motor vehicle;

(16) fails to issue a refund as ordered by the board or department; or

(17) fails to participate in statutorily required mediation without good cause.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §215.112

STATUTORY AUTHORITY. The department proposes a repeal to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, § §503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. This repeal would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.112. Motor Home Show Limitations and Restrictions.

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

Filed with the Office of the Secretary of State on December 14, 2023.

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SUBCHAPTER D. GENERAL DISTINGUISHING NUMBERS AND IN-TRANSIT LICENSES

43 TAC §§215.131 - 215.135, 215.137 - 215.141, 215.143 - 215.145, 215.147 - 215.152, 215.154, 215.155, 215.160, 215.161

The department proposes amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who proposes to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE.These proposed revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.131. Purpose and Scope.

This subchapter implements Transportation Code, Chapters [~~Chapter~~] 503 and 1001-1005, and Occupations Code, Chapter 2301, and applies to general distinguishing numbers and drive-a-way operator in-transit licenses issued by the department.

§215.132. Definitions.

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

(1) Barrier--A material object or set of objects that separates or demarcates.

[~~(2) Charitable organization--Has the meaning assigned by Transportation Code, §503.062(e).~~]

(2) [~~(3)~~] Consignment sale--The owner-authorized sale of a motor vehicle by a person other than the owner.

(3) [~~(4)~~] House trailer--A nonmotorized vehicle designed for human habitation and for carrying persons and property on its own structure and for being drawn by a motor vehicle. A house trailer does not include manufactured housing. A towable recreational vehicle, as defined by Occupations Code, §2301.002, is included in the terms "house trailer" or "travel trailer."

(4) Municipality--As defined according to the Local Government Code, Chapter 1.

[~~(5) License--A dealer's GDN assigned by the department identifying the type of business for a specified location from which the person engages in business.~~]

(5) [~~(6)~~] Person--Has the meaning assigned by Occupations Code, §2301.002.

(6) [~~(7)~~] Sale--With regard to a specific vehicle, the transfer of possession of that vehicle to a purchaser for consideration.

(7) [~~(8)~~] Temporary tag--A buyer's temporary tag, converter's temporary tag, or dealer's temporary tag as described under Transportation Code, Chapter 503.

(8) [~~(9)~~] Towable recreational vehicle--Has the same meaning as "house trailer" defined by this section.

(9) [~~(10)~~] Travel Trailer--Has the same meaning as "house trailer" defined by this section.

(10) [~~(11)~~] Vehicle--Has the meaning assigned by Transportation Code, §503.001.

(11) [~~(12)~~] VIN--Vehicle identification number.

§215.133. GDN [~~General Distinguishing Number~~] Application Requirements for a Dealer or a Wholesale Motor Vehicle Auction.

(a) No person may engage in business as a dealer or as a wholesale motor vehicle auction unless that person has a [~~currently~~] valid GDN assigned by the department for each location from which the person engages in business. A dealer must also hold a GDN for a consignment location, unless the consignment location is a wholesale motor vehicle auction.

(b) Subsection (a) of this section does not apply to a person exempt from the requirement to obtain a GDN under Transportation Code §503.024.

(c) A GDN dealer or wholesale motor vehicle auction application shall be on a form prescribed by the department and properly completed by the applicant as required under §215.83 of this title (relating to License Applications, Amendments, or Renewals). A GDN dealer or wholesale motor vehicle auction application shall include all required information, required supporting documents, and required fees and shall be submitted to the department electronically in a system designated by the department for licensing. A GDN dealer or wholesale motor vehicle auction GDN holder renewing or amending its GDN must verify current license information, provide related information and documents for any new requirements or changes to the GDN, and pay required fees including any outstanding civil penalties owed the department under a final order. An applicant for a new dealer or wholesale motor vehicle auction GDN must provide the following:

(1) Required information:

(A) type of GDN requested;

(B) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number (if applicable), and website address (if applicable);

(C) [~~application contact name, email address, and telephone number~~] contact name, email address, and telephone number of the person submitting the application;

(D) contact name, email address, and telephone number of a person who can provide information about business operations and the motor vehicle products or services offered;

(E) [~~(D)~~] the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, or principal if the applicant is not a publicly traded company;

(F) [~~(E)~~] the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

(G) [~~(F)~~] the name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

(H) [~~(G)~~] the name, social security number, date of birth, and identity document information of at least one manager or other bona fide employee who will be present at the established and permanent place of business if the owner is out of state or will not be present during business hours at the established and permanent place of business in Texas;

(I) [~~(H)~~] if a dealer, the name, telephone number, and business email address of the temporary tag database account administrator designated by the applicant who must be an owner or representative listed in the application;

(J) [~~(I)~~] criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, including offense description, date, and location;

(K) [~~(J)~~] military service status;

(L) [~~(K)~~] licensing history required to evaluate fitness for licensure under §215.89 of this title (relating to Fitness);

(M) [~~(L)~~] information about the business location and business premises, including whether the applicant will operate as a salvage vehicle dealer at the location;

(N) [~~(M)~~] history of insolvency, including outstanding or unpaid debts, judgments, or liens, unless the debt was discharged under 11 U.S.C. §§101 et seq. (Bankruptcy Act) or is pending resolution under a case filed under the Bankruptcy Act;

(O) [~~(N)~~] signed Certification [~~Certificate~~] of Responsibility, which is a form provided by the department; and

(P) [~~(O)~~] any other information required by the department to evaluate the application under current law and board rules.

(2) A legible and accurate electronic image of each applicable required document:

(A) proof of a surety bond if required under §215.137 of this title (relating to Surety Bond);

(B) the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, if applicable;

(C) each assumed name certificate on file with the Secretary of State or county clerk;

(D) at least one of the following unexpired identity documents for each natural person listed in the application:

(i) [~~current~~] driver license;

(ii) [~~current~~] Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;

(iii) [~~current~~] license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(iv) [~~current~~] passport; or

(v) [~~current~~] United States military identification card [~~armed forces identification~~].

(E) a certificate of occupancy, certificate of compliance, or other official documentation confirming the business location complies with municipal ordinances, including zoning, occupancy, or other requirements for a vehicle business;

(F) documents proving business premises ownership, or lease or sublease agreement for the license period;

(G) business premises photos and a notarized affidavit certifying that all premises requirements in §215.140 of this title (relating to Established and Permanent Place of Business Premises Requirements) are met and will be maintained during the license period;

(H) evidence of franchise if applying for a franchised motor vehicle dealer GDN;

(I) proof of completion of the dealer education and training required under Transportation Code §503.0296, if applicable; and

(J) any other documents required by the department to evaluate the application under current law and board rules.

(3) Required fees:

(A) the fee [~~for the GDN~~] for each type of license requested as prescribed by law; and

(B) the fee, including applicable taxes, for each standard [~~metal~~] dealer plate requested by the applicant as prescribed by law.

(d) An applicant for a dealer or wholesale auction GDN must also comply with fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for Designated License Types [~~General Distinguishing Numbers~~]), if applicable.

(e) An applicant for a [~~dealer~~] GDN operating under a name other than the applicant's business name [~~applicant~~] shall use the assumed name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use a name or [~~an~~] assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(f) A wholesale motor vehicle dealer GDN holder may sell or exchange vehicles with licensed or authorized dealers only. A wholesale motor vehicle dealer GDN holder may not sell or exchange vehicles at retail.

(g) An independent mobility motor vehicle dealer shall retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-b) and all information and records required under Transportation Code §503.0295.

(h) In evaluating a new or renewal [~~dealer~~] GDN application or an application for a new GDN location, the department may require a site visit to determine if the business location meets the requirements in §215.140. The department will require the applicant or GDN holder to provide a notarized affidavit confirming that all premises requirements are met and will be maintained during the license period.

(i) A person holding an independent motor vehicle GDN does not have to hold a salvage vehicle dealer license to:

(1) act as a salvage vehicle dealer or rebuilder; or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

(j) A person holding an independent motor vehicle GDN and performing salvage activities under subsection (i) must apply for a National Motor Vehicle Title Information System (NMVTIS) identification number and provide the number to the department in the GDN application.

(k) [~~(j)~~] To be eligible for an independent motor vehicle GDN, a person must complete dealer education and training specified by the department, except as provided in this subsection:

(1) once a person has completed the required dealer education and training, the person will not have to retake the dealer education and training for subsequent GDN renewals, but may be required to provide proof of dealer education and training completion as part of the GDN renewal process;

(2) a person holding an independent motor vehicle GDN for at least 10 years as of September 1, 2019, is exempt from the dealer education and training requirement; and.

(3) a military service member, military spouse, or military veteran will receive appropriate credit for prior training, education, and professional experience and may be exempted from the dealer education and training requirement.

§215.134. Requirements for a Drive-a-way Operator In-Transit License.

(a) No drive-a-way operator may engage in business in Texas unless that person has a currently valid drive-a-way operator in-transit license issued by the department.

(b) A drive-a-way operator in-transit application shall be on a form prescribed by the department and properly completed by the applicant as required under §215.83 of this title (relating to License Applications, Amendments, or Renewals). A drive-a-way operator in-transit application shall include all required information, required supporting documents, and required fees, and shall be submitted to the department electronically in a system designated by the department for licensing.

(c) A drive-a-way operator in-transit license holder renewing or amending its license must verify current license information, provide related information and documents for any new requirements or changes to the license, and pay required fees.

(d) An applicant for a new license must register for an account in the department-designated licensing system by selecting the licensing system icon on the dealer page of the department website. An applicant must designate the account administrator and provide the name and email address for that person, and provide the business telephone number, name, business type, and social security number or employer identification number, as applicable. The applicant's licensing account administrator must be an owner, officer, manager, or bona fide employee.

(e) Once registered, an applicant may apply for a new license and must provide the following:

(1) Required information:

(A) type of license requested;

(B) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number (if applicable), and website address (if applicable);

(C) contact name, email address, and telephone number of the person submitting the application;

(D) contact name, email address, and telephone number of a person who can provide information about business operations and the motor vehicle services offered;

(E) the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a publicly traded company;

(F) the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

(G) the name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

(H) criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, including offense description, date, and location;

(I) military service status;

(J) licensing history required to evaluate fitness for licensure under §215.89 of this title (relating to Fitness);

(K) signed Certification of Responsibility, which is a form provided by the department; and

(L) any other information required by the department to evaluate the application under current law and board rules.

(2) A legible and accurate electronic image of each applicable required document:

(A) the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, if applicable;

(B) each assumed name certificate on file with the Secretary of State or county clerk;

(C) at least one of the following unexpired identity documents for each natural person listed in the application:

(i) driver license;

(ii) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;

(iii) license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(iv) passport; or

(v) United States military identification card;

(D) a list of manufacturers, distributors, dealers, or auctions for which the applicant provides drive-a-way services;

(E) a description of the business model or business process, transportation methods, compensation agreements, products, and services used or offered sufficient to allow department to determine if the license type applied for is appropriate under Texas law; and

(F) any other documents required by the department to evaluate the application under current law and board rules.

(3) Required fees:

(A) the license fee as prescribed by law; and

(B) the fee, including any taxes, for each standard drive-a-way in-transit license plate requested by the applicant as prescribed by law.

(f) An applicant for a drive-a-way operator in-transit license must also comply with fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for Designated License Types).

(g) An applicant operating under a name other than the applicant's business name shall use the name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use a name or assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

§215.135. More than One Location.

(a) A dealer that holds a GDN for a particular type of vehicle may operate from more than one location within the limits of a municipality [~~city~~], provided each location is operated by the same legal entity and meets the requirements of §215.140 of this title (relating to Established and Permanent Place of Business Premises Requirements).

(b) Additional locations not located within the limits of the same municipality [~~city~~] of the initial dealership are required to:

(1) obtain a new GDN; and

(2) provide a new surety bond reflecting the additional location [~~,~~] unless the licensed location is exempt by statute from the surety requirement.

(c) A dealer that relocates from a point outside the limits of a city or relocates to a point not within the limits of the same city of the initial location is required to:

(1) obtain a new GDN; and

(2) provide a new surety bond reflecting the new address [~~,~~] unless the licensed location is exempt by statute from the surety requirement.

(d) A dealer shall notify the department in writing within 10 days of opening, closing, or relocating a [~~any~~] licensed location by filing an amendment application electronically in the system designated by the department for licensing. Each location must meet and maintain the requirements of §215.140.

(e) A dealer may not commence business at any location until the department issues a license specific to that location.

§215.137. Surety Bond.

(a) The surety bond required by Transportation Code, §503.033 shall be in the legal business name in which the dealer's GDN [~~license~~] will be issued and shall contain the complete physical address of each [~~dealership~~] location licensed under the GDN that the surety bond is intended to cover.

(b) A surety bond executed by an agent representing a bonding company or surety must be supported by an original power of attorney from the bonding company or surety.

(c) The identity of the obligee on a surety bond or a rider to a surety bond must be approved by the department. An obligee may be identified as [~~A surety bond or rider to a surety bond may be identified as~~]:

(1) a person who obtains a court judgment assessing damages and attorney's fees for an act or omission on which the bond is conditioned; or

(2) unknown.

(d) A bonding company that pays any claim against a surety bond shall immediately report the payment to the department.

(e) A bonding company shall give written notice to the department 30 days prior to canceling any surety bond.

(f) The surety bond required by this section does not apply to a:

(1) franchised motor vehicle dealer licensed by the department;

(2) franchised motorcycle dealer licensed by the department;

(3) franchised house trailer or travel trailer dealer licensed by the department; or

(4) trailer or semitrailer dealer licensed by the department.

§215.138. Use of [~~Metal~~] Dealer's License Plates.

(a) A [~~metal~~] dealer's license plate shall be attached to the rear [~~license plate holder~~] of a vehicle in accordance with §217.27 of this title (relating to Vehicle Registration Insignia) [~~Transportation Code, §503.061~~].

(b) A copy of the receipt for a [~~the metal~~] dealer's standard license plate issued by the department should be carried in the vehicle to present [~~so that the receipt can be presented~~] to law enforcement personnel upon request.

(c) A [~~metal~~] dealer's license plate may not be displayed on:

(1) a laden commercial vehicle being operated or moved on the public streets or highways; or

(2) the dealer's service or work vehicle, except as provided by Transportation Code, §503.068(b-1).

(d) For purposes of this section, a dealer's service or work vehicle includes:

(1) a vehicle used for towing or transporting another vehicle;

(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;

(3) a courtesy car on which a courtesy car sign is displayed;

(4) a rental or lease vehicle; and

(5) a boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

[~~(e) As used in this section, "light truck" has the meaning assigned by Transportation Code, §541.201.~~]

(e) [~~(f)~~] For purposes of this section, a light truck as defined by Transportation Code, §541.201, is not considered a laden commercial vehicle when it is:

(1) mounted with a camper unit; or

(2) towing a trailer for recreational purposes.

(f) [~~(g)~~] A [~~metal~~] dealer's license plate may be displayed only on the type of vehicle for which the GDN is issued and for which a dealer is licensed to sell. A nonfranchised dealer may not display a [~~metal~~] dealer's license plate on a new motor vehicle.

(g) [~~(h)~~] A [~~metal~~] dealer's license plate may be displayed only on a vehicle that has a valid inspection in accordance with Transportation Code, Chapter 548.

(h) [~~(i)~~] A dealer shall maintain a record of each [~~metal dealer's~~] license plate issued by the department to that dealer including standard and personalized prestige plates. The record must contain:

(1) the [~~assigned metal dealer's~~] license plate number;

(2) the year and make of the vehicle to which the [~~metal~~] dealer's license plate is affixed;

(3) the VIN of the vehicle; and

(4) the name of the person in control of the vehicle.

(i) [~~(j)~~] If a dealer cannot account for a [~~metal~~] dealer's license plate that the department issued to that dealer, the dealer must:

(1) document the [~~metal~~] dealer's license plate as "void" in the [~~metal~~] dealer's license plate record;

(2) within three days of discovering that the [~~metal~~] dealer's license plate is missing [~~,~~] or damaged, report the dealer's license plate as lost, stolen, or damaged in the electronic system designated by the department [~~report to the department in writing that the metal dealer's license plate is lost or stolen~~]; and

(3) if found, cease use of the [~~metal~~] dealer's license plate.

(j) [~~(k)~~] A [~~metal~~] dealer's license plate is no longer valid for use after the dealer reports to the department that the [~~metal~~] dealer's license plate is lost, stolen, or damaged [~~missing~~]. A dealer must render a void plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and once marked, must destroy or recycle the license plate, or return the license plate to the department for recycling within 10 days.

(k) A dealer's license plate record must be available for inspection and copying by the department during normal business hours or be available to submit electronically to the department upon request.

(l) A dealer must return a department-issued license plate, sticker, or receipt to the department within 10 days of the license holder closing the associated license or the department revoking or canceling the license.

§215.139. [~~Metal~~] Dealer's Standard License Plate Allocation.

(a) The number of [~~metal~~] dealer's standard license plates a dealer may order for business use is based on the type of license for which the dealer applied and the number of vehicles the dealer sold during the previous year.

(b) A new license applicant is allotted a predetermined number of [~~metal~~] dealer's standard license plates for the duration of the dealer's first license term.

(c) Unless otherwise qualified under this section, the maximum number of [~~metal~~] dealer's standard license plates the department will issue to a new license applicant during the applicant's first license term is indicated in the following table.
Figure: 43 TAC §215.139(c)

(d) A dealer applying [~~that submits an application to the department~~] for a license is not subject to the initial allotment limits described in this section and may rely on that dealer's existing allocation of [~~metal~~] dealer's standard license plates if that dealer is:

(1) a franchised dealership subject to a buy-sell agreement, regardless of a change in the entity or ownership;

(2) any type of dealer that is relocating and has been licensed by the department for a period of one year or longer; or

(3) any type of dealer that is changing its business entity type and has been licensed by the department for a period of one year or longer.

(e) The maximum number of [~~metal~~] dealer's standard license plates the department will issue to a vehicle dealer per license term is indicated in the following table.
Figure: 43 TAC §215.139(e)

(f) A dealer may obtain more than the maximum number of [~~metal~~] dealer's standard license plates provided by this section by submitting to the department proof of sales for the previous 12-month period that justifies additional allocation.

(1) The number of additional [~~metal~~] dealer's standard license plates the department will issue to a dealer that demonstrates a need through proof of sales is indicated in the following table.
Figure: 43 TAC §215.139(f)(1)

(2) For purposes of this section, proof of sales for the previous 12-month period may consist of a copy of the most recent vehicle inventory tax declaration or monthly statements filed with the taxing authority in the county of the dealer's licensed location. Each copy must be stamped as received by the taxing authority. The department will consider a [A] franchised dealer's license renewal application that indicates sales of more than 200 units [~~is considered~~] to be proof of sales of more than 200 units and no additional proof is required.

(3) The department may not issue more than two [~~metal~~] dealer's standard license plates to a wholesale motor vehicle dealer. For purposes of this section, a wholesale motor vehicle dealer's proof of sales may be demonstrated to the department by submitting:

(A) evidence of the wholesale motor vehicle dealer's sales for the previous 12-month period, if the wholesale motor vehicle dealer has been licensed during those 12 months; or

(B) other documentation approved by the department demonstrating the wholesale motor vehicle dealer's transactions.

(g) The director may waive the [~~metal~~] dealer's standard license plate issuance restrictions if the waiver is essential for the continuation of the business. The director will determine the number of [~~metal~~] dealer's standard license plates the department will issue based on the dealer's past sales, dealer's inventory, and any other factor the director determines pertinent.

(1) A request for a waiver must be submitted to the director in writing and specifically state why the additional plate is necessary for the continuation of the applicant's business.

(2) A request for a waiver must be accompanied by proof of the dealer's sales for the previous 12-month period, if applicable.

(3) A wholesale motor vehicle dealer may not apply for a waiver of the [~~metal~~] dealer's standard license plate issuance restrictions.

(4) A waiver granted by the director under this section for a specific number of [~~metal~~] dealer's standard license plates is valid for four years.

~~[(h) This section does not apply to a personalized prestige dealer's license plate issued in accordance with Transportation Code, §503.0615.]~~

§215.140. Established and Permanent Place of Business Premises Requirements.

(a) A dealer must meet the following requirements at each licensed location and maintain the requirements during the term of the license. If multiple dealers are licensed at a location, each dealer must maintain the following requirements during the entire term of the license.

(1) Business hours for retail dealers.

(A) A retail dealer's office shall be open at least four days per week for at least four consecutive hours per day and may not be open solely by appointment.

(B) The retail dealer's business hours for each day of the week must be posted at the main entrance of the retail dealer's office in a manner and location that is accessible to the public. The owner or a bona fide employee of the retail dealer shall be at the retail dealer's licensed location during the posted business hours for the purposes of buying, selling, exchanging, or leasing vehicles. If the owner or a bona fide employee is not available to conduct business during the retail dealer's posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time the retail dealer will resume operations. Regardless of the retail dealer's business hours, the retail dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a wholesale motor vehicle dealer's GDN must post its business hours at the main entrance of the wholesale motor vehicle dealer's office in a manner and location that is accessible to the public. A wholesale motor vehicle dealer or bona fide employee shall be at the wholesale motor vehicle dealer's licensed location at least two weekdays per week for at least two consecutive hours per day. A wholesale motor vehicle dealer may not be open solely by appointment. Regardless of the wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(3) Business sign requirements for retail dealers.

(A) A retail dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the retail dealer's business name or assumed name substantially similar to the name reflected on the retail dealer's GDN under which the retail dealer conducts business. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(B) The sign must be permanently mounted at the physical address listed on the application for the retail dealer's GDN. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

(C) A retail dealer may use a temporary sign or banner if that retail dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(D) A retail dealer is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(4) Business sign requirements for wholesale motor vehicle dealers.

(A) Exterior Sign

(i) A wholesale motor vehicle dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the wholesale motor vehicle dealer's business name or assumed name substantially similar to the name reflected on the wholesale motor vehicle dealer's GDN under which the wholesale motor vehicle dealer conducts business. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least three inches in height. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(ii) The sign must be permanently mounted on the business property at the physical address listed on the application. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground. A wholesale motor vehicle dealer may use a temporary exterior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(B) Interior Sign

(i) If the wholesale motor vehicle dealer's office is located in an office building with one or more other businesses and an outside sign is not permitted by the property owner, a conspicuous permanent business sign permanently mounted on or beside the main door to the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least one inch in height.

(ii) An interior business sign is considered conspicuous if it is easily visible to the public within 10 feet of the main entrance of the wholesale motor vehicle dealer's office. An interior sign is considered permanent if made from durable material and has lettering that cannot be changed. An interior sign is considered permanently mounted if bolted or otherwise permanently affixed to the main door or nearby wall. A wholesale motor vehicle dealer may use a temporary interior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(C) A wholesale motor vehicle dealer is responsible for ensuring that the business sign complies with municipal ordinances and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(5) Office requirements for a retail dealer and a wholesale motor vehicle dealer.

(A) A dealer's office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(B) A dealer's office must comply with all applicable municipal ordinances, including municipal zoning ordinances. The dealer is responsible for obtaining a certificate of occupancy, certificate of compliance, or other required document issued by a municipal government to show compliance, including a new certificate or document when the building is altered or remodeled, or when the building use changes.

(C) A dealer's office may not be located in a residence, apartment, hotel, motel, rooming house, or any room or building not open to the public.

(D) A dealer's office may not be located in a restaurant, gas station, or convenience store, unless the office has a separate entrance door that does not require a dealer's customer to pass through the other business.

(E) A dealer's office may not be virtual or provided by a subscription for office space or office services. Access to an office space or office services is not considered an established and permanent location.

(F) The physical address of the dealer's office must be in Texas and recognized by the U.S. Postal Service, be [~~or~~] capable of receiving U.S. mail, and have an assigned emergency services property address. The department will not mail a [~~metal~~] dealer's license plate to an out-of-state address.

(G) A portable-type office building may qualify as an office only if the building meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(H) The dealer's office space must:

(i) include at least 100 square feet of interior floor space, exclusive of hallways, closets, or restrooms;

(ii) have a minimum seven-foot-high ceiling;

(iii) accommodate required office equipment; and

(iv) allow a dealer and customer to safely access the office and conduct business in private while seated.

(6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer. At a minimum, a dealer's office must be equipped with:

(A) a desk;

(B) two chairs;

(C) internet access; and

(D) a working telephone number listed in the business name or assumed name under which the dealer conducts business.

(7) Number of retail dealers in one building. Not more than four retail dealers may be located in the same building. Each retail dealer located in the same building must meet the requirements of this section.

(8) Number of wholesale motor vehicle dealers in one office building. Not more than eight wholesale motor vehicle dealers may be located in the same office building. Each wholesale motor vehicle dealer located in the same office building must meet the requirements of this section.

(9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers. Unless otherwise authorized by the Transportation Code, a retail dealer and a wholesale motor vehicle dealer licensed after September 1, 1999, may not be located in the same building.

(10) Dealer housed with other business.

(A) If a person conducts business as a dealer in conjunction with another business owned by the same person and under the same name as the other business, the same telephone number may be used for both businesses. If the name of the dealer differs from the name of the other business, a separate telephone listing and a separate sign for each business are required.

(B) A person may conduct business as a dealer in conjunction with another business not owned by that person only if the dealer owns the property on which business is conducted or has a separate lease agreement from the owner of that property that meets the requirements of this section. The same telephone number may not be used by both businesses. The dealer must have separate business signs, telephone listings, and office equipment required under this section.

(C) A dealer's office must have permanent interior walls on all sides and be separate from any public area used by another business.

(11) Display area and storage lot requirements.

(A) A wholesale motor vehicle dealer is not required to have display space at the wholesale motor vehicle dealer's business premises.

(B) A retail dealer must have an area designated as display space for the retail dealer's inventory. A retail dealer's designated display area must comply with the following requirements.

(i) The display area must be located at the retail dealer's physical business address or contiguous to the retail dealer's physical address. The display area may not be in a storage lot.

(ii) The display area must be of sufficient size to display at least five vehicles of the type for which the GDN is issued. The display area [~~Those spaces~~] must be reserved exclusively for the retail dealer's inventory and may not be used for customer parking, employee parking, general storage, or shared or intermingled with another business or a public parking area, a driveway to the office, or another dealer's display area.

(iii) The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(iv) If a retail dealer shares a display or parking area with another business, including another dealer, the dealer's vehicle inventory must be separated from the other business's display or parking area by a material object or barrier that cannot be readily removed. A barrier that cannot be readily removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the space necessary to allow for entry and exit of vehicle inventory.

(v) If a dealer's business location includes gasoline pumps or a charging station or includes another business that sells gasoline or has a charging station, the dealer's display area may not be part of the parking area for fuel or charging station customers and may not interfere with access to or from the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

(vi) The display area must be adequately illuminated if the retail dealer is open at night so that a vehicle for sale can be properly inspected by a potential buyer.

(vii) The display area may be located inside a building; however, if multiple dealers are displaying vehicles inside a building, each dealer's display area must be separated by a material object or barrier that cannot be readily removed. A barrier that cannot be readily removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the space necessary to allow for entry and exit of vehicle inventory.

(C) A GDN holder [~~dealer~~] may maintain a storage lot only if the storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the license holder's [~~dealer's~~] name, contact information, and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an access-controlled location to be considered not accessible to the public. An applicant must include the physical address of a storage lot in an application for a new license if the storage lot is located at a different physical address than the licensed business. If a storage lot is established after a license is issued and is located at a different physical address than the licensed business, the dealer must submit a license amendment to add the physical address of the storage lot within 10 days of the storage lot being established.

(12) Dealers authorized to sell salvage motor vehicles. If an independent motor vehicle dealer offers a salvage motor vehicle for sale on the dealer's premises, the vehicle must be clearly and conspicuously marked with a sign informing a potential buyer that the vehicle is a salvage motor vehicle. [~~This requirement does not apply to a licensed salvage pool operator.~~]

(13) Lease requirements. If the premises from which a dealer conducts business, including any display area, is not owned by the dealer, the dealer must maintain a lease that is continuous during the period of time for which the dealer's license will be issued. The lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the property owner as the lessor of the premises and the name of the dealer as the tenant or lessee of the premises;

(B) the period of time for which the lease is valid;

(C) the street address or legal description of the property, provided that if only a legal description of the property is included, a dealer must attach a statement verifying that the property description in the lease agreement is the physical street address identified on the application as the physical address for the established and permanent place of business;

(D) the signature of the property owner as the lessor and the signature of the dealer as the tenant or lessee; and

(E) if the lease agreement is a sublease in which the property owner is not the lessor, the dealer must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the dealer is authorized to sublease the location and may operate a vehicle sales business from the location.

(14) Dealer must display GDN and bond notice. A dealer must display the dealer's GDN issued by the department at all times in a manner that makes the GDN easily readable by the public and in a conspicuous place at each place of business for which the dealer's GDN is issued. [~~If the dealer's GDN applies to more than one location, a copy of the GDN and bond notice must be displayed in each supplemental location.~~] A dealer required to obtain a surety bond must post a bond notice adjacent to and in the same manner as the dealer's GDN is displayed. The notice must include the bond company name, bond identification number, and procedure by which a claimant can recover under the bond. The notice must also include the department's website address and notify a consumer that a dealer's surety bond information may be obtained by submitting a request to the department. If

the dealer's GDN applies to more than one location, a copy of the GDN and bond notice must be displayed in each supplemental location.

(b) Wholesale motor vehicle auction premises requirements. A wholesale motor vehicle auction must comply with the following premises requirements:

(1) a wholesale motor vehicle auction GDN holder must hold a motor vehicle auction on a regular periodic basis at the licensed location, and an owner or bona fide employee must be available at the business location during each auction and during posted business hours. If the owner or a bona fide employee is not available to conduct business during the posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time operations will resume.

(2) the business telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(3) a wholesale motor vehicle auction GDN holder must display a business sign that meets the following requirements:

(A) The sign must be a conspicuous, permanent sign with letters at least six inches in height showing the business name or assumed name substantially similar to the name reflected on the GDN under which the GDN holder conducts business. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(B) The sign must be permanently mounted at the physical address listed on the application for the wholesale motor vehicle auction GDN. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

(C) An applicant may use a temporary sign or banner if the applicant can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(D) An applicant or holder is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(4) The business office of a wholesale motor vehicle auction GDN applicant and holder must meet the following requirements:

(A) The office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(B) The office must comply with all applicable municipal ordinances, including municipal zoning ordinances. The wholesale motor vehicle auction is responsible for obtaining a certificate of occupancy, certificate of compliance, or other required document issued by a municipal government to show compliance, including a new certificate or document when the building is altered or remodeled, or when the building use changes.

(C) The office may not be located in a residence, apartment, hotel, motel, rooming house, or any room or building not open to the public.

(D) The office may not be located in a restaurant, gas station, or convenience store, unless the office has a separate entrance door that does not require a customer to pass through the other business.

(E) The office may not be virtual or provided by a subscription for office space or office services. Access to office space or office services is not considered an established and permanent location.

(F) The physical address of the office must be in Texas and recognized by the U.S. Postal Service, capable of receiving U.S. mail, and have an assigned emergency services property address.

(G) A portable-type office building may qualify as an office only if the building meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(5) A wholesale motor vehicle auction GDN applicant and holder must have the following office equipment:

(A) a desk;

(B) a chair;

(C) internet access; and

(D) a working telephone number listed in the business name or assumed name under which business is conducted.

(6) A wholesale motor vehicle auction must meet the following display area and storage lot requirements:

(A) The area designated as display space for inventory must be located at the physical business address or contiguous to the physical address. The display area may not be in a storage lot.

(B) The display area must be of sufficient size to display at least five vehicles. Those spaces must be reserved exclusively for inventory and may not be used for customer parking, employee parking, general storage, or shared or intermingled with another business or a public parking area, or a driveway to the office.

(C) The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(D) If the business location includes gasoline pumps or a charging station or includes another business that sells gasoline or has a charging station, the display area may not be part of the parking area for fuel or charging station customers and may not interfere with access to or from the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

(E) The display area must be adequately illuminated if open at night so that a vehicle for sale can be properly inspected by a potential buyer.

(F) The display area may be located inside a building.

(G) A wholesale motor vehicle auction may maintain a storage lot only if the storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the business name, contact information, and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an access-controlled location to be considered not accessible to the public. An applicant must include the physical address of a storage lot in an application for a new license if the storage lot is located at a different physical address. If a storage lot is established after a license is issued and is located at a different physical address, the dealer must submit a license amendment to add the physical address of the storage lot within 10 days of the storage lot being established.

(7) A wholesale motor vehicle auction must meet the following lease requirements if the business premises, including any display area, is not owned by the wholesale motor vehicle auction:

(A) the applicant or holder must maintain a lease that is continuous during the period of time for which the GDN will be issued;

(B) The lease agreement must be on a properly executed form containing at a minimum:

(i) the name of the property owner as the lessor of the premises and the name of the GDN applicant or holder as the tenant or lessee of the premises;

(ii) the period of time for which the lease is valid;

(iii) the street address or legal description of the property, provided that if only a legal description of the property is included, a wholesale motor vehicle auction must attach a statement verifying that the property description in the lease agreement is the physical street address identified on the application as the physical address for the established and permanent place of business;

(iv) the signature of the property owner as the lessor and the signature of the applicant or holder as the tenant or lessee; and

(C) if the lease agreement is a sublease in which the property owner is not the lessor, the wholesale motor vehicle auction must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the dealer is authorized to sublease the location and may operate a wholesale motor vehicle auction business from the location.

§215.141. Sanctions.

(a) The board or department may take the following actions against a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) deny an application;

(2) revoke a license;

(3) suspend a license; [~~and~~]

(4) assess a civil penalty; [~~or other action against a license applicant, a license holder, or a person engaged in business for which a license is required.~~]

(5) issue a cease and desist order; or

(6) or take other authorized action.

(b) The board or department may take action described in subsection (a) of this section if a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) fails to maintain a good and sufficient bond or post the required bond notice [~~in the amount of $25,000~~] if required under Transportation Code §503.033 (relating to Security Requirement);

(2) fails to meet or maintain the requirements of §215.140 (relating to Established and Permanent Place of Business Premises Requirements);

(3) [~~(2)~~] fails to maintain records required under this chapter;

(4) [~~(3)~~] refuses or fails to comply with a request by [~~a representative of~~] the department for electronic records or to examine and copy during the license holder's business hours at the licensed business location:

(A) sales records required to be maintained by §215.144 of this title (relating to Records);

(B) ownership papers for a vehicle owned by that dealer or under that dealer's control;

(C) evidence of ownership or a current lease agreement for the property on which the business is located; or

(D) the Certificate of Occupancy, Certificate of Compliance, business license or permit, or other official documentation confirming compliance with county and municipal laws or ordinances for a vehicle business at the licensed physical location.

(5) [~~(4)~~] refuses or fails to timely comply with a request for records made by a representative of the department;

(6) [~~(5)~~] holds a wholesale motor vehicle dealer's license and sells or offers to sell a motor vehicle to a person other than a licensed or authorized dealer; [~~:~~]

[~~(A) fails to meet the requirements of §215.140 of this title (relating to Established and Permanent Place of Business); or~~]

[~~(B) sells or offers to sell a motor vehicle to a person other than a licensed dealer;~~]

(7) [~~(6)~~] sells or offers to sell a type of vehicle that the person is not licensed to sell;

(8) [~~(7)~~] fails to submit a license amendment application in the electronic system designated by the department for licensing to notify the department of a change of the license holder's physical address, mailing address, telephone number, or email address within 10 days of the change, including a change in the physical address of a storage lot;

(9) [~~(8)~~] fails to submit a license amendment application in the electronic system designated by the department for licensing to notify the department of a license holder's name change, or management or ownership change within 10 days of the change;

(10) [~~(9)~~] except as provided by law, issues more than one buyer's temporary tag for the purpose of extending the purchaser's operating privileges for more than 60 days;

(11) [~~(10)~~] fails to remove a license plate or registration insignia from a vehicle that is displayed for sale;

(12) [~~(11)~~] misuses a [~~metal~~] dealer's license plate or a temporary tag;

(13) [~~(12)~~] fails to display a [~~metal~~] dealer's license plate or temporary tag, as required by law;

(14) [~~(13)~~] holds open a title or fails to take assignment of a certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle acquired by the dealer, or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle sold;

(15) [~~(14)~~] fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the GDN is issued by the department;

(16) [~~(15)~~] violates a provision of Occupations Code, Chapter 2301; Transportation Code Chapters 503 and 1001 [~~1000~~] -1005; a board order or rule; or a regulation of the department relating to the sale, lease, distribution, financing, or insuring of vehicles, including advertising rules under Subchapter F [~~H~~] of this chapter (relating to Advertising);

(17) [~~(16)~~] is convicted of an offense that directly relates to the duties or responsibilities of the occupation in accordance with §211.3 of this title (relating to Criminal Offense Guidelines);

(18) [~~(17)~~] is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a license;

(19) [~~(18)~~] has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

(20) [~~(19)~~] files or provides a false or forged:

(A) title document, including an affidavit making application for a certified copy of a title; or

(B) tax document, including a sales tax statement or affidavit;

(21) [~~(20)~~] uses or allows use of that dealer's license or location for the purpose of avoiding a provision of Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; or other laws;

(22) [~~(21)~~] omits information or makes a material misrepresentation in any application or other documentation filed with the department including providing a false or forged identity document or a false or forged photograph, electronic image, or other document;

(23) [~~(22)~~] fails to remit payment as ordered for a civil penalty assessed by the board or department;

(24) [~~(23)~~] sells a new motor vehicle without a franchised dealer's license issued by the department;

(25) [~~(24)~~] fails to comply with a dealer responsibility under §215.150 of this title (relating to Authorization to Issue Temporary Tags);

(26) utilizes a temporary tag that fails to meet the requirements of §215.153 of this title (relating to Specifications for All Temporary Tags);

(27) [~~(25)~~] violates any state or federal law or regulation relating to the sale of a motor vehicle; [~~or~~]

(28) [~~(26) effective January 1, 2017,~~] knowingly fails to disclose that a motor vehicle has been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100 (relating to Application for Regular Certificate of Title for Salvage Vehicle);.

(29) fails to issue a refund as ordered by the board or department; or

(30) fails to acquire or maintain a required certificate of occupancy, certificate of compliance, business license or permit, or other official documentation for the licensed location confirming compliance with county or municipal laws or ordinances or other local requirements for a vehicle business.

§215.143. Drive-a-way Operator In-Transit License Plates.

(a) A drive-a-way operator may apply for a drive-a-way in-transit standard license plate:

(1) when applying for a new or renewal in-transit license, or

(2) by submitting a plate request application electronically in the system designated by the department.

(b) A drive-a-way operator must display an in-transit license plate in the rear of each transported motor vehicle from the vehicle's point of origin to its point of destination in Texas in accordance with §217.27 of this title (relating to Vehicle Registration Insignia).

(c) A drive-a-way operator shall maintain a record of each license plate issued to the operator by the department. The record of each license plate issued must contain:

(1) the license plate number;

(2) the year and make of the vehicle to which the license plate is affixed;

(3) the VIN of the vehicle; and

(4) the name of the person in control of the vehicle.

(d) If a drive-a-way operator cannot account for a license plate or a license plate is damaged, the operator must:

(1) document the license plate as "void" in the operator's plate record;

(2) within three days of discovering that the license plate is missing or damaged, report the license plate as lost, stolen, or damaged in the electronic system designated by the department; and

(3) if found once reported, cease use of the license plate.

(e) A license plate is no longer valid for use after the drive-a-way operator reports to the department that the plate is lost, stolen, or damaged. A drive-a-way operator must render a void plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and once marked, may destroy or recycle the license plate, or return the license plate to the department for recycling within 10 days.

(f) The drive-a-way operator's license plate record must be available for inspection and copying by the department during normal business hours or be available to submit electronically to the department upon request.

(g) In evaluating requests for additional license plates, the department will consider the business justification provided by a drive-a-way operator including the following:

(1) the number of vehicles currently being transported to a location in Texas;

(2) the highest number of motor vehicles transported in the prior 12 months;

(3) the size and type of business; and

(4) the operator's record of tracking and reporting missing or damaged plates to the department.

(h) If a drive-a-way operator closes the associated license or the associated license is revoked or canceled by the department, the operator must return a license plate to the department within 10 days.

§215.144. Vehicle Records.

(a) Purchases and sales records. A dealer and wholesale motor vehicle auction must maintain a complete record of all vehicle purchases and sales for a minimum period of 48 months and make the record available for inspection and copying by [~~a representative~~] of the department during business hours.

(b) Independent mobility motor vehicle dealers. An independent mobility motor vehicle dealer must keep a complete written record of each vehicle purchase, vehicle sale, and any adaptive work performed on each vehicle for a minimum period of 36 months after the date the adaptive work is performed on the vehicle. An independent mobility motor vehicle dealer shall also retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-b) and all information and records required under Transportation Code §503.0295.

(c) Location of records. A dealer's record reflecting purchases and sales for the preceding 13 months must be maintained at the dealer's licensed location. Original titles are not required to be kept at the licensed location [,] but must be made available to the agency upon reasonable request. A dealer's record for prior time periods may be kept off-site.

(d) Request for records. Within 15 days of receiving a request [receipt of a request sent by mail or electronic document transfer] from the department, a dealer must deliver a copy of the specified records to the address listed in the request. If a dealer has a concern about the origin of a records request, the dealer may verify that request with the department [division] prior to submitting its records.

(e) Content of records. A dealer's complete record for each vehicle purchase or vehicle sale must contain:

(1) the date of the purchase;

(2) the date of the sale;

(3) the VIN;

(4) the name and address of the person selling the vehicle to the dealer;

(5) the name and address of the person purchasing the vehicle from the dealer;

(6) the name and address of the consignor if the vehicle is offered for sale by consignment;

(7) except for a purchase or sale where the Tax Code does not require payment of motor vehicle sales tax, a county tax assessor-collector receipt marked paid [copy of the receipt, titled "Tax Collector's Receipt for Texas Title Application/Registration/Motor Vehicle Tax"];

(8) a copy of all documents, forms, and agreements applicable to a particular sale, including a copy of:

(A) the title application;

(B) the work-up sheet;

(C) the front and back of the manufacturer's certificate of origin or manufacturer's statement of origin, unless the dealer obtains the title [is obtained] through the electronic title system;

(D) the front and back of the title for the purchase and the sale, unless the dealer enters or obtains the title [is obtained] through the electronic title system;

(E) the factory invoice, if applicable;

(F) the sales contract;

(G) the retail installment agreement;

(H) the buyer's order;

(I) the bill of sale;

(J) any waiver;

(K) any other agreement between the seller and purchaser; [and]

(L) the purchaser's photo identification; [Form VTR-136, relating to County of Title Issuance, completed and signed by the buyer;]

(M) the odometer disclosure statement signed by the buyer; and

(N) the rebuilt salvage disclosure, if applicable.

(9) the original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for a new motor vehicle [vehicles] offered for sale by a dealer which must be [, and a] properly stamped [original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for motor vehicles sold by a dealer] if the title transaction is entered into the electronic titling system by the dealer;

(10) the dealer's monthly Motor Vehicle Seller Financed Sales Returns, if any; and

(11) if the vehicle sold is a motor home or a towable recreational vehicle subject to inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at the time of the sale, notifying the buyer that the vehicle is subject to inspection requirements.

(f) Title assignments.

(1) For each vehicle a dealer acquires or offers for sale, the dealer must properly take assignment in the dealer's name of any:

(A) title;

(B) manufacturer's statement of origin;

(C) manufacturer's certificate of origin; or

(D) other evidence of ownership.

(2) Unless not required by Transportation Code, §501.0234(b), a [A] dealer must apply in the name of the purchaser of a vehicle for the title and registration, if applicable, of the vehicle with a [the appropriate] county tax assessor-collector [as selected by the purchaser].

(3) To comply with Transportation Code, §501.0234(f), a registration is considered filed within a reasonable time if the registration is filed within:

(A) 30 [20 working] days of the date of sale of the vehicle for a vehicle titled or registered in Texas; or

(B) 45 days of the date of sale of the vehicle for a dealer-financed transaction involving a vehicle that is titled or registered in Texas.

(4) The dealer is required to provide to the purchaser the receipt for the title and registration application.

(5) The dealer is required to maintain a copy of the receipt for the title and registration application in the dealer's sales file.

(g) Out-of-state sales. For a sale [sales transaction] involving a vehicle to be transferred out of state, the dealer must:

(1) within 30 [20 working] days of the date of sale, either file the application for certificate of title on behalf of the purchaser or deliver the properly assigned evidence of ownership to the purchaser; and

(2) maintain in the dealer's record at the dealer's licensed location a photocopy of the completed sales tax exemption form for out of state sales approved by the Texas Comptroller of Public Accounts.

(h) Consignment sales. A dealer offering a vehicle for sale by consignment shall have a written consignment agreement or a power of attorney for the vehicle, and shall, after the sale of the vehicle, take assignment of the vehicle in the dealer's name and, pursuant to subsection (f), apply in the name of the purchaser for transfer of title and registration, if the vehicle is to be registered, with a [the appropriate] county tax assessor-collector [as selected by the purchaser]. The dealer must, for a minimum of 48 months, maintain a record of each vehicle

offered for sale by consignment, including the VIN and the name of the owner of the vehicle offered for sale by consignment.

(i) Public motor vehicle auctions.

(1) A GDN holder that acts as a public motor vehicle auction must comply with subsection (h) of this section.

(2) A public motor vehicle auction:

(A) is not required to take assignment of title of a vehicle it offers for sale;

(B) must take assignment of title of a vehicle from a consignor prior to making application for title on behalf of the buyer; and

(C) must make application for title on behalf of the purchaser and remit motor vehicle sales tax within 20 working days of the sale of the vehicle.

(3) A GDN holder may not sell another GDN holder's vehicle at a public motor vehicle auction.

(j) Wholesale motor vehicle auction records. A wholesale motor vehicle auction license holder must maintain, for a minimum of 48 months, a complete record of each vehicle purchase and sale occurring through the wholesale motor vehicle auction. The wholesale motor vehicle auction license holder shall make the record available for inspection and copying by [~~a representative of~~] the department during business hours.

(1) A wholesale motor vehicle auction license holder must maintain at the licensed location a record reflecting each purchase and sale for at least the preceding 24 months. Records for prior time periods may be kept off-site.

(2) Within 15 days of receiving a department request [~~receipt of a request sent by mail or by electronic document transfer from a representative of the department~~], a wholesale motor vehicle auction license holder must deliver a copy of the specified records to the address listed in the request.

(3) A wholesale motor vehicle auction license holder's complete record of each vehicle purchase and sale shall, at a minimum, contain:

(A) the date of sale;

(B) the VIN;

(C) the name and address of the person selling the vehicle;

(D) the name and address of the person purchasing the vehicle;

(E) the dealer license number of both the selling dealer and the purchasing dealer, unless either is exempt from holding a license;

(F) all information necessary to comply with the federal odometer disclosure requirements in 49 CFR Part 580 [~~Truth in Mileage Act~~];

(G) auction access documents, including the written authorization and revocation of authorization for an agent or employee, in accordance with §215.148 of this title (relating to Dealer Agents);

(H) invoices, bills of sale, checks, drafts, or other documents that identify the vehicle, the parties, or the purchase price;

(I) any information regarding the prior status of the vehicle such as the Reacquired Vehicle Disclosure Statement or other lemon law disclosures; and

(J) a copy of any written authorization allowing an agent of a dealer to enter the auction.

(k) Electronic records. A license holder may maintain a record in an electronic format if the license holder can print the record at the licensed location upon request by [~~a representative of~~] the department, except as provided by subsection (l) of this section.

(l) Use of department electronic titling and registration systems [~~webDEALER~~]. A license holder utilizing the department's web-based title application known as webDEALER, as defined in §217.71 of this title (relating to Automated and Web-Based Vehicle Registration and Title Systems), must comply with §217.74 of this title (relating to Access to and Use of webDEALER). Original hard copy titles are not required to be kept at the licensed location [~~,~~] but must be made available to the department upon request.

§215.145. Change of Dealer's Status.

(a) A dealer's name change requires a new bond or a rider to the existing bond reflecting the new [~~dealer~~] name, unless the dealer is not otherwise required to purchase a bond.

(b) A dealer shall notify the department in writing within 10 days of a change of ownership by submitting a license amendment application in the department-designated electronic system for licensing. A licensed dealer that proposes to sell or assign to another any interest in the licensed entity, whether a corporation or otherwise, and provided the physical location of the licensed entity remains the same, shall notify the department in writing within 10 days of the change by filing an application to amend the license in the department-designated electronic system for licensing. If the sale or assignment of any portion of the business results in a change of entity, then the new entity must apply for and obtain a new license. A publicly held corporation only needs to inform the department of a change in ownership if one person or entity acquires a 10% or greater interest in the licensed entity.

(c) Upon the death of a dealer operating [~~of a dealership operated~~] as a sole proprietor [~~proprietorship~~], either the surviving spouse of the deceased dealer or other individual deemed qualified by the department shall submit to the department a bond rider adding the name of the surviving spouse or other qualifying person to the bond for the remainder of the bond and license term. The surviving spouse or other qualifying person may continue operating [~~dealership operations~~] under the current dealer license until the end of the license term.

(d) For purposes of subsection (c) of this section, [~~if the qualifying person is~~] the sole proprietor's surviving spouse [~~,then the surviving spouse~~] may change the ownership of the dealership at the time the license is renewed without applying for a new GDN. At the time the renewal application is filed, the sole proprietor's surviving spouse must [~~is required to~~] submit to the department:

(1) an application to amend the business entity;

(2) a copy of the sole proprietor's certificate of death, naming the surviving spouse;

(3) the required ownership information; and

(4) if applicable, a bond in the name of the surviving spouse.

(e) For purposes of subsection (c) of this section, a [~~if the qualifying person is not the surviving spouse, then the~~] qualifying person who is not the surviving spouse may operate the sole proprietorship

business during the term of the license. The qualifying person must file with the department:

(1) an application to amend the business entity, identifying the qualifying person as the manager;

(2) an ownership information form, indicating that the qualifying person has no ownership interest in the business; and

(3) a bond rider adding the qualified person's [~~individual's~~] name to the existing bond.

(f) For purposes of subsection (c) of this section, a [~~if the qualifying person is not the surviving spouse, then at the time the license is due to be renewed, the~~] qualifying person who is not the surviving spouse must file with the department an application for a new GDN on or before the expiration of the license term in the department-designated electronic system for licensing.

(g) A determination made under this section does not impact a decision made by the board under Occupations Code, §2301.462 [~~,~~] (relating to Succession Following Death of Franchised Dealer).

§215.147. Export Sales.

(a) Before selling a motor vehicle for export from the United States to another country, a dealer must obtain a legible photocopy of the buyer's government-issued photo identification document. The photo identification document must be issued by the jurisdiction where the buyer resides and be:

(1) a passport;

(2) a driver [~~driver's~~] license;

(3) a [~~concealed handgun license or~~] license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(4) a national identification certificate or identity document; or

(5) other identification document containing the:

(A) name of the issuing jurisdiction;

(B) buyer's full name;

(C) buyer's foreign address;

(D) buyer's date of birth;

(E) buyer's photograph; and

(F) buyer's signature.

(b) A dealer that sells a vehicle for export from the United States shall place a stamp on the title that includes the words "For Export Only" and includes the dealer's [~~license holder's~~] GDN. The stamp must be legible, in black ink, at least two inches wide, and placed on the:

(1) back of the title in all unused dealer reassignment spaces; and

(2) front of the title in a manner that does not obscure any names, dates, mileage statements, or other information printed on the title.

(c) In addition to the records required to be maintained by §215.144 of this title (relating to Vehicle Records), a dealer shall maintain, for each motor vehicle sold for export, a sales file record. The sales file record shall be made available for inspection and copying upon request by the department. The sales file record of each vehicle sold for export shall contain:

(1) a completed copy of the Texas Motor Vehicle Sales Tax Exemption Certificate for Vehicles Taken Out of State, indicating that the vehicle has been purchased for export to a foreign country;

(2) a copy of the front and back of the title of the vehicle, showing the "For Export Only" stamp and the GDN of the dealer; and

(3) if applicable, an Export-only Sales Record Form, listing each motor vehicle sold for export only.

(d) A dealer, at the time of sale of a vehicle for export, shall:

(1) enter the information required by Transportation Code, §503.061 in the temporary tag database;

(2) designate the sale as "For Export Only"; and

(3) issue a buyer's temporary tag, in accordance with Transportation Code, §503.063.

§215.148. Dealer Agents.

(a) A dealer must provide written authorization to each person with whom the dealer's agent or employee will conduct business on behalf of the dealer, including to a person that:

(1) buys and sells motor vehicles for resale; or

(2) operates a licensed auction.

(b) If a dealer's agent or employee that conducts business on behalf of the dealer commits an act or omission that would be cause for denial, revocation, or suspension of a license in accordance with Occupations Code, Chapter 2301 or Transportation Code, Chapter 503, the board may:

(1) deny an application for a license; or

(2) revoke or suspend a license.

(c) The board may take action described in subsection (b) of this section after notice and an opportunity for hearing, in accordance with Occupations Code, Chapter 2301 and Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

(d) A dealer's authorization to an agent or employee shall:

(1) be in writing;

(2) be signed by the dealer principal or person in charge of daily activities of the dealership;

(3) include the agent's or employee's name, current mailing address, and telephone number;

(4) include the dealer's business name, address, and dealer license number or numbers;

(5) expressly authorize buying or selling by the specified agent or employee;

(6) state that the dealer is liable for any act or omission regarding a duty or obligation of the dealer that is caused by that agent or employee, including any financial considerations to be paid for the vehicle;

(7) state that the dealer's authorization remains in effect until the recipient of the written authorization is notified in writing of the revocation of the authority; and

(8) be maintained as a required dealer's record and made available upon request by a representative of the department, in accordance with the requirements of §215.144 of this title (relating to Vehicle Records).

(e) A license holder, including a wholesale motor vehicle auction [~~license holder~~] that buys and sells vehicles on a wholesale basis,

including by sealed bid, is required to verify the authority of any person claiming to be an agent or employee of a licensed dealer who purports to be buying or selling a motor vehicle:

(1) on behalf of a licensed dealer; or

(2) under the written authority of a licensed dealer.

(f) A title to a vehicle bought by an agent or employee of a dealer shall be:

(1) reassigned to the dealer by the seller or by the auction; and

(2) shall not be delivered to the agent or employee [~~,~~] but delivered only to the dealer or the dealer's financial institution.

(g) Notwithstanding the prohibitions in this section, an authorized agent or employee may sign a required odometer statement.

(h) In a wholesale transaction for the purchase of a motor vehicle, the seller may accept as consideration only:

(1) a check or a draft drawn on the purchasing dealer's account;

(2) a cashier's check in the name of the purchasing dealer; or

(3) a wire transfer from the purchasing dealer's bank account.

§215.149. Sales of New Mobility Motor Vehicles [~~Independent Mobility Motor Vehicle Dealers~~].

In accordance with Occupations Code, §2301.361, a transaction occurs through or by a franchised dealer of the motor vehicle's chassis line-make if the franchised dealer applies for title and registration of a new [~~the~~] mobility motor vehicle in the name of the purchaser. An independent mobility motor vehicle dealer may prepare the documentation necessary for a franchised dealer to comply with the requirements of Transportation Code, §501.0234 in connection with the sale of a new mobility motor vehicle.

§215.150. Authorization to Issue Temporary Tags.

(a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a preprinted Internet-down temporary tag for authorized purposes only for each type of vehicle the dealer is licensed to sell or lease. A converter that holds a converter's license under Occupations Code, Chapter 2301 may issue a converter's temporary tag for authorized purposes only.

(b) A license holder may issue an applicable dealer's temporary tag, buyer's temporary tag, or converter's temporary tag until:

(1) the department denies access to the temporary tag database under Transportation Code §503.0632(f) and §224.58 [~~§215.505~~] of this title (relating to Denial of Dealer or Converter Access to Temporary Tag System);

(2) the license holder issues the maximum number of temporary tags authorized under Transportation Code §503.0632(a)-(d); or

(3) the license is canceled, revoked, or suspended.

(c) A federal, state, or local governmental agency that is exempt under Section 503.024 from the requirement to obtain a dealer general distinguishing number may issue one [~~temporary~~] buyer's temporary tag, or one preprinted Internet-down temporary tag, in accordance with Transportation Code §503.063. A governmental agency that issues a [~~temporary~~] buyer's temporary tag, or preprinted Internet-down temporary tag, under this subsection:

(1) is subject to the provisions of Transportation Code §503.0631 and §503.067 applicable to a dealer; and

(2) is not required to charge the registration fee under Transportation Code §503.063(g).

(d) A dealer or converter is responsible for all use of and access to the applicable temporary tag database under the dealer's or converter's account, including access by any user or unauthorized person. Dealer and converter duties include monitoring temporary tag usage, managing account access, and taking timely and appropriate actions to maintain system security, including:

(1) establishing and following reasonable password policies, including preventing the sharing of passwords;

(2) limiting authorized users to owners and bona fide employees with a business need to access the database;

(3) removing users who no longer have a legitimate business need to access the system;

(4) securing printed tags and destroying expired tags, by means such as storing printed tags in locked areas and shredding or defacing expired tags; and

(5) securing equipment used to access the temporary tag database and print temporary tags.

§215.151. Temporary Tags, General Use Requirements, and Prohibitions.

(a) A dealer, governmental agency, or converter shall secure a temporary tag to a vehicle in the license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times, including when the vehicle is being operated.

[~~(b) A federal, state, or local governmental agency shall secure a temporary buyer's tag or preprinted Internet-down temporary tag issued under 215.150(c) of this title (relating to Authorization to Issue Temporary Tags) to a vehicle in the license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times, regardless of whether the vehicle is being operated.~~]

(b) [~~(c)~~] All printed information on a temporary tag must be visible and may not be covered or obstructed by any plate holder or other device or material.

(c) [~~(d)~~] A motor vehicle that is being transported [~~using the full mount method, the saddle mount method, the tow bar method, or any combination of those methods~~] in accordance with Transportation Code, §503.068(d) or §503.0625, must have a dealer's temporary tag, a converter's temporary tag, or a buyer's temporary tag, whichever is applicable, affixed to the motor vehicle being transported.

§215.152. Obtaining Numbers for Issuance of Temporary Tags.

(a) A dealer, a [~~federal, state, or local~~] governmental agency, or a converter is required to have internet access to connect to the temporary tag databases maintained by the department.

(b) Except as provided by §215.157 of this title (relating to Advance Numbers, Preprinted Internet-down Temporary Tags), before a temporary tag may be issued and displayed on a vehicle, a dealer, a [~~federal, state, or local~~] governmental agency, or converter must:

(1) enter in the temporary tag database true and accurate information about the vehicle, dealer, converter, or buyer, as appropriate; and

(2) obtain a specific number for the temporary tag.

(c) The department will inform each dealer annually of the maximum number of buyer's temporary tags the dealer is authorized to

issue during the calendar year under Transportation Code §503.0632. The number of buyer's temporary tags allocated to each dealer by the department will be determined based on the following formula:

(1) Sales data determined from the department's systems from the previous three fiscal years. A dealer's base number will contain the sum of:

(A) the greater number of:

(i) in-state buyer's temporary tags issued in one fiscal year during the previous three fiscal years; or

(ii) title transactions processed through the Registration and Title System in one fiscal year during the previous three fiscal years; but

(iii) the amount will be limited to an amount that is not more than two times the number of title transactions identified in subparagraph (ii) of this paragraph; and

(B) the addition of the greatest number of out-of-state buyer's temporary tags issued in one fiscal year during the previous three fiscal years;

(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the dealer's time in operation giving a 10 percent increase in tags for each year the dealer has been in operation up to 10 years;

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:

(A) the dealer's actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of title transactions processed through the Registration and Title System plus the growth of the number of out-of-state buyer's temporary tags issued, except that it may not exceed 200 percent; or

(B) the statewide actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of title transactions processed through the Registration and Title System plus the growth of the number of out-of-state buyer's temporary tags issued, not less than zero, to determine the buyer's temporary tag allotment; and

(4) the department may increase the determined allotment of buyer's temporary tags for dealers in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(d) The department will inform each dealer annually of the maximum number of agent temporary tags and vehicle specific temporary tags the dealer is authorized to issue during the calendar year under Transportation Code §503.0632. The number of agent temporary tags and vehicle specific temporary tags allocated to each dealer by the department, for each tag type, will be determined based on the following formula:

(1) dealer temporary tag data for agent temporary tags and vehicle specific temporary tags determined from the department's systems from the previous three fiscal years. A dealer's base number will contain the maximum number of dealer temporary tags issued during the previous three fiscal years;

(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the dealer's time in operation giving a 10 percent increase in tags for each year the dealer has been in operation up to 10 years; and

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:

(A) the dealer's actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of dealer's temporary tags issued, except that it may not exceed 200 percent; or

(B) the statewide actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of dealer's temporary tags issued, not less than zero, to determine the dealer's temporary tag allotment; and

(4) the department may increase a dealer's allotment of agent temporary tags and vehicle specific temporary tags for dealers in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(e) The department will inform each converter annually of the maximum number of temporary tags the converter is authorized to issue during the calendar year under Transportation Code §503.0632. The number of temporary tags allocated to each converter by the department will be determined based on the following formula:

(1) converter temporary tag data determined from the department's systems from the previous three fiscal years. A converter's base number will contain the maximum number of converter temporary tags issued during the previous three fiscal years;

(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the converter's time in operation giving a 10 percent increase in tags for each year the dealer has been in operation up to 10 years; and

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:

(A) the converter's actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of converter's temporary tags issued, except that it may not exceed 200 percent; or

(B) the statewide actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of converter's temporary tags issued, not less than zero, to determine the converter's temporary tag allotment;

(4) the department may increase a converter's allotment of converter temporary tags for converters in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(f) A dealer or converter that is licensed after the commencement of a calendar year shall be authorized to issue the number of temporary tags allotted in this subsection prorated on all or part of the remaining months until the commencement of the calendar year after the dealer's or converter's initial license expires. The initial allocations

shall be as determined by the department in granting the license, but not more than:

(1) 1,000 [~~600~~] temporary tags for a franchised dealer per each tag type, buyer's temporary tags, agent temporary tags, and vehicle specific tags, unless:

(A) the dealer provides credible information indicating that a greater number of tags is warranted based on anticipated sales, and growth, to include new and used vehicle sales, including information from the manufacturer or distributor, or as otherwise provided in this section; and

(B) if more than 1,000 [~~600~~] temporary tags are determined to be needed based on anticipated sales and growth, the total number of temporary tags needed, including the 1,000 [~~600~~], will be doubled;

(2) 300 temporary tags for a nonfranchised dealer per each tag type, buyer's temporary tags, agent temporary tags, and vehicle specific tags, unless the dealer provides credible information indicating that a greater number of tags is warranted based on anticipated sales as otherwise provided in this section; and

(3) A converter will be allocated 600 temporary tags, unless the converter provides credible information indicating that a greater number of tags is warranted based on anticipated sales, including information from the manufacturer or distributor, or as otherwise provided in this section.

(g) An existing dealer or converter that is:

(1) moving its operations from one location to a different location will continue with its allotment of temporary tags and not be allocated temporary tags under subsection (f) of this section;

(2) opening an additional location will receive a maximum allotment of temporary tags based on the greater of the allotment provided to existing locations, including franchised dealers opening additional locations for different line makes, or the amount under subsection (f) of this section;

(3) purchased as a buy-sell ownership agreement will receive the maximum allotment of temporary tags provided to the location being purchased and not be allocated temporary tags under subsection (f) of this section; and

(4) inherited by will or laws of descent will receive the maximum allotment of temporary tags provided to the location being inherited and not be allocated temporary tags under subsection (f) of this section.

(h) A new dealer or converter may also provide credible information supporting a request for additional temporary tags to the amount allocated under subsection (f) of this section based on:

(1) franchised dealer, manufacturer, or distributor sales expectations;

(2) a change in license required by death or retirement, except as provided in subsection (g) of this section;

(3) prior year's sales by a dealership moving into the state; or

(4) other similar change of location or ownership that indicates some continuity in existing operations.

(i) After using 50 percent of the allotted maximum number of temporary tags, a dealer or converter may request an increase in the number of temporary tags by submitting a request in the department's eLICENSING system.

(1) The dealer or converter must provide information demonstrating the need for additional temporary tags results from business operations, including anticipated needs, as required by §503.0632(c). Information may include documentation of sales and tax reports filed as required by law, information of anticipated need, or other information of the factors listed in §503.0632(b).

(2) The department shall consider the information presented and may consider information not presented that may weigh for or against granting the request that the department in its sole discretion determines to be relevant in making its determination. Other relevant information may include information of the factors listed in §503.0632(b), the timing of the request, and the applicant's temporary tag activity.

(3) The department may allocate a lesser or greater number of additional temporary tags than the amount requested [~~by the dealer or converter~~]. Allocation of a lesser or greater number of additional temporary tags is not a denial of the request. Allocation of additional temporary tags under this paragraph does not limit the dealer's or converter's ability to submit additional requests for more temporary tags.

(4) If a request is denied, the denial will be sent to the dealer or converter by email to the requestor's email address [~~a dealer or converter may appeal the denial to the Director of the Motor Vehicle Division whose decision is final~~].

(A) A dealer or converter may appeal the denial to the Motor Vehicle Division Director. [~~The denial will be sent to the license holder by email to the email used by the license holder in the request.~~]

(B) The appeal must be requested though the eLICENSING system within 15 [~~10 business~~] days of the date the department emailed the denial to the dealer or converter [~~the denial being sent to the department though the eLICENSING system~~].

(C) The appeal may discuss information provided in the request but may not include additional information.

(D) The Motor Vehicle Division Director will review the submission and any additional statements concerning the information submitted in the original request and render an opinion within 15 [~~10 business~~] days of receiving the appeal. The Motor Vehicle Division Director may decide to deny the request and issue no additional tags [~~,~~] or award an amount of additional temporary tags that is lesser, equal to, or greater than the request.

(E) The requesting dealer or converter [~~license holder~~] will be notified as follows:

(i) If the Motor Vehicle Division Director [~~director~~] decides [~~has decided~~] to deny the appeal, the department will contact the license holder [~~will be contacted~~] by email regarding the decision and options to submit a new request with additional relevant credible supporting documentation or to pursue a claim in district court; or

(ii) If the Motor Vehicle Division Director awards [~~has decided to award~~] an amount of additional temporary tags that is lesser, equal to, or greater than the request, the additional temporary tags will be added to the dealer's or converter's [~~license holders~~] account and the license holder will be contacted by email regarding the decision, informed that the request has not been denied, and options [~~the license holder has~~] to submit a new request.

(5) The Motor Vehicle Division Director's decision on appeal is final.

(6) [~~(5)~~] Once a denial is final, a dealer or converter may only submit a subsequent request for additional temporary tags during

that calendar year if the dealer or converter is able to provide additional information not considered in a [the] prior request.

(j) A change in the allotment under subsection (i) of this section does not create a dealer or converter base for subsequent year calculations.

(k) The department may at any time initiate an enforcement action against a dealer or converter if temporary tag usage suggests that misuse or fraud has occurred as described in Transportation Code §§503.038, 503.0632(f), or 503.067.

(l) Unused temporary [dealer or converter] tag allotments from a calendar year do not roll over to subsequent years.

§215.154. Dealer's Temporary Tags.

(a) A dealer's temporary tag may be displayed only on the type of vehicle for which the GDN is issued and for which the dealer is licensed by the department to sell or lease.

(b) A wholesale motor vehicle auction license holder that also holds a dealer GDN may display a dealer's temporary tag on a vehicle that is being transported to or from the licensed auction location.

(c) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the selling dealer's temporary tag. The purchasing dealer may display its dealer's [dealer] temporary tag or its [metal] dealer's standard or personalized prestige license plate on the vehicle.

(d) A dealer's temporary tag:

(1) may be displayed on a vehicle only as authorized in Transportation Code §503.062; and

(2) may not be displayed on:

(A) a laden commercial vehicle being operated or moved on the public streets or highways;

(B) on the dealer's service or work vehicles as described in §215.138(d) of this chapter (relating to Use of Dealer's License Plates);

(C) a golf cart as defined under Transportation Code Chapter 551; or

(D) an off-highway vehicle as defined under Transportation Code Chapter 551A.

[(e) For purposes of this section, a dealer's service or work vehicle includes:]

[(1) a vehicle used for towing or transporting other vehicles;]

[(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;]

[(3) a courtesy car on which a courtesy car sign is displayed;]

[(4) a rental or lease vehicle; and]

[(5) any boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.]

(e) [(f)] For purposes of subsection (d) of this section, a vehicle bearing a dealer's temporary tag is not considered a laden commercial vehicle when the vehicle is:

(1) towing another vehicle bearing the same dealer's temporary tags; and

(2) both vehicles are being conveyed from the dealer's place of business to a licensed wholesale motor vehicle auction or from a licensed wholesale motor vehicle auction to the dealer's place of business.

[(g) As used in this section, "light truck" has the meaning assigned by Transportation Code, §541.201.]

(f) [(h)] A dealer's temporary tag may not be used to operate a vehicle for the personal use of a dealer or a dealer's employee.

(g) [(i)] A dealer's temporary tag must show its expiration date, which must not exceed 60 days after the date the temporary tag was issued.

(h) [(j)] A dealer's temporary tag may be issued by a dealer to a specific motor vehicle in the dealer's inventory or to a dealer's agent who is authorized to operate a motor vehicle owned by the dealer.

(i) [(k)] A dealer that issues a dealer's temporary tag to a specific vehicle must ensure that the following information is placed on the temporary tag:

(1) the vehicle-specific number from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN of the vehicle;

(4) the month, day, and year of the temporary tag's expiration; and

(5) the name of the dealer.

(j) [(l)] A dealer that issues a dealer's temporary tag to an agent must ensure that the following information is placed on the temporary tag:

(1) the specific number from the temporary tag database;

(2) the month, day, and year of the temporary tag's expiration; and

(3) the name of the dealer.

§215.155. Buyer's Temporary Tags.

(a) A buyer's temporary tag may be displayed only on a vehicle: [from the seller's inventory that can be legally operated on the public streets and highways and for which a sale has been consummated.]

(1) from the selling dealer's inventory; and

(2) that can be legally operated on the public streets and highways; and

(3) for which a sale or lease has been consummated; and

(4) that has a valid inspection in accordance with Transportation Code Chapter 548, unless:

(A) an inspection is not required under Transportation Code §503.063(i) or (j); or

(B) the vehicle is exempt from inspection under Chapter 548.

(b) A buyer's temporary tag must be issued and provided to the buyer of a vehicle that is to be titled but not registered but the temporary tag must not be displayed on the vehicle.

[(b) A buyer's temporary tag may be displayed only on a vehicle that has a valid inspection in accordance with Transportation Code Chapter 548, unless:]

[(1) an inspection is not required under Transportation Code §503.063(i) or (j); or]

[(2) the vehicle is exempt from inspection under Chapter 548.]

(c) For a wholesale transaction, the purchasing dealer places on the motor vehicle its own:

(1) dealer's temporary tag; or

(2) [metal] dealer's license plate.

(d) A buyer's temporary tag is valid until the earlier of:

(1) the date on which the vehicle is registered; or

(2) the 60th day after the date of purchase.

(e) The dealer [,] or [federal, state, or local] governmental agency, must ensure that the following information is placed on a buyer's temporary tag [that the dealer issues]:

(1) the vehicle-specific number obtained from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN of the vehicle;

(4) the month, day, and year of the expiration of the buyer's temporary tag; and

(5) the name of the dealer or [federal, state, or local] governmental agency.

(f) A dealer shall charge a buyer a fee of $5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456. [A federal, state, or local governmental agency may charge a buyer a fee of $5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456]. A dealer shall remit the fee [shall be remitted by a dealer] to the county [in conjunction] with the title transfer application [, and, if collected, by a federal, state, or local governmental agency, to the county,] for deposit to the credit of the Texas Department of Motor Vehicles fund. If [, unless] the vehicle is sold by a dealer to an out-of-state resident [, in which case]:

(1) the dealer shall remit the entire fee to the department for deposit to the credit of the Texas Department of Motor Vehicles fund if payment is made through the department's electronic title system; or

(2) the dealer shall remit the fee to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

(g) A governmental agency may charge a buyer a fee of $5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456. If collected by a governmental agency, the fee must be sent to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

§215.160. Duty to Identify Motor Vehicles Offered for Sale as Rebuilt.

(a) For each motor vehicle a dealer displays or offers for retail sale and which the dealer knows has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title subsequently issued under Transportation Code, §501.100, a dealer shall disclose in writing that the motor vehicle has been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100. The written disclosure must:

(1) be visible from outside of the motor vehicle; and

(2) contain lettering that is reasonable in size, stating as follows: "This motor vehicle has been repaired, rebuilt or, reconstructed after formerly being titled as a salvage motor vehicle."

(b) Upon the sale of a motor vehicle which has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title subsequently issued under Transportation Code, §501.100, a dealer shall obtain the purchaser's signature on the vehicle disclosure form or on an acknowledgement written in fourteen [eleven] point or larger font that states as follows: "I, (name of purchaser), acknowledge that at the time of purchase, I am aware that this vehicle has been repaired, rebuilt, or reconstructed and was formerly titled as a salvage motor vehicle."

(c) The purchaser's acknowledgement as required in subsection (b) of this section may be incorporated in a Buyer's Order, a Purchase Order, or other disclosure document. This disclosure requires [does not require] a separate signature.

(d) An original signed acknowledgement or vehicle disclosure form required by subsection (b) of this section [or a signed vehicle disclosure form] shall be given to the purchaser and a copy of the signed acknowledgement or vehicle disclosure form shall be retained by the dealer in the records of motor vehicles sales required by §215.144 of this title (relating to Vehicle Records). If the acknowledgement is incorporated in a Buyer's Order, a Purchase Order, or other disclosure document, a copy of that document must be given to the purchaser and a copy retained in the dealer's records in accordance with §215.144.

(e) This section does not apply to a wholesale motor vehicle auction.

§215.161. Licensing Education Course Provider Requirements.

(a) A motor vehicle dealer licensing education course provider must be a Texas institution of higher education, as defined by Education Code, §61.003, or a motor vehicle trade association domiciled in this state.

(b) The licensing education course must be approved by the department and must include information on the laws and rules applicable to motor vehicle dealers and the consequences of violating those laws and rules.

(c) The licensing education course must consist of at least 6 hours of online instruction for new applicants and 3 hours of online instruction for renewal applicants.

(d) The cost for the licensing education course must not exceed $150 per person. A trade association course provider may not charge a different rate to a nonmember.

(e) The course provider must issue a certificate of completion to each person who successfully completes the licensing education course.

(f) The dealer training provided by the department is not an approved licensing education course under this section.

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

Filed with the Office of the Secretary of State on December 14, 2023.

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Laura Moriaty
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Texas Department of Motor Vehicles
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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §215.146

STATUTORY AUTHORITY. The department proposes a repeal to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, § §503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. This repeal would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.146. Metal Converter's License Plates.

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

Filed with the Office of the Secretary of State on December 14, 2023.

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER E. LESSORS AND LEASE FACILITATORS

43 TAC §§215.171, 215.173 - 215.180

STATUTORY AUTHORITY. The department proposes amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement

with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, § §503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These proposed revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.171. Purpose and Scope.

This subchapter implements Occupations Code, Chapter 2301 [~~and more~~] specifically, §§2301.251, 2301.253, 2301.254, 2301.261, 2301.262, 2301.357, and Subchapter L. Vehicle Lessors and Vehicle Lease Facilitators [~~2301.551 - 2301.556~~], and Transportation Code Chapters 1001 - 1005.

§215.173. License.

(a) No person may engage in business as a vehicle lessor or a vehicle lease facilitator unless that person holds a valid license issued by the department[~~,~~] or is [~~otherwise~~] exempt [~~by law~~] from obtaining such a license under Occupations Code §2301.254.

(b) Any person who facilitates vehicle leases on behalf of a vehicle lease facilitator must:

(1) be on the vehicle lease facilitator's payroll and receive compensation from which social security, federal unemployment tax, and all other appropriate taxes are withheld from the representative's paycheck and paid to the proper taxing authority; and

(2) have work details such as when, where, and how the final results are achieved, directed, and controlled by the vehicle lease facilitator.

§215.174. Application for a License.

(a) An applicant for a vehicle lessor's or vehicle lease facilitator's license must submit a sufficient application to the department as required under §215.83 of this title (relating to License Applications, Amendments, or Renewals). To be sufficient, the application must be on a form prescribed by the department, [~~and~~] accompanied by all required supporting documentation, and required fees, and submitted to the department electronically in a system designated by the department for licensing.

(b) A license holder renewing or amending a license must verify current license information, provide related information and documents for any new requirements or changes to the license, and pay required fees.

(c) An applicant for a new license must register for an account in the department-designated licensing system by selecting the licensing system icon on the dealer page of the department website. An applicant must designate the account administrator and provide the name and email address for that person, and provide the business telephone number, name, business type, and social security number or employer identification number, as applicable. The applicant's licensing account administrator must be an owner, officer, manager, or bona fide employee.

(d) Once registered, an applicant may apply for a new license and must provide the following:

(1) type of license requested;

(2) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number (if applicable), and website address (if applicable);

(3) contact name, email address, and telephone number of the person submitting the application;

(4) contact name, email address, and telephone number of a person who can provide information about business operations and the motor vehicle services offered;

(5) the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a publicly traded company;

(6) the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

(7) the name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

(8) criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, including offense description, date, and location;

(9) military service status;

(10) licensing history required to evaluate fitness for licensure under §215.89 of this title (relating to Fitness);

(11) signed Certification of Responsibility, which is a form provided by the department; and

(12) any other information required by the department to evaluate the application under current law and board rules.

(e) [~~(b)~~] The supporting documentation for a vehicle lessor's license application shall include a legible and accurate electronic image of each applicable required document:

(1) Certificate of incorporation, registration, or formation filed with the Texas Secretary of State [~~verification of the criminal background of each owner and officer of the applicant, if applicable~~];

(2) at least one of the following current identity documents for each natural person listed in the application:

(A) driver license;

(B) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code Chapter 521, Subchapter E;

(C) license to carry a handgun issued by the Texas Department of Public Safety under Government Code Chapter 411, Subchapter H;

(D) passport; or

(E) United States military identification card

[~~(2) the fee required by law for each type of license required~~];

(3) a copy of each assumed name certificate on file with the appropriate recording entity, such as the Office of the Secretary of State or the county clerk;

(4) a sample copy of the vehicle lease agreement between the vehicle lessor and a lessee;

(5) a sample copy of the required fee disclosure statement regarding fees paid by the vehicle lessor to a vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid;

(6) a list including the business name(s), DBA(s), and addresses of lease facilitators with whom the applicant conducts or intends to conduct business;

(7) a list of other satellite offices that conduct business in the State of Texas that includes the address, phone number, and name of the contact person for each location;[~~.~~]

(8) if a vehicle lessor does not deal directly with the public to execute vehicle leases and has a licensed location in another state, a vehicle lessor must provide the jurisdiction name, licensed business address, and license number for each location that leases a motor vehicle to a Texas resident; and

(9) any other information required by the department to evaluate the application under current law and board rules.

(f) [~~(c)~~] The supporting documentation for a vehicle lease facilitator's license application shall include a legible and accurate electronic image of each applicable required document:

(1) Certificate of incorporation, registration, or formation filed with the Texas Secretary of State [~~verification of the criminal background of each owner and officer of the applicant, if applicable~~];

(2) at least one of the following current identity documents for each natural person listed in the application:

(A) driver license;

(B) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code Chapter 521, Subchapter E;

(C) license to carry a handgun issued by the Texas Department of Public Safety under Government Code Chapter 411, Subchapter H;

(D) passport; or

(E) United States military identification card

[~~(2) the fee required by law for each type of license required~~];

(3) a copy of each assumed name certificate on file with the appropriate recording entity, such as the Office of the Secretary of State or the county clerk;

(4) a sample copy of the vehicle lease agreement between each of the lessors the lease facilitator represents, and the lessee;

(5) a sample copy of the required fee disclosure statement regarding fees paid by a vehicle lessor to the vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid;

(6) a list of all vehicle lessors, including names and addresses, for whom any vehicle lease facilitator solicits or procures a lessee; [~~. The vehicle lease facilitator shall update the list upon renewal of a license and within 10 days of the addition of any vehicle lessor to this list; and~~]

(7) a copy of the representation agreement between the vehicle lease facilitators and each lessor; and [~~.~~]

(8) any other information required by the department to evaluate the application under current law and board rules.

(g) An applicant operating under a name other than the applicant's business name shall use the name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use a name or assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(h) During the term of a license, a vehicle lessor must add, delete, or update the previously submitted list of lease facilitators and a lease facilitator must add, delete, or update the previously submitted list of new vehicle lessors within 10 days by electronically submitting a license amendment in the system designated by the department for licensing.

§215.175. Sanctions.

(a) The board or department may:

(1) deny a vehicle lessor or vehicle lease facilitator application;

(2) revoke or suspend a vehicle lessor or vehicle lease facilitator license; or

(3) assess a civil penalty or take other action on a vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or vehicle lease facilitator license is required.

(b) The board or department may take action described in subsection (a) of this section if a vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or vehicle lease facilitator license is required:

(1) fails to maintain an established and permanent place of business required by §215.177 of this title (relating to Established and Permanent Place of Business);

(2) fails to maintain records required under this subchapter;

(3) refuses or fails to comply with a request by a representative of the department to examine during the vehicle lessor's or vehicle lease facilitator's posted business hours at the vehicle lessor's or vehicle lease facilitator's licensed location:

(A) a vehicle leasing record required to be maintained by §215.178 of this title (relating to Records Required for Vehicle Lessors and Vehicle Lease Facilitators);

(B) ownership papers for a vehicle owned, leased, or under that vehicle lessor's or vehicle lease facilitator's control; or

(C) evidence of ownership or a current premises lease agreement for the property upon which the business is located;

(4) refuses or fails to timely comply with a request for records made by a representative of the department;

(5) fails to notify the department in writing by electronically submitting a license amendment in the system designated by the department for licensing within 10 days of a change of the vehicle lessor or vehicle lease facilitator license holder's:

(A) mailing address;

(B) physical address;

(C) telephone number; or

(D) email address;

(6) fails to notify the department in writing by electronically submitting a license amendment in the system designated by the department for licensing within 10 days of a change of the vehicle lessor or vehicle lease facilitator license holder's name, assumed name, management, or ownership;

(7) fails to comply with the fee restrictions or other requirements under Occupations Code, §2301.357 or Chapter 2301, Subchapter L. Vehicle Lessors and Vehicle Lease Facilitators [~~§§2301.551 - 2301.556~~];

(8) fails to maintain advertisement records or otherwise fails to comply with the advertising requirements of:

(A) §215.178; or

(B) Subchapter F [~~H~~] of this chapter (relating to Advertising);

(9) violates any law relating to the sale, lease, distribution, financing, or insuring of motor vehicles;

(10) is convicted of an offense that, in accordance with Occupations Code, Chapter 53 and with §215.88 of this title (relating to Criminal Offense and Action on License), directly relates to the duties or responsibilities of the licensed occupation;

(11) is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a vehicle lessor or vehicle lease facilitator license;

(12) uses or allows use of a vehicle lessor or vehicle lease facilitator license in violation of any law or for the purpose of avoiding any provision of Occupations Code, Chapter 2301; or

(13) [~~willfully~~]omits material information or makes a material misrepresentation in any application or other documentation filed with the department including providing a false or forged identity document or a false or forged photograph, electronic image, or other document.

(c) The board or department may take action on a vehicle lessor's license or assess civil penalties for the vehicle lessor's failure to notify the department in writing by electronically submitting a license amendment in the system designated by the department for licensing within 10 days of any change, addition, or deletion to the list of vehicle lease facilitators with whom the vehicle lessor conducts business, including any change to a vehicle lease facilitator's mailing address, physical address, telephone number, or email address.

(d) The board or department may take action on a vehicle lease facilitator's license or assess civil penalties for the failure to notify the department in writing within 10 days by electronically submitting a license amendment in the system designated by the department for licensing of any change, addition, or deletion to the list of vehicle lessors for whom the vehicle lease facilitator conducts business, including any change to a vehicle lessor's mailing address, physical address, telephone number, or email address.

(e) The board or department may take action on a vehicle lessor's or vehicle lease facilitator's license if the vehicle lessor or vehicle lease facilitator accepts a fee from a dealer, directly or indirectly, for referring a customer who purchases or considers purchasing a motor vehicle.

§215.176. More Than One Business Location.

(a) A vehicle lease facilitator must be licensed separately for each business location.

(b) A vehicle lessor or vehicle lease facilitator that relocates from a point outside the limits of a municipality [~~city~~] or relocates to a point not within the limits of the same municipality [~~city~~] of the initial business location is required to obtain a new license.

(c) A vehicle lessor is required to obtain a license for the vehicle lessor's primary location. A vehicle lessor must provide the address, telephone number, and the name of a contact person for all other satellite offices that conduct business in the state of Texas.

§215.177. Established and Permanent Place of Business Premises Requirements.

(a) A vehicle lessor or vehicle lease facilitator operating within [~~the State of~~] Texas must meet the following requirements at each location where vehicles are leased or offered for lease.

(1) Physical location requirements.

(A) A vehicle lessor or vehicle lease facilitator operating within [~~the State of~~] Texas must be open to the public. The vehicle lessor's or vehicle lease facilitator's business hours for each day of the week must be posted at the main entrance of the office. The business telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours. The owner or an employee of the vehicle lessor or vehicle lease facilitator must be at the location during the posted business hours for the purpose of leasing vehicles. In the event the owner or an employee is not available to conduct business

during the posted business hours, a separate sign must be posted indicating the date and time such owner or employee will resume vehicle leasing operations.

(B) A vehicle lessor's or vehicle leasing facilitator's office structure must be of sufficient size to accommodate the following required equipment:

(i) a desk and two chairs from which the vehicle lessor or vehicle lease facilitator transacts business;[~~and~~]

(ii) a working telephone number listed in the business name or assumed name under which the vehicle lessor or vehicle lease facilitator conducts business; and [.]

(iii) internet access.

(C) A vehicle lessor or vehicle lease facilitator that files an application for a new license or a vehicle lessor that files an application for a satellite location must comply with the following requirements:

(i) The office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.

(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house or building not open to the public.

(iv) The physical address of the office must be recognized by the U.S. Postal Service, [~~and~~] capable of receiving U.S. mail, and have an assigned emergency services property address.

(v) The office may not be virtual or provided by a subscription for office space or office services. Access to office space or office services is not considered an established and permanent location.

(D) A portable-type office structure may qualify as an office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(E) One or more licensed vehicle lessors or vehicle lease facilitators, or a combination of one or more licensed vehicle lessors and vehicle lease facilitators may occupy the same business structure and conduct vehicle leasing operations in accordance with the license held by the vehicle lessor or licensed vehicle lease facilitator. Each [~~person engaged in business as a~~] vehicle lessor or vehicle lease facilitator must have:

(i) a separate desk from which that vehicle lessor or vehicle lease facilitator transacts business;

(ii) a separate working telephone number listed in the vehicle lessor or vehicle lease facilitator's business name or assumed name;

(iii) a separate right of occupancy that meets the requirements of this section; and

(iv) a vehicle lessor or vehicle lease facilitator license issued by the department in the name of the vehicle lessor or vehicle lease facilitator.

(F) A vehicle lease facilitator's established and permanent place of business must be physically located within [~~the State of~~]Texas.

(2) Business Sign requirements. A vehicle lessor or vehicle lease facilitator shall display a conspicuous and permanent business sign at the licensed location showing the name under which the vehicle lessor or vehicle lease facilitator conducts business. Outdoor business signs must contain letters that are at least six inches in height. The business name or assumed name on the sign must be substantially similar to the name reflected on the license issued by the department. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(3) Premises lease requirements. If the premises from which a licensed vehicle lessor or vehicle lease facilitator conducts business is not owned by the license holder, the license holder must maintain for the licensed location a valid premises lease that is continuous during the period of time for which the vehicle lessor's or vehicle lease facilitator's license will be issued. The premises lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the property owner [~~landlord~~] of the premises and the name of the vehicle lease facilitator as the tenant or lessee of the premises;

(B) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application as the physical address for the established and permanent place of business; [~~and~~]

(C) the signature of the property owner as the lessor and the signature of the applicant or holder as the tenant or lessee;

(D) [~~(C)~~] the period of time for which the premises lease is valid;[.] and

(E) if the lease agreement is a sublease in which the property owner is not the lessor, the applicant or holder must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the license holder is authorized to sublease the location and may operate a motor vehicle leasing business from the location.

[~~(b) A vehicle lessor that does not deal directly with the public to execute vehicle leases and whose licensed location is in another state must and meet the following requirements at each location.~~]

[~~(1) Physical location requirements.~~]

[~~(A) The vehicle lessor's office structure must be of sufficient size to accommodate the following required equipment:~~]

~~*(i)* a desk and chairs from which the vehicle lessor transacts business; and~~]

~~*(ii)* a working telephone number listed in the business name or assumed name under which the vehicle lessor conducts business.~~]

[~~(B) A vehicle lessor that files an application for a new license or a satellite location with a primary licensed location in another state must conform to the following requirements:~~]

~~*(i)* The office must be located in a building with connecting exterior walls on all sides.~~]

~~*(ii)* The office must comply with all applicable local zoning ordinances and deed restrictions.~~]

[(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house.]

[(iv) The physical address of the office must be recognized by the U.S. Postal Service and capable of receiving U.S. mail.]

[(C) A portable-type office structure may qualify as an office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.]

[(D) More than one licensed vehicle lessor may occupy the same business structure and conduct vehicle leasing operations under different names in accordance with the license held by each vehicle lessor. Each person engaged in business as a vehicle lessor must have:]

[(i) a separate desk from which that vehicle lessor transacts business;]

[(ii) a separate working telephone number listed in the vehicle lessor's business name or assumed name;]

[(iii) a separate right of occupancy that meets the requirements of this section; and]

[(iv) a vehicle lessor license issued by the department in the name of the vehicle lessor.]

[(2) Sign requirements. An out of state vehicle lessor shall display a conspicuous and permanent sign at the licensed location showing the name under which the vehicle lessor conducts business. Outdoor signs must contain letters at least six inches in height.]

[(3) Premises lease requirements. If the out of state premises from which a licensed vehicle lessor conducts business is not owned by the license holder, the license holder must maintain a valid premises lease for the property of the licensed location. The premises lease must be continuous during the period of time for which the license will be issued. The premises lease agreement must be on a properly executed form containing at a minimum:]

[(A) the name of the landlord of the premises and the name of the licensed lessor identified as the tenant of the premises;]

[(B) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application; and]

[(C) the period of time for which the premises lease is valid.]

(b) [(c)] A vehicle lessor or vehicle lease facilitator shall be independent of financial institutions and dealerships in location and in business activities, unless that vehicle lessor or vehicle lease facilitator is an:

(1) employee or legal subsidiary of the financial institution or dealership; or

(2) entity wholly owned by the financial institution or dealership.

(c) [(d)] For purposes of this section, an employee is a person who meets the requirements of §215.173(b) of this title (relating to License).

§215.178. Records Required for Vehicle Lessors and Vehicle Lease Facilitators.

(a) Purchase and leasing records. A vehicle lessor or vehicle lease facilitator must maintain a complete record of all vehicle purchases and sales for at least one year after the expiration of the vehicle lease.

(1) Complete records [Records] reflecting vehicle lease transactions that occurred within the preceding 24 months must be maintained at the licensed location. Records for prior time periods may be kept off-site [at a location within the same county or within 25 miles of the licensed location].

(2) Within 15 days of receipt of a request [sent by mail or by electronic document transfer] from a representative of the department, a vehicle lessor or vehicle lease facilitator must deliver a copy of the specified records to the address listed in the request.

(b) Content of records for lease transaction. A complete record for a vehicle lease transaction must contain:

(1) the name, address, and telephone number of the vehicle lessor [of the vehicle subject to the transaction];

(2) the name, mailing address, physical address, and telephone number of each vehicle lessee [of the vehicle subject to the transaction];

(3) the name, address, telephone number, and license number of the lease facilitator [of the vehicle subject to the transaction];

(4) the name, work [home]address, and telephone number of each employee of the vehicle lease facilitator that handled the transaction;

(5) a complete description of the vehicle involved in the transaction, including the VIN;

(6) the name, address, telephone number, and GDN of the dealer selling the vehicle, as well as the franchised dealer license number [of the dealer] if the vehicle [involved in the transaction] is a new motor vehicle;

(7) the amount of fee paid to the vehicle lease facilitator or a statement that no fee was paid;

(8) a copy of the buyer's order and sales contract for the vehicle;

(9) a copy of the vehicle lease contract;

(10) a copy of all other contracts, agreements, or disclosures between the vehicle lease facilitator and the consumer lessee; and

(11) a copy of the front and back of the manufacturer's statement of origin, manufacturer's certificate of origin, or the title of the vehicle, as applicable [if the vehicle involved in the transaction is a new motor vehicle.

(c) Content of records for sale of leased vehicle. A vehicle lessor's complete record for each vehicle sold at the end of a lease to a lessee, a dealer, or at a wholesale motor vehicle auction must contain:

(1) the date of the purchase;

(2) the date of the sale;

(3) the VIN;

(4) the name and address of the person selling the vehicle to the vehicle lessor;

(5) the name and address of the person purchasing the vehicle from the vehicle lessor;

(6) except for a purchase or sale where the Tax Code does not require payment of motor vehicle sales tax, a tax assessor-collector receipt marked paid;

(7) a copy of all documents, forms, and agreements applicable to a particular sale, including a copy of:

(A) the title application;

(B) the work-up sheet;

(C) the front and back of manufacturer's certificate of origin or manufacturer's statement of origin, unless the title is obtained through the electronic title system;

(D) the front and back of the title, unless the title is obtained through the electronic title system;

(E) the factory invoice;

(F) the sales contract;

(G) the retail installment agreement;

(H) the buyer's order;

(I) the bill of sale;

(J) any waiver;

(K) any other agreement between the seller and purchaser; and

(L) the purchaser's photo identification if sold to a lessee;

(8) a copy of the original manufacturer's certificate of origin, original manufacturer's statement of origin, or title for motor vehicle offered for sale, or a properly stamped original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for a title transaction entered into the electronic titling system by a dealer;

(9) the monthly Motor Vehicle Seller Financed Sales Returns, if any; and

(10) if the vehicle sold is a motor home or a towable recreational vehicle subject to inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at the time of the sale, notifying the buyer that the vehicle is subject to inspection requirements.

(d) [~~(c)~~] Records of advertising. A vehicle lessor or vehicle lease facilitator must maintain a copy of all advertisements, brochures, scripts, or an electronically reproduced copy in whatever medium appropriate, of promotional materials for a period of at least 18 months. Each copy is subject to inspection upon request by [~~a representative of~~] the department at the business [~~of the licenseholder~~] location during posted business hours.

(1) A vehicle lessor and a vehicle lease facilitator [~~Vehicle Lessors and vehicle lease facilitators~~] must comply with all federal and state advertising laws and regulations, including Subchapter F [~~H~~] of this chapter (relating to Advertising).

(2) A vehicle lessor's [~~lessor~~] or vehicle lease facilitator's advertising or promotional materials [~~facilitator~~] may not state or infer [~~in any advertisement~~], either directly or indirectly, that the business involves the sale of new motor vehicles.

(e) [~~(d)~~] Title assignments. Each certificate of title, manufacturer's certificate of origin, or other evidence of ownership for a vehicle that has been acquired by a vehicle lessor for lease must be properly assigned from the seller in the vehicle lessor's name.

(f) [~~(e)~~] Letters of representation or appointment. A letter of representation or appointment between a vehicle lessor and a vehicle lease facilitator [~~with whom the vehicle lessor conducts business~~] must be executed by both parties and maintained by each party.

(g) [~~(f)~~] Electronic records. Any record required to be maintained by a vehicle lessor or vehicle lease facilitator may be maintained in an electronic format, provided the electronic record can be printed at the licensed location or sent electronically upon department request [~~for the record by a representative of the department~~].

§215.179. Change of Vehicle Lessor or Vehicle Lease Facilitator Status.

(a) Change of ownership. A vehicle lessor or vehicle lease facilitator that [~~proposes to sell~~] sells or assigns [~~assign~~] to another any interest in the licensed entity, whether a corporation or otherwise, provided the physical location of the licensed entity remains the same, shall notify the department in writing within 10 days by filing an application to amend the license in the electronic system designated by the department for licensing. If the sale or assignment of any portion of the business results in a change of entity, then the purchasing or assignee entity must apply for and obtain a new license by submitting a new license application in the electronic system designated by the department for licensing. A publicly held corporation licensed as a vehicle lessor or vehicle lease facilitator needs only inform the department of a change in ownership if one person or entity acquires 10% or greater interest in the licensed entity by submitting a license amendment application in the electronic system designated by the department for licensing.

(b) Change of operating status of business location. A license holder shall obtain department approval prior to opening a satellite location or relocating an existing location, in accordance with §215.176 of this title (relating to More than One Business Location) by electronically submitting a new license application in the system designated by the department for licensing and receiving electronic notice of approval prior to relocating or opening a satellite location. A license holder must notify the department when closing an existing location or a satellite location by electronically submitting a license amendment to close the license or close the satellite location in the system designated by the department for licensing.

§215.180. Required Notices to Lessees.

Vehicle lessors and vehicle lease facilitators shall provide notice of the complaint procedures provided by Occupations Code, § [§] 2301.204 and Subchapter M (relating to Warranties: Rights of Vehicle Owners), [~~2301.601 - 2301.613~~] to each lessee of a new motor vehicle with whom they enter into a vehicle lease.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER F. ADVERTISING

43 TAC §§215.242, 215.244, 215.249, 215.250, 215.257, 215.261, 215.264, 215.268, 215.270

STATUTORY AUTHORITY. The department proposes amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution,

sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who proposes to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, § §503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These proposed revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.242. General Prohibition.

A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading advertising. In addition to a violation of a specific advertising rule, any other advertising or advertising practices found by the department to be false, deceptive, or misleading, whether herein described, shall be deemed a violation of Occupations Code, Chapter 2301 and shall also be deemed [~~considered~~] a violation of this rule.

§215.244. Definitions.

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

(1) Advertisement--

(A) An oral, written, graphic, or pictorial statement or representation made in the course of soliciting business, including, but not limited to a statement or representation:

(i) made in a newspaper, magazine, or other publication;

(ii) contained in a notice, sign, poster, display, circular, pamphlet, or letter;

(iii) aired on the radio;

(iv) broadcast on the internet or television; or

(v) streamed via an online service.

(B) Advertisement does not include direct communication between a person or person's representative and a prospective purchaser.

(2) Advertising provision--

(A) A provision of Occupations Code, Chapter 2301, relating to the regulation of advertising; or

(B) A rule relating to the regulation of advertising, adopted pursuant to the authority of Occupations Code, Chapter 2301.

(3) Bait advertisement--An alluring but insincere offer to sell or lease a product of which the primary purpose is to obtain a lead to a person interested in buying or leasing merchandise of the type advertised and to switch a consumer from buying or leasing the advertised product in order to sell or lease some other product at a higher price or on a basis more advantageous to the dealer.

(4) Balloon payment--Any scheduled payment made as required by a consumer credit transaction that is more than twice as large as the average of all prior scheduled payments except the down payment.

(5) Clear and conspicuous--The statement, representation, or term being disclosed is of such size, color, contrast, and audibility

and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning.

(6) Dealership addendum--A form that is displayed on a window of a motor vehicle when a [~~the~~] dealership installs special features, equipment, parts, or accessories, or charges for services not already compensated by the manufacturer or distributor for work required to prepare a motor vehicle for delivery to a buyer.

(A) The purpose of the addendum is to disclose:

(i) that it is supplemental;

(ii) any added feature, service, equipment, part, or accessory, including the retail price, charged and added by the dealership;

(iii) any additional charge to the selling price such as additional dealership markup; and

(iv) the total dealer selling price.

(B) The dealership addendum form shall not be deceptively similar in appearance to the Monroney label, as defined by paragraph (13) [~~(14)~~] of this section.

(7) Demonstrator--A new motor vehicle that is currently in the inventory of the automobile dealership and used primarily for test drives by customers and for other purposes designated by the dealership.

(8) Disclosure--Required information that is clear, conspicuous, and accurate.

(9) Distributor Suggested Retail Price (DSRP)--means the total price shown on the Monroney Label as specified by subparagraph [~~sub-paragraph~~] (D) of paragraph (13) [~~(14)~~] of this section.

(10) Factory executive/official motor vehicle--A new motor vehicle that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries.

[~~(11) License holder--Any person required to obtain a license from the department.~~]

(11) [~~(12)~~] Limited rebate--A rebate that is not available to every consumer purchasing or leasing a motor vehicle because qualification for receipt of the rebate is conditioned or restricted in some manner. A rebate conditioned or restricted to purchasers who are residents of the contiguous United States is not a limited rebate.

(12) [~~(13)~~] Manufacturer's Suggested Retail Price (MSRP)--means the total price shown on the Monroney Label as specified by subparagraph [~~sub-paragraph~~] (D) of paragraph (13) of this section.

(13) [~~(14)~~] Monroney Label--The label required by the Automobile Information Disclosure Act, 15 U.S.C. §§1231 - 1233, to be affixed to the windshield or side window of certain new motor vehicles delivered to the dealer and that contains information about the motor vehicle, including, but not limited to:

(A) the retail price of the motor vehicle suggested by the manufacturer or distributor, as applicable;

(B) the retail delivered price suggested by the manufacturer or distributor, as applicable, for each accessory or item of optional equipment, physically attached to the motor vehicle at the time of its delivery to a dealer, which is not included within the price of the motor vehicle as stated in subparagraph (A) of this paragraph;

(C) the amount charged, if any, to a dealer for the transportation of the motor vehicle to the location at which it is delivered to the dealer; and

(D) the total of the amounts specified pursuant to subparagraphs (A), (B), and (C) of this paragraph.

(14) [~~(15)~~] Online service--A network that connects computer users.

(15) [~~(16)~~] Rebate or cash back--A sum of money applied to the purchase or lease of a motor vehicle or refunded after full payment has been rendered for the benefit of the purchaser.

(16) [~~(17)~~] Savings claim or discount--An offer to sell or lease a motor vehicle at a reduced price, including, but not limited to, a manufacturer's or distributor's customer rebate, a dealer discount, or a limited rebate.

(17) [~~(18)~~] Subsequent violation--Conduct that is the same or substantially the same as conduct the department has previously alleged in a notice of an opportunity to cure [~~an earlier communication~~]to be a violation of an advertising provision.

§215.249. Manufacturer's or [/] Distributor's Suggested Retail Price.

(a) Except as provided by subsection (b) of this section, the suggested retail price of a new motor vehicle advertised by a manufacturer or distributor shall include all costs and charges for the motor vehicle advertised.

(b) The following costs and charges may be excluded if an advertisement described in subsection (a) of this section clearly and conspicuously states the costs and charges are excluded:

(1) destination and dealer preparation charges;

(2) registration, certificate of title, license fees, or an additional registration fee, if any;

(3) taxes; and

(4) other fees or charges that are allowed or prescribed by law.

(c) Except as provided by this subsection, if the price of a motor vehicle is stated in an advertisement placed with local media in [~~the State of~~] Texas by a manufacturer or distributor and the names of the local dealers for the motor vehicles advertised are included in that advertisement, then the price must include all costs and charges for the motor vehicle advertised, including destination and dealer preparation charges. The only costs and charges that may be excluded from the price are:

(1) registration, certificate of title, license fees, or an additional registration fee, if any;

(2) taxes; and

(3) other fees or charges that are allowed or prescribed by law.

§215.250. Dealer Price Advertising; Savings Claims; Discounts.

(a) When featuring a sales price of a [~~new or used~~] motor vehicle in an advertisement, the dealer must be willing to sell the motor vehicle for that featured sales price to any retail buyer. The featured sales price shall be the price before the addition or subtraction of any other negotiated items. Destination and dealer preparation charges and additional dealership markup, if any must be included in the featured sales price.

(b) The only costs and charges that may be excluded from the featured sales price are:

(1) registration, certificate of title, or license fees;

(2) taxes; and

(3) other fees or charges that are expressly allowed [~~or prescribed~~] by law.

(c) A qualification may not be used when featuring a sales price for a motor vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer," or "with down payment."

(d) Advertising an "internet price," "e-price," or using similar terms that indicate or create the impression that there is a different or unique sales price for an online or internet consumer or transaction is prohibited.

(e) A savings claim or discount offer is prohibited except to advertise a new motor vehicle. No person may advertise a savings claim or discount offer on a used motor vehicle.

(f) Statements such as "up to," "as much as," and "from" shall not be used by a dealer in connection with savings claims or discount offers.

(g) The savings claim or discount offer for a new motor vehicle, when advertised by a dealer, must be the savings claim or discount available to any and all members of the buying public.

(h) If an advertisement includes a savings claim or discount offer, the amount and type of each incentive that makes up the total amount of the savings claim or discount offer must be disclosed.

(1) If a savings claim or discount offer includes only a dealer discount, that incentive must be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising a dealer discount with and without a sales price.
Figure: 43 TAC §215.250(h)(1) (No change.)

(2) If a savings claim or discount offer includes only a customer rebate, that incentive must be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising a customer rebate with and without a sales price.
Figure: 43 TAC §215.250(h)(2) (No change.)

(3) If a savings claim or discount offer includes both a customer rebate and a dealer discount, the incentives must be disclosed as deductions from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising both a customer rebate and a dealer discount with and without a sales price.
Figure: 43 TAC §215.250(h)(3) (No change.)

(i) If a savings claim or discount offer includes an option package discount, that discount should be disclosed above, or prior to, the MSRP/DSRP, as applicable, with a total sales price of the motor vehicle before option discounts. Any additional savings or discounts should then be disclosed below the MSRP/DSRP, as applicable. The following are acceptable formats for advertising an option package discount with and without a sales price.
Figure: 43 TAC §215.250(i) (No change.)

(j) Except as provided herein, the calculation of the featured sales price or featured savings claim or discount may not include a limited rebate. A limited rebate may be advertised by providing the amount of the limited rebate and explaining the conditions or restrictions on qualification for the limited rebate in a statement below the featured sales price or featured savings claim or discount.
Figure: 43 TAC §215.250(j) (No change.)

(k) In an internet advertisement with multiple limited rebates available on an advertised new motor vehicle, a dealer may display each limited rebate separately allowing a potential buyer to "click" on the limited rebate to view the sales price after deducting the applicable limited rebate or applicable multiple rebates.
Figure: 43 TAC §215.250(k) (No change.)

(l) If a dealer has added an option that was not obtained from the manufacturer or distributor of the motor vehicle, a dealer discount may not be advertised for that vehicle. If a dealer has added an option obtained from the manufacturer or distributor and disclosed that option and its suggested retail price on a dealership addendum, the dealer may advertise a dealer discount for that motor vehicle if the option is listed, and the difference is shown between the dealer's sales price and the MSRP/DSRP, as applicable, of the vehicle including the option obtained from the manufacturer or distributor.
Figure: 43 TAC §215.250(l) (No change.)

§215.257. Authorized Dealer.
The term "authorized dealer" or a similar term shall not be used unless the advertising dealer holds both a franchised dealer license and a franchised dealer GDN [~~dealer license~~] to sell the motor vehicles the dealer identifies itself as "authorized" to sell.

§215.261. Manufacturer or [/] Distributor Sales and Wholesale Prices.
A motor vehicle shall not be advertised for sale in any manner that creates the impression that it is being offered for sale by the manufacturer or distributor of the motor vehicle. An advertisement shall not:

(1) contain terms such as "factory sale," "fleet prices," "wholesale prices," "factory approved," "factory sponsored," "manufacturer sale," or "distributor sale";

(2) use a manufacturer's or [/] distributor's name or abbreviation in any manner calculated or likely to create an impression that the motor vehicle is being offered for sale by the manufacturer or distributor; or

(3) use any other similar terms which indicate sales other than retail sales from the dealer.

§215.264. Payment Disclosure - Vehicle Lease.

(a) An advertisement that promotes a consumer lease and contains the amount of any payment or that contains either a statement of any capitalized cost reduction or other payment or a statement that no payment is required at consummation or prior to consummation or delivery, if delivery occurs after consummation, must clearly and conspicuously include the following:

(1) that the transaction advertised is a vehicle lease;

(2) the total amount due at consummation or prior to consummation or delivery, if delivery occurs after consummation;

(3) the number, amount, and due date or period of scheduled payments under the vehicle lease;

(4) a statement of whether a security deposit is required; and

(5) a statement that an extra charge may be imposed at the end of the vehicle lease term where the lessee's liability, if any, is based on the difference between the residual value of the leased property and its realized value at the end of the vehicle lease term.

(b) Except for a periodic payment, a reference to a charge described in subsection (a)(2) of this section cannot be more prominently advertised than the disclosure of the total amount due at vehicle lease signing or delivery.

(c) Except for disclosures of limitations on rate information, if a percentage rate is advertised, that rate shall not be more prominently

advertised than any other disclosure or deal term [~~of the following disclosures in the advertisement~~].

[~~(1) Description of payments.~~]

[~~(2) Amount due at vehicle lease signing or delivery.~~]

[~~(3) Payment schedule and total amount of periodic payments.~~]

[~~(4) Other itemized charges that are not included in the periodic payment. These charges include the amount of any liability that the vehicle lease imposes upon the lessee at the end of the vehicle lease term.~~]

[~~(5) Total number of payments.~~]

[~~(6) Payment calculation, including:~~]

[~~(A) gross capitalized cost;~~]

[~~(B) capitalized cost reduction;~~]

[~~(C) adjusted capitalized cost;~~]

[~~(D) residual value;~~]

[~~(E) depreciation and any amortized amounts;~~]

[~~(F) rent charge;~~]

[~~(G) total of base periodic payments;~~]

[~~(H) vehicle lease term;~~]

[~~(I) base periodic payment;~~]

[~~(J) itemization of other charges that are a part of the periodic payment; and~~]

[~~(K) total periodic payment.~~]

[~~(7) Early termination conditions and disclosure of charges.~~]

[~~(8) Maintenance responsibilities.~~]

[~~(9) Purchase option.~~]

[~~(10) Statement referencing nonsegregated disclosures.~~]

[~~(11) Liability between residual and realized values.~~]

[~~(12) Right of appraisal.~~]

[~~(13) Liability at the end of the vehicle lease term based on residual value.~~]

[~~(14) Fees and taxes.~~]

[~~(15) Insurance.~~]

[~~(16) Warranties or guarantees.~~]

[~~(17) Penalties and other charges for delinquency.~~]

[~~(18) Security interest.~~]

(d) If a vehicle lessor provides a percentage rate in an advertisement, a notice stating "this percentage may not measure the overall cost of financing this lease" shall accompany the rate disclosure. The vehicle lessor shall not use the terms "annual percentage rate," "annual lease rate," or any equivalent terms in any advertisement containing a percentage rate.

(e) A multi-page advertisement that provides a table or schedule of the required disclosures is considered a single advertisement, provided that for vehicle lease terms appearing without all of the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

(f) A merchandise tag stating any item listed in subsection (a) of this section must comply with subsection (a)[~~(1) - (5)~~] of this section by referring to a sign or to a display prominently posted in the vehicle lessor's place of business. The sign or display must contain a table or schedule of the required disclosures under subsection (a)[~~(1) - (5)~~].

(g) An advertisement made through television or radio stating any item listed in subsection (a) of this section, must include the following statements:

(1) that the transaction advertised is a vehicle lease;

(2) the total amount due at consummation or due prior to consummation or delivery, if delivery occurs after consummation; and

(3) the number, amount, and due date or period of scheduled payments under the vehicle lease.

(h) In addition to the requirements of subsection (g)[~~(1) - (3)~~] of this section, an advertisement made through television or radio stating any item listed in subsection (a) of this section, must:

(1) provide a toll-free telephone number along with a statement that the telephone number may be used by consumers to obtain the information in subsection (a) of this section; or

(2) direct the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that the required disclosures in subsection (a) of this section are included in the advertisement.

(i) The toll-free telephone number required by subsection (h)(1) of this section shall be available for at least 10 days, beginning on the date of the broadcast. Upon request, the vehicle lessor shall provide the information in subsection (a) of this section orally or in writing.

(j) The written advertisement required by subsection (h)(2) of this section shall be published beginning at least three days before the broadcast and ending at least 10 days after the broadcast.

§215.268. Bankruptcy and Liquidation Sales.

A person who advertises a liquidation sale, auction sale, or going out of business sale shall state the correct name and permanent address of the [~~owner of the~~] business in the advertisement. The phrases "going out of business," "closing out," "shutting doors forever," "bankruptcy sale," "foreclosure," "bankruptcy," or similar phrases or words indicating that a business [~~an enterprise~~] is ceasing operation [~~business~~] shall not be used unless the business is closing its operations and follows the procedures required by Business and Commerce Code, Chapter 17, Subchapter F.

§215.270. Enforcement.

(a) The department may file a Notice of Department Decision against a license holder alleging a violation of an advertising provision pursuant to Occupations Code, §2301.203, provided the department can show:

(1) that the license holder who allegedly violated an advertising provision has received from the department a notice of an opportunity to cure the violation by certified mail, return receipt requested, in compliance with subsection (b) of this section; and

(2) that the license holder committed a subsequent violation of the same advertising provision.

(b) An effective notice of an opportunity to cure issued under subsection (a)(1) of this section must:

(1) state that the department has reason to believe that the license holder violated an advertising provision and must identify the provision;

(2) set forth the facts upon which the department bases its allegation of a violation; and

(3) state that if the license holder commits a subsequent violation of the same advertising provision, the department will [~~formally~~] file a Notice of Department Decision under §224.56 of this title (relating to Notice of Department Decision).

(c) As a part of the cure procedure, the department may require a license holder who allegedly violated an advertising provision to publish a retraction notice to effect an adequate cure of the alleged violation. A retraction notice must:

(1) appear in a newspaper of general circulation in the area in which the alleged violation occurred;

(2) appear in the portion of the newspaper devoted to motor vehicle advertising, if any;

(3) identify the date and the medium of publication, print, electronic, or other, in which the advertising alleged to be a violation appeared; and

(4) identify the alleged violation of the advertising provision and contain a statement of correction.

(d) A cure is made solely for the purpose of settling an allegation and is not an admission of a violation of these rules; Occupations Code, Chapter 2301; or other law.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

43 TAC §§215.201 - 215.210

STATUTORY AUTHORITY. The department proposes repeals to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These repeals would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.201. Purpose and Scope.

§215.202. Filing of Complaints.

§215.203. Review of Complaints.

§215.204. Notification to Manufacturer, Converter, or Distributor.

§215.205. Mediation; Settlement.

§215.206. Hearings.

§215.207. Contested Cases: Final Orders.

§215.208. Lemon Law Relief Decisions.

§215.209. Incidental Expenses.

§215.210. Compliance with Order Granting Relief.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER G. ADMINISTRATIVE SANCTIONS

43 TAC §215.500

STATUTORY AUTHORITY. The department proposes amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who proposes to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These amendments would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.500. Administrative Sanctions [~~and Procedures~~].

[~~(a)~~] An administrative sanction may include:

(1) denial of an application for a license;

(2) suspension of a license;

(3) revocation of a license;

(4) the imposition of civil penalties; or

(5) a refund under §215.504 of this title (relating to Buyer [~~concerning buyer~~] or Lessee Refund [~~lessee refund~~]).

[~~(b) The department shall issue and mail a Notice of Department Decision to a license applicant, license holder, or other person by certified mail, return receipt requested, to the last known address upon a determination under Occupations Code, Chapters 2301 and 2302 or Transportation Code, Chapter 503 that:~~]

[~~(1) an application for a license should be denied; or~~]

[~~(2) administrative sanctions should be imposed.~~]

[~~(c) The last known address of a license applicant, license holder, or other person is the last mailing address provided to the~~

~~department when the license applicant applies for its license, when a license holder renews its license, or when the license holder notifies the department of a change in the license holder's mailing address.~~]

[~~(d) The Notice of Department Decision shall include:~~]

[~~(1) a statement describing the department decision and the effective date;~~]

[~~(2) a description of each alleged violation;~~]

[~~(3) a description of each administrative sanction being adopted;~~]

[~~(4) a statement regarding the legal basis for each administrative sanction;~~]

[~~(5) a statement regarding the license applicant, license holder, or other person's right to request a hearing;~~]

[~~(6) the procedure to request a hearing, including the deadline for filing; and~~]

[~~(7) notice to the license applicant, license holder, or other person that the adopted decision and administrative sanctions in the Notice of Department Decision will become final on the date specified if the license applicant, license holder, or other person fails to timely request a hearing.~~]

[~~(e) The license applicant, license holder, or other person must submit, in writing, a request for a hearing under this section. The department must receive a request for a hearing within 26 days of the date of the Notice of Department Decision.~~]

[~~(f) If the department receives a timely request for a hearing, the department will set a hearing date and give notice to the license applicant, license holder, or other person of the date, time, and location of the hearing.~~]

[~~(g) If the license applicant, license holder, or other person does not make a timely request for a hearing or enter into a settlement agreement within 27 days of the date of the Notice of Department Decision, the department decision becomes final.~~]

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

43 TAC §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, 215.314 - 215.317

STATUTORY AUTHORITY. The department proposes repeals to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who proposes to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, § §503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These repeals would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.301. Purpose and Scope.
§215.302. Conformity with Statutory Requirements.
§215.303. Application of Board and SOAH Rules.
§215.305. Filing of Complaints, Protests, and Petitions; Mediation.
§215.306. Referral to SOAH.
§215.307. Notice of Hearing.
§215.308. Reply to Notice of Hearing and Default Proceedings.
§215.310. Issuance of Proposals for Decision and Orders.
§215.311. Amicus Briefs.
§215.314. Cease and Desist Orders.
§215.315. Statutory Stay.
§215.316. Informal Disposition.
§215.317. Motion for Rehearing.

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

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Laura Moriaty
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SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

43 TAC §§215.501, 215.502, 215.505

STATUTORY AUTHORITY. The department proposes repeals to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who proposes to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, § §503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These repeals would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.501. Final Decisions and Orders; Motions for Rehearing.
§215.502. Judicial Review of Final Order.
§215.505. Denial of Dealer or Converter Access to Temporary Tag System.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.56

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend 43 Texas Administrative Code (TAC) Subchapter B, Motor Vehicle Registration, §217.56 concerning vehicle registration reciprocity agreements. The amendments are necessary to incorporate by reference the current edition of the International Registration Plan (IRP) dated January 1, 2022. The amendments are also necessary to clarify language, to make the terminology consistent with other department rules, to delete certain language regarding the process for an appeal under §217.56, and to refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure) for an appeal of the department's decision against a vehicle registrant regarding an assessment, cancellation, or revocation under §217.56. In this issue of the *Texas Register,* the department is proposing new Chapter 224, which would include all department adjudicative practice and procedure rules.

EXPLANATION.

Proposed amendments to §217.56(c)(2)(B) would incorporate by reference the current edition of IRP dated January 1, 2022. Texas is bound by IRP, which is a vehicle registration reciprocity agreement between the 48 contiguous states, the District of Columbia, and the Canadian provinces. Section 217.56 must incorporate the latest edition of IRP because it contains language regarding the nature and requirements of vehicle registration under IRP. Texas is a member of IRP, as authorized by Transportation Code, §502.091 and 49 U.S.C. §31704, and must comply with the current edition of IRP. The jurisdictions that are members of IRP amended the January 1, 2021, edition of IRP as follows to create the January 1, 2022, edition: added Section 601 (Uploading Data to the Repository), amended Section 1505 (Amendment Introduction Process), amended Section 1515 (Ballot Process), and amended Section 1520 (Effective Date of Plan Amendments).

A proposed amendment to §217.56(c)(2)(J) would replace the current catch line for subparagraph (J) to provide a better description of the contents of subparagraph (J). A proposed amendment to §217.56(c)(2)(J)(ii) would change the word "ruling" to "decision" to be consistent with other department rules. Proposed amendments to §217.56(c)(2)(J)(iii) would reference proposed new §224.122 of this title (relating to Appeal of Decision Regarding Assessment, Cancellation, or Revocation Under §217.56), which would prescribe the requirements for a vehicle registrant that wants to appeal a decision against the registrant under subparagraph (J) of an assessment (a financial penalty under §217.56(c)(2)(G)) or a cancellation or revocation of the registrant's apportioned registration under IRP. Proposed amendments to §217.56(c)(2)(J)(iii) would also add a citation to Transportation Code, Chapter 502 and proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure), which would govern an appeal under subparagraph (J). In addition, proposed amendments would delete language regarding the procedure for an appeal under current subparagraph (J), including the procedures under Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). In this issue of the *Texas Register,* the department is proposing amendments that would repeal Subchapter D of Chapter 206 and replace it with provisions in proposed new Chapter 224.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division (MCD), has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Archer has also determined that, for each year of the first five years the amended section is in effect, there are two anticipated public benefits regarding the amendments.

Anticipated Public Benefits. One public benefit anticipated as a result of the proposal is an updated rule that references the current edition of IRP. IRP governs the department's issuance of apportioned registration under IRP, so the public might need to know the current edition of IRP to review the provisions in IRP. Another public benefit is the deletion of language regarding the procedure for an appeal under current §217.56(c)(2)(J). The department's proposed new Chapter 224 would contain language regarding the adjudicative practice and procedure for all of the department's contested cases, including an appeal under §217.56(c)(2)(J). Chapter 224 would provide more information for a registrant who wants to file an appeal under §217.56(c)(2)(J), in addition to providing more clarity and consistency regarding the department's adjudicative practice and procedure for all contested cases.

Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be no costs to comply with these amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the amendments to the January 1, 2022, edition of IRP do not directly impact registrants under IRP.

Also, the amendments regarding an appeal under §217.56(c)(2)(J) only apply if the registrant chooses to appeal an assessment or a proposed cancellation or revocation of the registrant's apportioned registration under IRP. In addition, the proposed amendments would not change the fact that the

contested case procedures and requirements are primarily governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, which are the rules of procedure for the State Office of Administrative Hearings (SOAH). Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments do not create a new regulation; however, they technically enable the expansion of an existing regulation regarding the department's adjudicative practice and procedure. The proposed amendments to §217.56(c)(2)(J) enable the department's proposed new Chapter 224 to govern the adjudicative practice and procedure under §217.56(c)(2)(J), which results in more detailed requirements and clarity. Lastly, the proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on January 28, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY.

The department proposes amendments to §217.56 under Transportation Code, §§502.091(b), 502.0021, and 1002.001; and Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §502.091(b) authorizes the department to adopt and enforce rules to carry out IRP. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These proposed revisions would implement Transportation Code, Chapter 502, and Government Code, Chapter 2001.

§217.56. Registration Reciprocity Agreements.

(a) Purpose. To promote and encourage the fullest possible use of the highway system and contribute to the economic development and growth of the State of Texas and its residents, the department is authorized by Transportation Code, §502.091 to enter into agreements with duly authorized officials of other jurisdictions, including any state of the United States, the District of Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country, and to provide for the registration of vehicles by Texas residents and nonresidents on an allocation or distance apportionment basis, and to grant exemptions from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Cab card--The apportioned vehicle registration receipt that contains, but is not limited to, the vehicle description and the registered weight at which the vehicle may operate in each jurisdiction.

(2) Department--The Texas Department of Motor Vehicles.

(3) Director--The director of the Motor Carrier Division, Texas Department of Motor Vehicles.

(4) Executive director--The chief executive officer of the department.

(5) Regional Service Center--A department office which provides specific services to the public, including replacement titles, bonded title rejection letters, and apportioned registration under the International Registration Plan (IRP).

(6) Temporary cab card--A temporary registration permit authorized by the department that allows the operation of a vehicle for 30 days subject to all rights and privileges afforded to a vehicle displaying apportioned registration.

(c) Multilateral agreements.

(1) Authority. The executive director may on behalf of the department enter into a multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out the purpose of this section.

(2) International Registration Plan.

(A) Applicability. The IRP is a registration reciprocity agreement among states of the United States and other jurisdictions providing for payment of registration fees on the basis of fleet distance operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible use of the highway system by authorizing apportioned registration for commercial motor vehicles and payment of appropriate vehicle registration fees and thus contributing to the economic development and growth of the member jurisdictions.

(B) Adoption. The department adopts by reference the January 1, 2022, [~~2021~~] edition of the IRP. The department also adopts by reference the January 1, 2016, edition of the IRP Audit Procedures Manual. In the event of a conflict between this section and the IRP or the IRP Audit Procedures Manual, the IRP and the IRP Audit Procedures Manual control. Copies of the documents are available for review in the Motor Carrier Division, Texas Department of Motor Vehicles. Copies are also available on request.

(C) Application.

(i) An applicant must submit an application to the department on a form prescribed by the director, along with additional documentation as required by the director. An applicant shall provide the department with a copy of the applicant's receipt under the Unified Carrier Registration System Plan and Agreement under 49 U.S.C. §14504a (UCR) to prove the applicant is currently registered under UCR if the applicant is required to register under UCR.

(ii) Upon approval of the application, the department will compute the appropriate registration fees and notify the registrant.

(D) Fees. Upon receipt of the applicable fees in the form as provided by §209.23 of this title (relating to Methods of Payment), the department will issue one or two license plates and a cab card for each vehicle registered.

(E) Display of License Plates and Cab Cards.

(i) The department will issue one license plate for a tractor, truck-tractor, trailer, and semitrailer. The license plate issued to a tractor or a truck-tractor shall be installed on the front of the tractor or truck-tractor, and the license plate issued for a trailer or semitrailer shall be installed on the rear of the trailer or semitrailer.

(ii) The department will issue two license plates for all other vehicles that are eligible to receive license plates under the IRP. Once the department issues two license plates for a vehicle listed in this clause, one plate shall be installed on the front of the vehicle, and one plate shall be installed on the rear of the vehicle.

(iii) The cab card shall be carried at all times in the vehicle in accordance with the IRP. If the registrant chooses to display an electronic image of the cab card on a wireless communication device or other electronic device, such display does not constitute consent for a peace officer, or any other person, to access the contents of the device other than the electronic image of the cab card.

(iv) The authority to display an electronic image of the cab card on a wireless communication device or other electronic device does not prevent the Texas State Office of Administrative Hearings or a court of competent jurisdiction from requiring the registrant to provide a paper copy of the cab card in connection with a hearing, trial, or discovery proceeding.

(F) Audit. An audit of the registrant's vehicle operational records may be conducted by the department according to the IRP provisions and the IRP Audit Procedures Manual. Upon request, the registrant shall provide the operational records of each vehicle for audit in unit number order, in sequence by date, and including, but not limited to, a summary of distance traveled by each individual vehicle on a monthly, quarterly, and annual basis with distance totaled separately for each jurisdiction in which the vehicle traveled.

(G) Assessment. The department may assess additional registration fees of up to 100% of the apportionable fees paid by the registrant for the registration of its fleet in the registration year to which the records pertain, as authorized by the IRP, if an audit conducted under subparagraph (F) of this paragraph reveals that:

(i) the operational records indicate that the vehicle did not generate interstate distance in two or more member jurisdictions for the distance reporting period supporting the application being audited, plus the six-month period immediately following that distance reporting period;

(ii) the registrant failed to provide complete operational records; or

(iii) the distance must be adjusted, and the adjustment results in a shortage of registration fees due Texas or any other IRP jurisdiction.

(H) Refunds. If an audit conducted under subparagraph (F) of this paragraph reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the overpayment of registration fees in accordance with Transportation Code, §502.195 and the IRP. Any registration fees refunded to a carrier for another jurisdiction will be deducted from registration fees collected and transmitted to that jurisdiction.

(I) Cancellation or revocation. The director or the director's designee may cancel or revoke a registrant's apportioned registration and all privileges provided by the IRP as authorized by the following:

(i) the IRP; or

(ii) Transportation Code, Chapter 502.

(J) Procedures for assessment, cancellation, or revocation. [~~Enforcement of cancelled or revoked registration.~~]

(i) Notice. If a registrant is assessed additional registration fees, as provided in subparagraph (G) of this paragraph, and the additional fees are not paid by the due date provided in the notice or it is determined that a registrant's apportioned license plates and privileges should be canceled or revoked, as provided in subparagraph (I) of this paragraph, the director or the director's designee will mail a notice by certified mail to the last known address of the registrant. The notice will state the facts underlying the assessment, cancellation, or revocation; the effective date of the assessment, cancellation, or revocation; and the right of the registrant to request a conference as provided in clause (ii) of this subparagraph.

(ii) Conference. A registrant may request a conference upon receipt of a notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to the director or the director's designee within 30 days of the date of the notice. If timely requested, the conference will be scheduled and conducted by the director or the director's designee at division headquarters in Austin and will serve to abate the assessment, cancellation, or revocation unless and until that assessment, cancellation, or revocation is affirmed or disaffirmed by the director or the director's designee. In the event matters are resolved in the registrant's favor, the director or the director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the assessment, cancellation, or revocation is withdrawn, and stating the basis for that action. In the event matters are not resolved in the registrant's favor, the director or the director's designee will issue a decision [~~ruling~~] reaffirming the department's assessment of additional registration fees or cancellation or revocation of apportioned license plates and privileges. The registrant has the right to appeal in accordance with clause (iii) of this subparagraph.

(iii) Appeal. If a conference held in accordance with clause (ii) of this subparagraph fails to resolve matters in the registrant's favor, the registrant may submit an appeal under §224.122 of this title (relating to Appeal of Decision Regarding Assessment, Cancellation, or Revocation Under §217.56). An appeal will be governed by Transportation Code, Chapter 502 and Chapter 224 of this title (relating to Adjudicative Practice and Procedure). [~~request an administrative hearing. The request must be in writing and must be received by the director no later than the 20th day following the date of the ruling issued under clause (ii) of this subparagraph. If requested within the designated period, the hearing will be initiated by the department and will be conducted in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). Assessment, cancel-~~

~~lation, or revocation is abated unless and until affirmed or disaffirmed by order of the Board of the Texas Department of Motor Vehicles or its designee.~~]

(K) Reinstatement.

(i) The director or the director's designee will reinstate apportioned registration to a previously canceled or revoked registrant if all applicable fees and assessments due on the previously canceled or revoked apportioned account have been paid and the applicant provides proof of an acceptable recordkeeping system for a period of no less than 60 days.

(ii) The application for the following registration year will be processed in accordance with the provisions of the IRP.

(L) Denial of apportioned registration for safety reasons. The department will comply with the requirements of the Performance and Registration Information Systems Management program (PRISM) administered by the Federal Motor Carrier Safety Administration (FMCSA).

(i) Denial or suspension of apportioned registration. Upon notification from the FMCSA that a carrier has been placed out of service for safety violations, the department will:

(I) deny initial issuance of apportioned registration;

(II) deny authorization for a temporary cab card, as provided for in subparagraph (M) of this paragraph;

(III) deny renewal of apportioned registration; or

(IV) suspend current apportioned registration.

(ii) Issuance after denial of registration or reinstatement of suspended registration. The director or the director's designee will reinstate or accept an initial or renewal application for apportioned registration from a registrant who was suspended or denied registration under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in addition to all other required documentation and payment of fees.

(M) Temporary cab card.

(i) Application. The department may authorize issuance of a temporary cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper submission of all required documentation, a completed application, and all fees for either:

(I) Texas title as prescribed by Transportation Code, Chapter 501 and Subchapter A of this chapter (relating to Motor Vehicle Titles); or

(II) registration receipt to evidence title for registration purposes only (Registration Purposes Only) as provided for in Transportation Code, §501.029 and §217.24 of this title (relating to Vehicle Last Registered in Another Jurisdiction).

(ii) Title application. A registrant who is applying for a Texas title as provided for in clause (i)(I) of this subparagraph and is requesting authorization for a temporary cab card, must submit to a Regional Service Center a photocopy of the title application receipt issued by the county tax assessor-collector's office.

(iii) Registration Purposes Only. A registrant who is applying for Registration Purposes Only under clause (i)(II) of this subparagraph and is requesting authorization for a temporary cab card, must submit an application and all additional original documents or copies of original documents required by the director to a Regional Service Center.

(iv) Department approval. On department approval of the submitted documents, the department will send notice to the registrant to finalize the transaction and make payment of applicable registration fees.

(v) Finalization and payment of fees. To finalize the transaction and print the temporary cab card, the registrant may compute the registration fees through the department's apportioned registration software application, TxIRP system, and:

(I) make payment of the applicable registration fees to the department as provided by §209.23 of this title; and

(II) afterwards, mail or deliver payment of the title application fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor-collector in the registrant's county of residency and originals of all copied documents previously submitted.

(vi) Deadline. The original documents and payment must be received by the Regional Service Center within 72-hours after the time that the office notified the registrant of the approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

(vii) Failure to meet deadline. If the registrant fails to submit the original documents and required payment within the time prescribed by clause (vi) of this subparagraph, the registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the department for a period of six months from the date of approval to print the temporary cab card.

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

Filed with the Office of the Secretary of State on December 15, 2023.

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 465-5665

43 TAC §217.63

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code §217.63, concerning Digital License Plate Fees and Payment. These amendments implement Transportation Code §504.154.

EXPLANATION.

Since the digital license plate program began in 2020, digital license plate sales volume has not met the department's estimated targets. This has resulted in the department being unable to cover the administrative costs associated with the program through digital license plate fees, as it is required to do under Texas Transportation Code, §504.154(d)(2). The department has received feedback from stakeholders that the administrative fee associated with the digital license plate is too high and does not incentivize Texans to adopt the new digital license plate technology. To address these concerns, the department

proposes an amendment to §217.63(a)(1) to reduce the digital license plate administrative fee from $95 to $45. This fee reduction would provide an incentive for customers to choose a digital license plate over another type of specialty plate, which would result in the issuance of more digital license plates. Increased sales of digital license plates would allow the department to recoup the costs of administering the digital license plate program more quickly than it will be able to achieve while relying on the current fees from slow sales of very few plates. The proposed amendment to §217.63(a)(1) would also streamline the description of how the administrative fee is paid to more accurately reflect current practice.

The proposed amendments to §217.63(a)(2) clarify that the registration period of the digital license plate will be aligned with the vehicle registration period, and that the initial administrative fee will be prorated based on the remaining registration period. These proposed amendments would not change the meaning of the provision but would make it less confusing for the reader. The proposed amendment to §217.63(b) clarifies the purpose of the rule by amending the subsection title and language. The proposed amendment to §217.63(b)(2) corrects the description of the payment process for digital license plate fees to clarify that the fees for issuance of digital license plates are paid directly to the state through the digital license plate provider and state systems, in accordance with current practices.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years these rules will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There have been fewer than 10 digital license plates issued to Texas vehicles since the program began in 2020, so a change in the fee revenue created from their issuance and renewal is not expected to create a significant fiscal impact. Annette Quintero, Director of the Vehicle Titles and Registration (VTR) Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Quintero has also determined that, for each year of the first five years the amended and new section is in effect, there are public benefits anticipated from the administrative fee reduction for digital license plates.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include a reduction in the cost of digital license plates to the public. Additionally, since digital license plates can serve as screens to broadcast emergency alerts including public safety alerts issued by governmental entities, the proposed rules have an anticipated public benefit of increasing the number of digital license plates on Texas roads that can serve to enhance public awareness of emergency alerts like Amber Alerts, Silver Alerts, and Blue Alerts.

Anticipated Costs to Comply with the Proposal. Ms. Quintero anticipates that there will be no significant costs to comply with these rules because no one is required to buy a digital license plate and because the proposal reduces the administrative fees associated with digital license plates.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002(c), the department has determined that the amended section will not have an adverse economic impact on small businesses, micro businesses, and rural communities because there are no anticipated economic costs for persons required to comply. The department has determined that there will be no adverse economic impact on rural communities as a result of the proposal. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years the proposed amendments are in effect, the proposed rules will not create or eliminate a government program; will not require the creation of new employee positions or the elimination of existing employee positions; will not require an increase or decrease in future legislative appropriations to the department; will not create new regulations or expand existing regulations; will not repeal, expand, or limit existing regulations; will not expand or limit the number of individuals subject to the rule's applicability; and will not either positively or negatively impact the Texas economy. The department has determined that for each year of the first five years the proposed amendments are in effect, they may create a decrease in fees the department receives if the number of digital license plates does not increase as expected. On the other hand, if the sales volume of digital license plates increases significantly as a result of the reduced digital license plate fees during each year of the first five years the proposed amendments are in effect, the proposed rules may create an increase in total fees paid to the department.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on January 28, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The amendments and new sections are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §§504.151-504.157, which authorize digital license plates while giving the department rulemaking authority to implement the statutory provisions including setting specifications and requirements for digital license plates and establishing a fee.

CROSS REFERENCE TO STATUTE. The amendment implements Transportation Code, §§504.151-504.157.

§217.63. Digital License Plate Fees and Payment.

(a) Fees.

(1) A person issued a digital license plate must pay an administrative fee of $45 [~~$95 to the digital license plate provider~~] upon initial application for a digital license plate[~~,~~] and [~~to the county tax assessor collector or the department, as applicable,~~] on renewal of registration for a vehicle with a digital license plate.

(2) The registration period [~~expiration date~~] of the digital license plate will be aligned with the registration period for the vehicle and the administrative fee due under subsection (a) [~~of this section~~] will be prorated [~~adjusted~~] to yield the appropriate fee based on the remaining registration period.

(3) A digital license plate administrative fee will be refunded only when registration fees are overcharged under Transportation Code, §502.195.

(b) Payment of fees.

(1) All state, county, local, and other applicable fees are due at the time of registration of a vehicle with a digital license plate.

(2) The fees for issuance of digital license plates will be paid directly to the state through the digital license plate provider and state systems. [~~Digital license plate providers that have received the administrative fee under subsection (a) must submit payment of the administrative fee due in full to the department upon receipt of an application for a digital license plate.~~]

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

Filed with the Office of the Secretary of State on December 15, 2023.

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 465-5665

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CHAPTER 218. MOTOR CARRIERS

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Subchapter B, Motor Carrier Registration, §218.10 and §218.16; Subchapter C, Records and Inspections, §218.33; Subchapter E, Consumer Protection, §218.64; and Subchapter F, Enforcement, §§218.70, 218.71 and 218.72. These amendments are necessary to delete language regarding adjudicative practice and procedure and to refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure). In this issue of the *Texas Register,* the department proposes new Chapter 224, which would include all department adjudicative practice and procedure rules in one chapter. These amendments are also necessary to make the terminology consistent with statute and current practice, and to implement House Bill (HB) 2190 enacted during the 88th Texas Legislature, Regular Session (2023), which changed the word "accident" to "collision" in Transportation Code, §643.105. The department is also proposing the repeal of 43 TAC Subchapter F, Enforcement, §§218.73, 218.75, 218.76, 218.77, and 218.78, because those provisions would be incorporated into proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

EXPLANATION.

A proposed amendment to §218.10 would replace the word "accident" with "accidental" to be consistent with the terminology in Transportation Code, §643.106.

A proposed amendment to §218.16(d)(6) would replace the reference to orders issued or adopted by the department regarding self-insured status with a reference to the department's approval letter. When the department grants an applicant self-insured status under §218.16(d) and Transportation Code, §643.102, it issues an approval letter that contains the scope and terms of the approval, including maintenance requirements. A proposed amendment to §218.16(d) would also clarify the scope of the reasons for which self-insured status could be revoked by referring to the applicable requirements under §218.16, instead of the requirements under §218.16(d)(6). In addition, a proposed amendment to §218.16(d)(6) would refer to proposed new Chapter 224 for the revocation of self-insured status.

Proposed amendments to §218.16(d)(7) would delete reference to revocation of self-insured status and modify the catch line to indicate this change because revocations are addressed in §218.16(d)(6). Revocations would be treated differently than a denial of an application for self-insured status under proposed new Chapter 224. Government Code, §2001.054 authorizes this distinction between the two actions and the applicable procedures. Proposed amendments to §218.16(d)(7) would also reference proposed new §224.126 of this title (relating to Appeal of a Denial of Self-Insured Status) regarding the filing of an appeal of a denial of an application for self-insured status, and clarify that the applicant would file an appeal, rather than a petition for an administrative hearing. In addition, a proposed amendment to §218.16(d)(7) would replace the reference to "self-insurance status" with a reference to "self-insured status" to be consistent with the terminology in §218.16(d). Further, a proposed amendment to §218.16(d)(7) would delete the reference to Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). In this issue of the *Texas Register,* the department is proposing amendments which would repeal Subchapter D of Chapter 206 and replace it with provisions in proposed new Chapter 224.

A proposed amendment to §218.16(h) would replace the word "accidents" with "collisions" to implement HB 2190, which changed the word "accident" to "collision" in Transportation Code, §643.105.

A proposed amendment to §218.33 would replace the reference to Subchapter F of Chapter 218 with a reference to proposed new Chapter 224, which would include all department adjudicative practice and procedure rules in one chapter.

Proposed amendments to §218.64(c)(7) would delete language regarding the current procedure for non-approval of a collective ratemaking agreement under Transportation Code, §643.154. Proposed amendments would replace the language with a new procedure that would be governed by proposed new Chapter 224. Department staff do not recall having any hearings regarding the rejection of a collective ratemaking agreement, which may be because the requirements for an acceptable collective ratemaking agreement are minimal. The proposed deletions in §218.64(c)(7) would provide for greater flexibility in the procedure for these cases and would make the procedure consistent with Transportation Code, §643.154 and other contested cases under Transportation Code, Chapter 643 to the extent applicable.

A proposed amendment to the heading for Subchapter F of Chapter 218 would make the heading consistent with the proposed amendments and repeals in Subchapter F that would change the scope of the subchapter. Proposed amendments to §218.70 would make the section consistent with the proposed

amendments to and repeals of sections within Subchapter F. In addition, proposed amendments to §218.70 would reference the assessment of civil penalties in certain cases under federal law regarding the interstate movement of household goods under current §218.71(c). A proposed amendment to §218.70 would also state that the enforcement actions under Chapter 218 are governed by Transportation Code, Chapters 643 and 645; and proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

A proposed amendment to §218.70 would delete reference to Transportation Code, Chapter 648 regarding foreign commercial motor transportation because the department enforces the insurance requirements under Transportation Code, Chapter 643, rather than Chapter 648. Transportation Code, §643.101(b) requires the department by rule to set the amount of liability insurance required for a motor carrier at an amount that does not exceed the amount required under a federal regulation adopted under 49 U.S.C. §13906(a)(1). The insurance requirements in 49 C.F.R. Part 387 were adopted under 49 U.S.C. §13906. The department adopted the insurance requirements under Subchapter G of Chapter 218 under Transportation Code, §643.101(b). Also, Chapter 648 does not provide enforcement authority for the department; however, Transportation Code, Chapter 643 provides the department with enforcement authority, such as §§643.251, 643.252, 643.2525, 643.254, and 643.256.

Proposed amendments to §218.71 would delete subsections (b) and (d). In this issue of the *Texas Register,* the department is proposing new Chapter 224, which would include new §224.115 of this title (relating to Administrative Penalty Assessment and Probation of Suspension), which would contain the language found in current §218.71(b). Chapter 224 would also include new §224.116 of this title (relating to Administrative Proceedings), which would contain a modified version of the language the department proposes to delete from §218.71(d). A proposed amendment to §218.71 would re-letter subsection (c) due to the deletion of current subsection (b).

Proposed amendments to §218.72(a) would add language regarding the department's authority to deny a certificate of registration to a motor carrier under Transportation Code, §643.252, as well as the department's authority to place on probation a motor carrier whose registration is suspended. Proposed amendments to §218.72 would also delete subsection (c) and re-letter current subsection (c) to subsection (d). In this issue of the *Texas Register,* the department is proposing new Chapter 224, which would include new §224.115 of this title (relating to Administrative Penalty Assessment and Probation of Suspension), which would contain a modified version of the language found in current §218.72(c) regarding the probation of any suspension ordered under Transportation Code, §643.252.

Proposed amendments would repeal the following sections: §§218.73, 218.75, 218.76, 218.77, and 218.78. In this issue of the *Texas Register,* the department is proposing new Chapter 224, which would include the language in these sections with some modifications. Current §218.73 would be addressed in proposed new §224.116 of this title (relating to Administrative Proceedings), current §218.75 would be addressed in proposed new §224.31 of this title (relating to Cost of Record on Appeal), current §218.76 would be addressed in proposed new §224.120 of this title (relating to Registration Suspension Ordered Under Family Code), current §218.77 would be addressed in proposed new §224.114 of this title (relating to Cease and Desist Order), and current §218.78 would be addressed in proposed new §224.124 of this title (relating to Appeal of a Denial Under Transportation Code, §643.2526).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments and repeals will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division, has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Archer has also determined that, for each year of the first five years the amended and repealed sections are in effect, there are two anticipated public benefits regarding the amendments and repeals.

Anticipated Public Benefits. One anticipated public benefit as a result of the proposal is updated rules that would contain terminology that is consistent with statute and current practice. Another public benefit is that the repeal of language regarding adjudicative practice and procedure in Chapter 218 in conjunction with the department's proposal of new Chapter 224 would consolidate all of the department's rules regarding adjudicative practice and procedure in one chapter that provides more clarity, consistency regarding adjudicative practice and procedure, and consistency with statute.

Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be no costs to comply with these rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments and repeals will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the changes are not sufficient to create an adverse economic effect. The department's current Chapter 218 rules regarding adjudicative practice and procedure are proposed to be repealed, in conjunction with adding most of the repealed rule text to the proposed new Chapter 224 with some minor modifications, including modifications to make the rule text consistent with statute. In addition, the proposed amendments would not change the fact that the contested case procedures and requirements are primarily governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, which are the rules of procedure for the State Office of Administrative Hearings (SOAH). Further, the proposed amendments would not change the fact that Transportation Code, Chapter 643 imposes certain requirements for a contested case under Chapter 643, such as the requirements in Transportation Code, §643.2525. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments and repeals are in effect, no government program would be created or eliminated. Implementation of the proposed amendments and repeals would not require the cre-

ation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments and repeals do not create a new regulation; however, they technically enable the expansion of an existing regulation regarding the department's adjudicative practice and procedure. The proposed amendments and repeals in Chapter 218 enable the department's proposed new Chapter 224 to govern the adjudicative practice and procedure under Chapter 218, which results in more detailed requirements and clarity for contested cases under Chapter 218. Lastly, the proposed amendments and repeals do not affect the number of individuals subject to the applicability of the rules and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on January 28, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §218.10, §218.16

STATUTORY AUTHORITY.

The department proposes the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.101(b), which requires the department by rule to set the amount of liability insurance required for a motor carrier at an amount that does not exceed the amount required under a federal regulation adopted under 49 U.S.C. §13906(a)(1); Transportation Code, §643.102, which authorizes a motor carrier to comply with the requirements under Transportation Code, §643.101 through self-insurance if it complies with the requirements; Transportation Code, §643.2525, which provides the administrative hearing process under Transportation Code, Chapter 643; Transportation Code, Section 648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387 that require motor carriers operating foreign commercial motor vehicles in this state to maintain financial responsibility; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and the other laws of this state.

The department also proposes the amendments under the authority of Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. The amendments would implement Transportation Code, Chapters 643 and 648; and Government Code, Chapter 2001.

§218.10. Purpose.

Transportation Code, Chapter 643, provides that a motor carrier may not operate a commercial motor vehicle or transport household goods on a for-hire basis on a road or highway of this state unless the carrier registers with the department or is exempt from registration under Transportation Code, §643.002. This subchapter prescribes the procedures by which a motor carrier, leasing business, or for-hire transporter of household goods may register, and sets out minimum insurance requirements and minimum workers' compensation or accidental [~~accident~~] insurance requirements.

§218.16. Insurance Requirements.

(a) Automobile liability insurance requirements. A motor carrier must file proof of commercial automobile liability insurance with the department on a form acceptable to the director for each vehicle required to be registered under this subchapter. The motor carrier must carry and maintain automobile liability insurance that is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage to property (excluding cargo) per occurrence, or both. Extraneous information will not be considered acceptable, and the department may reject proof of commercial automobile liability insurance if it is provided in a format that includes information beyond what is required. Minimum insurance levels are indicated in the following table. However, a motor carrier that operates a foreign commercial motor vehicle must comply with the minimum level of financial responsibility in 49 C.F.R. Part 387 to the extent Part 387 prescribes a higher level of financial responsibility than the following table. The department adopts by reference 49 C.F.R. Part 387. Effective October 23, 2015, the department adopts by reference the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015.

Figure: 43 TAC §218.16(a) (No change.)

(b) Cargo insurance. Household goods carriers shall file and maintain with the department proof of financial responsibility.

(1) The minimum limits of financial responsibility for a household goods carrier for hire is $5,000 for loss or damage to a single shipper's cargo carried on any one motor vehicle.

(2) The minimum limits of financial responsibility for a household goods carrier for hire is $10,000 for aggregate loss or damage to multiple shipper cargo carried on any one motor vehicle. In cases in which multiple shippers sustain damage and the aggregate amount of cargo damage is greater than the cargo insurance in force, the insurance company shall prorate the benefits among the shippers in relationship to the damage incurred by each shipper.

(c) Workers' compensation or accidental insurance coverage.

(1) A motor carrier that is required to register under this subchapter and whose primary business is transportation for compensation or hire between two or more incorporated cities, towns, or villages shall provide workers' compensation for all its employees or accidental insurance coverage in the amounts prescribed in paragraph (2) of this subsection.

(2) Accidental insurance coverage required by paragraph (1) of this subsection shall be at least in the following amounts:

(A) $300,000 for medical expenses and coverage for at least 104 weeks;

(B) $100,000 for accidental death and dismemberment, including 70 percent of employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and

(C) $500 for the maximum weekly benefit.

(d) Qualification of motor carrier as self-insured.

(1) General qualifications. A motor carrier may meet the insurance requirements of subsections (a) and (b) of this section by filing an application, in a form prescribed by the department, to qualify as a self-insured. The application must include a true and accurate statement of the motor carrier's financial condition and other evidence that establishes its ability to satisfy obligations for bodily injury and property damage liability without affecting the stability or permanency of its business. The department may accept USDOT evidence of the motor carrier's qualifications as a self-insured.

(2) Applicant guidelines. In addition to filing an application as prescribed by the department, an applicant for self-insured status must submit materials that will allow the department to determine the following information.

(A) Applicant's net worth. An applicant's net worth must be adequate in relation to the size of its operations and the extent of its request for self-insurance authority. The applicant must demonstrate that it can and will maintain an adequate net worth.

(B) Self-insurance program. An applicant must demonstrate that it has established and will maintain a sound insurance program that will protect the public against all claims involving motor vehicles to the same extent as the minimum security limits applicable under this section. In determining whether an applicant is maintaining a sound insurance program, the department will consider:

(i) reserves;

(ii) sinking funds;

(iii) third-party financial guarantees;

(iv) parent company or affiliate sureties;

(v) excess insurance coverage; and

(vi) other appropriate aspects of the applicant's program.

(C) Safety program. An applicant must submit evidence of substantial compliance with the federal motor carrier safety regulations as adopted by the Texas Department of Public Safety and with Transportation Code, Chapter 644.

(3) Other securities or agreements. The department may accept an application for approval of a security or agreement if satisfied that the security or agreement offered will adequately protect the public.

(4) Periodic reports. An applicant shall file annual statements, semi-annual and quarterly reports, and any other reports required by the department reflecting the applicant's financial condition and the status of its self-insurance program while the motor carrier is self-insured.

(5) Duration and coverage of self-insured status. The department may approve an applicant as a self-insured for any specific time or for an indefinite time. An approved self-insured status only applies to the type of cargo that the applicant reported to the department in the application for self-insured status.

(6) Revocation of self-insured status. On receiving evidence that a self-insured motor carrier's financial condition has changed, that its safety program or record is inadequate, or that it is otherwise not in compliance with this subchapter, the department may at any time require the self-insured to provide additional information. On 10 days' notice from the department, the self-insured shall appear and demonstrate that it continues to have adequate financial resources to pay all claims involving motor vehicles for bodily injury and property damage liability. The self-insured shall also demonstrate that it remains in compliance with the requirements of this section and of any active self-insurance requirements included in the department's approval letter. [~~orders issued or adopted by the department.~~] If an applicant fails to comply with the applicable requirements under this section, [~~this paragraph,~~] its self-insured status may be revoked. The revocation of self-insured status will be governed by Transportation Code, Chapter 643 and Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

(7) Appeal of denial of application for self-insured status. An applicant may appeal a denial [~~or revocation~~] of self-insured [~~self-insurance~~] status by filing an appeal [~~a petition for an administrative hearing~~] in accordance with §224.126 of this title (relating to Appeal of a Denial of Self-Insured Status). [~~Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases).~~]

(e) Filing proof of insurance with the department.

(1) Forms.

(A) A motor carrier shall file and maintain proof of automobile liability insurance for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a form acceptable to the director.

(B) A household goods carrier shall also file and maintain proof of cargo insurance for its cargo at all times. This proof shall be on a form acceptable to the director.

(2) Filing proof of insurance. A motor carrier's insurer shall file and maintain proof of insurance on a form acceptable to the director:

(A) at the time of the original application for motor carrier certificate of registration;

(B) on or before the cancellation date of the insurance coverage as described in subsection (f) of this section;

(C) when the motor carrier changes insurers;

(D) when the motor carrier asks to retain the certificate number of a revoked certificate of registration;

(E) when the motor carrier changes its name under §218.13(e)(2) of this title (relating to Application for Motor Carrier Registration);

(F) when the motor carrier, under subsection (a) of this section, changes the classification of the cargo being transported; and

(G) when replacing another active insurance filing.

(3) Filing fee. Each certificate of insurance or proof of financial responsibility filed with the department for the coverage required under this section shall be accompanied by a nonrefundable filing fee of $100. This fee applies both when the carrier submits an original application and when the carrier submits a supplemental application when retaining a revoked certificate of registration number.

(4) Acceptable filings. The motor carrier's insurer must file proof of insurance with the department in a form prescribed by the department and approved by an authorized agent of the insurer.

(f) Cancellation of insurance coverage. Except when replaced by another acceptable form of insurance coverage or proof of financial responsibility approved by the department, no insurance coverage shall be canceled or withdrawn until 30 days after notice has been given to the department by the insurer in a form approved by the department. Nonetheless, proof of insurance coverage for a seven day or 90 day certificate of registration may be canceled by the insurer without 30 days' notice if the certificate of registration is expired, suspended, or

revoked, and the insurer provides a cancellation date on the proof of insurance coverage.

(g) Replacement insurance filing. The department will consider a new insurance filing as the current record of financial responsibility required by this section if:

(1) the new insurance filing is received by the department; and

(2) a cancellation notice has not been received for previous insurance filings.

(h) Insolvency of insurance carrier. If the insurer of a motor carrier becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the motor carrier must file an affidavit with the department. The affidavit must be executed by an owner, partner, or officer of the motor carrier and show that:

(1) no collisions [~~accidents~~] have occurred and no claims have arisen during the insolvency of the insurance carrier; or

(2) all claims have been satisfied.

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

Filed with the Office of the Secretary of State on December 14, 2023.

TRD-202304774
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER C. RECORDS AND INSPECTIONS

43 TAC §218.33

STATUTORY AUTHORITY.

The department proposes the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the administrative hearing process under Transportation Code, Chapter 643; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and the other laws of this state.

The department also proposes the amendments under the authority of Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. The amendments would implement Transportation Code, Chapters 643 and 645; and Government Code, Chapter 2001.

§218.33. Enforcement.

A motor carrier who fails or refuses to permit an inspection, fails to maintain and make available the requisite records, or otherwise fails to comply with the requirements of this subchapter commits a violation subject to enforcement under Chapter 224 of this title (relating to Adjudicative Practice and Procedure). [~~Subchapter F of this chapter (relating to Enforcement).~~]

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

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Laura Moriaty
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Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §218.64

STATUTORY AUTHORITY.

The department proposes the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the administrative hearing process under Transportation Code, Chapter 643; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and the other laws of this state.

The department also proposes the amendments under the authority of Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. The amendments would implement Transportation Code, Chapter 643; and Government Code, Chapter 2001.

§218.64. Rates.

(a) Ratemaking. A household goods carrier and/or its household goods agent shall set maximum rates and charges for services in

its applicable tariff. The household goods carrier and/or its household goods agent shall disclose the maximum rates and charges to prospective shippers before transporting a shipment between two incorporated cities.

(b) Prohibited charges and allowances. A household goods carrier and/or its household goods agent shall not charge more than the maximum charges published in its tariff on file with the department for services associated with transportation between two incorporated cities.

(c) Collective ratemaking agreements.

(1) Eligibility. In accordance with Transportation Code, §643.154, a household goods carrier and/or its household goods agent may enter into collective ratemaking agreements between one or more other household goods carriers or household goods agents concerning the establishment and filing of maximum rates and charges, classifications, rules, or procedures.

(2) Designation of collective ratemaking associations. An approved association may be designated by a member household goods carrier as its collective ratemaking association for the purpose of filing a tariff containing maximum rates and charges required by §218.65 of this title (relating to Tariff Registration).

(3) Submission. In accordance with Transportation Code, §643.154, a collective ratemaking agreement shall be filed with the department for approval. The agreement shall include the following information:

(A) full and correct name, business address (street and number, city, state and zip code), and phone number of the association;

(B) whether the association is a corporation or partnership; and

(i) if a corporation, the government, state, or territory under the laws of which the applicant was organized and received its present charter; and

(ii) if an association or a partnership, the names of the officers or partners and date of formation;

(C) full and correct name and business address (city and state) of each household goods carrier on whose behalf the agreement is filed and whether it is an association, a corporation, an individual, or a partnership;

(D) the name, title, and mailing address of counsel, officer, or other person to whom correspondence in regard to the agreement should be addressed; and

(E) a copy of the constitution, bylaws, or other documents or writings, specifying the organization's powers, duties, and procedures.

(4) Signature. The collective ratemaking agreement shall be signed by all parties subject to the agreement or the association's executive officer.

(5) Incomplete agreement. If the department receives an agreement which does not comply with this subsection, the department will send a letter to the individual submitting the agreement. The letter shall identify the information that is missing and advise the association that the agreement will not be processed until the information is received.

(6) Approval. In accordance with Transportation Code, §643.154, the director or designee will approve a collective ratemaking agreement if the agreement provides that:

(A) all meetings are open to the public; and

(B) notice of meetings shall be sent to shippers who are multiple users of household good carriers.

(7) Noncompliance. If the director or the director's designee determines that an agreement does not comply with paragraph (6) of this subsection, the matter will be governed by Transportation Code, Chapter 643 and Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

~~[(A) If the director or designee determines that an agreement does not comply with paragraph (6) of this subsection, the department will notify the association representative by certified mail of:]~~

~~*[(i)* the specific reason that an agreement is not being approved; and]~~

~~*[(ii)* the hearing date.]~~

~~[(B) If the association representative resubmits an acceptable agreement which meets the requirements of paragraph (6) of this subsection within 10 business days prior to the hearing date, the hearing will be canceled and the agreement will be approved. The State Office of Administrative Hearings (SOAH) shall conduct the hearing in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases).]~~

~~[(C) If the hearing is held, the presiding officer shall explain the reason(s) that the agreement was rejected. The association representative will be allowed to respond to the objections and present evidence or exhibits which relate to his or her response. The hearing examiner, based on the evidence provided, will make a recommendation to the board whether the agreement should be approved or resubmitted. The association representative shall be advised of the examiner's recommendation. The final order will be submitted to the board for approval.]~~

(8) New parties to an agreement. An updated agreement shall be filed with the department as new parties are added.

(9) Amendments to approved agreements. Amendments to approved agreements (other than as to new parties) may become effective only after approval of the department.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

SUBCHAPTER F. ADMINISTRATIVE PENALTIES AND SANCTIONS

43 TAC §§218.70 - 218.72

STATUTORY AUTHORITY.

The department proposes the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the administrative hearing process under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and the other laws of this state.

The department also proposes the amendments under the authority of Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. The amendments would implement Transportation Code, Chapters 643 and 645; and Government Code, Chapter 2001.

§218.70. Purpose.

The purpose of this subchapter is to provide for administrative penalties and sanctions under Transportation Code, Chapters 643 and 645, as well as the probation of the suspension of a motor carrier's certificate of registration. This subchapter also provides for the assessment of civil penalties in certain cases under federal law regarding the interstate movement of household goods. The enforcement actions under this chapter are governed by Transportation Code, Chapters 643 and 645; and Chapter 224 of this title (relating to Adjudicative Practice and Procedure), as applicable. [~~an efficient and effective system of enforcement of Transportation Code, Chapters 643, 645, and 648, by establishing procedures for the assessment of administrative penalties; the suspension, revocation, and denial of motor carrier registration and leasing business registration; cease and desist orders; and probation of the suspension of a motor carrier's certificate of registration.~~]

§218.71. Administrative Penalties.

(a) Authority. The department, after notice and opportunity for hearing, may impose an administrative penalty against the following:

(1) a motor carrier that violates a provision of Transportation Code, Chapter 643 or Chapter 645 or violates a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645; or

(2) a motor carrier or broker that violates a federal law or regulation, the enforcement of which has been delegated to the department.

[~~(b) Amount of administrative penalty for violations of state laws, rules, or orders.~~]

[~~(1) In an action brought by the department, the aggregate amount of administrative penalty shall not exceed $5,000 unless it is found that the motor carrier knowingly committed a violation.~~]

[~~(2) In an action brought by the department, if it is found that the motor carrier knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed $15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness may be inferred from the conduct of the alleged violator or from the history of previous violations by the alleged violator.~~]

[~~(3) In an action brought by the department, if it is found that the motor carrier knowingly committed multiple violations, the aggregate amount of administrative penalty for the multiple violations shall not exceed $30,000.~~]

[~~(4) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.~~]

(b) [~~(c)~~] Memorandum of Agreement. Pursuant to a Memorandum of Agreement between the department and the Federal Motor Carrier Safety Administration, United States Department of Transportation, the department is authorized to initiate an enforcement action and assess civil penalties against a motor carrier or broker, as applicable, under the authority of the following:

(1) 49 U.S.C. §§13702, 13704, 13707(b), 13901, 14104(b), 14706(f), 14708, 14710, 14901(d)(2) and (3), 14901(e), and 14915, as amended;

(2) 49 C.F.R. §§366.4, 370.3-370.9, 371.3(c), 371.7, 371.105, 371.107, 371.109, 371.111, 371.113, 371.115, 371.117, 371.121, 373.201, Part 375, §§378.3 - 378.9, 387.301(b), 387.307, 387.403, and Part 386 Appendix B(g)(22) - (23), as amended; and

(3) any future delegations pursuant to 49 U.S.C. §14710.

[~~(d) Enforcement process for federal laws and regulations. The department will follow the process set forth in Transportation Code, §643.2525 when enforcing the federal laws and regulations cited in subsection(c) of this section via an administrative proceeding.~~]

§218.72. Administrative Sanctions.

(a) Grounds for suspension, [~~and~~] revocation, denial, and probation. Transportation Code, §643.252 provides the grounds on [~~for~~] which the department can suspend, [~~or~~] revoke, or deny a certificate of registration issued under Transportation Code, Chapter 643. Transportation Code, §643.252 also provides the grounds on which the department can place on probation a motor carrier whose registration is suspended.

(b) Department of Public Safety enforcement recommendations.

(1) The department may suspend or revoke a certificate of registration of a motor carrier upon a written request by the Department of Public Safety, if a motor carrier:

(A) has an unsatisfactory safety rating under 49 C.F.R., Part 385; or

(B) has multiple violations of Transportation Code, Chapter 644, a rule adopted under that chapter, or Transportation Code, Title 7, Subtitle C.

(2) A request under paragraph (1) of this subsection must include documentation showing the violation.

[~~(c) Probation.~~]

[(1) The department may probate any suspension ordered under this section.]

[(2) In determining whether to probate a suspension, the department will review:]

[(A) the seriousness of the violation;]

[(B) prior violations by the motor carrier;]

[(C) whether the department has previously probated a suspension for the motor carrier;]

[(D) cooperation by the motor carrier in the investigation and enforcement proceeding; and]

[(E) the ability of the motor carrier to correct the violations.]

[(3) The department shall set the length of the probation based on the seriousness of the violation and previous violations by the motor carrier.]

[(4) The department will require that the motor carrier report monthly to the department any information necessary to determine compliance with the terms of the probation.]

[(5) The department may revoke the probation and order the initial suspension and administrative penalty if the motor carrier fails to abide by any terms of the probation.]

(c) [(d)] Refund.

(1) The department may order a motor carrier that violates Transportation Code Chapter 643, department rules, or a department order adopted under Transportation Code Chapter 643 to issue a refund to a customer who paid the motor carrier to transport household goods.

(2) Under this subsection, a refund is the return of any percentage of funds paid, or contracted to be paid, to a motor carrier transporting household goods, whether those funds are documented as a separate line item or included in the overall amount paid by a customer.

(A) A refund includes overpayments, fees paid for services not rendered, and fees paid for charges not listed on the household mover's tariff after the household mover takes possession of the customer's property.

(B) A refund does not include any consideration of damages or harm over the amount paid by the customer.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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43 TAC §§218.73, 218.75 - 218.78

STATUTORY AUTHORITY.

The department proposes the repeals under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the administrative hearing process under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and the other laws of this state.

The department also proposes the repeals under the authority of Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. The repeals would implement Transportation Code, Chapters 643 and 645; and Government Code, Chapter 2001.

§218.73. Administrative Proceedings.
§218.75. Cost of Preparing Agency Record.
§218.76. Registration Suspension Ordered under Family Code.
§218.77. Cease and Desist Order.
§218.78. Appeal of Denial.

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

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CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Subchapter F, Compliance, §219.82; and Subchapter H, Enforcement, §§219.120, 219.121, and 219.126. The department also proposes the repeal of Subchapter H, Enforcement, §§219.122, 219.124, and 219.127.

These amendments and repeals are necessary to delete language regarding adjudicative practice and procedure. In addition, the amendments are necessary to refer to proposed new

Chapter 224 of this title (relating to Adjudicative Practice and Procedure), which the department proposes in this issue of the *Texas Register* to include all department adjudicative practice and procedure rules in one chapter.

EXPLANATION.

Amendments to §219.82 would delete the word "enforcement" and add a reference to proposed new Chapter 224, which would apply to any adjudicative practice and procedure under the department's rules, including Chapter 219.

A proposed amendment to the heading for Subchapter H of Chapter 219 would make the heading consistent with the rules under Subchapter H because the proposed amendments and repeals would change the contents of this subchapter. Proposed amendments to §219.120 would make the section consistent with the proposed amendments to and repeals of sections within Subchapter H. A proposed amendment to §219.120 would also state that the enforcement actions under this chapter are governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapters 621 through 623 for clarity and ease of reference.

Proposed amendments to §219.121 would replace the current language with a summary of the department's authority under Transportation Code, §623.271 to investigate and impose an administrative penalty or revoke an oversize or overweight permit. Current language in §219.121(a) repeats the language found in Transportation Code, §623.271. It is not necessary to repeat statutory language in rules. A proposed amendment to the title of §219.121 would include sanctions and a reference to Transportation Code, §623.271 to address the expanded scope of §219.121 due to the proposed amendments and to distinguish §219.121 from §219.126 of this title (relating to Administrative Penalty for False Information on Certificate by a Shipper) regarding the administrative penalty under Transportation Code, §623.272.

Proposed amendments to §219.121(b) would delete the language regarding the calculation of administrative penalties under Transportation Code, §623.271, which says the amount of an administrative penalty imposed under §623.271 is calculated in the same manner as the amount of an administrative penalty imposed under Transportation Code, §643.251. In this issue of the *Texas Register,* the department proposes new Chapter 224 of this title (relating to Adjudicative Practice and Procedure). The language in current §219.121(b) would be addressed in proposed new §224.115 of this title (relating to Administrative Penalty Assessment and Probation of Suspension).

A proposed amendment would repeal §219.122. Current language in §219.122(a) repeats the language found in Transportation Code, §623.271. It is not necessary to repeat statutory language in rules. Current language in §219.122(b) is not expressly authorized under Transportation Code, Chapter 623.

A proposed amendment to §219.126 would delete subsection (b) because a proposed amendment to §219.120 would state that the enforcement actions under this chapter are governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapters 621 through 623. It is not necessary for §219.126 to cite the specific provisions in proposed new Chapter 224 regarding notice and hearing requirements. A proposed amendment to §219.126 would also delete subsection (c) regarding the calculation of an administrative penalty under §219.126. In this issue of the *Texas Register,* the department proposes new Chapter 224 of this title (relating to Adjudicative Practice and Procedure). The language in current §219.126(c) would be addressed in proposed new §224.115 of this title (relating to Administrative Penalty Assessment and Probation of Suspension). Due to the proposed deletions of §219.126(b) and (c), a proposed amendment to §219.126 would delete the "(a)" because there would only be one subsection in §219.126. An amendment to §219.126 would also cite to Transportation Code, §623.272 as the authority for the administrative penalty to help distinguish §219.126 from the provisions in §219.121 regarding the administrative penalty under Transportation Code, §623.271.

Proposed amendments would repeal §219.124 and §219.127. In this issue of the *Texas Register,* the department proposes new Chapter 224, which would include the language in current §219.124 and §219.127 with some modifications. Current §219.124 would be addressed in proposed new §224.116 of this title (relating to Administrative Proceedings). Current §219.127 would be addressed in proposed new §224.31 of this title (relating to Cost of Record on Appeal).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments and repeals will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division (MCD), has determined that there will be no significant effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Archer has also determined that, for each year of the first five years amendments and repeals will be in effect, there is one anticipated public benefit as a result of the amendments and repeals.

Anticipated Public Benefits. The anticipated public benefit is that the repeal of language regarding adjudicative practice and procedure in Chapter 219 in conjunction with the department's proposed new Chapter 224 would consolidate all of the department's rules regarding adjudicative practice and procedure in one chapter that provides more clarity and consistency.

Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be no costs to comply with these amendments and repeals.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments and repeals will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the changes are not sufficient to create an adverse economic effect. The department's current Chapter 219 rules regarding adjudicative practice and procedure are proposed to be repealed, in conjunction with adding most of the repealed rule text to the proposed new Chapter 224 with some minor modifications. In addition, the proposed amendments would not change the fact that the contested case procedures and requirements are primarily governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, which are the rules of procedure for the State Office of Administrative Hearings (SOAH). Further, the proposed amendments would not change the fact that Transportation Code, Chapter 623 imposes certain requirements for a contested case under Chapters 621 through 623, such as the requirements in Transportation Code, §623.271. Therefore, the department is not required to pre-

pare a regulatory flexibility analysis under Government Code, §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments and repeals are in effect, no government program would be created or eliminated. Implementation of the proposed amendments and repeals would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments and repeals do not create a new regulation; however, they technically enable the expansion of an existing regulation regarding the department's adjudicative practice and procedure. The proposed amendments and repeals in Chapter 219 enable the department's proposed new Chapter 224 to govern the adjudicative practice and procedure under Chapter 219, which results in more detailed requirements and clarity. Lastly, the proposed amendments and repeals do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on January 28, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER F. COMPLIANCE

43 TAC §219.82

STATUTORY AUTHORITY.

The department proposes amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.,* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under Transportation Code, §623.272 or §623.274, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code and other laws of this state.

The department also proposes amendments under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout the preamble.

CROSS REFERENCE TO STATUTE. The amendments would implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

§219.82. Falsification of Information on Application and Permit.

(a) A person who provides false information on the permit application or another form required by the department for the issuance of an oversize or overweight permit commits a violation of this chapter and is subject to revocation of an oversize or overweight permit and the [~~enforcement~~] provisions of Subchapter H of this chapter and Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

(b) A person violates this chapter if the person produces a counterfeit permit or alters a permit issued by the department.

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

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Texas Department of Motor Vehicles
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SUBCHAPTER H. ADMINISTRATIVE PENALTIES AND SANCTIONS

43 TAC §§219.120, 219.121, 219.126

STATUTORY AUTHORITY.

The department proposes amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.,* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code,

§623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under Transportation Code, §623.272 or §623.274, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code and other laws of this state.

The department also proposes amendments under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout the preamble.

CROSS REFERENCE TO STATUTE. The amendments would implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

§219.120. Purpose.

The purpose of this subchapter is to provide for administrative penalties and sanctions under Transportation Code, Chapters 621 through 623. The enforcement actions under this chapter are governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapters 621 through 623 [~~an efficient and effective system of enforcement of Transportation Code, Chapters 621, 622, and 623 and the rules adopted under those chapters by setting out procedures for administrative penalties, revocation, and denial of oversize or overweight permits~~].

§219.121. Administrative Penalties and Sanctions under Transportation Code, §623.271.

Transportation Code, §623.271 authorizes the department to investigate and impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623.

[~~(a) Authority. The department, after notice and opportunity for hearing, may impose an administrative penalty against a person or the holder of the permit who:~~]

[~~(1) provides false information on a permit application or another form required by the department concerning the issuance of an oversize or overweight permit;~~]

[~~(2) violates this chapter or Transportation Code, Chapters 621, 622, or 623;~~]

[~~(3) violates an order adopted under this chapter or Transportation Code, Chapters 621, 622, or 623; or~~]

[~~(4) fails to obtain an oversize or overweight permit that is required under this chapter or Transportation Code, Chapters 621, 622, or 623.~~]

[~~(b) Amount of administrative penalty.~~]

[~~(1) In an action brought by the department, the aggregate amount of administrative penalty shall not exceed $5,000 unless it is found that the person or the holder of the permit knowingly committed a violation.~~]

[~~(2) In an action brought by the department, if it is found that the person or the holder of the permit knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed $15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness may be inferred from the conduct of the alleged violator or from the history of previous violations by the alleged violator.~~]

[~~(3) In an action brought by the department, if it is found that the person or the holder of the permit knowingly committed multiple violations, the aggregate amount of administrative penalty for the multiple violations shall not exceed $30,000.~~]

[~~(4) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.~~]

[~~(5) Any recommendation that an administrative penalty should be imposed must be based on the following factors:~~]

[~~(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;~~]

[~~(B) the economic harm to property or the environment caused by the violation;~~]

[~~(C) the history of previous violations;~~]

[~~(D) the amount necessary to deter future violations;~~]

[~~(E) efforts made to correct the violation; and~~]

[~~(F) any other matters that justice may require.~~]

§219.126. Administrative Penalty for False Information on Certificate by a Shipper.

[~~(a)~~] Transportation Code, §623.272 authorizes the [~~The~~] department to [~~may~~] investigate and impose an administrative penalty on a shipper who does not provide a shipper's certificate of weight as required under Transportation Code, §623.274(b) or provides false information on a shipper's certificate of weight that the shipper delivers to a person transporting a shipment.

[~~(b) The notice and hearing requirements of §219.124 of this title (relating to Administrative Proceedings) apply to the imposition of an administrative penalty under this section.~~]

[~~(c) The amount of an administrative penalty imposed under this section is calculated in the same manner as the amount of an administrative penalty imposed under §219.121 of this title (relating to Administrative Penalties).~~]

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

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SUBCHAPTER H. ENFORCEMENT

43 TAC §§219.122, 219.124, 219.127

STATUTORY AUTHORITY.

The department proposes repeals under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.,* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under Transportation Code, §623.272 or §623.274, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code and other laws of this state.

The department also proposes repeals under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout the preamble.

CROSS REFERENCE TO STATUTE. The repeals would implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

§219.122. Administrative Sanctions.

§219.124. Administrative Proceedings.

§219.127. Cost of Preparing Agency Record.

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

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CHAPTER 221. SALVAGE VEHICLE DEALERS

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §221.1 and §221.2; Subchapter B, Licensing, §§221.11, 221.13 - 221.20; Subchapter C, Licensed Operations, §§221.41 - 221.47 and 221.49 - 221.54; Subchapter D, Records, §§221.71 - 221.73; and Subchapter F, Administrative Sanctions, §§221.111, 221.112, and 221.115. The department proposes to repeal §221.48 and Subchapter E, Administrative Procedures, §§221.91 - 221.96. The proposed amendments are necessary to modify language to be consistent with statutes and other chapters in Title 43 of the Texas Administrative Code; to clarify the purpose of a rule by amending the rule title and language; to modify language to be consistent with current practice including the use of records or electronic systems; to improve readability by use of consistent terminology; to clarify or delete unused, archaic, or inaccurate definitions, terms, and references or other language; to delete language that is inconsistent with statute, to implement statutory changes and add conforming language; to deter fraud or abuse by expanding fingerprint requirements to salvage vehicle dealers and setting minimum standards for business operations; to clarify existing requirements; and to modernize language and improve understanding and readability. Proposed amendments would implement Senate Bill (SB) 422, 88th Legislature, Regular Session (2023), which amended Occupations Code §§55.004, 55.0041, and 55.005 affecting licensing of military service members, and would conform language with SB 604, 86th Legislature, Regular Session (2019), which eliminated salvage vehicle dealer license endorsements, and House Bill (HB) 1667, 86th Legislature, Regular Session (2019) which granted certain motor vehicle dealers the option to act as a salvage dealer.

Repeals are proposed to remove a section which duplicates §217.86 of this title and to move the adjudicative rules in Subchapter E to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure), which is proposed in this edition of the *Texas Register* to consolidate all department adjudicative practice and procedure rules in one chapter. Subchapter F is also proposed for relettering because the preceding subchapter is proposed for repeal.

EXPLANATION.

Subchapter A. General Provisions

Proposed conforming amendments to §221.1 would more completely describe the scope of the chapter to include holders of an independent motor vehicle dealer's general distinguishing number (GDN) issued under Transportation Code, Chapter 503, who act as salvage vehicle dealers. HB 1667, 86th Legislature, Regular Session (2019), added Occupations Code, §2302.009 and amended §2302.101, granting these dealers the ability to perform salvage activities without obtaining a salvage vehicle dealer's license, but at the same time requiring these dealers to comply with Occupations Code, Chapter 2302 requirements. For completeness, a proposed amendment would add a reference to persons exempt from licensure as Occupations Code, Chapter 2302 contains exceptions for metal recyclers, insurance companies, and used automotive recyclers licensed under Occupations Code, Chapter 2309.

The proposed amendments to §221.2 would add the following definitions for consistency: "day" in §221.2(4) to mean a calendar day, unless otherwise stated or the context clearly indicates otherwise; "director" in §221.2(6) to mean the division director that regulates the distribution and sales of motor vehicles, including any department staff to whom the director delegates any duty assigned under this chapter; and "General Distinguishing Number (GDN)" in §221.2(7) to match the definition of the same term in Occupations Code, §2301.002(17). A proposed amendment to §221.2(8) would also conform the definition of "license holder" to include an independent motor vehicle dealer GDN authorized to operate as a salvage vehicle dealer consistent with Occupations Code, §2302.009 and §2302.102. A proposed amendment to renumbered §221.2(15) would also substitute the current definition of "person" for the definition in Occupations Code, §2301.002 for consistency. The proposed amendments to §221.2 would also remove the definition of "corporation" in §221.2(4) because a special definition for corporation is unnecessary. The proposed amendments to §221.2 would remove the definition of "final order authority" in §221.2(6) because the sections of Chapter 221 that use the term "final order authority", §221.93 and §221.95, are proposed for repeal and will be incorporated into new proposed Chapter 224 of this title (relating to Adjudicative Practice and Procedure). The proposed amendments to §221.2 would also remove the definitions of "major component part," in §221.2(8) and "minor component part" in §221.2 (10) because these two terms are not referenced in Chapter 221. Proposed amendments would also renumber the definitions to correspond with the proposed revisions.

Subchapter B. Licensing

The proposed amendment to § 221.11(b) would make a minor change to reflect that a motor vehicle may be either registered or titled to operate on public highways. Proposed amendments to §221.11(c) would substitute a statutory reference to a person exempt from licensure and would delete rule language that duplicates the statute to ensure consistency with any future statutory changes.

A proposed amendment to § 221.13(c) would set a fee for a salvage vehicle dealer license amendment at $25. Occupations Code, §2302.052 assigns the board the duty of setting reasonable and necessary fees. Occupations Code, §2301.264(e) prescribes a $25 license amendment fee for licenses issued under Occupations Code, Chapter 2301 and Transportation Code, Chapter 503. The department construes the fee amount prescribed in statute to be reasonable and necessary and proposes adopting the same fee because department resources required to process a license amendment are similar across all license types.

A proposed amendment to §221.14(a) would make a minor edit to remove redundant language. Occupations Code, §2302.103 requires an applicant to submit an application on a form prescribed by the department. Proposed amendments to §221.14(b) would update application requirements for a new salvage vehicle dealer license, license amendment, or license renewal. These proposed amendments include language consistent with current practices and new requirements to deter and prevent fraud in the application process, such as fingerprinting and site visits, that have proven to be successful in reducing fraud in the issuance of dealer GDNs, a related license type. Proposed amendments §221.14(b) would specify that the application must be on a department-approved form; completed by the applicant, license holder, or authorized representative who is an employee, a licensed attorney, or a certified public accountant; and accompanied by the required fee from an account held by the applicant or license holder, or from a trust account of the applicant or license holder, or from a trust account of the applicant's or license holder's attorney or certified public accountant. Proposed amendments would create new §221.14(c) to modernize the application process by requiring license applications and fees to be submitted to the department electronically and paid for by credit card or electronic funds transfer. Proposed amendments would create new §221.14(d), intended to reduce application fraud by giving the department the option to require a site visit to determine whether a business location meets the requirements of Chapter 221. Proposed amendments would add new §221.14(e) to reduce application fraud by requiring salvage vehicle dealers applying for or renewing a license to comply with fingerprint requirements in §211.6 of Title 43. The proposed fingerprinting requirement would be a one-time requirement if a person maintains an active license. Proposed amendments would create new §221.14(f) to clarify that the department will not provide information regarding the status of an application, application deficiencies, or pending new license numbers to a person other than to the applicant, license holder, or authorized representative, unless the person files a written request under the Texas Public Information Act. These proposed revisions to §221.14 would provide more clarity and certainty regarding the salvage vehicle dealer license application process.

Proposed amendments to §221.15 update the information required on a salvage vehicle dealer application. Proposed new §221.15(a) would modernize the application process by requiring an applicant for a new salvage dealer license to register for an account in the online licensing system, to designate an account administrator, to provide the name and email address for that person, and to provide the business telephone number, name, business type, and social security number or employer identification number, as applicable. Proposed new §221.15(a) would specify that the applicant's license account administrator must be an owner, officer, manager, or bona fide employee to reduce fraud and increase responsiveness and accountability by the applicant.

Proposed amendments would create a new subsection §221.15(b) that would include language currently in §221.15. Proposed new §221.15(b) would require the applicant to provide the reason for the application and certain other business information. Proposed amendments to the existing language incorporated into proposed new §221.15(b) would remove surplus language and provide additional detail regarding required business information to improve the department's ability to identify fraud and investigate applicants, including clarifying that the business address is the physical address of the business, and that the following information is required: business email address; telephone number; Texas Sales Tax Identification Number; National Motor Vehicle Title Information System Identification Number (NMVTIS); and Secretary of State filing number, if applicable. Proposed amendments to the text in proposed new §221.15(b) would prohibit the business name or assumed name from being misleading to the public so that accurate information about the nature of the salvage business is disclosed to the public. Proposed amendments to the text incorporated into proposed new §221.15(b) would also require the applicant to provide an application contact name, email address, and telephone number to allow the division to contact the applicant easily and would delete the prior requirement that the

department consider the applicant's last known address as the applicant's designated mailing address to decrease misdirected mail. Additionally, proposed new §221.15(b) would consolidate previous subsections that set out separate requirements for the applicant to apply as a sole proprietor, a general partnership, or a limited partnership, limited liability company, or corporation. To allow the department to identify and investigate applicants, the proposed amendments to §221.15(b) would require the applicant to provide: the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a publicly traded company; the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity; the name, employer identification number, ownership percentage, and non-profit or publicly-traded status for each legal entity that owns the applicant in full or in part; the name, social security number, date of birth, and identity document information of at least one manager or other bona fide employee who will be present at the business location if the license holder is out of state or will not be present during business hours at the business location in Texas. To facilitate the department's evaluation of applicants and its efforts to protect the public from crime, proposed amendments to the text incorporated into new §221.15(b) would clarify that criminal history record information required for an application is criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, including the offense description, date, and location. Other proposed amendments to the text incorporated into new §221.15(b) would clarify that applicants are required to provide their military service status to enable the department to determine eligibility for special licensing considerations provided under law to veterans. Proposed amendments to the text incorporated into new §221.15(b) would facilitate department investigations of applicants by clarifying the requirement for an applicant to provide information regarding previously submitted license applications, whether under this chapter or the laws of another jurisdiction, the result of previous applications, and whether the applicant has ever been the holder of a license issued by the department or another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction, or has an unpaid administrative penalty. These proposed requirements in proposed new §221.15(b) are consistent with Occupations Code, §2302.104, which prescribes information that must be obtained from an applicant, and that is necessary for the department to investigate an applicant's qualifications as required under Occupations Code, §2302.105. Proposed amendments in proposed new §221.15(b) would require an applicant to provide information about each business location and business premises sufficient to demonstrate compliance with related premises rules in Chapter 221, Subchapter C. Proposed amendments in proposed new §221.15(b) would also clarify that a salvage vehicle dealer renewing or amending its license must verify its current license information and provide information for any new requirements or changes to the license.

Proposed amendments to §221.16 would require an applicant to attach a legible and accurate image of each required document to allow the department to investigate and process the application as required under Occupations Code, Chapter 2302. Proposed amendments to §221.16 would specify that required attachments include the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, if applicable; each assumed name certificate on file with the Secretary of State or county clerk; at least one identity document for each natural person listed in the application; documents proving premises ownership or a valid lease; business premises photos with a notarized affidavit; a Texas Use and Sales Tax Permit; a Franchise Tax Account Status issued by the Comptroller's Office, and any other documents required by the department to evaluate the application under current law and board rules. These proposed amendments would consolidate previous separate requirements for sole proprietors, general partnerships, limited partnerships, limited liability companies, and corporations. The proposed amendments to §221.16(c) would also update references to types of identification consistent with current usage and changes in statute. The proposed amendments to §§221.16(d) and (e) would clarify and add requirements that the license application includes documents proving business premises ownership or a fully executed lease or sublease agreement for the license period, and business premises photos with a notarized affidavit certifying that all premises requirements in Subchapter C are met and will be maintained during the license period. These changes are necessary to prevent and deter fraud in the application process and to improve compliance with premises requirements in Chapter 221, Subchapter C. These requirements are consistent with GDN dealer requirements, which have proven successful in preventing and deterring fraud and improving compliance with premises requirements. A proposed amendment to §221.16(h) would further authorize the department to require any other documents necessary to evaluate the application to ensure that the department can comply with its statutory duty to investigate each license application as required under Occupations Code, §2302.105.

A proposed amendment to §221.17(a) would exempt a license holder from any increased fee or penalty for failing to timely renew a license because the license holder was on active military duty. This amendment is necessary to conform to Occupations Code, §55.002.

Proposed amendments to §221.17(b) would add the phrase "military service members or" in multiple places in subparagraphs (1), (2), and (3). These proposed amendments are necessary to implement SB 422, which entitled military service members with out-of-state licenses to be eligible for special business or occupational authorization or licensing consideration that is already afforded for military spouses.

Proposed amendments in §221.17(b)(1) would delete duplicate references to Occupations Code, §55.0041 and would substitute the phrase "being stationed" for "residency" to clarify that eligibility for special licensing consideration for both the military service member and military spouse is based on the military service member being stationed in Texas rather than residing in Texas.

Three other amendments to §221.17(b)(3) are proposed to implement SB 422. Proposed amendments would change the word "may" to "shall" and add the phrase "within 30 days" to set a deadline by which the department must issue a license to a military service member or spouse. This change is necessary to implement changes to Occupations Code, §55.005(a) from SB 422, which requires a state agency to issue a license no later than the 30th day after an application is filed. Issuing a license within 30 days would also fulfill the requirement of Occupations Code, §55.0041, as amended by SB 422, which requires that the department confirm within 30 days that the military service member or military spouse is authorized to engage in the licensed

business or occupation. Another amendment to §221.17(b)(3) would add the phrase "or modified" to recognize that provisions of Occupations Code, Chapter 55 may require the department to modify standard licensing processes when processing an application for a military service member or military spouse and to clarify that the department's licensing process for military service members and military spouses will be in accordance with all Occupations Code, Chapter 55 requirements. A proposed amendment would add new §221.17(c) to clarify that the requirements and procedures authorized under Texas law do not modify or alter rights under federal law.

Proposed amendments to §§221.18(a-c) would modernize the notification requirements by specifying that a license holder notify the department if the license holder opens or closes an additional location by electronically submitting a license amendment in the department's designated licensing system. Proposed amendments to §221.18(a)(2) and §221.18(b)(2) would remove surplus language. A proposed amendment to §221.18(c) would clarify the appropriate action a license holder must take when closing a location depending on the number of locations listed in the license. A proposed amendment would add new §221.18(d) to clarify an existing requirement that a license holder must apply for a new license if the license holder is opening a new location not located in the same county.

Proposed amendments to §221.19 would update the title to reflect the scope of the section. Proposed amendments to §221.19(a) and (b) would modernize the process for requesting a license amendment by requiring the license holder to submit a license amendment application electronically in the department's designated licensing system. A proposed amendment to §221.19(a) would clarify that a license holder is required to submit a change in assumed name to the department to enable the department to investigate whether the assumed name is misleading or deceptive or otherwise violates a law or rule. Proposed amendments would add new §221.19(b)(4) to clarify that a license holder must notify the department of a change in business email address, telephone number, mailing address, or license contact so that the department can communicate with a license holder. Another proposed amendment would add §221.19(c), which would require the license holder to provide the department with any information necessary for the department to fully evaluate a license amendment to enable the department before approving to conduct a thorough and efficient investigation as required by Occupations Code, §2302.105.

Proposed amendments to §221.20(a), (d), (e), (h), and relettered (j) would simplify the language and improve readability without changing meaning. Proposed amendments to §221.20(c) would change "salvage vehicle dealer's" to "license holder's" for clarity and consistency, correct the time frame in which the department will provide notice of license expiration from 30 to 31 days consistent with Occupations Code, §2302.152, add "of expiration" to clarify a reference to a written notice, and add "license" to clarify the description of a renewal fee. A proposed amendment to §220.20(i) would add new language to clarify that a license holder who timely submits a renewal application may continue to operate under the expired license until the status of the renewal application is determined by the department in accordance with Government Code, §2001.054. The current language in §220.20(i) is relettered to §220.20(j).

Subchapter C. Licensed Operations

Proposed amendments to §221.41 would make minor changes to simplify and modernize the language to add clarity without changing meaning. Proposed amendments to §221.41(1) would add new requirements that apply if a salvage dealer leases or subleases property for a business location. Proposed amendments to create new §§221.41(1)(D) and (E) would require a property owner signature or a signed and notarized statement from the property owner if the location is subleased and the property owner is not the lessor. The property owner statement must include the property owner's full name, email address, mailing address, and phone number and confirm that the dealer is authorized to sublease the location and to operate a salvage vehicle dealer business. These proposed changes are necessary to prevent fraud in the application process, to prevent consumer abuse, and to protect public health and safety. This provision also protects salvage vehicle dealer applicants: the department has received applications from dealers with a signed sublease who are unable to operate a business because the property owner has not authorized a dealer to operate such a business on the property.

Proposed amendments to the title and language of §221.42 would make minor wording changes to clarify and remove surplus wording.

Proposed amendments to §221.43(a) would require a salvage vehicle dealer who sells to a retail customer to be open at least four days per week for at least four consecutive hours per day and prohibit the office to be open solely by appointment. These proposed amendments would create standard minimum business hours across the industry by requiring the office of a salvage pool operator selling only to a wholesale dealer to be open at least two weekdays per week for at least two consecutive hours per day and prohibit the office to be open solely by appointment. Occupations Code, §2302.0015 requires a person to allow the department, law enforcement officers, and others to enter and inspect a business during normal business hours. Minimum normal business hours are not defined in statute or rule; therefore, these proposed amendments are necessary to establish these standards, and the board is authorized to do so under the rulemaking authority in Occupations Code, §2302.051. Proposed minimum standards for salvage vehicle dealers are consistent with current minimum requirements for GDN dealers in §215.140(1)(A) of this title and proposed minimum standards for salvage pool operators that only sell to wholesale dealers are consistent with current requirements for wholesale GDN dealers in §215.140(2) of this title. These proposed minimum hours are necessary to deter and prevent fraud in the application process, prevent consumer harm, and ensure the department and others authorized by law have access to a salvage vehicle dealer's location for inspection purposes. Proposed amendments to §221.43(c) and (d) would make minor word changes for clarity. An additional proposed amendment to §221.43(d) would give license holders more flexibility by adding options for the office telephone to be answered by the owner or a voicemail service in addition to a bona fide employee, answering service, or answering machine.

Proposed amendments to §221.44(a) would clarify that a permanent business sign must be made of durable, weather resistant material. Proposed amendments to §221.44(b) would clarify that a sign will be considered permanently mounted if it is bolted to an exterior building wall or bolted or welded to a dedicated sign pole or a sign support permanently installed in the ground. Proposed new §221.44(c) would authorize a license holder to use a temporary sign or banner if that license holder can show proof that a business sign that meets the above requirements has been ordered and provides a written statement that the busi-

ness sign will be promptly and permanently mounted upon delivery. This proposed amendment would allow a license holder to open their business without delay if all other department requirements are met. Proposed new §221.44(d) would clarify that a license holder is still responsible for ensuring that the business sign complies with applicable municipal ordinances and that any signage requirements in a lease comport with the requirements of this section.

A proposed amendment to §221.45(a) would clarify that a business must be located in a building that has a permanent roof. A proposed amendment to §221.45(c) would clarify that a business may not conduct operations in a room or building not open to the public. A proposed amendment would create new §221.45(e) to clarify that a business may not be virtual or provided by a subscription for office space or office services. A proposed amendment would create new §221.45(f) to require the physical address of a business be in Texas, recognized by the U.S. Postal Service, and have an assigned emergency services property address, to ensure that both the public and department personnel can readily locate the place of business, and confirm the municipality in which the property is located. A proposed amendment to §221.45(g) would modernize the business access requirements by requiring the business to be equipped with internet access. These amendments are consistent with minimum standards for public health and safety and business operation and are necessary to deter and prevent fraud in the licensing process.

Proposed amendments to §221.46 regarding the requirements to display a license would make minor wording changes to simplify language for clarity without changing meaning.

A proposed amendment to §221.47 would clarify that a salvage vehicle dealer must properly process vehicle records in accordance with §217.86 of this title regarding the dismantling, scrapping, or destruction of motor vehicles. The following provision, §221.48, duplicates §217.86 and is therefore proposed for repeal because it is redundant and unnecessary with the proposed addition of a citation to §217.86 in §221.47.

A proposed amendment to §221.49 would add a phrase from the title of the section to the body of the section for clarification.

Proposed amendments to §221.50(a) would clarify that a sale or transfer of a flood-damaged vehicle must be in accordance with §217.88 of this title, regarding the sale, transfer, or release of ownership of a non-repairable or salvage motor vehicle. Proposed amendments to §221.50(b) would make wording and format changes to clarify the language without changing the meaning. Proposed amendments to §221.50(c) and (d) would delete duplicative language also found in §217.88.

Proposed amendments to §221.51 would make wording changes to clarify the language and comport with current practice. Proposed amendments to §221.51(c) and (d) would remove the phrase "or any other state" to reflect that the department does not have jurisdiction over out-of-state highways. Proposed amendments to §221.51(f) would allow flexibility for a salvage vehicle dealer who offers only salvage vehicles for sale to install a conspicuous permanent sign to provide the required notice to consumers under §221.51(a) and (c). A proposed amendment to §221.51(h) would rephrase the existing requirement to recognize that a separate salvage pool license endorsement no longer exists in statute as salvage vehicle dealer license endorsements were eliminated by SB 604, 86th Legislature, Regular Session (2019).

The proposed amendment to §221.52(a) would add a reference to §217.88 of this title. A proposed amendment to §221.52(b) would remove duplicate language found in §217.88 of this title, and the remaining subsections would be relettered. A proposed change to relettered §221.52(b) would change the retention period for a copy of a purchaser's photo identification from 48 to 36 months for consistency with §217.88.

Proposed amendments to §221.53 would reference §217.88 and delete redundant language found in §217.88.

Proposed amendments to §221.54 would add "vehicle" for consistency in terminology and would add two factors the department will consider in determining whether to conduct a site visit: whether a business location fails to meet premises or operating requirements and whether records require further investigation by the department. These criteria are proposed to be added because they are indicators of fraud and consumer harm that frequently arise in complaints investigated by the department.

Subchapter D. Records

Proposed amendments to §221.71 would edit language to remove surplus language and improve grammar and clarity. A proposed amendment to §221.71(c) would modernize the rule by deleting a reference to a requestor being present at the business location and adding an option for records to be provided electronically upon request. A proposed amendment to §221.71(e) would increase the deadline from 10 days to 15 days for a salvage vehicle dealer to provide copies of requested records to the department.

Proposed amendments to §221.72 would clarify an existing requirement that a salvage vehicle dealer maintain a record of each vehicle that is dismantled, in addition to each vehicle scrapped or destroyed, and shortens the length of retention of these records from the fourth anniversary of the date the report was acknowledged as received by the department to the third anniversary for consistency with other sections. Lastly, proposed amendments to §221.72(c) would add a word and remove a comma for clarity without changing the meaning of the rule.

Proposed amendments to §221.73 would make wording changes to improve clarity and reflect current practice regarding both vehicle purchase and vehicle sales records. Proposed amendments would add references to §221.52 and §217.89 and would remove redundant language in this section, related to unnecessary descriptors including various types of photo identification. The proposed amendments to §221.73(a) would expand the list of records that may be applicable to a particular purchase or sale for clarification and consistency with other rules and because these records are necessary for the department to determine a dealer's compliance with existing laws and rules.

Subchapter E. Administrative Procedures

All sections in Subchapter E are proposed for repeal because the substance of each rule and any proposed amendments are incorporated into proposed new Chapter 224, Adjudicative Practice and Procedure, which is published in this issue of the *Texas Register*. The proposed repeal includes §§221.91-221.96.

Subchapter F. Administrative Sanctions

Proposed amendments to §221.111 would delete unnecessary phrases without changing the meaning and would update a citation to improve clarity. Additionally, proposed amendments to §221.111(a)(5-6) would remove the phrase "is unfit to hold the

licenses, is ineligible for licensure" from the factors the department considers to determine denial of licensure as that language is not found in Occupations Code, Chapter 2302.

Proposed amendments to §221.112 would delete unnecessary phrases without changing the meaning, add statutory and rule references and explanatory language for clarity, remove surplus language associated with those references, and renumber accordingly.

Proposed amendments to §221.115 would remove the language stating that the department will not refund license fees in the case of a licensure denial, suspension, or revocation and would substitute language that allows a refund with director approval unless a license application is withdrawn, denied, suspended, or revoked, or the license applicant or license holder is subject to an unpaid civil penalty imposed by a final order against the license applicant or license holder. This provision would ensure that the department receives as much of the civil penalties it assesses as possible but would also give the department flexibility to refund an application fee in other circumstances. These proposed amendments are consistent with the refund process for other license types.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Monique Johnston, Director of the Motor Vehicle Division (MVD), has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Johnston also determined that, for each year of the first five years the proposed amendments are in effect, several significant public benefits are anticipated, and certain applicants and license holders may incur costs to comply with the proposal. In proposing these amendments, the department prioritized the public benefits associated with reducing fraud and related crime and improving public health and safety, while carefully considering potential costs to salvage vehicle dealers consistent with board and department responsibilities.

A proposed amendment would charge a $25 fee for a license amendment, the same amount paid by all other license holders for filing an amendment. Ms. Johnston has determined department resources to process a salvage vehicle dealer license amendment is approximately the same on average as for other dealer license types and a $25 fee is reasonable and fair.

Proposed amendments to §§221.14, 221.15, and 221.16, may require applicants and license holders to provide more information in the application. While some applicants may be required to spend more time completing an application or providing additional information, Ms. Johnston has determined these costs will be offset by the reduced risk of license applicants and holders incurring financial penalties due to noncompliance with applicable federal, state, or local statutes or property owner requirements, which will benefit both license holders and the public. The department's civil penalty guidelines for license holders who violate statutory provisions range $500 to $10,000 per violation.

In proposed amendments to §221.15, an applicant or license holder may not use a name or assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public. Ms. Johnston estimates that a small number of current license holders may have to change a confusing, deceptive, or misleading business name or assumed name and may incur related secretary of state or county filing fees or signage cost. The Secretary of State filing fee to amend a business name is $150. Department research suggests the cost for an exterior sign will vary between $30 to $167, with an average expected cost of about $80. The department recognizes that these costs may vary widely based on business owner style and design preferences. The department's civil penalty guidelines for license holders who violate statutory provisions range $500 to $10,000 per violation. Ms. Johnston has determined that the signage cost will be offset by the reduced risk of these license holders incurring financial penalties due to noncompliance with laws and regulations and will benefit the public by informing the public and preventing consumer harm.

A proposed amendment to §221.14 would add fingerprint requirements for a salvage vehicle dealer license applicant and holder. Fingerprint requirements allow the department to verify the identity of license applicants, preventing fraudulent applications under false or stolen identities, while giving the department access to more accurate and comprehensive criminal history record information to use in evaluating fitness for licensure under its criminal offense guidelines in §211.3. These new fingerprint requirements benefit the public by preventing bad actors with a history of criminal offenses that directly relate to the duties and responsibilities of a license holder from obtaining licenses from the department and using those licenses to perpetrate fraudulent and criminal actions, or otherwise taking advantage of the position of trust created by the license. Ms. Johnston anticipates that there will be no additional costs on regulated persons to comply with the fingerprint requirements under this proposal as the new section does not establish fees for fingerprinting or processing criminal background checks. Fees for fingerprinting and access to criminal history reports are established by DPS under the authority of Texas Government Code Chapter 411.

Proposed amendments to §221.73 may require a salvage vehicle dealer to keep more document copies in a vehicle records file. Ms. Johnston anticipates that while most bona fide dealers already comply with these requirements, a few dealers may have to add up to four additional pages to the sales file. Department research suggests that the cost of a copy ranges from $0.14 to $0.22 per page. She has determined that these costs are necessary to prevent fraud and protect consumers.

Proposed changes to §221.43 requires a salvage vehicle dealer to observe minimum requirements for weekly business hours which vary based on whether a dealer sells at retail to the public or to wholesale customers. Ms. Johnston anticipates that bona fide salvage vehicle dealers exceed these minimum requirements. However, a salvage vehicle dealer may be required to establish more regular hours to comply. Ms. Johnston has determined that the minimum 16 hours per week for retail dealers and four hours per week for wholesale dealers is set so that the hiring of additional staff should not be required and that establishing minimum requirements for regular business hours is necessary to prevent fraud and ensure the public and department has access to the licensed business.

A proposed amendment would require a salvage vehicle dealer to have internet access in the office. Ms. Johnston anticipates that most bona fide salvage vehicle dealers already have access either at their office or on a mobile device. If a salvage dealer does not have access a dealer could purchase a mobile phone with a data plan. Department research suggests that this cost

ranges from $15 to $90 per month and that basic internet service costs $65 per month. Ms. Johnston has determined that these requirements are reasonable minimum standards as the public and the department must be able to communicate with a license holder and these requirements are necessary to prevent fraud and consumer harm.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

The cost analysis in the Public Benefit and Cost Note section of this proposal determined that proposed amendments may result in additional costs for a few license holders. Based on data from the Comptroller and the Texas Workforce Commission, the department estimates that most license holders are small or micro-businesses. The department has tried to minimize costs to license holders. The new proposed requirements are designed to be the minimum standards that will prevent fraud in the application process, prevent consumer abuse, and protect public health and safety. These requirements do not include requirements that will cause a license holder to incur unnecessary or burdensome costs, such as employing additional persons.

Under Government Code §2006.002, the department must perform a regulatory flexibility analysis. The department considered the alternatives of not adopting amendments, exempting small or micro-businesses, and rural community license holders from these amendments, and adopting a limited version of these amendments for these license holders. The department rejects all three options. The department reviewed licensing and enforcement records, including records for license holders whose license has been revoked and determined that small and micro-business license holders are largely the bad actors perpetrating fraud in the application process and causing consumer harm, and that rural communities are not currently affected because department records indicate that no rural community holds a salvage dealer license. The department, after considering the purpose of the authorizing statutes, does not believe it is feasible to waive or limit the requirements of the proposed amendments for small or micro-business salvage vehicle dealers. Also, Government Code §2006.002(c-1) does not require the department to consider alternatives that might minimize possible adverse impacts on small businesses, micro-businesses, or rural communities if the alternatives would not be protective of the health and safety of the state.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments and repeals are in effect, the amendments will not create or eliminate a government program; will not require the creation of new employee positions and will not require the elimination of existing employee positions; will not require an increase or decrease in future legislative appropriations to the department; will require an increase in fees paid to the department by certain license holders who are required to file a license amendment; will expand existing regulations, delete some existing regulations, and make other existing regulations more flexible as described in the explanation section of this proposal; will repeal existing regulations to improve overall organization of department rules in conjunction with other proposals published in this issue of the *Texas Register*; will not increase or decrease the number of individuals subject to the rule's applicability; and will positively affect the Texas economy by deterring fraud and preventing consumer harm.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. Central Time on January 28, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to Chapter 221 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a license issued under Occupations Code, Chapter 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.052, which assigns the board a duty to set reasonable and necessary application fees, license fees, renewal fees, and other fees as required to implement the chapter; Occupations Code, §2302.103, which requires a salvage vehicle dealer to apply for a license on a form prescribed by the department and pay an application fee; Occupations Code, §2302.104, which prescribes content that must be included in an application; Occupations Code, §2302.105, which requires the department to complete an investigation of the applicant's qualifications before issuing a license; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. These rule revisions would implement Government Code, Chapter 411 and 2001; Occupations Code, Chapter 2302; and Transportation Code, Chapter 1002.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §221.1, §221.2

STATUTORY AUTHORITY.

The department proposes amendments to Chapter 221 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a license issued under Occupations Code, Chapter 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.052, which assigns the board a duty to set reasonable and necessary application fees, license fees, renewal fees, and

other fees as required to implement Chapter 2302; Occupations Code, §2302.103, which requires a salvage vehicle dealer to apply for a license on a form prescribed by the department and pay an application fee; Occupations Code, §2302.104, which prescribes content that must be included in an application; Occupations Code, §2302.105, which requires the department to complete an investigation of the applicant's qualifications before issuing a license; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also proposes amendments under the authority of Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and to take any action that is necessary or convenient to exercise that authority; Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These rule revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 53, 55, 2301, and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§221.1. Purpose and Scope.

Transportation Code, §1001.002, provides that the department shall administer and enforce Occupations Code, Chapter 2302. Chapter 2302 provides that a person may not act as a salvage vehicle dealer, unless the department issues that person a salvage vehicle dealer license, or an independent motor vehicle dealer's general distinguishing number issued under Chapter 503, Transportation Code, or a person is exempt from licensure under Occupations Code, Chapter 2302. This chapter describes the procedures by which a person obtains a salvage vehicle dealer license and the rules governing how a license holder or an independent motor vehicle dealer with authority to operate as a salvage vehicle dealer, must operate, and the procedures by which the department will administer and enforce Occupations Code, Chapter 2302, and this chapter.

§221.2. Definitions.

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

(1) Board--The Board of the Texas Department of Motor Vehicles.

(2) Casual sale--A sale as defined by Transportation Code, §501.091.

(3) Component part--As defined by Occupations Code, §2302.251.

(4) Day--Means a calendar day unless otherwise stated or context clearly indicates otherwise. [~~Corporation--A business entity, including a corporation, or limited liability company, but not a sole proprietorship or general partnership, which has filed a certificate of formation or registration with the Texas Secretary of State.~~]

(5) Department--The Texas Department of Motor Vehicles.

(6) Director--Means the division director that regulates the distribution and sales of motor vehicles, including any department staff to whom the director delegates any duty assigned under this chapter. [~~Final order authority--The person with authority under Occupations Code, Chapter 2302, or board rules to issue a final order.~~]

(7) General Distinguishing Number (GDN)--As defined by Occupations Code, §2301.002(17).

(8) [~~(7)~~] License holder--A person that holds a salvage vehicle dealer license or an independent motor vehicle dealer GDN that authorizes the dealer to operate as a salvage vehicle dealer [~~issued by the department~~].

[~~(8) Major component part--As defined by Transportation Code, §501.091.~~]

(9) Metal recycler--As defined by Transportation Code, §501.091.

[~~(10) Minor component part--As defined by Occupations Code, §2302.251.~~]

(10) [~~(11)~~] Nonrepairable motor vehicle--As defined by Transportation Code, §501.091.

(11) [~~(12)~~] Nonrepairable record of title--As defined by Transportation Code, §501.091.

(12) [~~(13)~~] Nonrepairable vehicle title--As defined by Transportation Code, §501.091.

(13) [~~(14)~~] Out-of-state buyer--As defined by Transportation Code, §501.091.

(14) [~~(15)~~] Out-of-state ownership document--As defined by Transportation Code, §501.091.

(15) [~~(16)~~] Person--Has the meaning assigned by Occupations Code, §2301.002. [~~A natural person, partnership, corporation, trust, association, estate, or any other legal entity.~~]

(16) [~~(17)~~] Public highway--As defined by Transportation Code, §502.001.

(17) [~~(18)~~] Retail sale--As defined by Occupations Code, §2301.002.

(18) [~~(19)~~] Salvage motor vehicle--As defined by Transportation Code, §501.091.

(19) [~~(20)~~] Salvage record of title--As defined by Transportation Code, §501.091.

(20) [~~(21)~~] Salvage vehicle dealer--As defined by Transportation Code, §501.091.

(21) [~~(22)~~] Salvage vehicle title--As defined by Transportation Code, §501.091.

(22) [~~(23)~~] Used part--As defined by Transportation Code, §501.091.

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

Filed with the Office of the Secretary of State on December 15, 2023.

TRD-202304795
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER B. LICENSING

43 TAC §§221.11, 221.13 - 221.20

STATUTORY AUTHORITY. The department proposes amendments to Chapter 221 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a license issued under Occupations Code, Chapter 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.052, which assigns the board a duty to set reasonable and necessary application fees, license fees, renewal fees, and other fees as required to implement Chapter 2302; Occupations Code, §2302.103, which requires a salvage vehicle dealer to apply for a license on a form prescribed by the department and pay an application fee; Occupations Code, §2302.104, which prescribes content that must be included in an application; Occupations Code, §2302.105, which requires the department to complete an investigation of the applicant's qualifications before issuing a license; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also proposes amendments and under the authority of Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These rule revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 53, 55, 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§221.11. License Required.

(a) A person must hold a salvage vehicle dealer license, or an independent motor vehicle dealer's general distinguishing number issued under Chapter 503; Transportation Code to:

(1) act as a salvage vehicle dealer or rebuilder; or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

(b) A person may not engage in the business of buying, selling or exchanging motor vehicles that can be titled or registered to operate on public highways, including selling a salvage motor vehicle that has been rebuilt, repaired or reconstructed, unless the person holds a general distinguishing number issued by the department under Transportation Code, Chapter 503.

(c) The provisions of this subchapter do not apply to a person exempt from licensure under Occupations Code, Chapter 2302.[~~:~~]

[~~(1) a person who purchases no more than five (5) nonrepairable or salvage motor vehicles at casual sale in a calendar year from:~~]

[~~(A) a salvage vehicle dealer; or~~]

[~~(B) an insurance company;~~]

[~~(2) a metal recycler, unless a motor vehicle is sold, transferred, released, or delivered to the metal recycler for the purpose of reuse or resale as a motor vehicle, or as a source of used parts, and is used for that purpose;~~]

[~~(3) a person who casually repairs, rebuilds, or reconstructs no more than five (5) salvage motor vehicles in the same calendar year;~~]

[~~(4) a person who is a non-United States resident who purchases nonrepairable or salvage motor vehicles for export only;~~]

[~~(5) an agency of the United States, an agency of this state, or a local government;~~]

[~~(6) a financial institution or other secured party that holds a security interest in a motor vehicle and is selling that motor vehicle in the manner provided by law for the forced sale of a motor vehicle;~~]

[~~(7) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;~~]

[~~(8) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special interest vehicle is at least 12 years old; and~~]

[~~(9) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction under the following conditions:~~]

[~~(A) neither legal nor equitable title passes to the auctioneer;~~]

[~~(B) the auction is not held for the purpose of avoiding a provision of Occupations Code, Chapter 2302, or this subchapter; and~~]

[(C) the auction is conducted of motor vehicles owned, legally or equitably, by a person who holds a salvage vehicle dealer's license and the auction is conducted at their licensed location or at a location approved by the department.]

§221.13. License Terms and Fees.

(a) The term of a salvage vehicle dealer license issued by the department under Occupations Code, Chapter 2302, and this chapter, is two years. The fee for a salvage vehicle dealer license is $190. The entire amount of the fee is due at the time of application for the license.

(b) The department may prorate the fee for a salvage vehicle dealer license to allow the salvage vehicle dealer license to expire on the same day as another license issued by the department under Occupations Code, Chapter 2301; Chapter 2302; or Transportation Code, Chapter 503.

(c) The fee for a license amendment is $25.

§221.14. License Applications Generally.

(a) A salvage vehicle dealer license may be issued for multiple locations within a single county. A separate license and fee is required for a business location [or locations located] in another county.

(b) An application for a new license, license amendment, or license renewal filed with the department must be: [A license applicant must submit a signed application on a form prescribed by the department, provide any required attachments, and remit the required fees at the time of submission of the application.]

(1) on a form approved by the department;

(2) completed by the applicant, license holder, or authorized representative who is an employee, a licensed attorney, or a certified public accountant; and

(3) accompanied by the required fee from an account held by the applicant or license holder, or from a trust account of the applicant's or license holder's attorney or certified public accountant.

(c) License applications and fees must be submitted to the department electronically in a system designated by the department for licensing. Fees may be paid by credit card or electronic funds transfer.

(d) In evaluating a new or renewal salvage vehicle dealer license application or an application for a new location, the department may require a site visit to determine if the business location meets the requirements in this chapter.

(e) An applicant for a salvage vehicle dealer license must also comply with fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for Designated License Applicants and License Holders).

(f) The department will not provide information regarding the status of an application, application deficiencies, or pending new license numbers to a person other than a person listed in subsection (b)(2) of this section unless the person files a written request under Government Code, Chapter 552.

§221.15. Required License Application Information.

(a) An applicant for a new salvage dealer license must register for an account in the department-designated licensing system by selecting the licensing system icon on the dealer page of the department website. An applicant must designate the account administrator and provide the name and email address for that person, and provide the business telephone number, name, business type, and social security number or employer identification number, as applicable. The applicant's licensing account administrator must be an owner, officer, manager, or bona fide employee.

(b) Once registered, an applicant for a new salvage dealer license may apply for a license and must provide the following: [The following information must be provided on each salvage vehicle dealer application:]

(1) the application reason [full legal name of the applicant];

(2) business information including:

(A) the name, provided that the applicant may not use a name or assumed name under which the applicant is authorized to do business that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public;

(B) mailing address;

(C) [(2)] the full business physical address, including number, street, municipality, county, and zip code for each location where the applicant will conduct business [under the license if each location is] in the same county;

(D) business email;

(E) telephone number;

(F) Texas Sales Tax Identification Number;

(G) National Motor Vehicle Title Information System (NMVTIS) Identification Number;

(H) Secretary of State file number, if applicable; and

(I) website address, if applicable.

(3) application contact name, email address, and telephone number [the business telephone number and email address];

(4) the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a publicly traded company [the mailing address];

(5) the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity; [a statement acknowledging that the department will consider the applicant's designated mailing address the applicant's last known address for department communication, including service of process under Subchapter E of this chapter (relating to Administrative Procedures). The designated mailing address will be considered applicant's last known address until such time that the mailing address is changed in the licensing records of the department after the license holder submits an amendment to change the license holder's mailing address;]

(6) the name, employer identification number, ownership percentage, and non-profit or publicly-traded status for each legal entity that owns the applicant in full or in part; [all assumed names as registered with the secretary of state or county clerk, as applicable;]

(7) the name, social security number, date of birth, and identity document information of at least one manager or other bona fide employee who will be present at the business location if the license holder is out of state or will not be present during business hours at the business location in Texas; [if applying as a sole proprietor, the social security number, address and telephone number for the sole proprietor;]

(8) criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, including offense description, date, and location; [if applying as a general part-

nership, the social security number, address and telephone number for each of the general partners;]

(9) military service status; [if applying as a limited partnership, limited liability company, or corporation, the full name, social security number, address and telephone number for each officer or director of the corporation, each member, officer, or manager of the limited liability company, each partner, and each officer of the limited partnership, including the information for the general partner based on the type of entity;]

(10) licensing history required to evaluate business reputation, character, and fitness for licensure including a statement indicating whether the applicant or any person described in §211.2 of this title (relating to Application of Subchapter) has previously applied for a license under this chapter or the salvage vehicle dealer licensing laws of another jurisdiction, the result of the previous application, and whether the applicant, including a person described in §211.2 of this title, has ever been the holder of a license issued by the department or another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative penalty that remains unpaid; [the state sales tax number;]

(11) information about each business location and business premises to demonstrate compliance with related rules in this chapter; [the National Motor Vehicle Title Information System (NMVTIS) number evidencing that the applicant is registered with NMVTIS;]

(12) signed Certification of Responsibility, which is a form provided by the department; and [a statement indicating whether the applicant or any person described in §211.2 of this title (relating to Application of Subchapter) has previously applied for a license under this chapter or the salvage vehicle dealer licensing laws of another jurisdiction, the result of the previous application, and whether the applicant, including a person described in §211.2 of this title, has ever been the holder of a license issued by the department or another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative penalty that remains unpaid;]

(13) any other information required by the department to evaluate the application under current law and board rules. [a statement indicating whether the applicant has an ownership, organizational, affiliation, or other business arrangement that would allow a person to direct the management, policies, or activities of an applicant or license holder, whether directly or indirectly, who was the holder of a license issued by the department or by another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative penalty that remains unpaid;]

[(14) details of the criminal history of the applicant and any person described in §211.2 of this title;]

[(15) details of the professional information of the applicant and any person described in §211.2 of this title;]

[(16) a statement that the applicant at the time of submitting the application is in compliance, and, after issuance of a license, will remain in compliance, with all ordinances and rules of the municipality or county of each location where the applicant will conduct business; and]

[(17) an acknowledgement that the applicant understands, is, and will remain in compliance with all state and federal laws relating to the licensed activity.]

(c) A salvage vehicle dealer renewing or amending its license must verify current license information and provide related information for any new requirements or changes to the license.

§221.16. Required Attachments to the License Application.

A legible and accurate electronic image of each applicable required document must be attached to the license application:

(1) the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, if applicable;

(2) each assumed name certificate on file with the Secretary of State or county clerk;

(3) at least one of the following valid and current identity documents for each natural person listed in the application:

(A) driver's license;

(B) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;

(C) license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(D) United States or foreign passport; or

(E) United States military identification card;

(4) documents proving business premises ownership, or a fully executed lease or sublease agreement for the license period;

(5) business premises photos and a notarized affidavit certifying that all premises requirements in Subchapter C of the chapter are met and will be maintained during the license period;

(6) Texas Use and Sales Tax Permit;

(7) Franchise Tax Account Status issued by the Comptroller's Office; and

(8) any other documents required by the department to evaluate the application under current law and board rules.

[(a) If the applicant is a sole proprietor or general partnership, in addition to the information required by §221.15 of this title (relating to Required License Application Information), the applicant must submit a legible copy of one of the following types of identification that is valid and active at the time of application for the sole proprietor and each of the general partners:]

[(1) driver's license, Department of Public Safety identification, or state identification certificate issued by a state or territory of the United States;]

[(2) concealed handgun license or license to carry a handgun issued by the Department of Public Safety under Government Code, Chapter 411, Subchapter H;]

[(3) United States or foreign passport;]

[(4) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State Identification document;]

[(5) United States military identification card; or]

[(6) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement.]

[(b) If the applicant is a limited partnership, limited liability company, or a corporation, the applicant must submit a legible copy of one of the following current types of identification that is valid and active at the time of application for each partner of the limited partnership, each member of the limited liability company, and for each officer of the corporation:]

[(1) driver's license, Department of Public Safety identification, or state identification certificate issued by a state or territory of the United States;]

[(2) concealed handgun license or license to carry a handgun issued by the Department of Public Safety under Government Code, Chapter 411, Subchapter H;]

[(3) United States or foreign passport;]

[(4) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State Identification document;]

[(5) United States military identification card; or]

[(6) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement.]

[(c) If the applicant is a corporation, the applicant must submit a copy of the certificate of incorporation issued by the secretary of state or a certificate issued by the jurisdiction where the applicant is incorporated, and a verification that, at the time the application is submitted, all business franchise taxes of the corporation have been paid.]

[(d) If the applicant is a limited partnership, the applicant must submit a copy of the certificate of partnership issued by the secretary of state or a certificate issued by the jurisdiction where the applicant is formed, and verification that, at the time the application is submitted, all business franchise taxes of the limited partnership have been paid.]

[(e) Upon request by the department, the applicant shall submit documents demonstrating that the applicant owns the real property on which the business is situated or has a written lease for the property that has a term of not less than the term of the license.]

[(f) If the applicant is a sole proprietor or general partnership, in addition to the information required by §221.15, the applicant must submit a legible copy of the Assumed Name Certificate (DBA) issued by the county clerk in which the business is located.]

[(g) If the applicant is a limited partnership, limited liability company, or a corporation, the applicant must submit a legible copy of the Assumed Name Certificate (DBA) as registered with the Texas Secretary of State's office.]

[(h) If the applicant is a sole proprietor or general partnership, in addition to the information required by §221.15, the applicant must submit a legible copy of the Texas Sales and Use Tax Permit.]

[(i) If the applicant is a limited partnership, limited liability company, or a corporation, the applicant must submit a legible copy of the Texas Sales and Use Tax Permit.]

§221.17. License Processing for Military Service Members, Spouses, and Veterans.

(a) The department will process a license, amendment, or renewal application submitted for licensing of a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55. A license holder who fails to timely file a sufficient renewal application because the license holder was on active duty is exempt from any increased fee or penalty imposed by the department.

(b) A military service member or military spouse may engage in a business or occupation for which a department issued license is required if the military service member or military spouse meets the requirements of Occupations Code, §55.0041 and this section.

(1) A military service member or [To meet the requirements of Occupations Code, §55.0041, a] military spouse must submit to the department:

(A) notice of the military service member or military spouse's intent to engage in a business or occupation in Texas for which a department issued license is required;

(B) proof of the military service member being stationed [military spouse's] [residency] in Texas and a copy of the military service member or military spouse's military identification card[, as required by Occupations Code, §55.0041(b)(2)]; and

(C) documentation demonstrating that the military service member or military spouse is licensed and in good standing in another jurisdiction for the relevant business or occupation.

(2) Upon receipt of the notice and documentation required by paragraphs (1)(B) and (1)(C) of this subsection the department shall:

(A) confirm with the other licensing jurisdiction that the military service member or military spouse is currently licensed and in good standing for the relevant business or occupation; and

(B) conduct a comparison of the other jurisdiction's license requirements, statutes, and rules with the department's licensing requirements to determine if the requirements are substantially equivalent.

(3) If the department confirms that a military service member or military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements, the department shall [may] issue a license to the military service member or military spouse for the relevant business or occupation within 30 days. The license is subject to the requirements of this chapter and Occupations Code, Chapter 2302 in the same manner as a license issued under the standard application process, unless exempted or modified under Occupations Code, Chapter 55.

(c) This section establishes requirements and procedures authorized or required by Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

§221.18. Additional, New, or Closed Location.

(a) If the license holder intends to conduct business at more than one location within the same county, the applicant must:

(1) notify the department no later than 10 days before opening the additional location by electronically submitting a license amendment application in the department-designated licensing system; [to amend the license to add an additional location;]

(2) acknowledge that the additional location[, at the time of submitting the amendment,] is and will remain in compliance with all ordinances and rules of the municipality or county for the additional location and board rules; and

(3) obtain approval from the department before conducting business at the additional location.

(b) If the license holder intends to relocate its business to a new location within the same county, the license holder must:

(1) notify the department no later than 10 days before opening the new location by electronically submitting a license amendment application in the department-designated licensing system [to amend the license] to add a new location and remove the existing location from the department's records;

(2) acknowledge that the new location[, at the time of submitting the amendment,] is and will remain in compliance with all ordinances and rules of the municipality or county for the new location and board rules; and

(3) obtain approval from the department before conducting business at the new location.

(c) A license holder must notify the department in writing within 10 days of [~~the~~] closing [~~of~~] a business location by electronically submitting a license amendment application in the department-designated licensing system to delete the location if more than one location is listed on the license, or closing the license if a single location is listed on the license.

(d) If a license holder is opening a new location not located in the same county, the license holder must apply for a new license.

§221.19. Notice of Change in [~~of~~] License Holder Information [~~Holder's Name, Ownership, or Control~~].

(a) A license holder shall notify the department by electronically submitting a license amendment application in the department-designated licensing system to amend its license within 30 days of a change in the license holder's business name or assumed name. Upon submission of an amendment to change the business name or assumed name, the department shall reflect the new business name in the department's records. The dealer shall retain the same salvage vehicle dealer license number except if the business name change is the result of a change in the type of entity being licensed, such as a sole proprietorship becoming a corporation, or if the ownership of the business changes as discussed in subsection (b) of this section.

(b) A salvage vehicle dealer shall notify the department by electronically submitting a license amendment application in the department-designated licensing system [~~by submitting a request for license amendment~~] within 30 days of a change to:

(1) the entity type of the applicant or license holder;

(2) the departure or addition of any person reported to the department in the original license application or most recent renewal application, including any person described in §211.2 of this title (relating to Application of Subchapter);

(3) an ownership, organizational, managerial, or other business arrangement that would allow the power to direct or cause the direction of the management and policies and activities of an applicant or license holder, whether directly or indirectly, to be established in or with a person not described in paragraph (1) or (2) of this subsection; or[~~.~~]

(4) a business email address, telephone number, mailing address, or change in license contact.

(c) The license holder must submit to the department [~~a notice of change and~~] all information required by the department to evaluate the license amendment application under current law and rules [~~needed for that specific license modification~~].

§221.20. License Renewal.

(a) A salvage vehicle dealer license expires on the second anniversary of the date the license was issued [~~of issuance of the salvage vehicle dealer license~~].

(b) The salvage vehicle dealer license may be renewed for an additional period of two years upon timely submission of a renewal application on a form approved by the department with all required information, attachments, and fees. A renewal application is considered "timely" submitted if the renewal application with all required information, attachments, and required fees are received by the department on or before the expiration date of the existing license.

(c) The department will send a written notice of expiration to a license holder's [~~salvage vehicle dealer's~~] email address at least 31 [~~30~~] days before expiration of a license.

(d) Failure by the department to send written notice of expiration under this section does not relieve a license holder from timely renewing a license.

(e) The renewal fee for salvage vehicle dealer license is $170.

(f) A license holder may renew an expired license by submitting a renewal application and paying a late renewal fee of $85 in addition to the renewal fee, if 90 or fewer days have elapsed since the license expired.

(g) A license holder may renew an expired license by submitting a renewal application and paying a late renewal fee of $170 in addition to the renewal fee, if more than 90 days but less than one year has elapsed since the license expired.

(h) If a license has been expired for [~~a period of~~] one year or longer and the department has not received [~~is not in receipt of~~] a renewal application [~~with all required information and attachments~~], the department will close the license, and the license holder must apply for a new license [~~in the same manner as an applicant for an initial license~~].

(i) In accordance with Government Code, §2001.054, a license holder that timely submits a renewal application under subsection (b) of this section may continue to operate under the expired license until the status of the renewal application is determined by the department.

(j) [~~(i)~~] If the department does not receive a timely [~~is not in receipt of a~~] renewal application with all required information and attachments and the applicable renewal fee on or before [~~prior to~~] the license expiration date [~~cancellation date of the license~~], a salvage vehicle dealer may not engage in the activities that require the license until the license has been renewed by the department.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER C. LICENSED OPERATIONS

43 TAC §§221.41 - 221.47, 221.49 - 221.54

STATUTORY AUTHORITY. The department proposes amendments to Chapter 221 under §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also proposes amendments and under the authority of Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary

or convenient to exercise that authority; Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These new rules would implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§221.41. Location Requirements.

A salvage vehicle dealer must meet and maintain the following requirements at each licensed business location [~~and must maintain the following requirements~~] during the [~~entire~~] term of the license.

(1) If the licensed business location is not owned by the license holder, the license holder must maintain a lease that is continuous during the period of time for which the license will be issued [~~that extends through the period for which the license will be issued~~]. The lease agreement must be on a properly executed form [~~an executed lease contract~~] containing at a minimum:

(A) the name of the property owner as the lessor of the premises and the name of the dealer as the tenant or lessee of the premises [~~the names of the lessor and lessee~~];

(B) the period of time for which the lease is valid; [~~and~~]

(C) the street address or legal description of the property, provided that if only a legal description of the property is provided, the license holder must attach a statement verifying that the property description in the lease agreement is the physical street address identified on the application;[~~.~~]

(D) the signature of the property owner as the lessor and the signature of the dealer as the tenant or lessee; and

(E) if the lease agreement is a sublease in which the property owner is not the lessor, the dealer must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the dealer is authorized to sublease the location and may operate a salvage vehicle dealer business from the location.

(2) Any business location requirement in this subchapter are in addition to any requirements by municipal [~~city~~] ordinance, county rule, or state law.

§221.42. Operations Only at Licensed Business Location.

A salvage vehicle dealer may not sell or offer to sell a salvage motor vehicle [~~vehicles~~] or non-repairable motor vehicle [~~vehicles~~] from any location other than a licensed [~~the~~] business location [~~that has been approved by the department~~].

§221.43. Business Hours.

(a) The office of a salvage vehicle dealer who sells to a retail customer shall be open at least four days per week for at least four consecutive hours per day and may not be open solely by appointment. The office of a salvage pool operator selling only to a wholesale dealer must be open at least two weekdays per week for at least two consecutive hours per day and may not be open solely by appointment. The business hours must be posted at the main entrance of the business's office that is accessible to the public.

(b) The license holder or a bona fide employee of the license holder shall be at the licensed business location during the posted business hours for the purpose of operating the salvage business and allowing the inspection of the business location and records.

(c) If the license holder or a bona fide employee of the license holder is not available to conduct business during the posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time the license holder or bona fide employee of the license holder will resume operations at the licensed business location.

(d) Regardless of the license holder's business hours, the license holder's [~~licensee's~~] telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine.

§221.44. Business Sign Requirements.

(a) The license holder must display a permanent business sign with letters at least six inches in height showing the license holder's business name or assumed name as reflected on the [~~license holder's~~] license issued by the department. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(b) A business [~~The~~] sign must be permanently mounted at each physical business [~~the~~] address listed on the license. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

(c) A license holder may use a temporary sign or banner if that license holder can show proof that a business sign that meets the requirements of this paragraph has been ordered and provides a written statement that the business sign will be promptly and permanently mounted upon delivery.

(d) A license holder is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this section.

§221.45. Business Office.

(a) The license holder's office must be located at the licensed business [~~license~~] location in a building with a permanent roof and connecting exterior walls on all sides.

(b) A license holder's office structure must comply with all applicable local zoning ordinances and deed restrictions.

(c) A license holder's office may not be located within a residence, apartment house or building, hotel, motel, [~~or~~] rooming house, or any room or building not open to the public.

(d) A portable-type office structure may qualify as a business office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(e) A license holder's office may not be virtual or provided by a subscription for office space or office services.

(f) The physical address of the salvage vehicle dealer's office must be in Texas, recognized by the U.S. Postal Service, and have an assigned emergency services property address.

(g) A license holder's office must be equipped with internet access.

§221.46. Display of License.

At each licensed business location, a [~~A~~] license holder must continuously display [~~at its business location the original or copy of~~] the license issued by the department [~~at all times~~] in a conspicuous manner that makes the license easily readable by the public [~~and is displayed in a conspicuous place at each licensed business location for which the license is issued~~].

§221.47. Evidence of Ownership.

A salvage vehicle dealer must receive a properly assigned salvage vehicle title, salvage record of title, non-repairable vehicle title, non-repairable record of title, or out-of-state ownership document, as applicable, when acquiring a non-repairable motor vehicle or salvage motor vehicle in accordance with §217.86 of this title (relating to Dismantling, Scrapping, or Destruction of Motor Vehicles).

§221.49. Unique Inventory Number.

Occupations Code, §2302.255, sets out the requirements for a salvage vehicle dealer in assigning a unique inventory number when the salvage vehicle dealer purchases or takes delivery of a component part.

§221.50. Restrictions on Sales of Flood Damaged Vehicles.

(a) A motor vehicle that is [~~classified as~~] a non-repairable motor vehicle or salvage motor vehicle based solely on flood damage may be sold or transferred only as provided by this section and §217.88 of this title (relating to Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle).

(b) A salvage vehicle dealer may sell, transfer, or release a non-repairable motor vehicle or salvage motor vehicle if the salvage vehicle dealer provides [~~to anyone if a non-repairable or salvage vehicle title or a comparable out-of-state ownership document has been issued for the motor vehicle provided~~] a written disclosure [~~has been made~~] that the vehicle has been classified as a non-repairable motor vehicle or salvage motor vehicle based solely on flood damage.

[~~(c) If a non-repairable or salvage vehicle title or a comparable out-of-state ownership document has not been issued for the motor vehicle, a salvage vehicle dealer may only sell, transfer, or release a non-repairable motor vehicle or salvage motor vehicle to:~~]

[~~(1) an insurance company;~~]

[~~(2) a governmental entity;~~]

[~~(3) a licensed salvage vehicle dealer;~~]

[~~(4) an out-of-state buyer;~~]

[~~(5) a metal recycler; or~~]

[~~(6) a used automotive parts recycler, provided a written disclosure has been made that the vehicle has been classified as a non-repairable motor vehicle or salvage motor vehicle based solely on flood damage.~~]

§221.51. Duty to Identify Motor Vehicles Offered for Sale.

(a) A salvage vehicle dealer shall place a notice [~~sign~~] on each salvage motor vehicle it displays or offers for sale that:

(1) is visible from outside of the salvage motor vehicle;

(2) contains lettering that is two inches or more in height identifying the vehicle is a salvage motor vehicle; and

(3) states as follows: *"This is a salvage titled vehicle that cannot be operated on a public highway. If the salvaged vehicle is to be registered in Texas, the purchaser must apply to a county tax assessor-collector's office, surrender the salvage title, submit the required information on repairs that have been made to the vehicle and pay the applicable fees before the vehicle may be titled and/or registered to operate on the public highway."*

(b) Upon the sale of a salvage motor vehicle, a salvage vehicle dealer shall obtain the purchaser's signature to a disclosure statement written in eleven point or larger font that states as follows: *"I, (name of purchaser), acknowledge that at the time of purchase, I am aware that: the vehicle is titled on a salvage title; if I intend to operate the vehicle on a public highway in Texas, I am responsible for applying for a title for this salvage vehicle through a Texas county tax assessor-collector's office accompanied by the required forms showing that repairs have been made to the vehicle; I am responsible for paying the applicable fees; and, I may not drive this salvage vehicle on a public highway until after a titled branded rebuilt salvage and registration have been issued."*

(c) A salvage vehicle dealer shall place a sign on each non-repairable motor vehicle it displays or offers for sale that:

(1) is visible from outside of the non-repairable motor vehicle;

(2) contains lettering that is two inches or more in height; and

(3) states as follows: *"This is a non-repairable titled motor vehicle that can never be operated on a public highway of this state [~~or any other state~~]."*

(d) Upon the sale of a non-repairable motor vehicle, a salvage vehicle dealer shall obtain the purchaser's signature to a disclosure statement written in eleven point or larger font that states as follows: *"I, (name of purchaser), acknowledge that at the time of purchase, I am aware that the vehicle is a non-repairable vehicle; this vehicle will never be able to operate on a public highway of this state [~~or any other state~~] and will never be registered to operate on a public highway of this state [~~or any other state~~]; and, before selling this non-repairable vehicle I must have the non-repairable vehicle titled in my name."*

(e) A salvage vehicle dealer shall maintain a copy of the written disclosures required by this section as part of its records of sales in accordance with §221.73 of this title (relating to Content of Records).

(f) The notice requirements of subsections (a) and (c) can be met if the salvage vehicle dealer conspicuously displays a permanent sign that [~~single notice or notices if~~] all of the vehicles being offered for sale by the salvage vehicle dealer are salvage motor vehicles or non-repairable motor vehicles.

(g) If the salvage vehicle dealer conducts a sale of a salvage motor vehicle or a non-repairable motor vehicle in Spanish or other foreign language, the notices and disclosures required by this section shall be in that language.

(h) This section does not apply to a vehicle that is displayed or offered for sale by a salvage vehicle dealer who operates solely as a

salvage pool operator and only sells vehicles at wholesale [~~person who holds a salvage pool license on the premises of the licensed salvage pool operator~~].

§221.52. Export-only Sales.

(a) A license holder may sell a non-repairable motor vehicle or a salvage motor vehicle to a person who resides in a jurisdiction outside the United States only as provided by Transportation Code, §501.099 and §217.88 of this title (relating to Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle).

[~~(b) A license holder may accept any of the following types of government-issued photo identification documents to establish that the purchaser resides outside the United States:~~]

[~~(1) passport;~~]

[~~(2) driver's license;~~]

[~~(3) consular identity document;~~]

[~~(4) national identification certificate or identity document; or~~]

[~~(5) other photo identification card issued by the jurisdiction where the purchaser resides that contains the name, address, and date of birth of the purchaser.~~]

(b) [~~(c)~~] A legible copy of the purchaser's photo identification document must be maintained in the records of the license holder for a period of 36 [~~48~~] months after the sale of a salvage motor vehicle or a non-repairable motor vehicle for "export-only."

(c) [~~(d)~~] The limitation on the number of casual sales that may be made to a person under §221.53 of this title (relating to Casual Sales) does not apply to sales to a person who resides in a jurisdiction outside the United States and who purchases salvage motor vehicles and non-repairable motor vehicles for "export-only."

§221.53. Casual Sales.

(a) A license holder may not make more than five (5) casual sales of salvage motor vehicles or non-repairable motor vehicles during a calendar year to the same person.

(b) A license holder must maintain records of each casual sale made in accordance with §217.88 of this title (relating to Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle). [~~during the previous 36 months, as provided by §221.72 of this title (relating to Record Retention). Such records must contain the following information regarding each casual sale:~~]

[~~(1) the complete name, address and phone number of the purchaser;~~]

[~~(2) a copy of one of the following valid and current photo identification documents for the purchaser:~~]

[~~(A) driver's license, Department of Public Safety identification, or state identification certificate issued by a state or territory of the United States;~~]

[~~(B) concealed handgun license or license to carry a handgun issued by the Department of Public Safety under Government Code, Chapter 411, Subchapter H;~~]

[~~(C) United States or foreign passport;~~]

[~~(D) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State Identification document;~~]

[~~(E) United States military identification card; or~~]

[~~(F) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; and~~]

[~~(3) the year, make, model, color and vehicle identification number for the salvage motor vehicle or non-repairable motor vehicle.~~]

(c) A person who purchases a salvage motor vehicle or a non-repairable motor vehicle through a casual sale may not sell that salvage motor vehicle or non-repairable motor vehicle until the salvage vehicle title, salvage record or title, non-repairable vehicle title or non-repairable record of title, as applicable, is in the person's name.

§221.54. Criteria for Site Visits.

In determining whether to conduct a site visit at an active salvage vehicle dealer's location, the department will consider whether the dealer has:

(1) failed to respond to a records request;

(2) failed to operate from the license location; [~~or~~]

(3) an enforcement history that reveals failed compliance inspections or multiple complaints with administrative sanctions being taken by the department;[~~.~~]

(4) a business location that fails to meet premises or operating requirements under this chapter; or

(5) records that require further investigation by the department.

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

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Laura Moriaty
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Texas Department of Motor Vehicles
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43 TAC §221.48

STATUTORY AUTHORITY. The department proposes a repeal to Chapter 221 under §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also proposes repeals under the authority of Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, 2001.054, and 2001.039 in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501.

Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. This repeal would implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§221.48. Scrapped or Destroyed Motor Vehicle.

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

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Laura Moriaty
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Texas Department of Motor Vehicles
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SUBCHAPTER D. RECORDS

43 TAC §221.71 - 221.73

STATUTORY AUTHORITY. The department proposes amendments to Chapter 221 under §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also proposes amendments and under the authority of Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These new rules would implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§221.71. Records; Generally.

(a) A salvage vehicle dealer shall maintain a record of each salvage motor vehicle and non-repairable motor vehicle purchased, sold, or exchanged by the salvage vehicle dealer.

(b) A salvage vehicle dealer's records must be maintained at the licensed business location.

(c) Any records required to be maintained by a license holder may be maintained in an electronic format if the record can be reviewed and printed at the licensed business location or provided electronically upon request [~~by a representative~~] of the department [~~at the time the requestor is at the business location~~].

(d) A salvage vehicle dealer must make records available for review and copying upon request by [~~a representative of~~] the department. The department may request records [~~A request for records may be made by the department~~] in person, by mail, or electronically from a department email or a department-designated system [~~by electronically document transfer~~].

(e) [~~Upon receipt of a request for review of records sent by mail or electronic document transfer from the department, a~~] A salvage vehicle dealer must provide [~~produce~~] copies of requested [~~specified~~] records to the department [~~requestor~~] within 15 [~~10 calendar~~] days of receipt of the request [~~by mail or electronic document transfer~~].

(f) Occupations Code, §2302.254, establishes the requirements that a salvage vehicle dealer maintain a record of an inventory of component parts purchased by or delivered to the salvage vehicle dealer.

§221.72. Record Retention.

(a) A salvage vehicle dealer must retain at the licensed business location, or have electronic access at the licensed business location of records stored electronically, a complete record of all purchases and sales of salvage motor vehicles and nonrepairable motor vehicles for a minimum period of 36 months from the date of the transaction.

(b) A salvage vehicle dealer shall maintain at the licensed business location a record of each vehicle that is dismantled, scrapped or destroyed, and a photocopy of the front and back of all salvage vehicle titles and nonrepairable vehicle titles, or a photocopy or electronic copy of all salvage records of title, and nonrepairable records of title, and, if applicable, a photocopy of any out-of-state evidence of ownership surrendered to the department, until the third [~~fourth~~] anniversary of the date the report was acknowledged as received by the department.

(c) A salvage vehicle dealer utilizing the department's web-based title application known as webDEALER, as defined in §217.71 of this title (relating to Automated and Web-Based Vehicle Registration and Title Systems), must comply with §217.74 of this title (relating to Access to and Use of webDEALER). Original hard copy titles are not required to be kept at the licensed business location[~~,~~] but must be made available to the department upon request.

§221.73. Content of Records.

(a) The records of a salvage vehicle dealer for purchases and sales shall include:

(1) the date the license holder purchased [~~of purchase of~~] the salvage motor vehicle, or non-repairable motor vehicle;

(2) the name and address of the person who sold the salvage motor vehicle or non-repairable motor vehicle to the salvage vehicle dealer;

(3) if the person [~~who sold the salvage motor vehicle or non-repairable motor vehicle to the salvage motor vehicle dealer~~] is not an insurance company or a license holder [~~salvage pool operator~~], a photocopy of [~~one of~~] the [~~following current~~] photo identification document [~~documents~~] of the person who purchased the salvage motor vehicle or non-repairable motor vehicle from the salvage vehicle dealer or sold the salvage motor vehicle or non-repairable motor vehicle to the salvage vehicle dealer;[~~:~~]

[~~(A) driver's license, Department of Public Safety identification, or state identification certificate issued by a state or territory of the United States;~~]

[~~(B) concealed handgun license or license to carry a handgun issued by the Department of Public Safety under Government Code, Chapter 411, Subchapter H;~~]

[~~(C) United States or foreign passport;~~]

[~~(D) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State Identification document;~~]

[~~(E) United States military identification card; or~~]

[~~(F) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement;~~]

(4) a description of the salvage motor vehicle or non-repairable motor vehicle, including the model, year, make, and vehicle identification number, if applicable;

(5) the ownership document number and state of issuance of the salvage motor vehicle or non-repairable motor vehicle ownership document, if applicable;

(6) a copy of the salvage record of title or non-repairable record of title, if applicable, or a copy of the front and back of the ownership document for the salvage motor vehicle or non-repairable motor vehicle;

(7) a copy of the form if the ownership document has been surrendered to the department; [~~and~~]

(8) any evidence indicating that the motor vehicle was dismantled, scrapped, or destroyed;[~~.~~]

(9) the sales contract or buyer's order;

(10) the salvage disclosure notice required under §221.51 of this title (relating to Duty to Identify a Motor Vehicle Offered for Sale);

(11) a copy of the photo identification document required for export sales under §221.52 (relating to Export-Only Sales);

(12) records for a casual sale as required under §221.53 (relating to Casual Sales); and

(13) any other records required under current rules in this title.

(b) If the salvage motor vehicle has been rebuilt, repaired, or reconstructed by the salvage vehicle dealer the salvage vehicle dealer's records must also include a form prescribed by the department in accordance with §217.89 of this title (relating to Rebuilt Salvage Motor Vehicles). [~~for "Rebuilt Vehicle Statement," listing all repairs made to the motor vehicle, and, when required to be completed, a form prescribed by the department for "Component Part(s) Bill of Sale."~~]

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

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Texas Department of Motor Vehicles
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SUBCHAPTER E. ADMINISTRATIVE PROCEDURES

43 TAC §§221.91 - 221.96

STATUTORY AUTHORITY. The department proposes repeals to Chapter 221 under §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also proposes repeals under the authority of Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, 2001.054, and 2001.039 in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These repeals would implement Government Code, Chapter 2001; Occupations Code,

Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§221.91. Notice of Department Decision.

§221.92. Notice of Hearing.

§221.93. Final Decisions and Orders; Motions for Rehearing.

§221.94. Judicial Review of Final Order.

§221.95. Delegation of Final Order Authority.

§221.96. Cease and Desist Order.

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

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SUBCHAPTER F. ADMINISTRATIVE SANCTIONS

43 TAC §§221.111, 221.112, 221.115

STATUTORY AUTHORITY. The department proposes amendments to Chapter 221 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a license issued under Occupations Code, Chapter 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.052, which assigns the board a duty to set reasonable and necessary application fees, license fees, renewal fees, and other fees as required to implement Chapter 2302; Occupations Code, §2302.103, which requires a salvage vehicle dealer to apply for a license on a form prescribed by the department and pay an application fee; Occupations Code, §2302.104, which prescribes content that must be included in an application; Occupations Code, §2302.105, which requires the department to complete an investigation of the applicant's qualifications before issuing a license; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also proposes amendments and under the authority of Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These rule revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§221.111. Denial of License.

(a) The [~~board or~~] department may deny an application for a new license or an application for a license renewal [~~of a license~~] under Occupations Code Chapter 53 or Chapter 2302, and §211.3 of this title (relating to Criminal Offense Guidelines) or this chapter, if:

(1) all the information required on the application is not complete;

(2) the applicant or any owner, officer, director, or other person described in §211.2 of this title (relating to Application of Subchapter) made a false statement, material misrepresentation, or a material omission, on the application to issue, renew, or amend a license;

(3) the applicant, or any owner, officer, director, or other person described in §211.2 of this title, has been convicted, or considered convicted under Occupations Code §53.021(d), by any local, state, federal, or foreign authority, of an offense that directly relates to the duties or responsibilities of the licensed occupation as described in §211.3 of this title or is convicted of an offense that is independently disqualifying under Occupations Code §53.021;

(4) the applicant's or any owner's, officer's, director's, or other person described in §211.2 of this title, previous license was revoked;

(5) the applicant [~~or license holder~~] has an ownership, organizational, managerial, or other business arrangement that would allow a person the power to direct, management, policies, or activities, of the applicant or license holder, whether directly or indirectly, who [~~is unfit, ineligible for license, or~~] has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, or similar assessment for a current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority; or

(6) the applicant, or any owner, officer, or director, or other person described in §211.2 of this title [~~is unfit to hold the license, is ineligible for licensure, or~~] whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment.

(b) If the department denies an application for a license to be issued under the authority of Occupations Code Chapter 2302, the applicant may request an administrative hearing in the manner specified in §224.54 [~~§221.91~~] of this title (relating to Notice of Department Decision).

(c) In accordance with Occupations Code §2302.108, the [~~board or~~] department shall reject any application for issuance of a new license under Occupations Code Chapter 2302 filed by a person whose license is revoked before the first anniversary of the date of revocation.

§221.112. Suspension, Revocation and Administrative Penalties.

The [~~board or~~] department may suspend or revoke a license or impose an administrative penalty if the license holder:

(1) fails to meet or maintain the qualifications and requirements for a license;

(2) violates any law relating to the purchase, sale, exchange, storage, or distribution of motor vehicles, including salvage motor vehicles and nonrepairable motor vehicles;

(3) willfully defrauds a purchaser;

(4) fails to maintain purchase, sales, and inventory records as required by Occupations Code, Chapter 2302, Transportation Code, Chapter 501, Chapter 217, Subchapter D of this title, or this chapter;

(5) refuses[~~to permit,~~] or fails to comply with a request by the department to examine, during normal business hours, the license holder's records as required by Occupations Code, Chapter 2302, or this chapter;

(6) engages in motor vehicle or salvage business without the required license;

(7) engages in business as a salvage vehicle dealer at a location for which a license has not been issued by the department;

(8) fails to notify the department of a change of the salvage vehicle dealer's license holder information as required under §221.19 of this title (relating to Notice of Change in License Holder Information) [~~legal business entity name, assumed name, mailing address, or email address within 30 days of such change by submitting an amendment to the license~~];

(9) fails to notify the department of a change in location prior to operating in a new location or closing a location in accordance with §221.18 of this title (relating to Additional, New, or Closed Location) [~~described in §221.19(b) of this title (relating to Change of License Holder's Name, Ownership, or Control)~~ as required in that section];

(10) fails to remain regularly and actively engaged in the business for which the salvage vehicle dealer license is issued;

(11) sells more than five (5) nonrepairable motor vehicles or salvage motor vehicles to the same person in a casual sale during a calendar year;

(12) violates any provision of Occupations Code Chapters 2301 or 2302, Transportation Code Chapters 501, 502, or 503, or any board rule or order promulgated under those statutes;

(13) uses or allows use of the salvage vehicle dealer's license or business location for the purpose of avoiding the requirements of Occupations Code Chapters 2301 or 2302, Transportation Code, Chapters 501, 502 or 503, or any board rule or order promulgated under those statutes;

(14) violates any law, ordinance, rule or regulation governing the purchase, sale, exchange, or storage, of salvage motor vehicles or nonrepairable motor vehicles;

(15) sells or offers for sale a nonrepairable motor vehicle or a salvage motor vehicle from any location other than the salvage vehicle dealer's licensed business location;

(16) is, or any owner, officer, director, or other person described in §211.2 of this title (relating to Application of Subchapter), is convicted, or considered convicted under Occupations Code §53.021(d), by any local, state, federal, or foreign authority, of an offense that directly relates to the duties or responsibilities of the licensed occupation as described in §211.3 of this title (relating to Criminal Offense Guidelines) or an offense that that is independently disqualifying under Occupations Code §53.021 after initial issuance or renewal of the salvage vehicle dealer license, or that has not been reported to the department as required;

(17) makes a false statement, material misrepresentation, or material omission in any application or other information filed with the department;

(18) fails to timely remit payment for administrative penalties imposed by the department;

(19) engages in business without a license required under Occupations Code Chapters 2301 or 2302, or Transportation Code Chapter 503;

(20) operates a salvage motor vehicle or a nonrepairable motor vehicle on [~~the~~] public highways or allows another person to operate a salvage motor vehicle or a nonrepairable motor vehicle on public highways; or

[~~(21) dismantles a salvage motor vehicle or a nonrepairable motor vehicle~~]

(21) [~~(22)~~] deals in used automotive parts as more than an incidental part of the salvage vehicle dealer's primary business.

§221.115. Refund of Fees.

In the absence of director approval, the department will not refund a fee paid by a license applicant or a license holder if:

(1) the application or license is withdrawn, denied, suspended, or revoked; or

(2) the license applicant or license holder is subject to an unpaid civil penalty imposed against the license applicant or license holder by a final order.

[~~The department will not refund fees paid if a license is denied, suspended or revoked.~~]

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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CHAPTER 224. ADJUDICATIVE PRACTICE AND PROCEDURE

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes new 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §§224.1-224.31; Subchapter B, Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement, §§224.50-224.64; Subchapter C, Contested Cases Between Motor Vehicle Industry License Holders or Applicants, §§224.80-224.94; Subchapter D, Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement, §§224.110-224.130; Subchapter E, Contested Cases Referred to SOAH, §§224.150-224.166; Subchapter F, Board Procedures in Contested Cases, §§224.190-224.206; and Subchapter G, Lemon Law and Warranty Performance Claims, §§224.230-224.268.

The proposed new Chapter 224 is necessary to organize and consolidate adjudicative practice and procedure into one chapter for easier reference by license applicants, license holders, permit and registration holders, the public, and the department; to modify language to be consistent with current practice including use of electronic systems; for consistency with related rules and rule requirements promulgated by the State Office of Administrative Hearings (SOAH), to improve readability through the use of consistent terminology; to clarify existing language; to delete unused, archaic, or inaccurate definitions, terms, references or other language; to add new rules to address statutory requirements or department adjudicative procedures; and to modernize language and improve readability.

In 2019, the Sunset Commission recommended the Board of the Texas Department of Motor Vehicles (board) establish advisory committees and adopt rules regarding standard advisory committee structure and operating criteria. The board adopted rules in 2019 and advisory committees have since provided valuable input on rule proposals considered by the board for proposal or adoption. In September of 2023, the department provided an early draft of these rules to two department advisory committees, the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) and the Customer Service and Protection Advisory Committee (CSPAC). Committee members voted on formal motions and provided informal comments on other provisions. Input from both committees was incorporated into proposed new §§224.52 relating to Cease and Desist Order; Delegation of Authority, 224.162 relating to Statutory Stay, 224.192 relating to Appeal of an Interlocutory Order, and 224.260 relating to Lemon Law Relief Decisions.

EXPLANATION.

In this issue of the *Texas Register*, the department proposes revisions that would delete language regarding adjudicative practices and procedures in current 43 TAC §217.56 and Chapters 206, 215, 218, 219, and 221. The department is proposing to reorganize these rules into proposed new Chapter 224 for easier reference and to add rules consistent with the department's authority and responsibility under Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1001-1005; and rules promulgated by the State Office of Administrative Hearings (SOAH). The proposed new rules would be organized into seven subchapters.

Subchapter A. General Provisions

Proposed new §224.1 would describe the purpose and scope of new Chapter 224, which would include all contested case matters in which the department has jurisdiction. Subchapter A would apply to all contested case matters unless expressly excluded or limited in another subchapter. The following current sections of this title regarding purpose or scope would be incorporated into new Chapter 224: §206.61, relating to Scope and Purpose; §215.21, relating to Purpose and Scope; §215.201, relating to Purpose and Scope; §218.70, relating to Purpose; and §219.120, relating to Purpose. These provisions are all proposed for repeal in this issue of the *Texas Register.*

Proposed new §224.3 would include definitions for terms used throughout Chapter 224. Proposed new §224.3 would incorporate terms defined in relevant content from 1 TAC §155.5, relating to Definitions, which are definitions used by SOAH. It would also incorporate the provisions of the following current sections of this title, which are proposed for repeal in this issue of the *Texas Register*: §215.2, relating to Definitions; Conformity with Statutory Requirements; §221.2, relating to Definitions; and §206.62, relating to Definitions.

Proposed new §224.5 would address prohibited communication during a contested case, including ex parte communication, and would incorporate the existing provisions of current section §215.22 of this title, relating to Prohibited Communications, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.7 would address the appearance by an authorized representative, intervention in a contested case, and the invitation of a person who is not a contested case party to participate in mediation. Relevant content would be incorporated into proposed new §224.7 from 1 TAC §155.201, relating to Representation of Parties, as well as current §215.23 of this title, relating to Appearances, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.9 would provide guidance on computing time consistent with Government Code, §311.014. Proposed new §224.9 would also incorporate relevant content from the existing provisions of §215.29 of this title, relating to Computing Time, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.11 would provide general procedures related to filing and service of documents. Proposed new §224.11 would incorporate relevant content from 1 TAC §155.101 (a-d), relating to Filing Documents. Proposed new §224.11 would also incorporate other current sections of this title--§215.30, relating to Filing of Documents, and §215.49, relating to Service of Pleading, Petitions, Briefs, and Other Documents--that are proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.13 would address discovery matters, including the requirement for cooperation between the contested case parties and criteria and process for a party to request a commission or subpoena. Proposed new §224.13 would incorporate relevant content from 1 TAC §155.259, relating to Discovery Motions, and §206.67 of this title, relating to Discovery, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.15 would address hearing recording and transcription costs. Proposed new §224.15 would incorporate relevant content from 1 TAC §155.423, relating to Making a Record of the Proceeding, and §215.37(a-c) of this title, relating to Recording and Transcriptions of Hearing Cost, which is proposed for repeal in this issue of the *Texas Register.*

Proposed new §224.17 would address when proceedings may be consolidated. Proposed new §224.17 would incorporate rele-

vant provisions from current §215.38 of this title, relating to Consolidation of Proceedings, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.19 would address the timing and criteria for informally disposing of a contested case. Proposed new §224.19 would incorporate relevant content from current §215.316 of this title, relating to Informal Disposition, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.21 would address criteria for when a party may waive a hearing and consent to an agreed order. Proposed new §224.21 would incorporate relevant content from current §215.39 of this title, relating to Waiver of Hearing, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.23 would require a contested case hearing to be open to the public. Proposed new §224.23 would incorporate content from current §215.36 of this title, relating to Hearings To Be Public, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.25 would address when a deadline may or may not be extended. Proposed new §224.25 would incorporate content from current §215.32 of this title, relating to Extension of Time, which is proposed for repeal in this issue of the *Texas Register.*

Proposed new §224.27 would implement provisions of Government Code 2001, Subchapter F that govern the issuance of final orders and motions for rehearing. Proposed new §224.27 would include related content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.55, relating to Final Decision, §215.501, relating to Final Decisions and Orders; Motions for Rehearing, §215.505, relating to Denial of Dealer or Converter Access to Temporary Tag System, and §221.93, relating to Final Decisions and Orders; Motions for Rehearing.

Proposed new §224.29 would address delegation of final order authority in accordance with Occupations Code, §2301.154(c) and §2301.711, and Transportation Code, §1003.005(b), as applicable. Proposed new §224.29 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.43, relating to Conduct and Decorum, §215.58, relating to Delegation of Final Authority, and §221.95, relating to Delegation of Final Order Authority.

Proposed new §224.31 would address the cost of providing a contested case record for appeal purposes. Proposed new §224.31 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.37(d), relating to Recording and Transcriptions of Hearing Cost, §218.75, relating to Cost of Preparing the Agency Record, and §219.127, relating to Cost of Preparing Agency Record.

Subchapter B. Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement

Proposed new §224.50 would address the purpose and scope of this subchapter and would identify the other subchapters that apply to these types of contested cases. Proposed new §224.50 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.21, relating to Purpose and Scope, and §215.201, relating to Purpose and Scope.

Proposed new §224.52 would address procedures related to cease and desist orders issued under Occupations Code, Chapters 2301 or 2302, including the notice and opportunity required for due process. Proposed new §224.52 would also address the delegation of signature authority to the department's Enforcement Division Director to sign interlocutory cease-and-desist orders. Proposed new §224.52 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.314, relating to Cease and Desist Orders, and §221.96, relating to Cease and Desist Order. The delegation of signature authority for an interlocutory cease-and-desist order is new text that is not contained in the department's current sections of this title. The delegation of signature authority is necessary to address a situation in which the facts warrant the issuance of an interlocutory cease-and-desist order as soon as possible. Additionally, proposed new §224.52 would clarify the notice and opportunity to respond for an individual who may be subject to a cease-and-desist order, to ensure consistent due process.

Proposed new §224.54 would address criteria used by the department to assess a civil penalty consistent with and under the authority of Occupations Code, §2301.801 and §2302.354, and Transportation Code, §503.095. These criteria are currently reflected in the department's disciplinary matrix for motor vehicle dealers that is published on the department's website. Proposed new §224.54 would create clarity and ease of reference for licensees, administrative law judges, and board members seeking to determine the appropriate penalty in a contested case.

Proposed new §224.56 would address the requirements for a notice of department decision issued to a person who is alleged to have violated a statute or department rule. Proposed new §224.56 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.500, relating to Administrative Sanctions and Procedures, and §221.91, relating to Notice of Department Decision.

Proposed new §224.58 would address the process for denying access to the temporary tag system as authorized under Transportation Code, §503.062(f). Proposed new §224.58 would incorporate content from current §215.505 of this title, regarding Denial of Dealer or Converter Access to Temporary Tag System, that is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.60 would describe the process for filing and service of documents under this subchapter. Proposed new §224.60 would be incorporate relevant content into from 1 TAC §155.101 (a-d), relating to Filing Documents, and the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.30, relating to Filing of Documents, and §215.49, relating to Service of Pleading, Petitions, Briefs, and Other Documents.

Proposed new §224.62 would address the process for referring a contested case under this subchapter to SOAH. Proposed new §224.62 would be incorporate relevant content from 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to Request to Docket Case, as well as current §215.306 of this title, relating to Referral to SOAH, that is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.64 would address the process for the department to issue a notice of hearing for contested cases under this subchapter. Proposed new §224.64 would incorporate relevant content into from the following current sections of this title

that are proposed for repeal in this issue of the *Texas Register*: §215.34, relating to Notice of Hearing in Contested Case, and §221.92, relating to Notice of Hearing.

Subchapter C. Contested Cases Between Motor Vehicle Industry License Holders or Applicants

Proposed new §224.80 would address the purpose and scope of this subchapter and would identify the other subchapters that would apply to these types of contested cases for clarity and ease of reference. Proposed new §224.80 incorporates relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.21, relating to Purpose and Scope, and §215.201, relating to Purpose and Scope.

Proposed new §224.82 would address the requirements for a franchised dealer to file a protest or complaint consistent with the department's responsibilities under Occupations Code, Chapter 2301. Proposed new §224.82 would incorporate relevant content would from current §215.106 of this title, relating to Time for Filing Protest.

Proposed new §224.84 would address how a protest, complaint, or other document must be filed, including the requirement to file and pay any required fee electronically, and include all assigned docket numbers. Proposed new §224.84 would incorporate relevant content into from 1 TAC §155.101 (a-d), relating to Filing Documents, and the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.24, relating to Petitions, §215.30, relating to Filing of Documents, §215.49, relating to Service of Pleading, Petitions, Briefs, and Other Documents, and §215.305, relating to Filing of Complaints, Protests, and Petitions; Mediation.

Proposed new §224.86 would describe the process used by the department to review a protest or complaint to determine if the protest or complaint meets the minimum statutory requirements and is appropriate to refer to SOAH for a hearing at SOAH consistent with the department's responsibilities under Occupations Code, Chapter 2301.

Proposed new §224.88 would describe the department's procedure for docketing a contested case under this subchapter, the issuance of a stay as authorized by Occupations Code §2301.803, the notice to the parties, the opportunity for the parties to accept or decline a department mediator and retain a private mediator, and the deadline to notify the department regarding the mediator option chosen by the parties. Mediation is required under Occupations Code, Subchapter K and §2301.703.

Proposed new §224.90 would describe the procedures related to mediation including the timeline for mediation, requirements if a private mediator is selected by the parties, the requirement for a mediator to submit a written report, and the department's actions upon receiving the report including notifying SOAH whether a party refused to participate or attend mediation. Proposed new §224.90 would allow a SOAH Administrative Law Judge (ALJ) to recommend a sanction in the final proposal for decision for refusal to participate or attend statutorily required mediation. Proposed new §224.90 would incorporate relevant content from the following current §215.305 of this title, relating to Filing of Complaints, Protests, and Petitions; Mediation, that is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.92 would address the process for referring a contested case under this subchapter to SOAH. Proposed new §224.92 would incorporate relevant content from 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to Request to Docket Case, as well as the following current §215.306 of this title, relating to Referral to SOAH, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.94 would address the process for the department to issue a notice of hearing for contested cases under this subchapter. Proposed new §224.94 would incorporate relevant content from current §215.34 of this title, relating to Notice of Hearing in Contested Cases, which is proposed for repeal in this issue of the *Texas Register*.

Subchapter D. Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement

Proposed new §224.110 would address the purpose and scope of this subchapter and identify the other subchapters that would apply to these types of contested cases. Proposed new §224.110 would incorporate relevant content from the following current sections of this title: §218.1, relating to Purpose, §218.70, relating to Purpose, §219.1, relating to Purpose and Scope, and §219.120, relating to Purpose.

Proposed new §224.112 would reference definitions used in statute and existing rules to avoid duplication and potential conflict when incorporating definitions from the Transportation Code, and the following current sections of this title: §218.2, relating to Definitions, and §219.2, relating to Definitions.

Proposed new §224.114 would address procedures related to cease-and-desist orders issued under Transportation Code, §643.256. Proposed new §224.114 would incorporate relevant content from §218.77, relating to Cease and Desist Order, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.115 would address criteria used by the department to assess an administrative penalty under Transportation Code, §§623.271, 623.272, and 643.251. Transportation Code, §643.251 provides the dollar caps for administrative penalties, as well as the factors on which the administrative penalty shall be based. Transportation Code, §623.271 and §623.272 state that the amount of an administrative penalty imposed under §623.271 and §623.272, respectively, is calculated in the same manner as the amount of an administrative penalty imposed under Transportation Code, §643.251. Proposed new §224.115 would also address the criteria the department would use to determine whether to probate a suspension of a motor carrier's registration, as well as the length of the probation and the reporting requirements during the probation. Many of these criteria are currently reflected in the department's disciplinary matrix for motor carriers that is published on the department's website. The department's disciplinary matrix for motor carriers also includes the factors on which the administrative penalty shall be based under Transportation Code, §§623.271, 623.272, and 643.251(c). Proposed new §224.115 would create clarity and provide ease of reference for motor carriers, administrative law judges, and the Motor Carrier Division Director seeking to determine the appropriate administrative penalty in a contested case. Proposed new §224.115 would incorporate relevant content from §218.71, relating to Administrative Penalties; §218.72, relating to Administrative Sanctions; §219.121, relating to Administrative Penalties; and §219.126, relating to Administrative Penalty for False Information on Certificate by a Shipper, which are proposed for amendment or repeal in this issue of the *Texas Register*.

Proposed new §224.116 would address procedures when the department decides to take enforcement action under any of the following sections of this title: §218.16, relating to Short-term Lease and Substitute Vehicles; §218.64, relating to Rates; §218.71, relating to Administrative Penalties; §218.72, relating to Administrative Sanctions; §219.121, relating to Administrative Penalties; §219.122, relating to Administrative Sanctions; or §219.126, relating to Administrative Penalty for False Information on Certificate by a Shipper. Proposed new §224.116 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §218.71, relating to Administrative Penalties; §218.73, relating to Administrative Proceedings; and §219.124, relating to Administrative Proceedings.

Proposed new §224.118 would require a person to file a document according to written instructions provided by the department as different systems and methods may be used depending on the party and type of enforcement action.

Proposed new §224.120 would describe the procedures followed by the department upon receiving a final order issued under Family Code, §§232.003, 232.008, or 232.009, regarding child support enforcement. Proposed new §224.120 would incorporate relevant content from current §218.76 of this title, relating to Registration Suspension Ordered Under the Family Code, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.122 would prescribe the requirements for a vehicle registrant that wants to appeal a decision against the registrant of an assessment (a financial penalty under §217.56(c)(2)(G)) or a cancellation or revocation of the registrant's apportioned registration under the International Registration Plan (IRP). Proposed new §224.122 would incorporate relevant content from current §217.56(c)(2)(J)(iii) of this title, relating to Registration Reciprocity Agreements, which is proposed for amendment in this issue of the *Texas Register*.

Proposed new §224.124 would describe the appeal process for a person who is denied registration whether it be a new, renewal, or reregistration application under Transportation Code, Chapter 643. Proposed new §224.124 would incorporate relevant content from current §218.78 of this title, relating to Appeal of Denial, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.126 would describe the appeal process for a person whose application for self-insured status is denied under §218.16(d), relating to Insurance Requirements. Relevant content would be incorporated from current §218.16(d), which is proposed for amendment in this issue of the *Texas Register*.

Proposed new §224.128 would address the process for referring a contested case under this subchapter to SOAH. Relevant content would be incorporated from 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to Request to Docket.

Proposed new §224.130 would address the process for the department to issue a notice of hearing for contested cases under this subchapter consistent with the statutory requirements under Government Code, Chapter 2001, and SOAH's rule regarding notice of hearing in 1 TAC §155.401, relating to Notice of Hearing.

Subchapter E. Contested Cases Referred to SOAH

Proposed new §224.150 would describe the types of contested cases that are referred to SOAH, the transfer of jurisdiction from the department to SOAH, and the transfer of jurisdiction from SOAH back to the department. Proposed new §224.150 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.21, relating to Purpose and Scope; §215.201, relating to Purpose and Scope; and §215.303, relating to Application of Board and SOAH Rules.

Proposed new §224.152 would describe the department's procedures for referring a contested case to SOAH consistent with SOAH's rules. Relevant content would be incorporated into proposed new §224.152 from SOAH's related rules in 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to Request to Docket, as well as current §215.306 of this title, relating to Referral to SOAH, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.154 would address notice of hearing requirements applicable under Government Code, §2001.052; Occupations Code, §2301.705; 1 TAC §155.401, relating to Notice of Hearing; and Transportation Code, Chapters 621-623 and 643; would provide for service of parties outside the United States to the extent authorized by applicable law; and would address the amendment of a notice of hearing under Government Code, §2001.052(b). Proposed new §224.154 would incorporate relevant content from SOAH's related rules in 1 TAC §155.401, as well as the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.34, relating to Notice of Hearing in Contested Cases; §215.307, relating to Notice of Hearing; §218.73, relating to Administrative Proceedings; §219.124, relating to Administrative Proceedings; and §221.92, related to Notice of Hearing. Transportation Code, §643.2525(a) requires the department to give written notice to the motor carrier by first class mail for an enforcement action under Transportation Code, §643.251 or §643.252 regarding administrative penalties and sanctions, respectively. Transportation Code, §623.271(b) and §623.272(b) state that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or revocation of a permit under §623.271 and the imposition of an administrative penalty under §623.272.

Proposed new §224.156 would describe the process for a party to reply to a notice of hearing and the consequences for when a party does not appear at a hearing. Proposed new §224.156 would incorporate relevant content from current §215.308 of this title, relating to Reply to Notice of Hearing and Default Proceedings, which is proposed for repeal in this issue of the *Texas Register*. Relevant content would also incorporate applicable sections of SOAH's rules of procedure for contested cases within SOAH's jurisdiction.

Proposed new §224.158 would describe the process and deadlines for an ALJ to consider an amicus brief. The new proposed rule would allow amicus briefs to be incorporated into the administrative record of the contested case for review and consideration by the ALJ, and the board or board designate responsible for issuing a final order in the case. Proposed new §224.158 would incorporate relevant content from current §215.311 of this title, relating to Amicus Briefs, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.162 would address an ALJ's responsibilities to hear and rule on a request regarding a statutory stay and the right for a party to file an interlocutory appeal with the board. Proposed new §224.162 would incorporate relevant con-

tent from §215.315 of this title, relating to Statutory Stay, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.164 would describe the ALJ and party responsibilities relating to a proposal for decision in a contested case. Proposed new §224.164 would be incorporate relevant content from SOAH's related rule in 1 TAC §155.507, relating to Proposals for Decision; Exceptions and Replies, and current §215.310 of this title, relating to Issuance of Proposals for Decision and Orders, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.166 would describe the process by which jurisdiction transfers back to the board or board delegate for a final decision, consistent with the requirements of Government Code, Chapter 2001.

Subchapter F. Board Procedures for Contested Cases

Proposed new §224.190 would describe the scope of the subchapter, which includes review and consideration of a contested case and issuance of a final order by the board or board delegate. Proposed new §224.190 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.21, relating to Purpose and Scope, and §215.201, relating to Purpose and Scope.

Proposed new §224.192 would describe the process for a person to appeal an interlocutory cease-and-desist or stay order authorized under Occupations Code, Chapter 2301, to comply with the statutory requirement that the board rule on appeals of such interlocutory orders. Proposed new §224.192 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.314, relating to Cease and Desist Orders, and §221.96, relating to Cease and Desist Order. Proposed new §224.192 would also clarify the timelines and process through which a party would request to make an oral presentation or to provide written materials to the board when it reviews the appeal of the interlocutory order. Proposed new §224.192 would also stipulate that the board's review of an appeal of an interlocutory order is limited to the review and changes allowed under Texas Government Code, §2001.058(e), to clarify the separate roles of the SOAH ALJ and the board in reviewing an interlocutory order issued by the department.

Proposed new §224.194 would describe the process for scheduling the review of a contested case by the board or a board delegate and allow for the decision-making authority to review the case during a public meeting to increase public insight into the decision-making process.

Proposed new §224.196 would describe department's procedures, deadlines, and order of presentations, if a contested case party wants to make an oral presentation to the board as part of the board's consideration of the contested case. Proposed new §224.196 would incorporate relevant content from current §215.59 of this title, relating to Request for Oral Presentation, which is proposed for repeal in this issue of the *Texas Register*. In addition, language in proposed new §224.196(e) would clarify that §206.22 of this title, relating to Public Access to Board Meetings, does not authorize a party to speak as a public commenter regarding the party's contested case before the board during the posted agenda item or during the open comment period. Proposed new §224.196 complies with Transportation Code, §1004.002, which requires the board to develop policies that provide the public with a reasonable opportunity to appear before the board and speak on any issue under the jurisdiction of the board. A party that complies with the requirements under proposed new §224.196 would be allowed a maximum of 15 minutes to make their oral presentation to the board unless the board chair increases this time under proposed new §224.200.

Proposed new §224.198 would describe the responsibilities and deadlines for a party that wants to provide written materials to the board as part of the board's consideration of the contested case. Proposed new §224.198 would incorporate relevant content from current §215.60 of this title, relating to Written Materials and Evidence, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.200 would describe the responsibilities and limitations for a party making an oral presentation as part of the board's consideration of the contested case. Proposed new §224.200 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §§206.22(f), relating to Public Access to Board Meetings, §215.61, relating to Limiting Oral Presentation and Discussion to Evidence in the Administrative Record, and §215.62, relating to Order of Presentations to the Board for Review of a Contested Case.

Proposed new §224.202 would describe the order of presentations at the board meeting in which the board is considering a contested case. Proposed new §224.202 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §§206.22(f), relating to Public Access to Board Meetings, and 215.62, relating to Order of Presentations to the Board for Review of a Contested Case.

Proposed new §224.204 would address board member conduct while reviewing and considering a contested case. Proposed new §224.204 would incorporate relevant content from current §215.63 of this title, relating to Board Conduct and Discussion When Reviewing a Contested Case, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.206 would describe the requirements for a final order issued by the board or a board delegate and when the order is final. Proposed new §224.206 would incorporate relevant content from §215.501 of this title, relating to Final Decisions and Orders; Motions for Rehearing, which is proposed for repeal in this issue of the *Texas Register*.

Subchapter G. Lemon Law and Warranty Performance Claims

Proposed new §224.230 would describe the scope of this subchapter, provide statutory references, and define terms used in the subchapter. Proposed new §224.230 would be incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.21, regarding Purpose and Scope, and §215.201, regarding Purpose and Scope.

Proposed new §224.232 would describe the requirements for a person to file a lemon law or warranty performance claim, the process, and the assistance available from the department to enable a person to do so. Proposed new §224.232 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.27, relating to Complaints, and §215.202, relating to Filing of Complaints.

Proposed new §224.234 would describe how the department reviews a complaint to determine if the department has juris-

diction and meets minimum statutory requirements. Proposed new §224.234 would incorporate relevant content from current §215.203 of this title, relating to Review of Complaints, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.236 would describe the process regarding the notification to the manufacturer, distributor, or converter. Proposed new §224.236 would be incorporate relevant content from current §215.204 of this title, relating to Notification to Manufacturer, Converter, or Distributor, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.238 would describe the process for mediation, settlement, and referral for hearing with a hearings examiner. Proposed new §224.238 would incorporate relevant content from current §215.205 of this title, relating to Mediation; Settlement, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.240 would describe the notice of hearing requirements consistent with Government Code, Chapter 2001. Proposed new §224.240 would incorporate relevant content from the current §215.34 of this title, relating to Notice of Hearing in Contested Cases, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.242 would describe the requirements for a party to make a motion, as well as the fact that a motion is not granted unless a hearings examiner makes a ruling. Proposed new §224.242 would incorporate relevant content from current §215.47 of this title, relating to Motions, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.244 would describe the methods by which a document may be filed and served in this subchapter. Proposed new §224.244 would incorporate relevant content from current §215.49 of this title, relating to Service of Pleading, Petitions, Briefs, and Other Documents, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.246 would describe the role and powers of the hearings examiner and the recusal or substitution process. Proposed new §224.246 would incorporate relevant content from current §215.41 of this title, relating to Presiding Officials, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.248 would describe the criteria for the granting of a continuance by a hearings examiner. Proposed new §224.248 would incorporate relevant content from current §215.40 of this title, relating to Continuance of Hearing, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.250 would describe a party's rights during the hearing, provide guidance as to how a hearing will be conducted, and address participant conduct and decorum in a hearing. Proposed new §224.250 would incorporate relevant content from the following current provisions of this title that are proposed for repeal in this issue of the *Texas Register*: §215.42, relating to Conduct of Hearing, and §215.43, relating to Conduct and Decorum.

Proposed new §224.252 would address the procedure that will be followed during a hearing. Proposed new §224.252 would incorporate related content from current §215.206 of this title, relating to Mediation; Settlement, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.254 would address the standards and handling of evidence during a hearing. Proposed new §224.254 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.44, relating to Evidence, and §215.45, relating to Stipulation of Evidence.

Proposed new §224.256 would address how objections and exceptions may be handled during a hearing conducted by a hearings examiner. Proposed new §224.256 would incorporate relevant content from current §215.46 of this title, relating to Objections and Exceptions, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.258 would specify that the hearings examiner has final order authority in cases under this subchapter. Proposed new §224.258 would incorporate relevant content from current §215.55 of this title, relating to Final Decision, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.260 would describe how lemon law relief decisions will be evaluated by a hearings examiner, the presumptions that may be applied, and how refunds may be calculated, in addition to other important criteria. proposed new §224.260 would incorporate content from current §215.208 of this title, relating to Lemon Law Relief Decisions, which is proposed for repeal in this issue of the *Texas Register*. However, language in §215.208 requiring a different presumptive useful life calculation for a towable recreational vehicle that is lived in full-time would be omitted as useful life may vary based on whether the towable recreational vehicle is at a fixed location or used for traveling. Proposed new §224.260 would allow the hearings examiner to consider the evidence presented regarding usage and adjust the calculation accordingly.

Proposed new §224.262 would detail which incidental costs may be included in a final refund amount ordered by a hearings examiner. Proposed new §224.262 would incorporate relevant content from current §215.209 of this title, relating to Incidental Expenses, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.264 would describe the requirements for a hearings examiner to issue a final order, the process for filing and considering a motion for rehearing, and notification of the parties. Proposed new §224.264 would incorporate relevant content from current §215.207 of this title, relating to Contested Cases: Final Orders, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.266 would describe the complainant's option to accept or reject the final order and the responsibilities of a manufacturer, distributor, or converter if a complainant accepts the final order. Proposed new §224.266 would incorporate relevant content from current §215.210 of this title, relating to Compliance with Order Granting Relief, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.268 would describe the process for a party to appeal a final order in Travis County district court under Government Code, Chapter 2001, and subject to Occupations Code, §2301.609. Proposed new §224.268 would incorporate relevant content from current §215.207(f) of this title, relating to Contested Cases: Final Orders, which is proposed for repeal in this issue of the *Texas Register*.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the new rules will be in effect, there will be no significant fiscal impact to state or local

governments as a result of the enforcement or administration of the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be no significant effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Thompson has also determined that, for each year of the first five years the new sections are in effect, there are several anticipated public benefits because of the proposed new chapter.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include the following: consolidation of the department's rules regarding adjudicative practice and procedure into one chapter that provides more clarity, more detail, easier reference, and more consistency with current practice.

Anticipated Costs To Comply With The Proposal. Ms. Thompson anticipates that no additional costs beyond those they already incur to comply with current provisions that we are incorporating, to the extent that is a true statement.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed new chapter will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the proposed new chapter primarily consolidates current rules into a new chapter that is consistent with current practice. Also, for the cases that the department refers to SOAH, the proposed rules would not change the fact that the contested case procedures and requirements are primarily governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, which are SOAH's rules of procedure.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the new rules are in effect, a government program would not be created or eliminated. Implementation of the new rules would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed new chapter technically creates new regulation; however, most of the new rule text is consistent with current practice and rule. The proposed rules do not expand, limit or repeal existing regulations since the entire chapter is new. Lastly, the proposed new rules do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on January 28, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§224.1, 224.3, 224.5, 224.7, 224.9, 224.11, 224.13, 224.15, 224.17, 224.19, 224.21, 224.23, 224.25, 224.27, 224.29, 224.31

STATUTORY AUTHORITY. The department proposes new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules; to provide for compliance with warranties; to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.602, which requires the board to adopt rules for the enforcement and implementation of Subchapter M of Occupations Code, Chapter 2301; Occupations Code, §2301.651, which authorizes the board to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce rules to carry out IRP; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under §623.272, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation Code,

§643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.102, which authorizes a motor carrier to comply with the requirements under Transportation Code, §643.101 through self-insurance if it complies with the requirements; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the process for an administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case, including the power to issue a final order, to one or more board members or certain department staff; and the statutory authority referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. These new rules would implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1002-1005.

§224.1. Purpose and Scope.

This subchapter describes the procedures by which the department will adjudicate a contested case arising under Occupations Code, Chapters 2301 or 2302, or Transportation Code, Chapters 502, 503, 621-623, 643, 645, or 1001-1005, consistent with the requirements of Government Code, Chapter 2001. Unless expressly excluded or limited, this subchapter applies to every contested case in which the department has jurisdiction.

§224.3. Definitions.

(a) The statutory definitions govern this chapter. In the event of a conflict, the definition or procedure referenced in statute controls.

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

(1) Administrative Law Judge or ALJ--An individual appointed to serve as a presiding officer by the State Office of Administrative Hearings Chief Judge under Government Code, Chapter 2003, to conduct a hearing on matters within the department's jurisdiction.

(2) APA--The Administrative Procedure Act, Government Code, Chapter 2001.

(3) Authorized representative--An attorney authorized to practice law or, if authorized by the applicable subchapter, a non-attorney designated by a party to represent the party.

(4) Board--The board of the Texas Department of Motor Vehicles, including department staff personnel to whom the board delegates an assigned duty.

(5) Complaint--A matter filed under Occupations Code, §2301.460 or under Subchapters E or M, or under Transportation Code, Chapter 503.

(6) Confidential Information--Information considered to be confidential under constitutional or statutory law or by judicial decision.

(7) Contested Case--A proceeding in which the legal rights, duties, or privileges of a party are determined by the department after the opportunity for an adjudicative hearing.

(8) Day--A calendar day.

(9) Department--The Texas Department of Motor Vehicles.

(10) Director--The division director of the department authorized by the board or by statute to act, including any department personnel to whom the division director delegates a duty assigned under this chapter.

(11) Electronic filing or filed electronically--The electronic transmission of documents filed in a contested case by uploading the documents to a case docket using a department-designated system or department-designated email.

(12) Electronic service or served electronically--The electronic transmission of documents filed in a contested case and sent to a party or a party's authorized representative by email or a department-designated system.

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

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

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

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

(14) Evidence--Testimony and exhibits admitted into the hearing record by an ALJ or hearings examiner to prove or disprove the existence of an alleged fact.

(15) Ex Parte Communication--Direct or indirect communication between a state agency, party, person, or representative of those entities and an ALJ, board member, or hearings examiner in connection with an issue of law or fact in a contested case where the other known parties to the contested case do not have notice of the communication and an opportunity to participate. Ex parte communication does not include:

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

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

(C) consultation between a board member or hearings examiner and the department's general counsel or hearings personnel;

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

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

(16) Exhibit--A document, record, photograph, video, or other form of data compilation, regardless of media, or other tangible object offered by a party as evidence.

(17) Filed--The receipt by the department of a document and required payment, if applicable.

(18) Final order authority--The person with authority under statute or a board rule to issue a final order.

(19) GDN--General distinguishing number as defined in Transportation Code, Chapter 503.

(20) Hearings Examiner--An individual appointed by the Chief Hearings Examiner to serve as a presiding officer to hear contested cases under Occupations Code, §2301.204 or Subchapter M.

(21) License holder--A person holding a license under Occupations Code, Chapters 2301 or 2302, or a GDN or other license issued under Transportation Code, Chapter 503.

(22) Mediation--A confidential, informal dispute resolution process in which a qualified impartial person facilitates communication between the contested case parties to promote settlement, reconciliation, or understanding, as defined by Occupations Code, §2301.521.

(23) Party--A person, including the department, named or allowed to participate in a contested case.

(24) Person--As defined in Occupations Code, §2301.002.

(25) Personal information--As defined by Transportation Code, §730.003(6).

(26) Personal identifying information--As defined by Business and Commerce Code, §521.002(1).

(27) Pleading--A filed document that requests procedural or substantive relief, makes a claim, alleges a fact, denies an allegation, makes or responds to a legal argument, or otherwise addresses a matter involved in a contested case.

(28) Protest--To challenge a person's licensing application or a decision by a license holder, as provided under Occupations Code, Chapter 2301.

(29) Redact--To remove a reference from a document.

(30) Sensitive personal information--As defined by Business and Commerce Code, §521.002(2).

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

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

(33) TAC--The Texas Administrative Code.

(34) TRCP--The Texas Rules of Civil Procedure, which may be found on the website of the Supreme Court of Texas.

(35) TRE--The Texas Rules of Evidence, which may be found on the website of the Supreme Court of Texas.

§224.5. Prohibited Communication.

(a) No person, party, attorney of record, or authorized representative in any contested case shall violate Government Code, §2001.061 by directly or indirectly engaging in ex parte communication concerning a contested case with an ALJ, board member, board delegate, or a hearings examiner assigned to render a decision or make findings of fact and conclusions of law in a contested case.

(b) Unless prohibited by Government Code, §2001.061, department staff who did not participate in the hearing may advise a board member, a board delegate, or a hearings examiner, regarding a contested case and any procedural matters.

(c) Department staff shall not recommend a final decision to the board unless the department is a party to the contested case.

(d) A violation of this section shall be promptly reported to the board chair or chief hearings examiner, as applicable, and the general counsel of the department.

(e) The general counsel shall ensure that a copy or summary of the ex parte communication is included with the record of the contested case and that a copy is forwarded to all parties or their authorized representatives.

(f) The general counsel may take any other appropriate action otherwise provided by law.

§224.7. Appearance.

(a) General. Any party to a contested case may appear in person or by an authorized representative. An authorized representative may be required to show authority to represent a party.

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

(c) Attorney in charge. When more than one attorney makes an appearance in a contested case on behalf of a party, the attorney whose signature appears first on the initial document filed in the contested case shall be the attorney in charge for that party unless another attorney is specifically designated in writing. All communication sent by the department or other party regarding the contested case shall be sent to the attorney in charge unless otherwise requested by a party.

(d) Intervention. Any public official or other person having an interest in a contested case may, upon request to the ALJ or hearings examiner, be allowed to intervene. A person requesting to intervene in a contested case may be required to disclose that person's interest in the contested case before permission to intervene will be granted.

(e) A person may be invited to participate in a contested case mediation if all parties and the mediator agree that the person's participation will facilitate understanding and resolution of the contested case. However, an invited person who is not a party is not required to participate in a mediation.

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

§224.9. Computing Time.

(a) General. Any time period prescribed or allowed by this chapter, by order of the board, or by any applicable statute shall be computed in accordance with Government Code, §311.014.

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

(c) Computing time periods. When computing a time period under this chapter:

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

(2) the last day of the time period is counted, unless it is a Saturday, Sunday, or legal holiday, in which case the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(d) Calendar days. Time shall be computed using calendar days rather than business days, unless otherwise specified in statute or rule.

§224.11. Filing and Service of Documents.

(a) Each document required or allowed to be filed with the department under this chapter must be filed as required under this section and the relevant subchapter for the applicable type of contested case.

(b) A copy of each document filed in a contested case shall be filed or served on the same date upon:

(1) the department, and

(2) each party or the party's authorized representative or attorney in charge.

(c) A certificate of service shall accompany each document. A certificate of service by the party or party's authorized representative showing timely service in a manner described in the relevant subchapter shall be prima facie evidence of timely service. This section does not preclude the department or any party from offering proof that the document was not timely filed or served.

(d) To be timely filed, a document must be received by the department within the time specified by statute, rule, or department order. A document received after the specified time, notwithstanding the means of delivery, shall be deemed untimely. Electronic filing is considered timely if the document is received by 5:00 p.m. Central Standard Time or Daylight Savings Time when in effect. Electronic filing after 5:00 p.m. shall be deemed received on the following day or the next business day if filed on a Saturday, Sunday, or legal holiday.

(e) A document filed electronically must:

(1) be legible and in a portable document format (PDF), unless the department requests a different format;

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

(3) not be locked;

(4) include the email address of the party or authorized representative who electronically filed the document;

(5) include the docket number and the name of the contested case in which the document is filed;

(6) be titled or described in a manner that allows the department and the parties to reasonably ascertain the contents of the document; and

(7) include an electronic signature.

(f) The department is not responsible for a filing party's user, system, transmission, or service error.

(g) If a document is not filed or served timely due to a system outage of a department-designated system, the filing party may send the document to a department-designated email address or seek appropriate relief from the final order authority.

(h) A party must redact information in a document before filing if the document contains personal identifying information, sensitive identifying information, or other confidential information that is not necessary to the resolution of the case. If the information is necessary to the resolution of the case, each page of the document must be conspicuously marked as "CONFIDENTIAL - NOT FOR PUBLIC RELEASE" in bold 12-point or larger type in the document header or footer. A party may request a document be filed under seal if allowed by other law, order, or rule.

§224.13. Discovery.

(a) Party Cooperation. The parties and their authorized representatives shall cooperate in discovery and shall endeavor to make any agreement reasonably necessary for the efficient disposition of the contested case.

(b) Discovery Request. A party may request that the department issue a commission or a subpoena if the parties cannot agree, or a contested case requires testimony, documents, or information from a person who is not a party. A party must submit a commission or subpoena request to the department's Office of General Counsel for review.

(c) Commission to take a deposition. Upon the written request of a party, the executive director may issue a written commission directed to an officer, authorized by statute, to take a deposition of a witness.

(d) Subpoena to produce documents. Upon the written request of a party, the executive director may issue a subpoena for the production of documents. The written request must identify the documents with as much detail as possible and must include a statement of their relevance to the issues in the contested case.

(e) Subpoena for attendance at a hearing or a deposition. Upon the written request of a party, the executive director may issue a subpoena for the attendance of a witness at a hearing or a deposition in a contested case. The subpoena may be directed to any person without regard to the distance between the location of the witness and the location of the hearing.

(f) The executive director is authorized to delegate the authority to department staff to issue a subpoena and a commission.

(g) Limits on discovery. A commission or subpoena will only be issued on a showing of good cause and receipt of a deposit sufficient to ensure payment of expenses and fees related to the subpoena, including statutory witness fees. A commission or subpoena will not be issued if it appears to be duplicative, dilatory, sought for the purpose of harassment, or if it would unduly inconvenience the person to whom it is directed. Issuance of a commission or subpoena will be subject to the provisions of Government Code, Chapter 2001, and SOAH rules.

§224.15. Hearing Recording and Transcription Cost.

(a) Except as provided by Subchapter G of this chapter (relating to Lemon Law and Warranty Performance Claims), a hearing in a contested case will be transcribed by a court reporter if anticipated to last longer than one day.

(b) The costs of transcribing the hearing and for the preparation of an original transcript of the record for the department shall be:

(1) assessed to a party requesting the transcript in a contested case;

(2) shared by the parties in a contested case under Subchapter C of this chapter (relating to Contested Cases Between Motor Vehicle Industry License Holders or Applicants); or

(3) assessed as directed by the ALJ or hearings examiner.

(c) Copies of recordings or transcriptions of a contested case hearing will be provided to any party upon written request and upon payment for any duplication costs incurred by the department.

§224.17. Consolidation of Proceedings.

No contested case proceedings including two or more related cases or claims shall be jointly heard without the consent of all parties, unless the ALJ or hearings examiner finds that justice and efficiency are better served by the consolidation.

§224.19. Informal Disposition.

(a) Notwithstanding any other provision in this chapter, at any time during the contested case, the final order authority may informally dispose of a contested case in whole or in part by stipulation, agreement, dismissal, or consent order.

(b) If the parties have settled or otherwise determined that a contested case proceeding is not required, the party who initiated the contested case shall file a motion to dismiss the contested case from the docket and present a proposed agreed order or dismissal order to the final order authority. If the party who initiated the contested case fails to file a motion to dismiss as required under this subsection, the final order authority may issue a dismissal order after providing the parties with a 30-day notice.

(c) A proposed agreed order submitted to the final order authority by the parties must contain proposed findings of fact and conclusions of law.

(d) Upon receipt of the proposed agreed order, the final order authority may:

(1) adopt the settlement agreement and issue a final order;

(2) reject the settlement agreement and remand the contested case for a hearing; or

(3) take other action that the final order authority finds just.

§224.21. Waiver of Hearing.

After the department issues a notice of hearing in a contested case, a party may waive a hearing and consent to an agreed order. An agreed order proposed by the parties is subject to the approval of the final order authority.

§224.23. Hearings to be Public.

A hearing in a contested case shall be open to the public.

§224.25. Extension of Time.

(a) The final order authority may not extend the time for filing a document when a statute or rule specifies the time period by which a document must be filed with the department.

(b) When an act is discretionary or allowed to be done at or within a specified time in accordance with this chapter and Government Code, Chapter 2001, the final order authority, with good cause shown, may:

(1) order the specific period extended if the extension is requested before the expiration of the period previously specified; or

(2) allow the act to be done after the expiration of the specified period, provided good cause is shown for the failure to act.

§224.27. Final Order; Motion for Rehearing.

(a) The provisions of Government Code, Chapter 2001, Subchapter F, govern the issuance of a final order issued under this subchapter and a motion for rehearing filed in response to a final order.

(b) Except as provided by subsection (c) of this section and §224.29 of this title (relating to Delegation of Final Order Authority), the board has final order authority in a contested case filed under Occupations Code, Chapters 2301 or 2302, or under Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1001-1005.

(c) The hearings examiner has final order authority in a contested case filed under Occupations Code, §2301.204 or Occupations Code Chapter 2301, Subchapter M.

(d) A department determination and action denying access to the temporary tag database becomes final within 26 days of the date of the notice denying access to a database, unless the dealer or converter:

(1) requests a hearing regarding the denial of access, or

(2) enters into a settlement agreement with the department.

(e) Unless a timely motion for rehearing is filed with the appropriate final order authority as provided by law, an order shall be deemed final and binding on all parties. All administrative remedies are deemed to be exhausted as of the effective date of the final order.

(f) If a timely motion for rehearing is not filed, the final order shall be deemed final and binding in accordance with the provisions of Government Code, §2001.144.

(g) If a final and binding order includes an action on a license, the department may act on the license on the date the final order is deemed final and binding, unless the action is stayed by a court order.

§224.29. Delegation of Final Order Authority.

(a) In accordance with Occupations Code, §2301.154(c) and Transportation Code, §1003.005(b), except as provided by subsection (b) of this section, the director of the division that regulates the distribution and sale of motor vehicles is authorized to issue, where there has not been a decision on the merits, a final order in a contested case under Subchapters B and C, including, but not limited to a contested case resolved:

(1) by settlement;

(2) by agreed order;

(3) by withdrawal of the complaint;

(4) by withdrawal of a protest;

(5) by dismissal for want of prosecution including:

(A) failure of a complaining or protesting party to participate in scheduling mediation or to appear at mediation as required under Subchapter C of this chapter (relating to Contested Cases Between Motor Vehicle Industry License Holders or Applicants);

(B) failure of a complaining or protesting party to respond to department requests for information or scheduling matters;

(C) failure of a complaining or protesting party to dismiss a contested case that has been resolved by the parties;

(6) by dismissal for want of jurisdiction;

(7) by summary judgment or summary disposition;

(8) by default judgment; or

(9) when a party waives opportunity for a contested case hearing.

(b) In accordance with Occupations Code, §2301.704 and §2301.711, a hearings examiner is authorized to issue a final order in a contested case brought under Occupations Code, §2301.204 or §§2301.601-2301.613.

(c) In accordance with Transportation Code, §1003.005, the director of the department's Motor Carrier Division is delegated any power relating to a contested case, including the authority to issue a final order, in contested cases under Subchapter D of this chapter to the extent that delegation of such authority is not already provided by statute.

(d) In a contested case in which the board has delegated final order authority under subsection (a) or (c) of this section, a motion for rehearing shall be filed with and decided by the final order authority delegate.

§224.31. Cost of Record on Appeal.

(a) If a final decision in a contested case is appealed and the department is required to transmit to the court the original or a certified copy of the administrative record, or any part thereof, the appealing party shall pay the costs of preparation of the record, unless waived by the department in whole or in part.

(b) A charge imposed as provided by this section is a court cost and may be assessed by the court in accordance with the TRCP.

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

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TRD-202304816
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 465-5665

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SUBCHAPTER B. MOTOR VEHICLE, SALVAGE VEHICLE, AND TRAILER INDUSTRY ENFORCEMENT

43 TAC §224.50, 224.52, 224.54, 224.56, 224.58, 224.60, 224.62, 224.64

STATUTORY AUTHORITY. The department proposes new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules; to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which authorizes the board to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case, including the power to issue a final order, to one or more board members or certain department staff; and the statutory authority referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. These new rules would implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 1002, and 1003.

§224.50. Purpose and Scope.

This subchapter, and Subchapters A, E, and F, describe the procedures by which the department will adjudicate alleged violations of Occupations Code, Chapter 2301 and 2302, and Transportation Code, Chapter 503 brought by the department against a license applicant, license holder, or unlicensed person engaging in an activity or business that requires a license under these statutes.

§224.52. Cease and Desist Order; Delegation of Authority.

(a) When a person is alleged to be violating a provision of Occupations Code, Chapter 2301, or a board rule or order, the department may enter an interlocutory order requiring the person to cease and desist from the violation under the following procedures.

(1) In accordance with Occupations Code, §2301.154(c) and Transportation Code, §1003.005(b), the department's Enforcement Division director is delegated the authority to issue an interlocutory cease-and-desist order under the procedures established in this subsection.

(2) A person requesting an interlocutory cease-and-desist order must present a petition or complaint, verified by affidavit, containing a plain statement of the grounds for seeking the cease-and-desist order to the department's Enforcement Division director in accordance with the procedures set forth in §224.84 of this title (regarding Filing and Service of a Protest, Complaint, or Other Document). The department shall not issue an interlocutory cease-and-desist order without a verified petition or complaint that meets the requirements of this subsection.

(3) At least three days prior to entering an interlocutory order requiring a person to cease and desist, the department must send a letter notifying the person of the allegations against them to all current addresses for the person in the department's records by both electronic service and certified mail, return receipt requested.

(4) The notice letter must include a statement of the alleged conduct that forms the basis for the interlocutory cease-and-desist order and must provide the person the opportunity to show cause in writing within three days why the department should not issue a cease-and-desist order.

(5) In considering whether to issue an interlocutory cease-and-desist order, the department must determine if the conditions set forth in Occupations Code, §2301.802(b) are present and consider the person's written response, if any, to the letter notifying the person of the alleged violations. The department shall email a copy of the department's decision to the person in addition to sending a copy by certified mail, return receipt requested.

(6) Each interlocutory cease-and-desist order must include:

(A) the date and hour of issuance;

(B) a statement of which of the conditions in Occupations Code, §2301.802(b) the department determined were present to necessitate the cease-and-desist order;

(C) a notice of hearing at SOAH to determine the validity of the order;

(D) the reasons for its issuance; and

(E) a description in reasonable detail of the act or acts to be restrained.

(7) If the ALJ determines after a hearing that the cease-and-desist order should remain in place during the pendency of the contested case, the ALJ shall issue an interlocutory cease-and-desist order.

(8) An interlocutory cease-and-desist order remains in effect until vacated or incorporated in a final order.

(9) A party may immediately appeal an interlocutory cease-and-desist order issued by an ALJ to the board under §224.192 of this title (relating to Appeal of an Interlocutory Order) while the contested case is at SOAH.

(b) The department may issue a final cease-and-desist order if a person who is not licensed under Occupations Code, Chapter 2302 is found, after notice and opportunity for a hearing, to have violated that chapter or a rule or order adopted under that chapter. The department may also issue a final cease-and-desist order under Occupations Code, Chapter 2301 to a person found, after notice and opportunity for a hearing, to have violated that chapter, a board rule, or an order.

(1) If the department decides to seek a cease-and-desist order under subsection (b) of this section, the department will send a letter notifying the person of the allegations against them to all current addresses for the person in the department's records by both electronic service and certified mail, return receipt requested. The notice letter will contain:

(A) a summary of the factual allegations;

(B) a description of the statutory provision, rule or order the person is alleged to have violated;

(C) a description in reasonable detail of the act or acts to be restrained by the cease-and-desist order;

(D) a statement regarding the person's right to request a hearing;

(E) the procedure to request a hearing, including the deadline for filing; and

(F) notice to the person that the department will issue a cease-and-desist order that will become final on the date specified if the person fails to timely request a hearing.

(2) A person to whom a cease-and-desist notice letter under subsection (c) of this section is sent may file a written request for a hearing before a SOAH ALJ. The person must submit, in writing, a request for a hearing under this section to the department's contact listed in the notice letter provided under subsection (c)(1) of this section. The department must receive the request for a hearing within 26 days of the date the notice letter is mailed.

(3) If the person does not make a timely written request for a hearing within 26 days of the date the cease-and-desist letter is mailed, the allegations are deemed admitted on the 27th day and a final cease-and-desist order including sanctions may be issued by the final order authority.

(c) Once jurisdiction for the conduct of a contested case hearing transfers to SOAH, an ALJ may act on a party's motion regarding an existing cease-and-desist order issued by the department or consider a new motion for a cease-and-desist order by a party.

§224.54. Civil Penalty Assessment.

(a) Occupations Code, §2301.801 and §2302.354, and Transportation Code, §503.095 govern the amount of a civil penalty that may be assessed by the department against a license holder.

(b) In determining the amount of civil penalty to assess the department will consider the following aggravating factors:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;

(2) the economic damage to the public caused by the violation;

(3) any history of previous violations including whether the license holder previously entered into an agreed order with the department or otherwise received a warning or reduced penalty;

(4) the amount necessary to deter a future violation; and

(5) any other matter that justice may require, including:

(A) the number of violations or number of consumers harmed by violation(s);

(B) whether the consumer received a title;

(C) whether the license holder misused license plates or temporary tags;

(D) whether the license holder attempted to conceal a violation;

(E) whether the act constituting the violation was intentional, premeditated, knowing, or grossly negligent; and

(F) whether an order issued by the department was violated.

(c) In determining whether license revocation is appropriate, the department will consider the following factors:

(1) whether the license holder is unfit under standards governing the occupation, including qualifications for a license;

(2) whether the license holder made a material misrepresentation in any written communication or information provided to the department;

(3) whether the license holder willfully defrauded a purchaser;

(4) whether the license holder misused license plates or temporary tags, including whether the license holder attempted to use an internet-down tag to avoid inspection requirements;

(5) whether the license holder failed to fulfill a written agreement with a retail purchaser of a vehicle or motor vehicle; and

(6) whether the license holder failed to attend an approved dealer training seminar as ordered in an agreed final order.

(d) The department will consider the following mitigating factors in determining the amount of civil penalty to assess or whether license revocation is appropriate:

(1) acknowledgment by the licensee of any wrongdoing;

(2) willingness to cooperate with the department; and

(3) efforts to correct a violation.

(e) The department will publish a disciplinary matrix on the department website to provide guidance to license holders on the sanctions that may be assessed for the most common violations.

§224.56. Notice of Department Decision.

(a) The department shall issue a Notice of Department Decision to a license applicant, license holder, or other person by certified mail, return receipt requested, to the last known address and email address upon a determination under Occupations Code, Chapters 2301 and 2302 or Transportation Code, Chapter 503 that:

(1) an application for a license should be denied; or

(2) an administrative sanction should be imposed.

(b) The last known address is the mailing address provided by the person in the department-designated licensing system.

(c) A Notice of Department Decision shall include:

(1) a statement describing the department decision and the effective date;

(2) a description of each alleged violation;

(3) a description of each administrative sanction being proposed;

(4) a statement which sets out the legal basis for each administrative sanction;

(5) a statement informing the license applicant, license holder, or other person of the right to request a hearing;

(6) the procedure to request a hearing, including the deadline for filing a request with the department and the acceptable electronic methods to request a hearing; and

(7) notice to the license applicant, license holder, or other person that the proposed decision and administrative sanctions in the Notice of Department Decision will become final on the date specified if the license applicant, license holder, or other person fails to timely request a hearing in accordance with subsection (d) of this section.

(d) To receive a hearing, the license applicant, license holder, or other person must submit a written request for a hearing under this section to the department. The department must receive a hearing request within 26 days of the date of the Notice of Department Decision for the request to be considered timely.

(e) If the department receives a timely request for a hearing, the department will contact the license holder and attempt to informally resolve the contested case. If the license holder and the department cannot informally resolve the contested case, the department will refer the contested case to SOAH to set a hearing date and will give notice to the license applicant, license holder, or other person of the date, time, and location of the hearing.

(f) If the license applicant, license holder, or other person does not make a timely request for a hearing or agree to settle the contested case within 26 days of the date of the Notice of Department Decision, the allegations are deemed admitted on the 27th day and a final order including sanctions may be issued by the final order authority.

§224.58. Denial of Dealer or Converter Access to Temporary Tag System.

(a) In this section "fraudulently obtained temporary tags from the temporary tag database" means misuse by a dealer or converter account user of the temporary tag database authorized under Transportation Code, §503.0626 or §503.0631 to obtain:

(1) an excessive number of temporary tags relative to dealer sales;

(2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory (a vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the relevant monthly Vehicle Inventory Tax Statement);

(3) access to the temporary tag database for a fictitious user or person using a false identity;

(4) temporary tags for a vehicle or a motor vehicle when a dealer is no longer operating at a licensed location; or

(5) temporary tags issued for a vehicle or a motor vehicle not located at a licensed location or a storage lot listed on the application.

(b) The department shall deny a dealer or converter access to the temporary tag database effective on the date the department sends notice electronically and by certified mail to the dealer or converter that the department has determined, directly or through an account user, that the dealer or converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or converter may seek a negotiated resolution with the department by demonstrating the dealer or converter took corrective action or that the department's determination was incorrect.

(c) Notice shall be sent to the dealer's or converter's last known mailing address and last known email in the department-designated licensing system.

(d) A dealer or converter may request a hearing on the denial of access to the temporary tag database, as provided by Subchapter O, Chapter 2301, Occupations Code. The request must be in writing and the dealer or converter must request a hearing under this section. The department must receive the written request for a hearing within 26 days of the date of the notice denying access to the database. The request for a hearing does not stay the denial of access under subsection (b) of this section. A dealer or converter may continue to seek a negotiated resolution with the department after a request for hearing has been submitted under this subsection by demonstrating the dealer or converter took corrective action or that the department's determination was incorrect.

(e) The department may also issue a Notice of Department Decision stating administrative violations as provided in §224.56 of this title (relating to Notice of Department Decision) concurrently with the notice of denial of access under this section. A Notice of Department Decision may include notice of any violation, including a violation listed under subsection (a) of this section.

(f) A department determination and action denying access to the temporary tag database becomes final if the dealer or converter does not request a hearing or enter into a settlement agreement with the department within 26 days of the date of the notice denying access to a database.

§224.60. Filing and Service of Documents.

Each document required or allowed to be filed with the department under this subchapter must be filed electronically in a department-designated system or according to written instructions provided by the department.

§224.62. Referral to SOAH.

(a) If the department receives a timely request for a hearing and the parties are unable to informally resolve or dispose of the contested case, the department will refer the contested case to SOAH by filing a Request to Docket form and related documents as required under SOAH rules.

(b) When SOAH accepts the department's request to docket a contested case, jurisdiction transfers to SOAH.

§224.64. Notice of Hearing.

Once SOAH provides the department with the initial hearing date, time, and place, the department notifies the parties. The contested case proceeds according to Subchapter E of this chapter (relating to Contested Cases Referred to SOAH).

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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SUBCHAPTER C. CONTESTED CASES BETWEEN MOTOR VEHICLE INDUSTRY LICENSE HOLDERS OR APPLICANTS

43 TAC §§224.80, 224.82, 224.84, 224.86, 224.88, 224.90, 224.92, 224.94

STATUTORY AUTHORITY. The department proposes new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which authorizes the board to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case, including the power to issue a final order, to one or more board members or certain department staff; and the statutory authority referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. These new rules would implement Government Code, Chapter 2001; Occupations Code, Chapter 2301; and Transportation Code, Chapters 503, 1002, and 1003.

§224.80. Purpose and Scope.

This subchapter, and Subchapters A, E, and F of this chapter describe the procedures by which the department will adjudicate a protest or complaint filed by a license holder against another license holder or license applicant under Occupations Code, Chapter 2301, Subchapters H, I, or J.

§224.82. Form of a Protest or Complaint.

(a) Protest. A franchised dealer that wishes to protest an application shall give notice in accordance with Occupations Code, Chapter 2301. The notice of protest shall:

(1) be in writing and signed by an owner or officer authorized to sign on behalf of the protesting dealer filing the notice;

(2) state the statutory basis upon which the protest is made;

(3) assert how the protesting dealer meets the standing requirements under §215.119 of this title (relating to Standing to Protest) to protest the application;

(4) include the notice of opportunity to protest sent to the dealer; and

(5) state that the protest is not made for purposes of delay or for any other purpose except for justifiable cause.

(b) Complaint. If a license holder wishes to file a complaint against another license holder under Occupations Code, Chapter 2301, Subchapters H, I, or J, the complaint must:

(1) be in writing and signed by an owner or officer authorized to sign on behalf of the complainant;

(2) state sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the statute; and

(3) state the statutory provision under which the complaint is made.

§224.84. Filing and Service of a Protest, Complaint, or Other Document.

(a) A party must file and serve a complaint, protest, or other document required or allowed to be filed with the department under this subchapter electronically in the department-designated licensing system, and include a Certification of Responsibility, a form provided by the department.

(b) Once a docket number has been assigned to a contested case by either the department or SOAH, a party must include all assigned docket numbers on a pleading, motion, correspondence, or other document filed in the contested case.

§224.86. Review of a Protest or Complaint.

(a) The department will review a protest or complaint to determine whether:

(1) a hearing is appropriate under Occupations Code, Chapter 2301; Transportation Code, Chapter 503; or Board rule; and

(2) the protest or hearing document meets minimum requirements.

(b) If the department cannot determine whether a complaint meets minimum requirements, the department may contact the protestant, complainant, or other person for additional information.

(c) If the department determines that a protest or complaint meets minimum requirements, a protest or complaint will be processed in accordance with this subchapter.

§224.88. Docketing and Notice of a Protest or Complaint.

(a) If a protest or complaint meets minimum requirements, the department will docket the contested case and assign a docket number.

(b) The department will notify the contested case parties that a statutory stay under Occupations Code, §2301.803 is in effect.

(c) The department will assign a department mediator and notify the contested case parties. Within seven days of the department notice date, each party must either:

(1) accept the assigned department mediator; or

(2) decline the assigned department mediator and retain a private mediator and comply with the requirements of §224.90 of this title (relating to Mediation).

§224.90. Mediation.

(a) Except as provided by subsection (b) of this section, parties to a contested case filed under this subchapter are required to participate in mediation before the department will refer a contested case to SOAH for a hearing.

(b) This section does not limit the parties' ability to settle a case without mediation.

(c) The department will provide mediation services by a staff member qualified to serve as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154.

(d) The mediation will conclude within 60 days of the date a contested case is assigned to a department mediator, unless the mediation deadline is extended. The department mediator may extend the mediation deadline based on a written request by a party or at the department mediator's discretion.

(e) If the parties do not agree on a mediation date within 30 days, the department mediator may set a date for mediation by notifying the parties in writing at least 10 days before the mediation date.

(f) At the discretion of the department mediator, a party may participate in scheduled mediation either in person or remotely using telephonic or videoconferencing technology.

(g) A party that declines to use the assigned department mediator shall:

(1) confer with each contested case party; and

(2) within 30 days of receiving notice from the department under §224.88 of the title (relating to Docketing and Notice of a Protest or Complaint), file with the department a joint notice of intent to retain a private mediator.

(h) The joint notice of intent to retain a private mediator must include:

(1) the name, address, email address, and telephone number of the private mediator agreed upon by the parties;

(2) a statement that the parties have entered into an agreement with the private mediator regarding the mediator's rate, method of compensation, and party responsibility for fee payment;

(3) an affirmation that the private mediator qualifies for appointment as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154;

(4) a statement that the mediation will conclude within 60 days of the department's notice under §224.88 of the title, unless the mediation deadline is extended at the department's discretion; and

(5) the signature of each party or authorized representative.

(i) All communication and documents provided by a contested case party or invited person in a mediation are confidential and subject to the Governmental Dispute Resolution Act, Government Code, §2009.054.

(j) An agreement reached by the contested case parties in mediation shall be reduced to writing and signed by the parties.

(k) Within 10 days of the conclusion of a mediation, a mediator shall provide to the department and to the parties a written report stating:

(1) whether the parties attended and participated in the mediation;

(2) whether the matter settled in part or in whole;

(3) any unresolved issues remaining in the contested case; and

(4) any other stipulations or matters the parties agree to report.

(l) Upon receipt of the mediator's report required under this section, the department shall:

(1) enter an order disposing of resolved issues;

(2) refer unresolved issues to SOAH for a hearing on the merits; and

(3) inform SOAH whether a party refused to attend or participate in a mediation.

(m) If a party refused to participate or attend a mediation, an ALJ may recommend a sanction in the proposal for decision.

§224.92. Referral to SOAH.

(a) The department will refer to SOAH unresolved contested case issues by filing all forms and documents that are required under SOAH rules to docket a case.

(b) When SOAH accepts the department's request to docket, jurisdiction of the contested case transfers to SOAH.

§224.94. Notice of Hearing.

(a) Once SOAH provides the department with the initial hearing date, time, and place, the department will issue to the contested case parties a notice of hearing that complies with Occupations Code, §2301.705, Government Code, Chapter 2001, and 1 TAC §155.401.

(b) The contested case proceeds according to Subchapter E of this chapter (relating to Contested Cases Referred to SOAH).

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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SUBCHAPTER D. MOTOR CARRIER AND OVERSIZE OR OVERWEIGHT VEHICLE OR LOAD ENFORCEMENT

43 TAC §§224.110, 224.112, 224.114 - 224.116, 224.118, 224.120, 224.122, 224.124, 224.126, 224.128, 224.130

STATUTORY AUTHORITY. The department proposes new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce rules to carry out IRP; Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under §623.272, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.102, which authorizes a motor carrier to comply with the requirements under Transportation Code, §643.101 through self-insurance if it complies with the requirements; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the process for an administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and the statutory authority referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. These new rules would implement Government Code, Chapter 2001; and Transportation Code, Chapters 502, 621-623, 643, 645, 1002 and 1003.

§224.110. Purpose and Scope.

This subchapter and Subchapters A, E, and F of this chapter describe the procedures by which the department will adjudicate alleged violations and claims under Transportation Code, Chapters 502, 621-623, 643, and 645. These contested cases involve registrants under the International Registration Plan, motor carriers, motor carrier leasing businesses, motor transportation brokers, and household goods carriers. Contested cases involving persons operating oversize or overweight vehicles or moving oversize or overweight loads are also included.

§224.112. Definitions.

(a) The definitions contained in the relevant Transportation Code chapter apply to the contested cases under this subchapter.

(b) The definitions contained in Chapter 217 of this title (relating to Vehicle Titles and Registration), Chapter 218 of this title (relating to Motor Carriers), and Chapter 219 of this title (relating to Oversize and Overweight Vehicles and Loads) apply to the relevant contested cases under this subchapter.

§224.114. Cease and Desist Order.

(a) The department may issue a cease-and-desist order to a respondent:

(1) who engages or represents itself to be engaged in a motor carrier operation that is in violation of this chapter;

(2) to prevent a violation of Chapter 218 of this title (relating to Motor Carriers); or

(3) to protect public health and safety.

(b) The order shall:

(1) be delivered by personal delivery or registered or certified mail, return receipt requested, to the person's or entity's last known address;

(2) include:

(A) a summary of the factual allegations;

(B) a description of the statutory provision, rule or order the person is alleged to have violated;

(C) a description in reasonable detail of the act or acts to be restrained by the cease-and-desist; and

(3) state the effective date of the order.

(c) The department's cease and desist order is final, unless within ten days of the service of the order, the respondent files with the department a written request for hearing.

(d) If a request for hearing is filed, the department shall initiate a contested case with SOAH in accordance with Chapter 224, Subchapter E of this title (relating to Contested Cases Referred to SOAH).

(e) The cease-and-desist order shall remain in effect until the respondent comes into complete compliance with department directives and decisions, or unless otherwise provided by an order issued after final review by the department.

(f) If a respondent violates a cease-and-desist order, the department may:

(1) impose an administrative penalty against the respondent; or

(2) refer the matter to the appropriate authority to institute actions for:

(A) an injunction against violation of the cease-and-desist order;

(B) collection of any administrative penalty assessed by the department; or

(C) any other remedy provided by law.

(g) Nothing in this section precludes the department from imposing other administrative sanctions against the respondent while a cease-and-desist order is in effect.

§224.115. Administrative Penalty Assessment and Probation of Suspension.

(a) Amount of administrative penalty under Transportation Code, §623.271.

(1) Transportation Code, §623.271 governs the amount of an administrative penalty that the department may assess against a person or the holder of an oversize or overweight permit, as applicable.

(2) In an action brought by the department, the aggregate amount of administrative penalty shall not exceed $5,000 unless it is found that the person or the holder of the permit knowingly committed a violation.

(3) In an action brought by the department, if it is found that the person or the holder of the permit knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed $15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness may be inferred from the conduct of the alleged violator or from the history of previous violations by the alleged violator.

(4) In an action brought by the department, if it is found that the person or the holder of the permit knowingly committed multiple violations, the aggregate amount of administrative penalty for the multiple violations shall not exceed $30,000.

(5) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.

(b) Amount of administrative penalty under Transportation Code, §623.272.

(1) Transportation Code, §623.272 governs the amount of an administrative penalty that the department may assess against a shipper.

(2) The amount of an administrative penalty imposed under this subsection is calculated in the same manner as the amount of an administrative penalty imposed under subsection (a) of this section.

(c) Amount of administrative penalty under Transportation Code, §643.251.

(1) Transportation Code, §643.251 governs the amount of an administrative penalty that the department may assess against a motor carrier that is required to register under Subchapter B of Chapter 643 of the Transportation Code and violates Transportation Code, Chapter 643 or a rule or order adopted under Chapter 643.

(2) In an action brought by the department, the aggregate amount of administrative penalty shall not exceed $5,000 unless it is found that the motor carrier knowingly committed a violation.

(3) In an action brought by the department, if it is found that the motor carrier knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed $15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness may be inferred from the conduct of the alleged violator or from the history of previous violations by the alleged violator.

(4) In an action brought by the department, if it is found that the motor carrier knowingly committed multiple violations, the aggregate amount of administrative penalty for the multiple violations shall not exceed $30,000.

(5) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.

(d) Probation of suspension under Transportation Code, §643.252.

(1) Transportation Code, §643.252 authorizes the department to place on probation a motor carrier whose registration is suspended.

(2) In determining whether to probate a suspension of a motor carrier's registration, the department will consider the factors listed in Transportation Code, §643.251 regarding the amount of an administrative penalty.

(3) The department shall set the length of the probation based on the seriousness of the violation and previous violations by the motor carrier.

(4) The department will require that the motor carrier report monthly to the department any information necessary to determine compliance with the terms of the probation.

(e) The department will publish a disciplinary matrix on the department website to provide guidance to motor carriers on the penalties and sanctions that may be assessed for the most common violations.

§224.116. Administrative Proceedings.

(a) If the department decides to take an enforcement action under §218.16 of this title (relating to Insurance Requirements) for the revocation of self-insured status, §218.64 of this title (relating to Rates), §218.71 of this title (relating to Administrative Penalties), §219.121 of this title (relating to Administrative Penalties and Sanctions under Transportation Code, §623.271), §218.72 of this title (relating to Administrative Sanctions), or §219.126 of this title (relating to Administrative Penalty for False Information on Certificate by a Shipper), the department shall mail a Notice of Department Decision to the person by first class mail to the last known address as shown in department records. If the enforcement action falls under the Memorandum of Agreement with the Federal Motor Carrier Safety Administration (FMCSA) under §218.71, the department shall mail the Notice of Department Decision to the person by first class mail to the last known address as shown in FMCSA's records.

(b) The Notice of Department Decision shall include:

(1) a brief summary of the alleged violation or enforcement action being proposed;

(2) a statement describing each sanction, penalty, or enforcement action proposed;

(3) a statement informing the person of the right to request a hearing;

(4) a statement of the procedure a person must use to request a hearing, including the deadline for filing a request with the department and the acceptable methods to request a hearing; and

(5) a statement that a proposed penalty, sanction, or enforcement action will become final and take effect on a specific date if the person fails to request a hearing.

(c) A person must submit to the department a written request for a hearing to the address provided in the Notice of Department Decision not later than the 26th day after the date the notice is mailed by the department; however, this requirement does not apply to a contested case that falls under §218.64 and Transportation Code, §643.154.

(d) If a person submits a timely written request for a hearing or the contested case that falls under §218.64 and Transportation Code, §643.154, the department will contact the person and attempt to informally resolve the contested case. If the person and the department cannot informally resolve the contested case, the department will refer the contested case to SOAH to set a hearing date and will give notice of the time and place of the hearing to the person.

(e) Except as provided by Transportation Code, §643.154, if the person does not make a timely request for a hearing or agree to settle a contested case within 26 days of the date the Notice of Department Decision was mailed, the allegations are deemed admitted on the 27th day and a final order including sanctions and penalties may be issued by the final order authority.

(f) Except as provided by statute and the applicable provisions of this chapter, any SOAH proceeding is governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, including the authority of the department to informally dispose of the contested case by stipulation, agreed settlement, consent order, or default. The department will follow the process set forth in Transportation Code, §643.2525 and the applicable provisions of this chapter when enforcing the federal laws and regulations cited in §218.71 to the extent authorized by applicable federal laws and regulations.

(g) The department and the person may informally resolve the contested case by entering into a settlement agreement or agreeing to stipulations at any time before the director issues a final order. However, the person must pay any penalty in full prior to the execution of a settlement agreement.

§224.118. Filing of Documents.

Each document required or allowed to be filed with the department under this subchapter must be filed according to written instructions provided by the department in the applicable notice under this subchapter.

§224.120. Registration Suspension Ordered Under Family Code.

(a) On receipt of a final order issued under Family Code, §§232.003, 232.008, or 232.009, regarding child support enforcement, the department will suspend:

(1) a certificate of registration issued under Chapter 218, Subchapter B (relating to Motor Carrier Registration); or

(2) the registration of an interstate motor carrier issued under §218.17 of this title (relating to Unified Carrier Registration System).

(b) The department will charge an administrative fee of $10 to a person whose registration is suspended under this section.

(c) A suspension under this section does not require the department to give notice or otherwise follow the administrative process provided under §224.116 of this title (relating to Administrative Proceedings).

(d) A registration suspended under this section may only be reinstated on receipt of an order issued under Family Code, §232.013.

§224.122. Appeal of Decision Regarding Assessment, Cancellation, or Revocation Under §217.56.

(a) Pursuant to §217.56(c)(2)(J)(iii) of this title (relating to Registration Reciprocity Agreements), a registrant may appeal the department's decision regarding an assessment, cancellation, or revocation.

(b) The appeal will be governed by Chapter 224, Subchapter E of this title (relating to Contested Cases Referred to SOAH).

(c) The registrant's appeal will be considered untimely if it is not received by the director of the department's Motor Carrier Division by the 26th day after the date of the department's decision. The department will not consider an untimely appeal.

(d) A timely appeal will abate the assessment pending a final order.

§224.124. Appeal of a Denial Under Transportation Code, §643.2526.

(a) Pursuant to Transportation Code, §643.2526, an applicant may appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643.

(b) The appeal will be governed by Chapter 224, Subchapter E of this title (relating to Contested Cases Referred to SOAH).

(c) The applicant's appeal will be considered untimely if it is not filed with the department by the 26th day after the date of the department's denial of the application. The department will not consider an untimely appeal.

(d) An application that is withdrawn under Transportation Code, §643.055 is not a denial of an application for the purposes of an appeal under Transportation Code, §643.2526.

§224.126. Appeal of a Denial of Self-Insured Status.

(a) Pursuant to §218.16(d) of this title (relating to Insurance Requirements), an applicant may appeal the denial of an application for self-insured status.

(b) The appeal will be governed by Chapter 224, Subchapter E of this title (relating to Contested Cases Referred to SOAH).

(c) The applicant's appeal will be considered untimely if it is not filed with the department by the 26th day after the date of the department's denial of the application. The department will not consider an untimely appeal.

§224.128. Referral to SOAH.

(a) The department will refer a contested case to SOAH by filing a Request to Docket form and related documents as required under SOAH rules as follows:

(1) if the department receives a timely request for a hearing and the parties are unable to informally resolve or dispose of the case;

(2) if the department receives a timely appeal under §§224.122, 224.124, or 224.126; or

(3) the contested case falls under §218.64 of this title (relating to Rates) and Transportation Code, §643.154.

(b) When SOAH accepts the department's Request to Docket, jurisdiction of the contested case transfers to SOAH.

§224.130. Notice of Hearing.

(a) Once SOAH provides the department with the initial hearing date, time, and place, the department will issue to the contested case parties a notice of hearing that complies with Government Code, Chapter 2001 and SOAH rules.

(b) The contested case proceeds according to Subchapter E of this chapter (relating to Contested Cases Referred to SOAH).

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 465-5665

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SUBCHAPTER E. CONTESTED CASES REFERRED TO SOAH

43 TAC §§224.150, 224.152, 224.154, 224.156, 224.158, 224.162, 224.164, 224.166

STATUTORY AUTHORITY. The department proposes new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules; to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which authorizes the board to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce rules to carry out IRP; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under §623.272, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.102, which authorizes a motor carrier to comply with the requirements under Transportation Code, §643.101 through self-insurance if it complies with the requirements; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the process for an administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and the statutory authority referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. These new rules would implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1002-1005.

§224.150. Purpose and Scope.

(a) This subchapter describes department practice and procedures for referring a contested case to SOAH for a hearing, including a contested case under Subchapter B (relating to Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement), Subchapter C (relating to Contested Cases Between Motor Vehicle Industry License Holders or Applicants), and Subchapter D (Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement) of this chapter.

(b) When SOAH accepts a referral from the department, jurisdiction of the contested case transfers to SOAH, and practice and procedure in contested cases heard by SOAH are addressed in:

(1) 1 TAC Chapter 155, and

(2) subchapter A and this subchapter, where not in conflict with SOAH rules.

(c) When SOAH disposes of a contested case, jurisdiction transfers from SOAH back to the department. The department will issue a final order under §224.29 of this title (relating to Delegation of

Final Order Authority) or under Subchapter F of this chapter (relating to Board Procedures in Contested Cases).

§224.152. Referral to SOAH.

(a) The department shall refer contested cases to SOAH upon determination that a hearing is appropriate under Occupations Code, Chapter 2301 or 2302, or Transportation Code, Chapters 502, 503, 621-623, 643, 645, or 1001-1005, including contested cases relating to:

(1) an enforcement complaint on the department's own initiative;

(2) a notice of protest that has been timely filed in accordance with §215.106 of this title (relating to Time for Filing Protest);

(3) a protest filed under Occupations Code, §2301.360 or a protest or complaint filed under Occupations Code, Chapter 2301, Subchapters I or J;

(4) a department-issued cease and desist order; or

(5) any other contested matter that meets the requirements for a hearing at SOAH.

(b) The department will follow SOAH procedures to file a Request to Docket Case and related documents and request a setting of a hearing.

(c) SOAH will provide the department with the date, time, and place of the initial hearing.

§224.154. Notice of Hearing.

(a) In a contested case, each party is entitled to an opportunity for a hearing, in accordance with Government Code, §2001.051.

(b) The requirements for a notice of hearing in a contested case are provided by Government Code, §2001.052; Occupations Code, §2301.705; the SOAH rules; and Transportation Code, Chapter 623 or 643, as applicable.

(c) For service of parties outside of the United States, in addition to service under Occupations Code, §2301.265, the department may serve a notice of hearing by any method allowed under TRCP or that provides for confirmation of delivery to the party to the extent authorized by applicable law.

(d) The last known address of a license applicant, license holder, or other person is the last mailing address in department records or Federal Motor Carrier Safety Administration (FMCSA) records, as applicable.

(e) A notice of hearing issued by the department in a contested case shall comply with the requirements of Government Code, §2001.052(a).

(f) The department will serve a notice of hearing upon a license holder by certified mail return receipt requested to the last known address of the license holder or authorized representative, in accordance with Occupations Code, §2301.705.

(g) The department may serve a notice of hearing upon a person who is not a license holder by first class mail to the person's last known address as shown in department records or Federal Motor Carrier Safety Administration (FMCSA) records, as applicable.

(h) A notice of hearing in a contested case may be amended in accordance with Government Code, §2001.052(b).

§224.156. Reply to Notice of Hearing and Default Proceedings.

(a) A party may file a written reply or pleading to respond to all allegations. The written reply or responsive pleading must be filed with SOAH in accordance with SOAH rules and must identify the SOAH and department docket numbers, as reflected on the notice of hearing.

(b) Any party filing a reply or responsive pleading shall serve a copy of the reply or responsive pleading on each party or party's authorized representative in compliance with SOAH rules.

(c) A party may file an amended or supplemental reply or responsive pleading in accordance with SOAH rules.

(d) If a party properly noticed under this chapter does not appear at the hearing, a party appearing at the hearing may request that the ALJ dismiss the contested case from the SOAH docket. If the contested case is dismissed from the SOAH docket, the case may be presented to the final order authority for disposition pursuant to SOAH rules and §224.29 of this title (relating to Delegation of Final Order Authority).

§224.158. Amicus Briefs.

(a) An interested person may submit an amicus brief for consideration by the ALJ in a contested case by the deadline for filing exceptions in accordance with SOAH rules. A party may submit one written reply to the amicus brief no later than the deadline for filing replies to exceptions under SOAH rules.

(b) An amicus brief and a party's reply to amicus brief must be submitted to the ALJ and be served on all parties.

(c) The ALJ may amend the proposal for decision after considering an amicus brief or a party's reply to an amicus brief.

§224.162. Statutory Stay.

(a) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may request a hearing before a SOAH ALJ to modify, vacate, or clarify the extent and application of the statutory stay.

(b) The ALJ shall hold a hearing on a motion to modify, vacate, or clarify a statutory stay, and prepare a written order, including a justification explaining why the statutory stay should or should not be modified, vacated, or clarified.

(c) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may request a hearing before the board to modify, vacate, or clarify the extent and application of the statutory stay under §224.192 of this chapter (relating to Appeal of an Interlocutory Order) while the contested case is at SOAH.

§224.164. Issuance of a Proposal for Decision.

(a) After a hearing on the merits, the ALJ shall submit a proposal for decision in a contested case to the department and all parties.

(b) The parties may submit to the ALJ exceptions to the proposal for decision and replies to exceptions to the proposal for decision in accordance with the SOAH rules.

(c) The ALJ will review all exceptions and replies and notify the department and parties whether the ALJ recommends any changes to the proposal for decision.

(d) The parties are not entitled to file exceptions or briefs in response to an amended proposal for decision but may raise an issue before the board as allowed at the time of oral presentation under Subchapter F of this chapter.

§224.166. Transfer of Jurisdiction for Final Decision.

(a) A party may appeal an interlocutory order issued under Occupations Code, Chapter 2301 to the board under §224.192 of this title (relating to Appeal of an Interlocutory Order). SOAH retains jurisdiction on all other pending matters in the contested case, except as provided otherwise in this chapter.

(b) If a contested case includes a hearing on the merits, SOAH's jurisdiction transfers to the board when the ALJ confirms that the proposal for decision is final.

(c) Once jurisdiction transfers, no new testimony, witnesses, or information may be considered by the board or board delegate with final order authority.

(d) After SOAH transfers the SOAH administrative record to the department, the board or board delegate with final order authority will consider the contested case under the provisions of Subchapter F of this chapter (relating to Board Procedures in Contested Cases).

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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SUBCHAPTER F. BOARD PROCEDURES IN CONTESTED CASES

43 TAC §§224.190, 224.192, 224.194, 224.196, 224.198, 224.200, 224.202, 224.204, 224.206

STATUTORY AUTHORITY. The department proposes new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules; to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which authorizes the board to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee; Occupations Code, §2301.709, which requires the board to adopt rules that establish standards for reviewing a case under Subchapter O of Chapter 2301 of the Occupations Code; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce rules to carry out IRP; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under §623.272, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the process for an administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case, including the power to issue a final order, to one or more board members or certain department staff; and the statutory authority referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. These new rules would implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1002-1005.

§224.190. Purpose and Scope.

This subchapter describes procedures for the board to review and issue a final order in a contested case in which:

(1) a SOAH ALJ has submitted a final proposal for decision for consideration by the board or board delegate with final order authority;

(2) a party has appealed an interlocutory cease-and-desist order issued by an ALJ; or

(3) a party affected by a statutory stay order issued by an ALJ requested a hearing to modify, vacate, or clarify the extent and application of the statutory stay order.

§224.192. Appeal of an Interlocutory Order.

(a) A party affected by an interlocutory cease-and-desist order or a statutory stay order under Occupations Code, Chapter 2301 may appeal the order to the board by submitting to the department's general counsel a motion requesting that the board modify, vacate, or clarify the order.

(b) The party requesting that the board modify, vacate, or clarify an order must also simultaneously serve the request on the other parties and the ALJ in accordance with §224.11 of this title (relating to Filing and Service of Documents).

(c) The board will consider the interlocutory appeal and issue a final order at a public meeting as soon as practicable. Notwithstanding the deadline listed in §224.196 of this title (relating to Request for Oral Presentation), the department shall give the parties written notice at least seven days prior to the board meeting at which the board is scheduled to consider the appeal. The notice shall notify the parties regarding the opportunity to attend and provide an oral presentation concerning an order before the board, and the opportunity to provide written materials to the board.

(1) Notwithstanding the deadline listed in §224.196, if a party seeks to provide an oral presentation at the board meeting, the party must submit a written request for an oral presentation to the department's contact listed in the notice provided under this subsection and copy all other parties in accordance with §224.11 at least three days prior to the date of the board meeting at which the board is scheduled to consider the party's contested case.

(2) Notwithstanding the deadline listed in §224.198 of this title (relating to Written Materials and Evidence), if a party wants to provide written materials at the board meeting, the party must provide the written materials to the department and all other parties in accordance with §224.11 at least three days prior to the date of the board meeting at which the board is scheduled to consider the party's contested case.

(d) An appeal to the board of an interlocutory cease-and-desist order or a statutory stay order is governed by Government Code, §2001.058(e).

§224.194. Contested Case Review.

(a) After SOAH submits a final proposal for decision and transfers SOAH's administrative record to the department, the board has jurisdiction and the record required to issue a final order and will review the contested case during the public session of a board meeting, in accordance with the APA.

(b) For a contested case in which the board has delegated final order authority to the Director of the Motor Carrier Division, a special public meeting may be scheduled.

§224.196. Request for Oral Presentation.

(a) At least 30 days prior to the scheduled date of a board meeting, the department shall notify the parties regarding the opportunity to attend and provide an oral presentation concerning a proposal for decision before the board. The department will deliver notice electronically to the last known email address provided to the department by the party or party's authorized representative in accordance with §224.11 of this title (relating to Filing and Service of Documents).

(b) If a party wants to make an oral presentation at the board meeting, a party must submit a written request for an oral presentation to the department's contact listed in the notice provided under subsection (a) of this section and copy all other parties in accordance with §224.11 at least 14 days prior to the date of the board meeting at which the party's contested case will be reviewed.

(c) If more than one party was not adversely affected by the proposal for decision, such parties may agree on the order of their presentations in lieu of the order prescribed under §224.202 of this title (relating to Order of Oral Presentations to the Board). The order of presentations will be determined under §224.202 of this title if the parties who were not adversely affected by the proposal for decision do not timely provide the department and the other parties with notice under subsection (b) of this section regarding their agreed order of presentation.

(d) If a party timely submits a written request for an oral presentation, that party may make an oral presentation at the board meeting. If a party fails to timely submit a written request for an oral presentation, that party shall not make an oral presentation at the board meeting.

(e) Section 206.22 of this title (relating to Public Access to Board Meetings) does not authorize a party to speak as a public commenter regarding the party's contested case before the board during the posted agenda item or during the open comment period.

§224.198. Written Materials and Evidence.

(a) If a party wants to provide written materials at the board meeting, the party must provide the written materials to the department and all other parties in accordance with §224.11 of this title (relating to Filing and Service of Documents) at least 21 days prior to the date of the board meeting. If a party fails to timely provide written materials to the department or any other party, the department shall not provide the written materials to the board and the party shall not provide the written materials to the board at the board meeting. Non-parties are not authorized to provide written materials to the board.

(b) For the purposes of this section, written materials are defined as language or images including photographs or diagrams, that are contained in the SOAH administrative record and recorded in paper form except as stated otherwise in this subsection. The language or images in the written materials must be taken without changes from the SOAH administrative record; however, proposed final orders and draft motions for possible board action are allowed to be included in a party's written materials even if they contain arguments or requests that aren't contained in the SOAH administrative record. Written materials shall be limited to evidence contained in the SOAH administrative record and consistent with the scope of the board's authority to act under Government Code, §2001.058(e) and Occupations Code, Chapters 2301 and 2302, and Transportation Code, Chapters 502, 503, 621-623, 643, 645, or 1001-1005, as applicable.

(c) All information in the written materials shall include a citation to the SOAH administrative record on all points to specifically identify where the information is located. The citations may be provided in an addendum to the written materials that is not counted against the 15-page limit under subsection (d) of this section; however, the addendum must not include any information other than a heading that lists the name of the party, the caption for the contested case, and text that lists the citations and page numbers.

(d) Written materials shall be 8.5 inches by 11 inches and single-sided. Written materials must be double-spaced and at least 12-point type if in text form. Written materials are limited to 15 pages per party. If a party provides the department with written materials that contain more pages than the maximum allowed, the department shall not provide the written materials to the board and a party shall not provide the written materials to the board at the board meeting.

§224.200. Oral Presentation Limitations and Responsibilities.

(a) A party to a contested case under review by the board shall limit oral presentation and discussion to evidence in the SOAH administrative record. Also, oral presentation and discussion shall be

consistent with the scope of the board's authority to act under Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; and Transportation Code Chapter 502, 503, 621-623, 643, 645, or 1001-1005, as applicable.

(b) A party may argue that the board should remand the contested case to SOAH.

(c) Each party is responsible for objecting when another party attempts to make arguments or engage in discussion regarding evidence that is not contained in the SOAH administrative record.

(d) A party's presentation to the board is subject to the following limitations and conditions:

(1) Each party shall be allowed a maximum of 15 minutes for their oral presentation. The board chair may increase this time.

(2) No party is allowed to provide a rebuttal or a closing statement.

(3) An intervenor of record from the SOAH proceeding supporting another party shall share that party's time.

(4) Time spent by a party responding to a board question is not counted against their presentation time.

(5) During an oral presentation, a party to the contested case before the board may object that a party presented material or argument that is not in the SOAH administrative record. Time spent discussing such objections is not counted against the objecting party's time.

§224.202. Order of Oral Presentations to the Board.

(a) The department will present the procedural history and summary of the contested case.

(b) The party that is adversely affected may present first. However, the board chair is authorized to determine the order of each party's presentation if:

(1) it is not clear which party is adversely affected;

(2) it appears that more than one party is adversely affected; or

(3) different parties are adversely affected by different portions of the contested case under review.

(c) The other party or parties not adversely affected will then have an opportunity to make a presentation. If more than one party is not adversely affected, each party will have an opportunity to respond in alphabetical order based on the name of the party in the pleadings in the SOAH administrative record, except as stated otherwise in §224.196 of this title (relating to Request for Oral Presentation).

§224.204. Board Conduct and Discussion When Reviewing a Contested Case or Interlocutory Order.

(a) The board shall conduct its contested case review in compliance with Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code Chapters 502, 503, 621, 623, 643, 645, or 1001-1005, as applicable, including the limitations on changing a finding of fact or conclusion of law made by a SOAH ALJ, and the prohibition on considering evidence outside of the SOAH administrative record.

(b) A board member may question a party or the department on any matter that is relevant to the proposal for decision; however, a question shall be consistent with the scope of the board's authority to take action under Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621-623, 643, 645, or 1001-1005, as applicable; a question must be limited to evidence contained in the SOAH administrative record; and the communication must comply with §224.5 of this title (relating to Prohibited Communication). In considering a contested case, a board member is authorized to ask a question regarding a request to remand the case to SOAH, including a remand to SOAH for further consideration of the evidence.

(c) A board member may use personal expertise in the industry to understand a contested case and make effective decisions, consistent with the scope of the board's authority to act under Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; and Transportation Code Chapters 502, 503, 621-623, 643, 645, or 1001-1005, as applicable. However, a board member is not an advocate for a particular industry. A board member is an impartial public servant who takes an oath to preserve, protect, and defend the Constitution and laws of the United States and Texas.

§224.206. Final Orders.

(a) A final decision or order in a contested case reviewed by the board or board delegate with final order authority shall be in writing and shall be signed by the board chair or board delegate, as applicable.

(b) The department shall email a copy of the final order to the parties in the contested case in addition to sending a copy of the final order certified mail, return receipt requested.

(c) The provisions of Government Code, Chapter 2001, Subchapter F govern:

(1) the issuance of a final order issued under this subchapter; and

(2) motions for rehearing filed in response to a final order.

(d) A decision or order in a contested case is final in accordance with Government Code, §2001.144.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER G. LEMON LAW AND WARRANTY PERFORMANCE CLAIMS

43 TAC §§224.230, 224.234, 224.236, 224.238, 224.240, 224.242, 224.244, 224.246, 224.248, 224.250, 224.252, 224.254, 224.256, 224.258, 224.260, 224.262, 224.264, 224.266, 224.268

STATUTORY AUTHORITY. The department proposes new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Occupations Code, §2301.152, which authorizes the board to provide for compliance with warranties; Occupations

Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301; Occupations Code, §2301.602, which requires the board to adopt rules for the enforcement and implementation of Subchapter M of Occupations Code, Chapter 2301; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and the statutory authority referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. These new rules would implement Government Code, Chapter 2001; Occupations Code, Chapter 2301; and Transportation Code, Chapters 1002 and 1003.

§224.230. Purpose, Scope, and Definitions.

(a) Subchapter A and this subchapter apply to contested cases filed under Occupations Code, §2301.204 or Subchapter M, to the extent they do not conflict with state law, rule, or court order.

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

(1) Case advisor--A department staff member responsible for evaluating, investigating, and mediating lemon law and warranty performance complaints prior to a hearing.

(2) Comparable motor vehicle--A new motor vehicle, with comparable mileage, from the same manufacturer, distributor, or converter's product line and the same model year or newer as the motor vehicle to be replaced or as reasonably equivalent to the motor vehicle to be replaced.

(3) Lemon law--Refers to Occupations Code, Chapter 2301, Subchapter M (§§2301.601-2301.613).

(4) Warranty performance--Refers to Occupations Code, §2301.204.

§224.232. Filing a Complaint.

(a) The department will provide information concerning the complaint procedure and a complaint form to a person requesting assistance. A person may call the department or visit the department website for information or to file a complaint electronically.

(b) A complaint alleging a violation of Occupations Code, §2301.204 or Subchapter M, must be in writing and signed by the complainant, and:

(1) state sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law or warranty performance statute;

(2) provide the following information:

(A) the name, address, and telephone number of the motor vehicle owner;

(B) the make, model, year, and Vehicle Identification Number or VIN of the motor vehicle;

(C) the type of warranty coverage;

(D) the name and address of the dealer or other person from whom the motor vehicle was purchased or leased, including the name and address of the vehicle lessor, if applicable;

(E) the original date of delivery of the motor vehicle to the owner and in the case of a demonstrator, the date the motor vehicle was placed into demonstrator service;

(F) the motor vehicle mileage at the time when:

(i) the motor vehicle was purchased or leased;

(ii) problems with the motor vehicle were first reported; and

(iii) the complaint was filed;

(G) the name of the dealer or the name of the manufacturer's, converter's, or distributor's agent to whom the problems were first reported;

(H) identification of the motor vehicle's existing problems and a brief description of the history of problems and repairs on the motor vehicle, including:

(i) the date and mileage of each repair; and

(ii) a copy of each repair order where possible;

(I) the date the motor vehicle manufacturer, distributor, or converter first received written notice of the alleged defect or nonconformity;

(J) the date and results of the motor vehicle inspection, if the motor vehicle was inspected by the manufacturer, distributor, or converter; and

(K) any other information the complainant deems relevant to the complaint.

(c) A person may file a complaint with the department:

(1) by mail sent to the mailing address listed on the department website at TxDMV.gov, or

(2) electronically in the Motor Vehicle Dealer Online Complaint System which may be accessed on the department website.

(d) Before investigating a claim, the department may require the complainant to provide additional information necessary to evaluate whether the department has jurisdiction to pursue the complaint.

(e) The following provisions apply to lemon law complaints.

(1) The filing fee required under the lemon law should be paid when the complaint is submitted to the department and may be paid online by credit card if filing a claim electronically or by check if mailing a complaint to the department. The filing fee is nonrefundable, but a complainant that prevails in a case is entitled to reimbursement of the filing fee from the nonprevailing party. Failure to pay the filing fee when submitting a complaint will delay the start of the 150-day period in paragraph (3) of this subsection and may result in dismissal of the complaint.

(2) A lemon law proceeding commences on the date the filing fee is received by the department.

(3) If the hearings examiner has not issued an order within 150 days after the commencement of the lemon law proceeding in accordance with paragraph (2) of this subsection, the department shall notify the parties by certified mail that the complainant may file a civil action in state district court to seek relief under the lemon law. The notice will inform the complainant of the complainant's right to continue the lemon law complaint with the department. The department shall extend the 150-day period upon request of the complainant or if a delay in the proceedings is caused by the complainant.

(f) The following provisions apply to warranty performance complaints (repair-only relief).

(1) A filing fee is not required for a complaint that is subject to a warranty performance claim.

(2) A complaint may be filed with the department in accordance with this section if the defect in the motor vehicle subject to the warranty performance complaint was reported to the manufacturer, distributor, or converter prior to the expiration of the warranty period.

(3) If the defect is not resolved pursuant to §224.238 of this title (relating to Mediation; Settlement or Referral for Hearing), the department will schedule a hearing to be conducted in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O and this subchapter.

(4) A hearings examiner will issue a final order on a warranty performance complaint. A party who disagrees with the order may oppose the order in accordance with §224.264 of this title (relating to Final Orders).

§224.234. Complaint Review.

(a) A case advisor will review a complaint to determine if the department has jurisdiction to consider the complaint and whether the complaint meets the minimum statutory requirements for a lemon law or a warranty performance complaint.

(b) If a case advisor cannot determine if the department has jurisdiction or whether a complaint meets the lemon law or warranty performance minimum statutory requirements, the case advisor will contact the complainant for additional information.

(c) The case advisor will notify the complainant if the department does not have jurisdiction over the complaint.

(d) If a case advisor determines that the department has jurisdiction and the complaint meets the minimum lemon law or warranty performance requirements, the complaint will be processed in accordance with this subchapter.

§224.236. Notification to Manufacturer, Distributor, or Convertor.

(a) Once a case advisor determines that a complaint meets the minimum statutory requirements the case advisor will:

(1) notify the appropriate manufacturer, distributor, or converter of the complaint and request a response; and

(2) provide a copy of the complaint to the selling dealer and any other dealer involved with the complaint and may request a response.

(b) Upon request by the department, the manufacturer shall provide a copy of the warranty for the motor vehicle subject to the lemon law or warranty performance complaint.

(c) The case advisor will provide a copy of any responses or documents received from the manufacturer, distributor, or converter to the complainant.

§224.238. Mediation; Settlement or Referral for Hearing.

(a) A case advisor will attempt to settle or resolve a lemon law or warranty performance complaint through nonbinding mediation before a hearing on the complaint is scheduled.

(b) The parties must participate in the nonbinding mediation process in good faith.

(c) In a case filed under Occupations Code, §2301.204 or §§2301.601-2301.613, a case advisor shall qualify for appointment as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154.

(d) If the parties cannot resolve the complaint, a case advisor will refer the complaint for a hearing with a hearings examiner.

§224.240. Notice of Hearing.

(a) Each party is entitled to an opportunity for a hearing, in accordance with Government Code, §2001.051.

(b) A notice of hearing in a contested case shall comply with the requirements of Government Code, §2001.052(a) and the department shall serve the notice upon the parties by certified mail, return receipt requested to the last known address of a party or the party's authorized representative in accordance with Occupations Code, §2301.705.

(c) The last known address of a party is the last mailing address provided to the department.

(d) A notice of hearing in a contested case may be amended in accordance with Government Code, §2001.052(b).

§224.242. Motions.

(a) Unless made during a contested case hearing, each motion in a contested case shall be in writing and shall state:

(1) the relief sought; and

(2) the specific reasons and grounds for the relief requested.

(b) A motion not made during a contested case hearing shall be filed with the hearings examiner and a copy shall be served on all parties or their authorized representatives at least five days prior to the hearing absent a showing of good cause.

(c) A motion is not granted until it has been ruled on by the hearings examiner, even if the motion is uncontested or agreed.

§224.244. Service of Documents.

(a) A copy of each document filed in a contested case shall be served upon all parties or their authorized representatives by sending a copy properly addressed to each party by:

(1) first-class mail; or

(2) email.

(b) A copy of each document must also be filed with the department by:

(1) email;

(2) fax; or

(3) first-class mail.

(c) A certificate of service shall accompany each document.

§224.246. Presiding Official.

(a) Hearings examiner. A hearings examiner will preside over a hearing for a lemon law or warranty performance complaint.

(b) Powers and duties. A hearings examiner shall conduct fair hearings and shall take all necessary action to administer the disposition of contested cases. A hearings examiner's powers include, but are not limited to the authority to:

(1) administer oaths;

(2) examine witnesses;

(3) rule upon the admissibility of evidence;

(4) rule upon motions; and

(5) regulate the course of the contested case hearing and the conduct of the parties and their authorized representative.

(c) Expert Inspection. If a hearings examiner determines that an expert opinion may assist in arriving at a decision, a hearings examiner may have the motor vehicle in question inspected by an expert prior to the hearing. An inspection under this subsection shall be made

only upon prior notice to all parties, who shall have the right to be present at the inspection. A copy of any findings or report from the expert inspection will be provided to all parties before or at the hearing.

(d) Recusal.

(1) If a hearings examiner determines that the hearings examiner should be recused from a particular contested case hearing, the hearings examiner shall withdraw from the contested case by giving notice on the record and by notifying the chief hearings examiner.

(2) A party may file a motion to recuse the hearings examiner. The motion to recuse shall be supported by an affidavit setting forth the alleged grounds for disqualification. A copy of the motion shall be served on the hearings examiner who shall have 10 days to reply, and a copy shall be served on all parties or their authorized representatives.

(3) If the hearings examiner contests the alleged grounds for disqualification, the chief hearings examiner shall promptly determine the validity of the grounds alleged and render a decision.

(e) Substitution of hearings examiner. If the hearings examiner is disqualified, dies, becomes disabled, or withdraws during any contested case proceeding, the chief hearings examiner may appoint another hearings examiner to preside over the remainder of the contested case proceeding.

§224.248. Hearing Continuance.

(a) A continuance of the contested case hearing will be granted by the hearings examiner only upon a showing of good cause.

(b) A motion for continuance of a contested case hearing shall be filed and served on all parties at least five days before the hearing date, except when good cause is shown to consider a motion for continuance filed after the deadline.

§224.250. Conduct of Hearing.

(a) Each party in a contested case shall have the right to notice, cross examination, present evidence, object, make a motion or argument, and all other rights essential to a fair contested case hearing. Except as provided by this chapter or in the notice of hearing, the TCRP as applied to non-jury civil cases shall be applicable to hearings in contested cases as far as reasonably practical.

(b) Parties, representatives, and other participants in a contested case shall:

(1) conduct themselves with dignity;

(2) show courtesy and respect for one another and the hearings examiner;

(3) follow any additional guidelines of decorum prescribed by the hearings examiner; and

(4) adhere to the time schedule.

(c) If a participant violates this section, the hearing examiner may:

(1) issue a warning;

(2) recess the hearing; or

(3) exclude a person from the contested case hearing for such period and upon such conditions as are just.

§224.252. Hearings.

(a) Depositions, interrogatories, and requests for admission shall not be allowed.

(b) When possible, an in-person hearing will be held in the city in which the complainant resides. A hearing may also be conducted by telephone or videoconference.

(c) A hearing will be scheduled at the earliest date possible, provided that a 10-day notice or other notice required by law is given to all parties.

(d) A hearing will be conducted expeditiously by a hearings examiner in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, and this subchapter.

(e) If a party fails to appear for the hearing, relief may be granted to the party that appears.

(f) Absent a showing of good cause, a complaint may be dismissed if the complainant repeatedly fails to respond or communicate with the department.

(g) The complainant shall have the burden of proof by a preponderance of the evidence.

(h) Hearings will be conducted informally. A party has a right to be represented by an attorney at a hearing, although an attorney is not required. A party who intends to be represented at a hearing by an attorney or other authorized representative must notify the hearings examiner and any other party in writing at least five business days prior to the hearing. Failure to provide notice will result in postponement of the hearing if requested by another party.

(i) Subject to a hearings examiner ruling, a party may present that party's case in full, including testimony from witnesses and documentary evidence such as repair orders, warranty documents, and the motor vehicle sales contract.

(j) With written approval of the hearings examiner, a hearing may be conducted by written submission only or by telephone or videoconference.

(k) Upon notice to the parties, a hearings examiner may conduct a hearing or prehearing conference by telephone or videoconference.

(l) Except for a hearing conducted by written submission, a party may be questioned by another party at the discretion of the hearings examiner.

(m) Except for a hearing conducted by written submission, telephone, or videoconference, the complainant may bring the motor vehicle in question to the hearing so that the motor vehicle may be inspected and test driven by Respondent.

(n) Except for a hearing conducted by written submission, a hearing will be recorded by the hearings examiner. A copy of the recording will be provided to any party upon request and upon payment of the cost of the copy as provided by statute or rules.

§224.254. Evidence.

(a) General. The TRE shall apply in all contested cases, in accordance with Government Code, Chapter 2001.

(b) Documents in department files. The hearings examiner may take official notice of documents or information in the department's files, in accordance with Government Code, Chapter 2001.

(c) Exhibits. Exhibits shall be limited to the relevant and material issues involved in a particular contested case. If an offered exhibit has been excluded after objection and the party offering the exhibit withdraws the offer, the hearings examiner shall return the exhibit. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification and be included in the record only for the purpose

of preserving the exception together with the hearings examiner's ruling.

(d) Evidence may be stipulated by agreement of all parties.

§224.256. Objections and Exceptions.

A party is not required to make a formal exception to a ruling of the hearings examiner.

§224.258. Final Order Authority.

(a) The hearings examiner has final order authority in a contested case filed under Occupations Code, §2301.204 or Occupations Code, Chapter 2301, Subchapter M.

(b) This authority includes a contested case in which a case is resolved:

(1) by settlement;

(2) by agreed order;

(3) by withdrawal of the complaint;

(4) by dismissal for want of prosecution or continued failure to communicate with the department;

(5) by dismissal for want of jurisdiction;

(6) by summary judgment or summary disposition;

(7) by a default judgment; or

(8) when a party waives the opportunity for a contested case hearing.

§224.260. Lemon Law Relief Decisions.

(a) Unless otherwise indicated, this section applies to decisions that relate to lemon law complaints. Decisions shall give effect to the presumptions provided in Occupations Code, §2301.605, where applicable.

(1) If a hearings examiner finds that the manufacturer, distributor, or converter is not able to conform the motor vehicle to an applicable express warranty by repairing or correcting a defect in the complainant's motor vehicle, creating a serious safety hazard or substantially impairing the use or market value of the motor vehicle after a reasonable number of attempts, and that the affirmative defenses provided under Occupations Code, §2301.606 are not applicable, the hearings examiner shall issue a final order to the manufacturer, distributor, or converter to:

(A) replace the motor vehicle with a comparable motor vehicle; or

(B) accept the return of the motor vehicle from the owner and refund the full purchase price of the motor vehicle to the owner, less a reasonable allowance for the owner's use of the motor vehicle and any other allowances or refunds payable to the owner.

(2) In a decision in favor of the complainant, the hearings examiner will, to the extent possible, accommodate the complainant's request with respect to replacement or repurchase of the motor vehicle.

(b) This subsection applies only to the repurchase of motor vehicles.

(1) When a refund is ordered, the purchase price shall be the total purchase price of the motor vehicle, excluding the amount of any interest, finance charge, or insurance premiums. The refund amount to the motor vehicle owner shall include reimbursement of the amount of the lemon law complaint filing fee paid by, or on behalf of, the motor vehicle owner. The refund shall be made payable to the motor vehicle owner and to any lienholder, respective to each person's ownership interest in the motor vehicle.

(2) There is a rebuttable presumption that the expected useful life of a motor vehicle is 120,000 miles. Except in cases where the preponderance of the evidence shows the motor vehicle has a longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use of the motor vehicle shall be the sums of the amounts obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) The product obtained by multiplying the total purchase price, as defined in paragraph (1) of this subsection, of the motor vehicle by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the motor vehicle traveled from the time of delivery to the owner to the date of the date of the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50% of the product obtained by multiplying the total purchase price by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the motor vehicle traveled after the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(3) There is a rebuttable presumption the expected useful life of a towable recreational vehicle is 5,475 days or 15 years. Except in cases where a preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 5,475 days or 15 years, the reasonable allowance for the owner's use of the towable recreational vehicle shall be the sum of the amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) The product obtained by multiplying the total purchase price, as defined in paragraph (1) of this subsection, of the towable recreational vehicle by a fraction having as its denominator 5,475 days or 15 years and having as its numerator the number of days from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order.

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 5,475 days or 15 years and having as its numerator the number of days of ownership after the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(C) Any day or part of a day that the vehicle is out of service for repair will be deducted from the numerator in determining the reasonable allowance for use of a towable recreational vehicle in this paragraph.

(c) This subsection applies only to the repurchase of a leased motor vehicle.

(1) Except in cases involving unusual and extenuating circumstances supported by a preponderance of the evidence, when a refund of the total purchase price of a leased motor vehicle is ordered, the refund shall be allocated and paid to the lessee and the vehicle lessor, respectively, in accordance with subparagraphs (A) and (B) of this paragraph.

(A) The lessee shall receive the total of:

(i) all lease payments previously paid by the lessee to the vehicle lessor under the terms of the lease; and

(ii) all sums previously paid by the lessee to the vehicle lessor in connection with entering into the lease agreement, including, but not limited to any capitalized cost reduction, down payment, trade-in, or similar cost, plus sales tax, license, registration fees, and other documentary fees, if applicable.

(B) The vehicle lessor shall receive the total of:

(i) the actual price paid by the vehicle lessor for the motor vehicle, including tax, title, license, and documentary fees, if paid by the vehicle lessor and evidenced in a bill of sale, bank draft demand, tax collector's receipt, or similar instrument; and

(ii) an additional 5.0% of the purchase price plus any amount or fee paid by the vehicle lessor to secure the lease or interest in the lease.

(C) A credit reflecting all of the payments made by the lessee shall be deducted from the actual purchase price that the manufacturer, distributor, or converter is required to pay the vehicle lessor, as specified in subparagraph (B)(i) and (ii) of this paragraph.

(2) When the hearings examiner orders a manufacturer, distributor, or converter to refund the purchase price in a leased vehicle transaction, the motor vehicle shall be returned to the manufacturer, distributor, or converter with clear title upon payment of the sums indicated in paragraph (1)(A) and (B) of this subsection. The vehicle lessor shall transfer title of the motor vehicle to the manufacturer, distributor, or converter, as necessary to effectuate the lessee's rights. The lease shall be terminated without penalty to the lessee.

(3) Refunds shall be made to the lessee, vehicle lessor, and to any lienholder, respective to their ownership interest in the motor vehicle. The refund to the lessee under paragraph (1)(A) of this subsection shall be reduced by a reasonable allowance for the lessee's use of the motor vehicle. A reasonable allowance for use shall be computed in accordance with subsection (b)(2) or (3) of this section, using the amount in paragraph (1)(B)(i) of this subsection as the applicable total purchase price.

(d) This subsection applies only to replacement of motor vehicles.

(1) Upon a hearing examiner's issuance of a final order to a manufacturer, distributor, or converter to replace a motor vehicle, the manufacturer, distributor, or converter shall:

(A) promptly authorize the exchange of the complainant's motor vehicle with the complainant's choice of any comparable motor vehicle; and

(B) instruct the dealer to contract the sale of the selected comparable motor vehicle with the complainant under the following terms.

(i) The sales price of the comparable motor vehicle shall be the vehicle's Manufacturer's Suggested Retail Price or Distributor's Suggested Retail Price (MSRP/DSRP), as applicable;

(ii) The trade-in value of the complainant's motor vehicle shall be the MSRP/DRSP, as applicable, at the time of the original transaction, less a reasonable allowance for the complainant's use of the complainant's motor vehicle.

(iii) The reasonable allowance for replacement relief shall be calculated in accordance with subsection (b)(2) and (3) of this section.

(2) Upon a replacement of a complainant's motor vehicle, the complainant shall be responsible for payment or financing of the reasonable allowance for use of the complainant's vehicle, any outstanding liens on the complainant's vehicle, and applicable taxes and fees associated with the new sale of a comparable motor vehicle, excluding documentary fees.

(A) If the comparable motor vehicle has a higher MSRP/DSRP, as applicable, than the complainant's vehicle, the complainant shall be responsible at the time of sale to pay or finance the difference in the two vehicles' MSRPs/DSRPs, as applicable, to the manufacturer, converter or distributor.

(B) If the comparable motor vehicle has a lower MSRP/DSRP, as applicable, than the complainant's vehicle, the complainant will be credited the difference in the MSRP/DSRP, as applicable, between the two motor vehicles. The difference credited shall not exceed the amount of the calculated reasonable allowance for use for the complainant's vehicle.

(3) The complainant is responsible for obtaining financing, if necessary, to complete the transaction.

(4) The replacement transaction, as described in paragraphs (2) and (3) of this subsection, shall be completed as specified in the final order. If the replacement transaction cannot be completed within the ordered time period, the manufacturer shall repurchase the complainant's motor vehicle in accordance with the repurchase provisions of this section. If repurchase relief occurs, a party may request calculation of the refund price by the hearings examiner.

(e) If the hearings examiner finds that a complainant's motor vehicle does not qualify for replacement or repurchase, the hearings examiner may enter an order requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, converter's, or distributor's warranty obligations.

(f) If the motor vehicle is substantially damaged or if there is an adverse change in the motor vehicle's condition beyond ordinary wear and tear, from the date of the hearing to the date of repurchase, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the hearings examiner of the refund amount contained in the final order.

(g) In any award in favor of a complainant, the hearings examiner may require the dealer involved to reimburse the complainant, manufacturer, distributor, or converter for the cost of any items or options added to the motor vehicle by the dealer if one or more of those items or options contributed to the defect that is the basis for the final order. This subsection shall not be interpreted to require a manufacturer, distributor, or converter to repurchase a motor vehicle due to a defect or condition that was solely caused by an item or option added by the dealer.

§224.262. Incidental Costs.

(a) When a refund of the purchase price or replacement of a motor vehicle is ordered, the complainant shall be reimbursed for certain incidental costs incurred by the complainant from loss of use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint. The costs must be reasonable and verifiable. Reimbursable incidental costs include, but are not limited to the following costs:

(1) alternate transportation;

(2) towing;

(3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the motor vehicle;

(4) meals and lodging necessitated by the motor vehicle's failure during out-of-town trips;

(5) loss or damage to personal property;

(6) attorney fees if the complainant retains counsel after notification that the respondent is represented by counsel; and

(7) items or accessories added to the motor vehicle at or after purchase, less a reasonable allowance for use.

(b) Incidental costs shall be included in the final refund amount required to be paid by a manufacturer, distributor, or converter to a prevailing complainant, or in the case of a motor vehicle replacement, shall be tendered to the complainant at the time of replacement.

(c) When awarding reimbursement for the cost of items or accessories presented under subsection (a)(7) of this section, the hearings examiner shall consider the permanent nature, functionality, and value added by the items or accessories and whether the items or accessories are original equipment manufacturer (OEM) parts or non-OEM parts.

§224.264. Final Orders.

(a) A hearings examiner shall prepare a final order as soon as possible, but not later than 60 days after the hearing is closed, or as otherwise provided by law. The final order shall include the hearings examiner's findings of fact and conclusions of law. The final order shall be sent by the department to all parties by certified mail.

(b) A party who disagrees with the final order may file a motion for rehearing in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O. A motion for rehearing of a final order must:

(1) be filed with the chief hearings examiner;

(2) include the specific reasons, exceptions, or grounds asserted by a party as the basis of the request for a rehearing; and

(3) recite, if applicable, the specific findings of fact, conclusions of law, or any other portions of the final order to which the party objects.

(c) Replies to a motion for rehearing must be filed with the chief hearings examiner in accordance with Government Code, Chapter 2001, subject to Occupations Code, §2301.713.

(d) If the chief hearings examiner or designee grants a motion for rehearing, the parties will be notified by mail and a rehearing will be scheduled promptly. After rehearing, a final order shall be issued with any additional findings of fact or conclusions of law, if necessary to support the final order.

(e) A hearings examiner may issue a final order granting the relief requested in a motion for rehearing or requested in a reply to a motion for rehearing without the need for a rehearing.

(f) If a motion for rehearing is denied, the chief hearings examiner or designee will issue a final order and notify the parties.

§224.266. Compliance with Order Granting Relief.

(a) Compliance with a final order will be monitored by the department.

(b) A complainant is not bound by a final order.

(c) If a complainant does not accept the final order, the proceeding before the hearings examiner will be deemed concluded and the complaint file closed.

(d) If the complainant accepts the final decision, then the manufacturer, distributor, or converter, and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such action as is necessary to implement the final order.

(e) If a manufacturer, distributor, or converter replaces or repurchases a motor vehicle pursuant to a final order, then the manufacturer, distributor, or converter shall, prior to the resale of such motor vehicle, retitle the vehicle in Texas and shall:

(1) issue a disclosure statement on a form provided by or approved by the department; and

(2) affix a department-approved disclosure label in a conspicuous location in or on the motor vehicle.

(f) The disclosure statement and disclosure label required under subsection (e) of this section shall accompany the motor vehicle through the first retail purchase. No person holding a license or GDN issued by the department under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 shall remove or cause the removal of the disclosure label until delivery of the motor vehicle to the first retail purchaser.

(g) A manufacturer, distributor, or converter shall provide to the department the name, address, and telephone number of the transferee to whom the manufacturer, distributor, or converter transfers the motor vehicle on the disclosure statement within 60 days of a transfer. A dealer that sells the vehicle to the first retail purchaser shall return the completed disclosure statement to the department within 60 days of the sale.

(h) The manufacturer, distributor, or converter must repair the defect or condition in the motor vehicle that resulted in the vehicle being reacquired and issue a basic warranty excluding non-original equipment manufacturer items or accessories, for a minimum of 12 months or 12,000 miles, whichever comes first. The warranty shall be provided to the first retail purchaser of the motor vehicle.

(i) In the event this section conflicts with the terms contained in a cease and desist order, the terms of the cease and desist order shall prevail.

(j) The failure of any manufacturer, distributor, converter, or dealer to comply with a final order within the time period prescribed in the order may subject the manufacturer, converter, distributor, or dealer to formal action by the department, including the assessment of civil penalties of up to $10,000 per day per violation or other sanctions prescribed by Occupations Code, Chapter 2301.

§224.268. Judicial Appeal of a Final Order.

(a) A party who has exhausted all administrative remedies may appeal a final order in a Travis County district court under Government Code, Chapter 2001, and subject to Occupations Code, §2301.609.

(b) A party appealing a final order must serve a copy of the petition for judicial review on the department and all parties of record. After service of the petition and within the time allowed for filing an answer, the department shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding. If the court orders that new evidence be presented to a hearings examiner, the hearings examiner may modify the findings and decision or order by reason of the new evidence and shall transmit the additional record to the court.

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

Filed with the Office of the Secretary of State on December 15, 2023.

TRD-202304826
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 28, 2024
For further information, please call: (512) 465-5665

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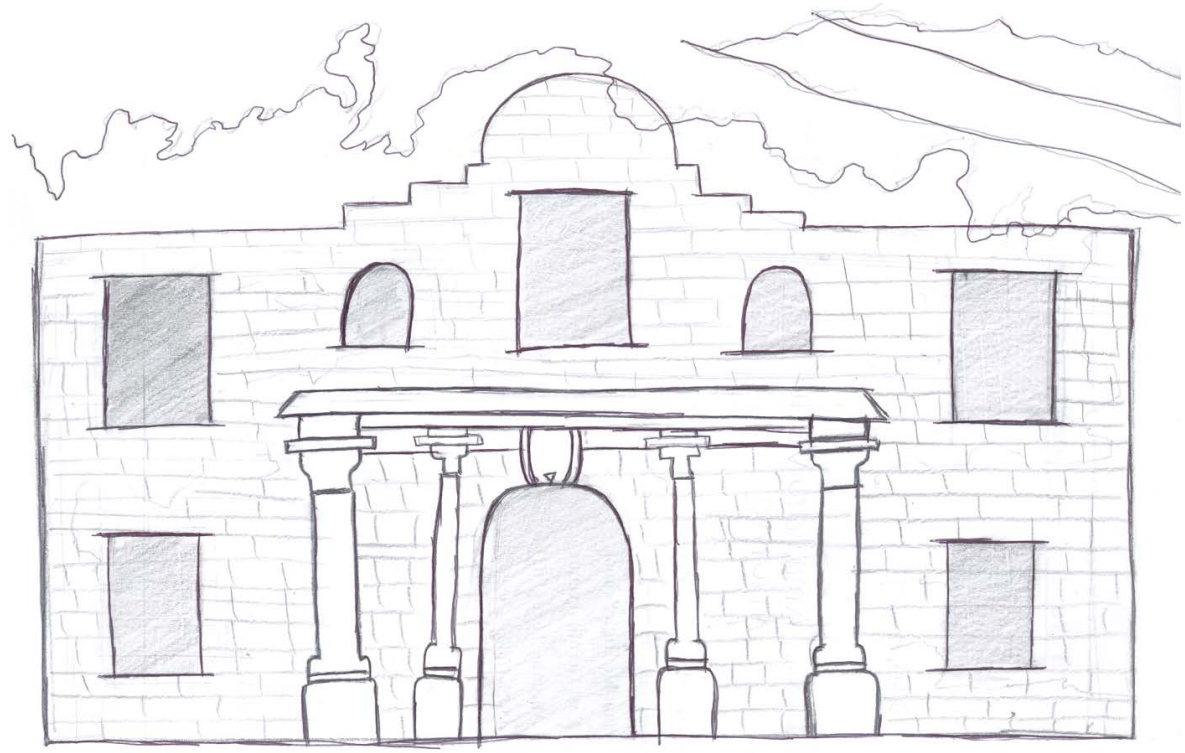

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036).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

TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 12. LOANS AND INVESTMENTS

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to Chapter 12 of Title 7 of the Texas Administrative Code, concerning loans and investments by state banks. Sections 12.2, 12.3, 12.6, 12.11, 12.12, and 12.33 are the affected sections. Amendments to §§12.3, 12.6, 12.11, and 12.33 are adopted without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6509). The amended rules will not be republished. Amendments to §12.2 and §12.12 are adopted with nonsubstantive changes and the rule will be republished.

The amendments conform these rules to changes in applicable Texas law, federal regulation, and accounting standards. The amendments do not materially change the requirements of the rules.

The department received no comments regarding the proposed amendments.

SUBCHAPTER A. LENDING LIMITS

7 TAC §§12.2, 12.3, 12.6, 12.11, 12.12

The amendments to Chapter 12, Subchapter A are adopted pursuant to Finance Code §11.301, which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

These amendments affect the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statutes are affected by this proposal.

§12.2. Definitions.

Definitions in the Finance Code, Title 3, Subtitles A and G, are incorporated herein by reference. As used in this subchapter and in Finance Code, Chapter 34, concerning investments and loans, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Borrower--A person who is named as a borrower, obligor, or debtor in a loan or extension of credit; a person to whom a state bank has credit exposure arising from a derivative transaction or a securities financing transaction, entered by the bank; or any other person, including but not limited to a drawer, endorser, or guarantor who is considered to be a borrower under the direct benefit, source of repayment, or common enterprise tests set forth in §12.9 of this title (relating to Aggregation and Attribution).

(2) Call report--The federal Consolidated Report of Condition and Income required by and filed under 12 U.S.C. §1817 (or under 12 U.S.C. §324 in the case of a bank that is a member of the Federal Reserve System), or a report of financial condition and results of operations of a state bank required by the banking commissioner under Finance Code, §31.108.

(3) Control--Control is presumed to exist when a person directly or indirectly, or acting through or together with one or more persons:

(A) owns, controls, or has the power to vote 25 percent or more of any class of voting securities of another person;

(B) controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(C) has the power to exercise a controlling influence over the management or policies of another person.

(4) Credit derivative--As defined in 12 C.F.R. §324.2 (or 12 C.F.R. §217.2 in the case of a bank that is a member of the Federal Reserve System).

(5) Derivative transaction--Includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(6) Effective margining arrangement--A master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds $25 million created by the derivative transactions covered by the agreement.

(7) Eligible credit derivative--A single-name credit derivative or a standard, non-tranched index credit derivative provided that:

(A) the derivative contract meets the requirements of an eligible guarantee, as defined in 12 C.F.R. §324.2 (or 12 C.F.R. §217.2 in the case of a bank that is a member of the Federal Reserve System), and has been confirmed by the protection purchaser and the protection provider;

(B) any assignment of the derivative contract has been confirmed by all relevant parties;

(C) if the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment

threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) bankruptcy, insolvency, restructuring (for obligors not subject to bankruptcy or insolvency), or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;

(D) the terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(E) if the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(F) if the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

(G) if the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(8) Eligible protection provider--An entity that is:

(A) a sovereign entity (a central government, including the U.S. government; an agency; department; ministry; or central bank);

(B) the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(C) a Federal Home Loan Bank;

(D) the Federal Agricultural Mortgage Corporation;

(E) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. §1813(c);

(F) a bank holding company, as defined in section 2 of the Bank Holding Company Act, as amended, 12 U.S.C. §1841;

(G) a savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act, 12 U.S.C. §1467a;

(H) a securities broker or dealer registered with the SEC under the Securities Exchange Act of 1934, 15 U.S.C. §§78o et seq.;

(I) an insurance company that is subject to the supervision of a State insurance regulator;

(J) a foreign banking organization;

(K) a non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; or

(L) a qualifying central counterparty.

(9) Qualifying central counterparty--As defined in 12 C.F.R. §324.2 (or 12 C.F.R. §217.2 in the case of a bank that is a member of the Federal Reserve System).

(10) Qualifying master netting agreement--As defined in 12 C.F.R. §324.2 (or 12 C.F.R. §217.2 in the case of a bank that is a member of the Federal Reserve System).

(11) Sale of federal funds--A transaction between depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve Banks, or from credits to new or existing deposit balances due from a correspondent depository institution.

(12) Securities financing transaction--A repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.

(13) Tier 1 capital--A state bank's unimpaired capital and surplus. A state bank's Tier 1 capital is calculated under 12 C.F.R. part 324 (or 12 C.F.R. part 217 in the case of a bank that is a member of the Federal Reserve System), is reported in the bank's most recent call report, and is periodically re-calculated as provided by §12.11 of this title (relating to Calculation of Lending Limit).

(14) Unimpaired capital and surplus--A state bank's core capital, equal to its Tier 1 capital calculated under 12 C.F.R. part 324 (or 12 C.F.R. part 217 in the case of a bank that is a member of the Federal Reserve System), and referred to as Tier 1 capital in this chapter.

§12.12. Credit Exposure Arising from Derivative and Securities Financing Transactions.

(a) Scope. This section sets forth the rules for calculating the credit exposure arising from a derivative transaction or a securities financing transaction entered into by a state bank for purposes of determining the bank's lending limit pursuant to Finance Code, §34.201, and this subchapter.

(b) Derivative transactions.

(1) Non-credit derivatives. Subject to paragraphs (2) - (4) of this subsection, a state bank shall calculate the credit exposure to a counterparty arising from a derivative transaction by one of the following methods. Subject to paragraphs (3) and (4) of this subsection, a bank shall use the same method for calculating counterparty credit exposure arising from all of its derivative transactions.

(A) Model method.

(i) Credit exposure. The credit exposure of a derivative transaction under the model method is equal to the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.

(ii) Calculation of current credit exposure. A bank shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-market value is zero or negative, then the current credit exposure is zero.

(iii) Calculation of potential future credit exposure. A bank shall calculate its potential future credit exposure by using an internal model that has been approved in writing for purposes of 12 C.F.R. §324.132(d) (or 12 C.F.R. §217.132(d) in the case of a bank that is a member of the Federal Reserve System), provided that the bank notifies the commissioner prior to its use for purposes of this section, or another model approved by the department based on the views of the bank's primary federal banking regulatory agency and any third party testing and evaluation reports submitted to the commissioner. Any substantive revisions to an internal model made after the bank has provided notice of its use, or after the commissioner has approved the use of an alternate model, must be approved by the commissioner before a bank may use the revised model for purposes of this section.

(iv) Net credit exposure. A bank that calculates its credit exposure by using the model method pursuant to this subparagraph may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.

(B) Conversion factor matrix method. The credit exposure arising from a derivative transaction under the conversion factor matrix method is equal to and will remain fixed at the potential future credit exposure of the derivative transaction, which equals the product of the notional amount of the derivative transaction and a fixed multiplicative factor determined by reference to Table 1 of this section.
Figure: 7 TAC §12.12(b)(1)(B) (No change.)

(C) Current exposure method. The credit exposure arising from a derivative transaction (other than a credit derivative transaction) under the current exposure method is calculated in the manner provided by 12 C.F.R. §324.34(b)-(c) (or 12 C.F.R. §217.34(b)-(c) in the case of a bank that is a member of the Federal Reserve System).

(2) Credit derivatives.

(A) Counterparty exposure.

(i) General rule. Notwithstanding paragraph (1) of this subsection and subject to clause (ii) of this subparagraph, a state bank that uses the conversion factor matrix method or the current exposure method, or that uses the model method without entering an effective margining arrangement as defined in §12.2 of this title (relating to Definitions), shall calculate the counterparty credit exposure arising from credit derivatives entered by the bank by adding the net notional value of all protection purchased from the counterparty on each reference entity.

(ii) Special rule for certain effective margining arrangements. A bank must add the effective margining arrangement threshold amount to the counterparty credit exposure arising from credit derivatives calculated under the model method. The effective margining arrangement threshold is the amount under an effective margining arrangement with respect to which the counterparty is not required to post variation margin to fully collateralize the amount of the bank's net credit exposure to the counterparty.

(B) Reference entity exposure. A state bank shall calculate the credit exposure to a reference entity arising from credit derivatives entered into by the bank by adding the net notional value of all protection sold on the reference entity. A bank may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.

(3) Special rule for central counterparties. In addition to amounts calculated under paragraphs (1) and (2) of this subsection, the measure of counterparty exposure to a central counterparty must also include the sum of the initial margin posted by the bank plus any contributions made by it to a guaranty fund at the time such contribution is made. However, this requirement does not apply to a bank that uses an internal model pursuant to paragraph (1)(A) of this subsection if such model reflects the initial margin and any contributions to a guaranty fund.

(4) Mandatory or alternative use of method. The commissioner may in the exercise of discretion require or permit a state bank to use a specific method or methods set forth in this subsection to calculate the credit exposure arising from all derivative transactions, from any category of derivative transactions, or from a specific derivatives transaction if the commissioner in the exercise of discretion finds that such method is consistent with the safety and soundness of the bank.

(c) Securities financing transactions.

(1) In general. Except as provided by paragraph (2) of this subsection, a state bank shall calculate the credit exposure arising from a securities financing transaction by one of the following methods. A state bank shall use the same method for calculating credit exposure arising from all of its securities financing transactions.

(A) Model method. A state bank may calculate the credit exposure of a securities financing transaction by using an internal model that has been approved in writing for purposes of 12 C.F.R. §324.132(b) (or 12 C.F.R. §217.132(b) in the case of a bank that is a member of the Federal Reserve System), provided that the bank notifies the commissioner prior to its use for purposes of this section, or another model approved by the department based on the views of the bank's primary federal banking regulatory agency and any third party testing and evaluation reports submitted to the commissioner. Any substantive revisions to an internal model made after the bank has provided notice of its use, or after the commissioner has approved the use of an alternate model, must be approved by the commissioner before a bank may use the revised model for purposes of this section.

(B) Basic method. A state bank may calculate the credit exposure of a securities financing transaction as follows:

(i) Repurchase agreement. The credit exposure arising from a repurchase agreement shall equal and remain fixed at the market value at execution of the transaction of the securities transferred to the other party less cash received.

(ii) Securities lending.

(I) Cash collateral transactions. The credit exposure arising from a securities lending transaction where the collateral is cash shall equal and remain fixed at the market value at execution of the transaction of securities transferred less cash received.

(II) Non-cash collateral transactions. The credit exposure arising from a securities lending transaction where the collateral is other securities shall equal and remain fixed as the product of the higher of the two haircuts associated with the two securities, as determined by reference to Table 2 of this section, and the higher of the two par values of the securities. Where more than one security is provided as collateral, the applicable haircut is the higher of the haircut associated with the security lent and the notional-weighted average of the haircuts associated with the securities provided as collateral.

(iii) Reverse repurchase agreements. The credit exposure arising from a reverse repurchase agreement shall equal and remain fixed as the product of the haircut associated with the collateral received, as determined by reference to Table 2 of this section, and the amount of cash transferred.

(iv) Securities borrowing.

(I) Cash collateral transactions. The credit exposure arising from a securities borrowed transaction where the collateral is cash shall equal and remain fixed as the product of the haircut on the collateral received, as determined by reference to Table 2 of this section, and the amount of cash transferred to the other party.

(II) Non-cash collateral transactions. The credit exposure arising from a securities borrowed transaction where the collateral is other securities shall equal and remain fixed as the product of the higher of the two haircuts associated with the two securities, as determined by reference to Table 2 of this section, and the higher of the two par values of the securities. Where more than one security is provided as collateral, the applicable haircut is the higher of the haircut associated with the security borrowed and the notional-weighted average of the haircuts associated with the securities provided as collateral.
Figure: 7 TAC §12.12(c)(1)(B)(iv)(II) (No change.)

(C) Basel collateral haircut method. A state bank may calculate the credit exposure of a securities financing transaction in the manner provided by 12 C.F.R. §324.132(b)(2)(i) and (ii) (or 12 C.F.R. §217.132(b)(2)(i) and (ii) in the case of a bank that is a member of the Federal Reserve System).

(2) Mandatory or alternative use of method. The commissioner may in the exercise of discretion require or permit a state bank to use a specific method or methods set forth in this subsection to calculate the credit exposure arising from all securities financing transactions, from any category of securities financing transactions, or from a specific derivatives transaction if the commissioner finds in the exercise of discretion that such method is consistent with the safety and soundness of the bank.

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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Robert K. Nichols, III
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1382

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SUBCHAPTER B. LOANS

7 TAC §12.33

The amendments to Chapter 12, Subchapter B are adopted pursuant to Finance Code §11.301, which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

These amendments affect the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statutes are affected by this proposal.

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

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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Robert K. Nichols, III
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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER G. EXAMINATIONS

7 TAC §§84.707 - 84.709

The Finance Commission of Texas (commission) adopts amendments to §84.707 (relating to Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)), §84.708 (relating to Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)), and §84.709 (relating to Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales.

The commission adopts the amendments to §§84.707, 84.708, and 84.709 without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6519). The rules will not be republished.

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 84 govern motor vehicle retail installment transactions. In general, the purposes of the adopted rule changes to 7 TAC Chapter 84 are: (1) to implement changes relating to recordkeeping for debt cancellation agreements under HB 2746 (2023), and (2) to make technical corrections and updates.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft, discussed later in this preamble. The OCCC appreciates the thoughtful input provided by stakeholders.

Amendments to §84.707 update recordkeeping requirements for retail sellers that assign motor vehicle retail installment contracts to another holder. Amendments at §84.707(d)(2)(A)(iv) remove a reference to the Tax Collector's Receipt for Texas Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS). Based on information from the Texas Department of Motor Vehicles (TxDMV), the OCCC understands that this form is obsolete for motor vehicle dealer sales. An amendment removes current §84.707(d)(2)(E), which requires retail sellers to maintain the County of Title Issuance form (Form VTR-136). The OCCC understands that this form is now obsolete and is no longer used, following the passage of SB 876 (2021) and amendments to Texas Transportation Code, Chapter 501. Other amendments throughout §84.707 renumber provisions to be consistent with these amendments and make technical corrections.

Amendments at §84.707(d)(2)(I) update recordkeeping requirements for motor vehicle debt cancellation agreements. Under Texas Finance Code, §354.007, a buyer is entitled to a refund of a debt cancellation agreement fee when the agreement terminates due to prepayment of the retail installment contract. The OCCC has identified failure to provide these refunds as a recurring issue in its examinations of licensees. In examinations conducted between 2016 and 2023, the OCCC instructed licensees to provide more than $26 million in refunds to consumers as

a result of this issue. In the 2023 regular legislative session, the Texas Legislature passed HB 2746, which amended requirements for debt cancellation agreement refunds. In particular, HB 2746 amended Texas Finance Code, §354.007 to specify: (1) that retail sellers and third-party administrators are responsible for providing refunds upon cancellation or termination of a debt cancellation agreement (based on the portion of the debt cancellation agreement fee that the retail seller and administrator received), (2) that holders must either refund a debt cancellation agreement fee or provide written instruction to the administrator and retail seller to make the refund, and (3) that administrators and retail sellers are responsible for maintaining records of a refund. The amendments to §84.707(d)(2)(I) specify that retail sellers must maintain documentation of the disbursement of the debt cancellation agreement fee, any written instruction from a holder to make a refund, and documentation of any refund. These amendments will help ensure that retail sellers maintain records to show compliance with Texas Finance Code, §354.007, as amended by HB 2746. Licensees must maintain these records to document that consumers are receiving legally required refunds.

In an informal precomment, an attorney representing an association of motor vehicle dealers asked two questions regarding the proposed amendments to §84.707. First, the attorney asked: "With respect to the required 'written instruction' from a holder and the documentation of any refund of the DCA, if the written instructions are sent electronically, may the written instructions be maintained electronically by the retail seller?" Second, the attorney asked: "With the recognition that the DCA is to be maintained in each retail installment transaction file or a copy of any page of the DCA with a signature, transaction-specific term, the cost of the DCA and any blank spaces completed and a master copy of each DCA maintained as required, do the written instructions and refund documents have to be maintained in each retail buyer's file, or may they be maintained collectively?" These issues are addressed in the current rule's introductory text to §84.707(d)(2), which states: "A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time." The introductory text also states: "If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request." These two sentences apply to the records that are normally part of the retail installment transaction file, and these sentences are not being changed in this adoption. As described in these two sentences, a retail seller could maintain an electronic record that is not included in the transaction file, as long as the electronic record can be accessed on request within a reasonable amount of time.

Amendments to §84.708 update recordkeeping requirements for retail sellers that collect payments on motor vehicle retail installment contracts. The amendments to §84.708 are substantially similar to the amendments to §84.707 described in the previous two paragraphs. In particular, the amendments delete a reference to Form 31-RTS, delete a reference to Form VTR-136, make technical corrections, and require sellers to maintain records of debt cancellation agreement refunds to ensure consistency with HB 2746.

Amendments to §84.709 update recordkeeping requirements for holders that take assignment of motor vehicle retail installment contracts. Specifically, amendments to §84.709(e)(2)(D) explain that holders must maintain any written instruction to another person to make a refund, and must maintain any other refunding documentation that comes into their possession. Amendments to §84.709(e)(2)(F) specify that holders must maintain documents relating to the cancellation or termination of a debt cancellation agreement that come into their possession, and must cooperate in obtaining related documents. These amendments are consistent with a holder's current responsibility under §84.709(e)(2)(F) to maintain (and cooperate in obtaining) documents relating to a debt cancellation agreement claim. It is important that licensees maintain these records to document that consumers are receiving legally required refunds.

The rule amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4. In addition, Texas Finance Code, §348.513 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 348 and 354.

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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Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7660

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 13. MULTIFAMILY DIRECT LOAN RULE

10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§ 13.1 - 13.13 without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6549). The purpose of the repeal is to provide for clarification of the existing rule through new rulemaking 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, administration of the Multifamily Direct Loan Program.

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 work load 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 nor in 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, administration of the Multifamily Direct Loan Program.

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 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 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 increased clarity and improved access to the Multifamily Direct Loan funds. 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 COMMENT. The public comment period was held from November 1 to December 1, 2023, to receive input on the proposed repealed section. No comments on the repeal were received.

STATUTORY AUTHORITY. The repeal is adopted 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.

Filed with the Office of the Secretary of State on December 13, 2023.

TRD-202304728
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2024
Proposal publication date: November 10, 2023
For further information, please call: (512) 475-3959

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10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§ 13.1 - 13.13 with changes to the text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6550). The rules will be republished. The purpose of the new sections is to provide compliance with Tex. Gov't Code §2306.111 and to update the rule to: clarify program requirements in multiple sections, codify in rule practices of the division, and change citations to align with changes to other multifamily rules. In general, most changes are corrective in nature, intended to gain consistency with state or federal rules, delete duplicative language or provisions, correct or update rule references, and clarify language or processes to more adequately communicate the language or process. Additional changes were undertaken in order to simplify the rule, and to allow greater flexibility in implement the programs which it covers.

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, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Multifamily Direct Loan Program.

2. The new rule 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 rule changes do not require additional future legislative appropriations.

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

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

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

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

8. 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 rule, 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 §2306.111.

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

2. This rule relates to the procedures for multifamily direct loan applications and award through various Department fund sources. Other than in the case of a small or micro-business that is an applicant for such a loan product, no small or micro-businesses are subject to the rule. It is estimated that approximately 200 small or micro-businesses are such applicants; for those entities the new rule provides for a more clear, transparent process for applying for funds and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the rule because this rule is applicable only to direct loan applicants for development of properties, which are not generally municipalities. The fee for applying for a Multifamily Direct Loan product is $1,000, unless the Applicant is a nonprofit that provides supportive services or the Applicant is applying for Housing Tax Credits in conjunction with Multifamily Direct Loan funds, in which case the application fee may be waived. These 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.

There are 1,296 rural communities potentially subject to the rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 13 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 MFDL resources that are located in rural areas is approximately fifteen. In those cases, a rural community securing a loan will experience an economic benefit, including, potentially, increased property tax revenue from a multifamily Development.

3. The Department has determined that because there are rural MFDL 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 MFDL 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 rule 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 rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule since MFDL Developments, layered with housing tax credits, often involve a typical minimum investment of $10 million in capital, and more commonly an investment from $20 million to $30 million. Such a capital investment has 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 predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until MFDL awards 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 MFDL 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 new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive MFDL 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 improved clarity of program requirements in multiple sections, codification in rule practices of the division, and change citations to align with changes to other multifamily rules. There will not be any economic cost to any individuals required to comply with the new sections because this rule does not have any new requirements that would cause additional costs to applicants.

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 it does not have any new requirements that would cause additional costs to applicants.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from November 1, to December 1, 2023, to receive input on the proposed new sections. Comment was received from: BETCO Housing Lab (Commenter 1) and Foundation Communities (Commenter 2). A summary of comments pertinent to the proposed rule and the Department's response is provided.

13.3 General Loan Requirements.

COMMENT SUMMARY: Commenter 1 requests that interest on construction loans be removed from §13.3(e), related to Ineligible Costs. The commenter notes that interest on construction loans is eligible federally, and therefore should also be eligible in this rule.

STAFF RESPONSE: Both NHTF and HOME federal regulations limit repayment of construction, bridge financing, or guaranteed loans, including the interest on those loans. For both programs, in order for the repayment of these loans to be eligible, the loan must have been used for eligible costs under the specific program in question, and the HOME or NHTF assistance is required to have been part of the original financing for the project. For NHTF, these costs could not have occurred before the Department enters into the Contract with the Owner. In addition, repayment of these loans or the interest on them would require that the Department review all costs paid out of those loans to ensure that all are eligible under the relevant program. Given the Department's current workload related to these funds, staff is unable to assume the additional responsibility of these reviews. Accordingly, no change is recommended related to this comment.

13.4 Set-Asides, Regional Allocation, and NOFA Priorities

COMMENT SUMMARY: Commenter 1 requests that "NOFA Priorities" be removed from this section, and elsewhere in the rule, as those priorities are now established in each Notice of Funding Availability.

STAFF RESPONSE: NOFA Priorities are still addressed at §13.4(c), which establishes that the priorities will be established in each NOFA. Staff recognizes that this is significantly abbreviated from what has previously been covered in the rule concerning NOFA priorities, but believes that it is important to make this small section of the rule easy to locate for people who may be reading the rule for the first time. Staff recommends leaving the title as is.

COMMENT SUMMARY: Commenter 2 notes that a sentence in §13.4(a) is confusing, and could be read to prohibit layering MFDL funds with other Department sources. Commenter 2 also requests that §13.4(a)(A)(i) be modified to include a provision from 24 CFR 93.302 concerning layering of project-based subsidies onto NHTF units.

STAFF RESPONSE: Concerning the unclear sentence noted by the Commenter, staff agrees and has deleted this sentence from the rule. Any prohibited layering can be addressed in a NOFA, as has been done in the past. Regarding the federal provision that the Commenter would like referenced in the rule, the rule currently cites the exact section of 24 CFR, and therefore staff believes the rule currently accomplishes what is being asked.

13.5 Application and Award Process

COMMENT SUMMARY: Commenter 1 requests clarity as to whether the experience requirement of having previously placed 50 units in service is limited to affordable or market-rate units. The Commenter also requests additional guidance as to what would be considered sufficient evidence of this requirement.

STAFF RESPONSE: The rule is silent as to whether the units in question must be affordable or market-rate, therefore staff would have no basis for denying either type of unit to meet the qualification.

Regarding adding guidance to the rule specifying acceptable documentation to demonstrate that this requirement has been met, the Qualified Allocation Plan previously contained similar language related to an experience requirement. A common complaint among Applicants was that the requirements were so specific that they prevented some Applicants from qualifying, even if they otherwise met the intention of the experience requirement. Recognizing that each Development and business are unique, staff recommends no change to the language to allow as much reasonableness and flexibility as possible when reviewing for this requirement.

COMMENT SUMMARY: Commenter 2 requests that NHTF applications be exempt from the requirement to include language concerning choice-limiting actions and environmental review in purchase contracts or site control agreements, stating that this language is not the result of any federal requirement for that particular program.

STAFF RESPONSE: Staff recommends exempting NHTF applications from having to meet this requirement unless the Development is layered with other funds subject to Part 50 and Part 58; however, potential Applicants should be aware that undertaking any choice-limiting action may render the Development ineligible for other types of funding should the need arise for an Application to be moved to another funding source.

13.7 Maximum Funding Requests and Minimum Number of MFDL Units

COMMENT SUMMARY: Commenter 2 requests that staff analysis follow HUD requirements for determining the minimum number of MFDL units and to not require any more 30% AMI units than what are required federally.

STAFF RESPONSE: Staff uses a unit-subsidy analysis and a cost-proportion analysis to determine the number of affordable units required on a project. This method is compliant with federal requirements. Staff recommends no change.

13.8 Loan Structure and Underwriting Requirements

COMMENT SUMMARY: Commenter 1 requests that TDHCA's loan only be superior to that have soft repayment structures, non-amortizing notes, have deferred forgivable provisions, or in which the lender has an identity of interest with any member of the Development Team, only in the event that the TDHCA loan is in an amount greater than those sources.

STAFF RESPONSE: Staff recommends that an Applicant that needs a structure that does not comply with the rules should submit a waiver request as soon as possible, but no later than with the Application for the Board's consideration. No change is recommended to the rule.

COMMENT SUMARRY: Commenter 2 requests that loans with soft repayment structures have a 0% interest during permanent periods. The commenter also requests that the Department begin determining lien priority and payment priority separately (current practice is that lien priority determines payment priority), and that certain fees that are payable from surplus cash, such as deferred developer fees and investor required fees, to be paid before the Department's loan.

STAFF RESPONSE: Permanent-period interest is established in each NOFA, and therefore recommends no change concerning that interest rate in the rule. Lien priority and payment priority have historically matched one another for Department programs. While staff appreciates the suggestion of treating them as separate concepts, this would represent a significant rule change, and therefore recommends exploring this concept for the 2025 rule.

Regarding loan priorities, staff recommends that an Applicant that needs a structure that does not comply with the rules should submit a waiver request with the Application for the Board's consideration. No change is recommended to the rule.

13.10 Development and Unit Requirements

COMMENT SUMMARY: Commenter 1 requests that the Department publish a calculator to assist Applicants in determining the appropriate number of HOME Match units that must be provided at each development. Commenter 1 also requests that no program other than HOME be required to provide match units.

STAFF RESPONSE: Staff appreciates the suggestion of publishing a match unit calculator, and will work on this in 2024. Regarding other programs providing match units, the Department has an obligation to match the majority of its federal HOME allocation each year at $0.25 per $1.00 received. The funds must contribute towards housing that qualifies as affordable housing under the HOME program (24 CFR 92.218(a)). A development that provides match funds must also provide match units to meet the requirement, otherwise the match would not be contributing to qualifying housing. The Department does not have the option of removing the requirement for non-HOME MFDL programs to provide match, as these contributions are necessary to meet the federal requirement, therefore this provision will remain in the rule.

13.11 Post-Award Requirements.

COMMENT SUMMARY: The new rule requires that a fully completed environmental review must be submitted to the Department within 90 days of the Application Acceptance Date. Commenter 1 requests that this be changed to within 90 days of the Board approval date.

STAFF RESPONSE: Staff will not enter into a contract for any awarded funds until the environmental clearance is completed. Shortening the time between Application receipt, underwriting, Board approval, contracting, and closing is a critical and immediate priority for the Department. Adding as many as 90 days between award and contract is contrary to this priority, and therefore staff recommends no change.

MISCELLANEOUS

Commenter 2 provided additional comment concerning priorities that should be established in the Department's NOFAs. Staff appreciates these comments and will revisit them during future NOFA development processes; however, no specific response is being provided at this time, as these items are part of a NOFA, rather than the rule in question.

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

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

§13.1. Purpose.

(a) Authority. The rules in this chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program (MFDL or Direct Loan Program) by the Texas Department of Housing and Community Affairs (the Department). Notwithstanding anything in this chapter to the contrary, loans and grants issued to finance the development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), and the implementing regulations 24 CFR Parts 91, 92, 93, and 570 as they may be applicable to a specific fund source. The Department is authorized to administer Direct Loan Program funds pursuant to Tex. Gov't Code, Chapter 2306.

(b) General. This chapter applies to Applications submitted for, and award of, MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this chapter, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 11 of this title (relating to Qualified Allocation Plan (QAP)), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) as applicable. The Applicant is also required to certify that it is familiar with the requirements of any other federal, state, or local financing sources that it identifies in its Application. Any conflict with rules, regulations, or statutes will be resolved on a case by case basis that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility, with the right to an Appeal as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process for the Housing Tax Credit program), as applicable.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with 10 TAC §11.207 of this title (relating to Waiver of Rules), as limited by the rules in this chapter. Waiver requirements are provided in paragraphs (1) - (3) of this subsection:

(1) Rule Waivers and NOFA Amendments prior to Construction Completion. For Direct Loan Developments, an Applicant may request, at the latest at Application submission, that the Department amend its NOFA, amend its Consolidated Plan or One Year Action Plan, or ask HUD to grant a waiver of its regulations, if such request will not impact the timing of the Application's review, nor alter the scoring or satisfaction of threshold requirements for the Housing Tax Credits or other Department resources. Such requests will be presented to the Department's Board. The Board may not waive rules that are federally required, or that have been incorporated as a required part of the Department's Consolidated Plan or One Year Action Plan (OYAP) to the U.S. Department of Housing and Urban Development (HUD), unless those Plans are so amended by the earlier of a date the NOFA is closed or by an earlier date that is identified by the Board. Such items include §13.8 of this chapter, relating to Loan Structure and Underwriting Requirements, the interest rate published in the NOFA, the maximum subsidy limits as published in the NOFA, the priorities listed in the NOFA, the eligibility requirements of applicants describe in rule or the NOFA, scoring, and the tiebreaker procedure. Prior to Contract, except as otherwise described in rule, the Application Acceptance Date will then be the date the Department completes the amendment process or receives a waiver from HUD, if funds are still available in the NOFA. After Contract, but prior to Construction Completion staff will not recommend a waiver or NOFA Amendment;

(2) Utility Allowance Waivers with Project-Based Vouchers. Upon request before or with the submittal of the Application or at the time the Application is amended to reflect the vouchers, for De-

velopments that are layered with Project-Based Vouchers awarded under 24 CFR Part 983 from a Housing Authority that is not Moving to Work Housing Authority, Department staff will submit a waiver to the Office of Community Planning and Development at HUD to allow the Development to use the Public Housing Utility Allowance. For Project-Based Vouchers from a Housing Authority that is a Moving to Work Housing Authority, the Applicant must have the Moving to Work Housing Authority obtain this waiver from the appropriate HUD office or agree that the Development will be all bills-paid before Contract Execution. These waivers, if granted by HUD, will not require the Development to receive a new Application Acceptance Date; and

(3) Waivers under Closed NOFAs. The Board may not waive any portion of a closed NOFA prior to Construction Completion. Thereafter, the Board may only waive any portion of a closed NOFA as part of an approved Asset Management Division work out. Allowable Post-Closing Amendments are described in 10 TAC §13.13 of this chapter (relating to Post-Closing Amendments to Direct Loan Terms).

(d) Eligibility and Threshold Requirements. Applications for Multifamily Direct Loan funds must meet all applicable eligibility and threshold requirements of Chapter 11 of this title (relating to the Qualified Allocation Plan (QAP)), unless otherwise excepted in this rule or NOFA.

§13.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306; §§141, 142, and 145 of the Internal Revenue Code; 24 CFR Parts 91, 92, and 93; 2 CFR Part 200; and 10 TAC Chapters 1 of this title regarding Administration, 2 of this title regarding Enforcement, 10 of this title regarding Uniform Multifamily Rules, and 11 of this title regarding the Qualified Allocation Plan.

(1) Application Acceptance Date--The date the MFDL Application is considered received by the Department as described in this chapter, chapter 11 of this title, or in the NOFA.

(2) Community Housing Development Organization (CHDO)--A private nonprofit organization with experience developing or owning affordable rental housing that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME Investment Partnerships Program (HOME) funds under the CHDO Set-Aside. A member of a CHDO's board cannot be a Principal of the Development beyond their role as a board member of the CHDO or be an employee of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (e.g., a voting board member cannot also be a paid executive).

(3) Construction Completion or Development Period--The Development Period is the time allowed to complete construction, which includes, without limitation, that necessary title transfer requirements and construction work has been fully performed, the certificate(s) of occupancy (if New Construction or reconstruction), Certificate of Substantial Completion (AIA Form G704), Form HUD-92485 (for instances in which a federally insured HUD loan is utilized), or equivalent notice has been issued.

(4) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(5) Federal Affordability Period--The period commencing on the later of the date after Construction Completion and after all Direct Loan funds have been disbursed for the project, or the date of Project Completion as defined in 24 CFR §92.2 or §93.3, as applicable, and ending on the date which is the required number of years as defined by the federal program.

(6) HOME--The HOME Investment Partnership Program, authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act.

(7) HOME Match-Eligible Unit--A Unit in the Development that is not assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92. Unless otherwise identified by the provisions in the NOFA, TCAP RF and matching contribution on NSP and NHTF Developments must meet all criteria to be classified as HOME-Match Eligible Units.

(8) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used by the Department for Direct Loan Programs administered by the Department.

(9) Land Use Restriction Agreement (LURA) Term--The period commencing on the effective date of the LURA and ending on the date which, at a minimum, is the greater of the loan term or 30 years. The LURA may include the Federal Affordability Period, in addition to the State Affordability Period requirements and State restrictive criteria.

(10) Matching Contribution (Match)--A contribution to a Development from nonfederal sources that may be in one or more of the forms provided in subparagraphs (A) through (E) of this paragraph:

(A) Cash contribution (grant), except for cash contributions made by investors in a limited partnership or other business entity subject to pass through tax benefits in a tax credit transaction or owner equity (including Deferred Developer Fee and General Partner advances);

(B) Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner;

(C) Net present value of yield foregone from a below market interest rate loan as described in HUD Community Planning and Development (CPD) Notice 97-03;

(D) Waived or reduced fees or taxes from cities or counties not related to the Applicant in connection with the proposed Development; or

(E) Donated land or land sold by an unrelated third party at a price below market value, as evidenced by a third party appraisal.

(11) NHTF--National Housing Trust Fund.

(12) NOFA--Notice of Funding Availability.

(13) NSP--Neighborhood Stabilization Program.

(14) Qualifying Unit--Means a Unit designated for Multifamily Direct Loan use and occupancy in compliance with State and federal regulations, as set forth in the Contract. Except if the Development is all-bills paid, Qualifying Units may not also have a Project-Based Voucher issued under 24 CFR Part 983, unless the Application contains permission from the Public and Indian Housing Division of HUD for the layered units to use a utility allowance that is not the Public Housing Utility Allowance, or the Applicant has received permission from the Community Planning and Development Division of HUD for the layered units to use the Public Housing Utility Allowance.

(15) Relocation Plan--A residential anti-displacement and relocation assistance plan and budget in an Application that addresses residential and non-residential displacement and complies with the Uniform Relocation Assistance and Real Property Act as implemented at 49 CFR Part 24, HUD Handbook 1378, and the TDHCA Relocation Handbook. Additionally, some HOME and NSP funded Developments must comply with Section 104(d) of the Housing and Community Development Act of 1974 (as amended), and 24 CFR Part 42 (as modified for NSP and HOME American Rescue Plan (ARP) funds), which requires a one-for-one replacement of occupied and vacant, occupiable low- and moderate-income dwelling units demolished or converted. Guidance is on the Department's website at https://www.tdhca.state.tx.us/multifamily/home/index.htm. The Relocation Plan must be in form and substance consistent with requirements of the Department.

(16) Section 234 Condominium Housing Basic Mortgage Limits (Section 234 Condo Limits)--The per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. If the high cost percentage adjustment applicable to the Section 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program, then confirmation of that applicability will be included in the applicable NOFA.

(17) Site and Neighborhood Standards--HUD requirements for New Construction or reconstruction Developments funded by NHTF (24 CFR §93.150) or New Construction Developments funded by HOME (24 CFR §92.202). Proposed Developments must provide evidence that the Development will comply with these federal regulations in the Application. Guidance for successful submissions is provided on the Department website at https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm. Applications that are unable to comply with requirements in 24 CFR §983.57(e)(2) and (3) will not be eligible for HOME or NHTF.

(18) State Affordability Period--The LURA Term as described in the MFDL contract and loan documents and as required by the Department in accordance with the Chapter 2306, Texas Gov't Code which may be an additional period after the Federal Affordability Period.

(19) Surplus Cash--Except when the first lien mortgage is a federally insured HUD mortgage that is subject to HUD's surplus cash definition, Surplus Cash is any cash remaining:

(A) After the payment of:

(i) All sums due or currently required to be paid under the terms of any superior lien;

(ii) All amounts required to be deposited in the reserve funds for replacement;

(iii) Operating expenses actually incurred by the borrower for the Development during the period with an appropriate adjustment for an allocable share of property taxes and insurance premiums;

(iv) Recurring maintenance expenses actually incurred by the borrower for the Development during the period; and

(v) All other obligations of the Development approved by the Department; and

(B) After the segregation of an amount equal to the aggregate of all special funds required to be maintained for the Development; and

(C) Excluding payment of:

(i) All sums due or currently required to be paid under the terms of any subordinate liens against the property;

(ii) Any development fees that are deferred including those in eligible basis; and

(iii) Any payments or obligations to the borrower, ownership entities of the borrower, related party entities; any payment to the management company exceeding 5% of the effective gross income; incentive management fee; asset management fees; or any other expenses or payments that shall be negotiated between the Department and borrower.

(20) TCAP Repayment Funds--(TCAP RF) the Tax Credit Assistance Payment program funds.

§13.3. General Loan Requirements.

(a) Funding Availability. Direct Loan funds may be made available through a NOFA or other similar governing document that includes the method for applying for funds and funding requirements.

(b) Oversourced Developments. A Direct Loan request may be reduced or not recommended if the Department's Underwriting Report concludes the Development does not need all or part of the MFDL funds requested in the Application because it is oversourced, and for which a timely appeal has been completed, as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process for Competitive HTC Applications), as applicable.

(c) Funding Sources. Direct Loan funds are composed of annual HOME and National Housing Trust Fund (NHTF) allocations from HUD and associated Program Income, repayment of TCAP or TCAP RF loans, HOME Program Income, NSP Program Income (NSP PI or NSP), and any other similarly encumbered funding that may become available, except as otherwise noted in this chapter. Similar funds include any funds that are identified by the Board to be loaned or granted for the development of multifamily property and are not governed by another chapter in this title, with the exception of State funds appropriated for a specific purpose.

(d) Eligible and Ineligible Activities.

(1) Eligible Activities. Direct Loan funds may be used for the predevelopment, acquisition, New Construction, reconstruction, Adaptive Reuse, rehabilitation, or preservation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, subject to applicable HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist Developments previously awarded by the Department when approved by specific action of the Board. Eligible Activities may have fund source restrictions or may be restricted by a NOFA.

(2) Ineligible Activities. Direct Loan funds may not be awarded to a Development:

(A) Layered with Housing Tax Credits that have elected the income averaging election under Section 42(g)(1)(C) of the Internal Revenue Code that have more than 15% of the Units designated as Market Rate Units;

(B) In which the Applicant will not be directly leasing Units to residents, except as specifically described in the NOFA;

(C) Applicants applying for HOME or NSP funds may not commit any choice limiting activities as defined by HUD in 24 CFR Part 58 prior to obtaining environmental clearance, and will be subject

to termination of the Direct Loan award if such action is undertaken. For an Applicant applying for NHTF funds, choice limiting activities prior to full execution of a Contract with the Department are not prohibited, unless the Development also has sources requiring environmental review under 24 CFR Part 50 or Part 58, but the eligibility of costs associated with these activities will be impacted in keeping with 24 CFR §93.201(h) and all applicable federal regulations. Furthermore, certain activities which prohibit environmental mitigation may cause the Development to be ineligible and will cause the termination of the Direct Loan award.

(e) Ineligible Costs. All costs associated with the Development and known by the Applicant must be disclosed as part of the Application. Other federal funds will be included in the Final Direct Loan Eligible Costs located in Table 1 of the Direct Loan Calculator as part of the required per-unit subsidy limit calculation. Costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Parts 91, 92, 93, and 570, and 2 CFR Part 200, as federally required or identified in the NOFA, include but are not limited to:

(1) Offsite costs;

(2) Stored Materials;

(3) Site Amenities, such as swimming pools and decking, landscaping, playgrounds, and athletic courts;

(4) The purchase of equipment required for construction;

(5) Furnishings and Furniture, Fixtures and Equipment (FF&E) required for the Development;

(6) Detached Community Buildings;

(7) Carports and/or parking garages, unless attached as a feature of the Unit;

(8) Commercial Space costs;

(9) Personal Property Taxes;

(10) TDHCA fees;

(11) Syndication and organizational costs;

(12) Reserve Accounts, except Initial Operating Deficit Reserve Accounts;

(13) Delinquent fees, taxes, or charges;

(14) Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract, unless the Application is awarded TCAP RF, and if specifically allowed by the Board;

(15) Costs that have been allocated to or paid by another fund source (except for soft costs that are attributable to the entire project as specifically identified in the applicable federal rule, or for TCAP RF if specifically allowed by the NOFA), including but not limited to, contingency, including soft cost contingency, and general partner loans and advances;

(16) Deferred Developer Fee;

(17) Texas Bond Review Board (BRB) fees;

(18) Community Facility spaces that are not for the exclusive use of tenants and their guests;

(19) The portion of soft costs that are allocated to support ineligible hard costs;

(20) Other costs limited by Award or NOFA, or as established by the Board;

(21) Interest on Construction Loans; and

(22) Acquisition that occurred before the Application Acceptance Date and environmental clearance for HOME and NSP projects. For NHTF, acquisition that occurred prior to Contract signing.

§13.4. Set-Asides, Regional Allocation, and NOFA Priorities.

(a) Set-Asides. Specific types of Activities or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in categories called Set-Asides. Not all Set-Asides will be available in every NOFA, and the Board may approve Set-Asides not described in this section. The amount of a single award may be credited to multiple Set-Asides, in which case the credited portion of funds may be repositioned into an oversubscribed Set-Aside prior to a defined collapse deadline.

(1) General / Soft Repayment Set-Aside.

(A) Applicants seeking to qualify for NHTF under this set-aside must propose Developments in which all Units assisted with MFDL funds are available for households earning the greater of the poverty rate or 30% AMI, and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b).

(B) Applicants seeking to qualify for HOME under this set-aside must propose Developments in which all Units assisted with MFDL funds are available to households earning no more than 80% AMI and have rents no higher than the rent limits 24 CFR §92.2.

(C) A portion of the General / Soft Repayment Set-Aside may be reallocated into the CHDO Set-Aside in order to fully fund a CHDO award that exceeds the remaining amount in the CHDO Set-Aside.

(2) CHDO Set-Aside. Unless waived or reduced by HUD, a portion of the Department's annual HOME allocation will be set aside for eligible CHDOs meeting the requirements of the definition of Community Housing Development Organization in 24 CFR §92.2 and 10 TAC §13.2(2) of this chapter. Applicants under the CHDO Set-Aside must be proposing to develop housing on Development Sites located outside Participating Jurisdictions (PJ), unless the award is made within a Persons with Disabilities (PWD) Set-Aside, or the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor. A grant for CHDO operating expenses may be awarded in conjunction with an award of MFDL funds under this Set-Aside, if no other CHDO operating grants have been awarded to the Applicant in the same Calendar year, in accordance with 24 CFR §92.208. Applications under the CHDO Set-Aside may not have a for profit special limited partner within the ownership organization chart.

(b) Regional Allocation and Collapse. All funds subject to Tex. Gov't Code §2306.111 or as described to HUD in planning documents will be allocated to regions and potentially subregions based on a Regional Allocation Formula (RAF) within the applicable Set-Asides (unless the funds have already been through a RAF of the annual NOFA and/or Special Purpose NOFA). The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date and Application Acceptance Date for the regionally allocated funds will be identified in the NOFA but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA or NOFA Amendment is published on the Department's website.

(1) After funds have been made available regionally and the period for regional allocation has expired, remaining funds within each respective Set-Aside may collapse and be pooled together on a date identified in the NOFA. All Applications received prior to these collapse dates will continue to hold their priority unless they are withdrawn, terminated, suspended, or funded.

(2) Funds remaining after expiration of the Set-Asides on the end date identified in the NOFA, which have not been requested in the form of a complete Application, may be collapsed and pooled together to be made available statewide on a first-come first-served basis to Applications submitted after the collapse dates, as further described in the NOFA.

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an Application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board, and reflected in the NOFA.

(c) Notice of Funding Availability (NOFA). MFDL funds will be distributed pursuant to the terms of a published NOFA that provides the specific collapse dates and deadlines as well as Set-Aside and RAF amounts applicable to each NOFA, along with scoring criteria, priorities, award limits, and other Application information. Set-asides, RAFs, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as authorized by the Board.

§13.5. Application and Award Process.

(a) Applications. MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 11, Subchapter C (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) and the Notice of Funding Availability for which the Application is submitted.

(b) Application Acceptance Date. Applications will be considered received on the business day of receipt, unless a different time period is described in the Department's rules or NOFA. If an Application is received after 5:00 p.m., Austin local time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all Application materials, required third party reports and application fee(s) are received by the Department. Within certain Set-Asides or priorities, the date of receipt may be fixed, regardless of the earlier actual date a complete Application is received, if so specified in the Department's rules or NOFA. If multiple Applications have the same Application Acceptance Date, in the same region or subregion (as applicable), within the same Set-Aside, and for 9% then score and tiebreaker factors, as described 10 TAC §11.7 of this title (relating to Tie Breaker Factors) will be used to determine the Application's rank.

(c) Market Analysis. Applications proposing Rehabilitation that request MFDL as the only source of Department funding may be exempted from the Market Analysis requirement in 10 TAC §11.205(2) (relating to Required Third Party Reports) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80% of all Units.

(d) Required Site Control Agreement Provisions. All Applicants for MFDL funds where the Development is subject to environmental review under 24 CFR Part 50 and Part 58 must include the following provisions in the purchase contract or site control agreement if the subject property is not already owned by the Applicant:

(1) "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that:

(A) It has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract,

(i) the purchase may proceed, or

(ii) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or

(B) It has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required."; and for all Developments using federal funding

(2) "The Buyer does not have the power of eminent domain relating to the purchase and acquisition of the Property. The Buyer may use federal funds from the U.S. Department of Housing and Urban Development (HUD) to complete this purchase. HUD will not use eminent domain authority to condemn the Property. All parties entered this transaction voluntarily and the Buyer has notified the Seller of what it believes the value of the Property to be in accordance with 49 CFR Part 24 Appendix A. If negotiations between both parties fail, Buyer will not take further action to acquire the Property."

(e) Oversubscribed Funds for Competitive HTC-Layered Applications. Should MFDL funds be oversubscribed in a Set-Aside or for a fund source that has geographic limitations within a Set-Aside, Applications concurrently requesting Competitive HTC will be notified and may amend their Application to accommodate another fund source and make changes that still meet threshold requirements in 10 TAC Chapters 11 and 13 of this title, if such changes do not impact scoring under 10 TAC §11.9 (relating to Competitive HTC Selection Criteria). The Department will provide notice to all impacted Applicants in the case of over-subscription, which will include a deadline by which the Applicant must respond to the Department. Multiple Applications from a single or affiliated Applicants do not constitute oversubscription, and the Applicant(s) will not be able to amend their Applications as described in this subsection. If MFDL funds become available between the Market Analysis Delivery Date, and the date of the Department's Board meeting at which final Competitive HTC awards are made, the MFDL funds will not be reserved for Competitive HTC-layered Applications, unless the reservation is described in the NOFA.

(f) Availability of funds for Non-Competitive HTC-layered Applications. If an Application requesting layered Non-Competitive HTC and Direct Loan funds is terminated under 10 TAC §11.201(2)(E) (relating to Withdrawal of Certificate of Reservation), the Application will receive a new Application Acceptance Date for purposes of Direct Loan funds upon submission to the Department of the new Certificate of Reservation if the Board has not made an award. Direct Loan funds will not be reserved for terminated Applications, and may not be available for the Application with a new Reservation.

(g) Eligibility Criteria and Determinations.

(1) The Department will evaluate Applications received under a NOFA for eligibility and threshold pursuant to the requirements of this chapter and Chapter 11 of this title (relating to the Qualified Allocation Plan). The Department may terminate the Application if there are changes at any point prior to MFDL loan closing that would have had an adverse effect on the score and ranking order of the Application that would have resulted in the Application not being recommended for an award or being ranked below another Application received prior to the subject Application.

(2) Applicants requesting MFDL as the only source of Department funds must be able to demonstrate that a Principal of the Developer, Development Owner, or General Partner has previously developed and placed into service a minimum of 50 multifamily housing units. It is the Applicant's responsibility to identify and submit sufficient evidence of this experience in the Application. If the Department determines that the evidence submitted is not substantial, ad-

ditional evidence may be submitted through the Administrative Deficiency process, if it is available. If the Applicant is unable to provide satisfactory evidence, the Applicant will be ineligible for funding.

(h) Effective rules and contractual terms. The contractual terms of an award will be governed by and reflect the rules in effect at the time of Application; however, any changes in federal requirements will be reflected in the contractual terms. Further provided, that if after award, but prior to execution of such Contract, there are new rules in effect, the Direct Loan awardee may elect to be governed by the new rules, provided the Application would continue to have been eligible for award under the rules and NOFA in effect at the time of Application.

§13.6. Scoring Criteria and Tie Breaker Factors.

(a) Scoring. The scoring items used to calculate the score for a Competitive HTC-Layered Application will be utilized for scoring for an MFDL Application, and evaluated in the same manner. For all other Applications, the Tie Breaker described below will be utilized to determine which Applications to recommend for an award if multiple Applications are given the same Application Acceptance Date within the same Set-Aside and with the same Priority as described in the NOFA.

(b) Tie Breaker. In the event that two or more Applications receive the same Application Acceptance Date, within the same Set-Aside and having the same Priority, staff will utilize the Tie Breaker Factors established in §11.7.

§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.

(a) Maximum Funding Request. The maximum funding request for an Application will be identified in the NOFA, and may vary by development type, set-aside, Priority, or fund source.

(b) Maximum New Construction or Reconstruction Per-Unit Subsidy Limits. The per-Unit subsidy limit for a Development will be determined by the Department as the Section 234 Condo limits with the applicable high cost percentage adjustment in effect at the start date of the NOFA, which are the maximum MFDL eligible cost per-Unit subsidy limits that an Applicant may use to determine the amount of MFDL funds combined with other federal funds that may subsidize a Unit.

(c) Maximum Rehabilitation Per-Unit Subsidy Limits. The MFDL eligible cost per-Unit to rehabilitate a Development may not exceed the HUD 221(d)(4) statutory limits, subject to high cost factors as published in the NOFA.

(d) Minimum Number of MFDL Units. The minimum required number of MFDL Units will be determined by the MFDL per-Unit subsidy limits and the cost allocation analysis, which will ensure that the amount of MFDL Units as a percentage of total Units is equal to or greater than the percentage of MFDL funds requested as a percentage of total eligible MFDL Development costs.

§13.8. Loan Structure and Underwriting Requirements.

(a) Loan Structures. Loan structures must meet the criteria described in this section and as further described in a NOFA. The interest rate, amortization period, ad term for the loan will be approved by the Board at the time of award, and can only be amended prior to loan closing by the process in 10 TAC §13.12 (relating to Pre-Closing Amendments to Direct Loan Terms).

(b) Criteria for Construction-to-Permanent Loans. Direct Loans awarded through the Department must adhere to the criteria as identified in paragraphs (1) - (7) of this subsection if being requested as construction-to-permanent loans, for which the interest rate will be specified in the NOFA and approved by the Board:

(1) The construction term for MFDL loans shall generally be coterminous with any superior construction loan(s), but no greater than 36 months. In the event the MFDL loan is the only loan with a construction term or is the superior construction loan, the construction term may be up to 36 months. Shorter timeframes may be required to meet federal project completion or expenditure deadlines;

(2) No interest will accrue during the construction term;

(3) The loan term shall be no less than 15 years and no greater than 40 years, and the amortization period shall be between 30 to 40 years. The Department's loan must mature at the same time or within six months of the shortest term of any senior debt, so long as neither exceeds 40 years. The loan term commences following the end of the construction term;

(4) Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is in an amount less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing notes, have deferred forgivable provisions, or in which the lender has an identity of interest with any member of the Development Team. Parity liens may only be considered with federal loan funds from USDA Rural Development;

(5) In general, up to 50% of the MFDL loan may be advanced at loan closing, should there be sufficient eligible costs to reimburse that amount; however, this amount may be proportionally exceeded for a Development being awarded additional MFDL funds, if the Development is past 50% at loan closing, so long as the required Mid-Construction Inspection has been completed. In all cases, at least 10% of the funds will be reserved for the final Draw.

(c) Criteria for Construction Only Loans. MFDL Loans through the Department must adhere to the following criteria as identified in this paragraph, if being requested as construction only loans. The term of the construction loan shall generally be coterminous with any superior construction loan(s), but no greater than 36 months. In the event that the MFDL loan is the only construction loan or is the superior construction loan, the term may not exceed 36 months. Shorter timeframes may be required to meet federal project completion or expenditure deadlines.

(d) Criteria for Permanent Refinance Loans. If 90% of the Department's loan will repay existing debt, the first payment will be due the month after the month of loan closing; 90% of the loan may be advanced at loan closing, unless the Board approves another date.

(e) Evaluations. All Direct Loan Applicants in which third-party financing entities are part of the sources of funding must include a pro forma and lender approval letter evidencing review of the Development and the Principals, as described in 10 TAC §11.9(f)(1) of this title (relating to Competitive HTC Selection Criteria). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the Applicant.

(f) Pass-Through Loans. Department funds may not be used as pass-through financing. The Department's Borrower must be the Development Owner.

§13.9. Construction Standards.

All Developments financed with Direct Loans will be required to meet at a minimum the applicable requirements in Chapter 11 of this title (relating to the Qualified Allocation Plan). In addition, Developments must meet all applicable state and local codes, ordinances, and standards; the 2021 International Existing Building Code (IEBC) or International Building Code (IBC), as applicable. Should IEBC be more restrictive than local codes, or should local codes not exist, then the

Development must meet the requirements imposed by IEBC or IBC, as applicable. Developments must also meet the requirements in paragraphs (1) - (5) of this section:

(1) Third-Party Recommendations. Recommendations made in the Environmental Site Assessment (§11.305 of this title) and any Scope of Work and Cost Review (§11.306 of this title) with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

(2) Lead and Asbestos Testing. For properties originally constructed prior to 1978, the Scope of Work and Cost Review must be provided to the party conducting the lead-based paint and/or asbestos testing, and the Development Owner must implement the mitigation recommendations of the testing report;

(3) Broadband Infrastructure. The broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) for HOME, NSP, or TCAP RF; or 24 CFR §93.301(a)(2)(vi) or 24 CFR §93.301(b)(2)(vi) for NHTF, as applicable;

(4) Properties in Catastrophe Areas. Developments located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4012 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After April 1, 2020); and

(5) Minimum Construction Standards. Rehabilitation Developments funded with federal sources may also be required to meet Minimum Rehabilitation Standards, as required by HUD. Rehabilitation Developments funded by the national Housing Trust Fund are required to meet the Multifamily Minimum Rehabilitation Standards approved by HUD, as posted on the Department's website at https://www.tdhca.state.tx.us/multifamily/home/index.htm, in addition to the Department's rules and NOFA requirements.

§13.10. Development and Unit Requirements.

(a) Proportionality. The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested as a percentage of total MFDL eligible costs. As a result of this requirement, the Department will use the Proration Method as the Cost Allocation Method in accordance with HUD CPD Notice 16-15, except as described in subsection (b) of this section. Additionally, the amount of Direct Loan funds requested cannot exceed the per-unit subsidy limit described in this chapter or in the applicable NOFA. Direct Loan Units must be provided as a percentage of each Unit Type, in proportion to the percentage of total costs included in the Direct Loan.

(b) Floating Units. Floating Direct Loan Units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA.

(1) For HOME, NSP, and TCAP RF, Direct Loan Units must float throughout the Development unless the Development also contains public housing Units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100.

(2) For NHTF, Direct Loan Units must float throughout the Development, except as prohibited by 24 CFR §93.203, concerning public housing units.

(c) Unit Match Requirements.

(1) For a Development funded with NSP and/or NHTF, a required matching contribution will result in at least one HOME Match-Eligible Unit, in addition to the NSP and/or NHTF Units.

(2) For a Development funded with HOME, a required matching contribution may or may not result in a HOME Match-Eligible Unit, beyond the Department's HOME assisted Units.

(3) For a Development funded with TCAP RF in the annual NOFA, a matching contribution in addition to the Match that the Department counts from the TCAP RF investment will result in some amount of TCAP RF assisted Units being considered HOME Match-Eligible Units.

(d) Minimum Affordability Period. The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan, or 30 years unless a lesser period is approved by the Board. The Department reserves the right to extend the Affordability Period for Developments that fail to meet Program requirements.

(e) Restricted Units. If the Department is the only source of permanent funding for the Development by virtue of equity from HTC and MFDL funding, all Units must be income and rent restricted under a combination of HTC and Direct Loan LURAs, regardless of the amount of deferred Developer Fee as a permanent source. If the MFDL funding is the only source of permanent funding for the Development, all Units must be income and rent restricted by the Direct Loan LURA, and all costs must be MFDL eligible, regardless of the amount of deferred Developer Fee as a permanent source.

(f) Income Levels Committed at Time of Application. If the Direct Loan funds are used in a Competitive or non-Competitive HTC-Layered Development that is electing Income Averaging to qualify under IRC §42, the Direct Loan Units required by the LURA must continue to be provided at the income levels committed at the time of Application. Direct Loan Unit designations may not change to meet Income Averaging requirements.

(g) Mandatory Development Features. Development features described under 10 TAC §11.101(b)(4) (relating to Mandatory Development Amenities) may be selected to meet federal or state requirements, without a change to the number or description of features (e.g. selection of Broadband).

§13.11. Post-Award Requirements.

(a) Direct Loan awardees must satisfactorily complete the Post-Award Requirements identified in this section after the Board approval date.

(b) If a Direct Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the Direct Loan awardee or Affiliates fail to timely enter into the Contract, close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC §11.9(f) (relating to Competitive HTC Selection Criteria), and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of two years.

(c) Benchmarks. Extensions to the benchmarks in paragraphs (1) - (8) of this subsection may only be approved by the Executive Director or authorized designee in accordance with §13.12 or §13.13 of this chapter (relating to Pre-Closing and Post-Closing Amendments), as applicable.

(1) Environmental Clearance. In order to obtain environmental clearance required by the National Environmental Policy Act (NEPA) and other related Federal and state environmental laws (if applicable), Direct Loan Applicants, including those previously awarded

HTC, must submit a fully completed environmental review, including any applicable reports to the Department within 90 days of the Application Acceptance Date.

(2) Contract Execution. After a Development receives environmental clearance (if applicable), the Department will draft a Contract to be emailed to the Direct Loan awardee. Direct Loan awardees must execute and return a Contract to the Department within 30 calendar days after receipt of the Contract.

(3) Loan Closing and Construction Commencement. Loan closing must occur and construction must begin on or before the dates described in the Contract. If construction has not commenced within 12 months of the Contract Effective Date, the award may be terminated.

(4) Loan Closing. In preparation for closing any Direct Loan, the Development Owner must submit the items described in subparagraphs (A) - (F) of this paragraph. Providing incomplete documents, or not responding timely to subsequent Department requests for materials needed to facilitate closing, may significantly delay closing. Any request to change the financing structure of the Development, or the ownership structure, will in most cases extend the amount of time it will take for the Department to meet closing timelines, and may move prioritization of the closing below that of other Developments.

(A) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.

(B) Due diligence items determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department, as requested by Staff.

(C) When Department funds have a first lien position during the construction term, or if the Development is a public work under state law, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee as allowable under state law in the sole determination of the Department is required. Development Owners utilizing the USDA §515 program for a Development that is not a public work are exempt from this requirement, but must meet the alternative requirements set forth by USDA.

(D) Documentation required for preparation of closing loan documents includes, but is not limited to:

(i) Substantially final information necessary for REA staff to reevaluate the transaction prior to loan closing, including but not limited to a substantially final development cost schedule, sources and uses, operating pro forma, annual operating expenses, rent schedule, updated written financial commitments or term sheets, and any additional financing exhibits that have changed since the time of Application;

(ii) Substantially final Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

(iii) Survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(iv) Plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that is intended to assist in identifying early concerns associated with the Department's final construction requirements; and

(v) If layered with Housing Tax Credits, a substantially final draft limited partnership agreement between the General Partner and the tax credit investor entity.

(E) If required by the fund source, prior to Contract Execution unless an earlier period is described in Chapters 10, 11, or 12 of this title, the Development Owner must provide verification of:

(i) Environmental clearance from the Department or HUD, as applicable;

(ii) Site and Neighborhood clearance from the Department;

(iii) Documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply;

(iv) Title Insurance Commitment or Policy showing the Department as Lender, with copies of all Schedule B documents; and

(v) Any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(F) The Direct Loan Contract as executed, which will be drafted by the Department's counsel or its designee for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division or its designee.

(6) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in the form and substance acceptable to the Department's Legal Division.

(A) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Underwriting Report and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents. Additional loan terms and conditions may be imposed by the loan closing documents.

(B) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis Underwriting Report, and the Set-Aside under which the award was made.

(7) Quarterly Construction Status Reports. The Development Owner is required to submit quarterly Construction Status Reports to the Asset Management Division as described and by the deadlines specified in 10 TAC §10.401(e) of this title (relating to Construction Status Report).

(8) Mid-Construction Development Inspection Letter. In addition to any other obligations required as the result of any other Department funding sources, the Development Owner must submit a Mid-Construction Development Inspection Request once the Development has met at least 25% construction completion as indicated on the G703 Continuation Sheet or HUD equivalent form. Department inspection staff will issue a Mid-Construction Development Inspection Letter that confirms work is being done in accordance with the applicable codes, the construction contract, and construction documents.

(9) Construction Completion. Construction must be completed, as reflected by the Development's certificate(s) of occupancy (if new construction and/or reconstruction) and Certificate of Substantial

Completion (AIA Form G704) or Form HUD-92485 for instances in which a federally insured HUD loan is being utilized, within the construction term of any superior construction loan(s) or up to 36 months of the actual loan closing date if no superior construction loan(s) exists, unless a shorter timeline is necessitated by the federal funding source.

(10) Closed Final Development Inspection Letter. The Closed Final Development Inspection Letter must be issued by the Department within 36 months of loan closing. This letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements; this letter may include deficiencies that require resolution. The Closed Final Development Inspection may be conducted concurrently with a NSPIRE inspection. However, any letters associated with a NSPIRE inspection will not satisfy the Closed Final Development Inspection Letter required by this subsection.

(11) Initial Occupancy. Initial occupancy of all MFDL assisted Units by eligible households shall occur within six months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required by the MFDL fund source.

(12) Per Unit Repayment. Repayment may be required on a per Unit basis for Units that have not been rented to eligible households within 6-18 months of the final Direct Loan draw, depending on the fund source.

(13) Termination and Repayment for Failure to Complete. Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four years of the effective date of a Direct Loan Contract.

(14) Disbursement of Funds. The Borrower must comply with the requirements in subparagraphs (A) - (K) of this paragraph in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements is required with a request for disbursement:

(A) All requests for disbursement must be submitted using the MFDL draw workbook or such other format as the Department may require;

(B) Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702/ G703 or HUD equivalent form;

(C) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702 or HUD equivalent form. For release of retainage, the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least 30 calendar days after the date of the completion as certified on the Certificate of Substantial Completion (AIA Form G704) with $0 as the work remaining to be completed. If AIA Form G704 or HUD equivalent form indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed. Disbursement requests for acquisition and closing costs are exempt from this requirement;

(D) Table Funding (the wiring of Direct Loan funds to the title company at loan closing) may be permitted at the time of closing, for disbursement of funds related to eligible acquisition costs and eligible softs costs incurred, and in an amount not to exceed 50% of the total funds. Table Funding must be requested in writing at least 30 calendar days prior to the anticipated closing date, and will not be considered unless the Direct Loan Contract has been executed and all necessary documentation has been submitted to and accepted by the Department at least 10 calendar days prior to the anticipated closing date;

(E) At least 50% of Direct Loan funds (except as otherwise allowed for Permanent Refinance Loans described in 10 TAC §13.8(e)) will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(F) The initial draw request for the Development (excluding Table Funding) must be entered into the Department's Housing Contract System no later than 180 days after loan closing, and may not be submitted prior to submission of all architectural drawings;

(G) Developer Fee disbursement shall be limited by subparagraph (I) of this paragraph and is further conditioned upon clauses (i) - (iii), as applicable:

(i) For Developments in which the loan is secured by a first lien deed of trust against the Property, 75% shall be disbursed in accordance with percent of construction completed. 75% of the total allowable fee will be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25% shall be disbursed at the time of release of retainage; or

(ii) For Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, Developer Fees will not be reimbursed by the Department, except as follows. If all other lenders and syndicator in a Housing Tax Credit Development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of Developer Fees and expect that Department funds shall be used to fund Developer Fees, they shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(iii) The Department may reasonably withhold any disbursement in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If disbursement is withheld for any reason, disbursement of any remaining Developer Fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met;

(H) Expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall review each expenditure requested for reasonableness. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(I) Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion as documented on AIA Form G702/703 or HUD equivalent

form. 10% of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually. All of the items described in clauses (i) - (viii) of this subparagraph are required in order to approve the final draw request:

(i) Fully executed Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 (for instances in which a federally insured HUD loan is being utilized) with $0 as the cost estimate of work that is incomplete. If AIA Form G704 or Form HUD-92485 indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed;

(ii) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485;

(iii) For Developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(iv) For NHTF Developments layered with HTCs, a separate, additional cost certification form completed by an independent, licensed, certified public accountant of all Development costs (including project costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract, commonly known as a cost certification;

(v) For Developments subject to the Davis-Bacon Act, written documentation from the Department that the Department's Notice to Proceed that serves to lock in the Department of Labor's worker prevailing wage mandates at the development and authorizes start of construction was sent and final wage compliance report was received and approved or confirmation that HUD or other entity maintains Davis-Bacon oversight;

(vi) Certificate(s) of Occupancy (for New Construction or Reconstruction Units);

(vii) Development completion reports, which includes, but is not limited to, documentation of full compliance with the Uniform Relocation Act/104(d), Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement;

(viii) If applicable to the Development, certification from Architect or a licensed engineer that all HUD environmental mitigation conditions have been met; and

(ix) evidence of Match being credited to the Development.

(J) No disbursement of funds will be approved without receipt of all closing documents in the form and substance required by the Department's Legal Division;

(K) The final draw request must be submitted within the construction term as determined in accordance with 10 TAC §13.8(c)(1) or (d)(1) as applicable, unless the construction term has been extended in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable; and

(L) Annually, Borrowers must submit at least one draw, and may not submit more than four draws, unless previously approved by the Executive Director or designee.

(15) Annual Audits and Cost Certifications under 24 CFR §93.406(b).

(A) Annual Audits under 24 CFR §93.406(b). Unless otherwise directed by the Department, the Development Owner shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under the Direct Loan Contract, subject to the conditions and limitations set forth in the executed Direct Loan Contract. All approved audit reports will be made available for public inspection within 30 days after completion of the audit.

(B) Cost Certifications under 24 CFR §93.406(b).

(i) Non-HTC-Layered Developments. Within 180 calendar days of the later of all title transfer requirements and construction work having been performed, as reflected by the Development's Certificate(s) of Occupancy (if New Construction) or Certificate of Substantial Completion (AIA Form G704 or HUD equivalent form), or when all modifications required as a result of the Department's Final Construction Inspection are cleared as evidenced by receipt of the Closed Final Development Inspection Letter, the Development Owner will submit to the Department a cost certification done by an independent licensed certified public accountant of all Development costs (including project NHTF eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

(ii) HTC-Layered Developments. With the Cost Certification required by the Low Income Housing Tax Credit Program, the Development Owner must submit to the Department a cost certification completed by an independent licensed certified public accountant of all Development costs (including NHTF project eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

§13.12. Pre-Closing Amendments to Direct Loan Terms.

(a) Closing Memo to Underwriting Report. Any changes to the total development cost, expenses, income, and/or other sources of funds from time of the publication of the initial Underwriting Report at the time of award to the time of loan closing, if the type or amount of the sources and uses have changed must be reevaluated by the Real Estate Analysis division, which will typically publish a Closing Memo to the Underwriting Report. The Report may recommend changes to the principal amount and/or the repayment structure for the Multifamily Direct Loan pursuant to §11.302 of this title (relating to Underwriting Rules and Guidelines), except that the change must have been an available option in the rule or NOFA (as applicable), and may not be made to awards that were competitively scored to the extent that change would have caused the Development to lose points. This will allow the Department to uphold the competitive process, mitigate any increased risk, and to ensure that the Development is not oversubsidized. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered by the Board. If the changes cause the total Debt Coverage Ratio (DCR) to no longer comply with 10 TAC §11.302 of this title (relating to Underwriting Rules and Guidelines), the award may be subject to termination. The Department may require the Closing Memo to be completed before providing a Contract to the Development Owner.

(b) Executive Approval Required Pre-Closing. The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection. Under no circumstances may an amendment cause the Department to violate or be at risk of violating a federal requirement or deadline.

(1) Extensions to the loan closing date required in 10 TAC §13.11(c)(4) of this chapter (relating to Post-Award Requirements) may be approved prior to closing. An Applicant must submit sufficient evidence documenting good cause, including but not limited to, docu-

mented delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple fund source closing.

(2) Changes to the construction term and/or loan maturity date to accommodate the requirements of other lenders or to maintain parity of term may be approved prior to closing.

(3) Extensions to the Construction Completion date or date of receipt of a Closed Final Development Inspection Letter required in 10 TAC §13.11(c)(8) of this chapter may be requested but generally are not approved prior to initial loan closing. Extensions under this paragraph are determined based on documentation that the extension is necessary to complete construction and that there is good cause for the extension.

(4) Only to the extent determined necessary by Real Estate Analysis to maintain financial feasibility, changes to the amortization period (not to exceed 40 years) or interest rate (to not less than the minimum specified in rule or NOFA) may be approved if such changes continue to meet all requirements of Chapter 11, Chapter 13, and the NOFA.

(5) Decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development in the determination of Real Estate Analysis may be approved prior to closing, though the Development Owner may be subject to penalties as further described in 10 TAC §13.11 of this chapter (relating to Post-Award Requirements). Increases will not be approved unless the Applicant applies for the additional funding under an open NOFA.

(6) Changes to other loan terms or requirements that would not require a waiver, as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(c) Board Approval Required Pre-Closing. Board approval is necessary for any other changes prior to closing.

§13.13. Post-Closing Amendments to Direct Loan Terms.

(a) Good Cause Extensions. The Executive Director or authorized designee may approve extensions of up to 12 months under 10 TAC §13.11(c)(7) - (8) or (14)(L) of this chapter (relating to Post-Award Requirements) based on documentation that there is good cause for the extension and cause the Department to violate or be at risk of violating a federal requirement or deadline.

(b) Amendments to MFDL Awards. Except in cases of Force Majeure, changes to terms of awards subject to mandatory HUD reporting requirements will only be processed after the Construction Completion is reported to the federal oversight entity as completed, and the last of the MFDL funds have been drawn.

(c) Executive Amendments. The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this subsection. Board approval is necessary for any other changes post-closing.

(1) Changes in Terms. Changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term may be approved post-closing, provided the changes result in the Direct Loan continuing to meet the requirements of 10 TAC §13.8(c)(1) and (3) of this chapter (relating to Loan Structure and Underwriting Requirements), and NOFA requirements.

(2) Post-Closing Subordinations or Re-subordinations of MFDL Liens. Re-subordination of the Direct Loan in conjunction with refinancing may be approved post-closing, provided the conditions in subparagraphs (A) - (E) of this paragraph are met:

(A) The Borrower is current with loan payments to the Department, and no notice has been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;

(B) The refinance does not propose payment to any of the Development Owner or Developer parties (including the Limited Partners);

(C) A proposal for partial repayment of the MFDL lien is made with the request;

(D) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.

(i) For purposes of this section, a negative effect on the financial feasibility of the Development shall mean a reduction in the total Debt Coverage Ratio (DCR) of more than 0.05, or if the DCR no longer meets the requirements of 10 TAC §11.302 of this title; and

(ii) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be directly applied to property improvements, as evidenced by the loan or security agreements (exclusive of fees associated with the refinance and any required reserves), will be considered on a case by case basis; and

(E) The subordination or re-subordination request does not include a request to subordinate or resubordinate any MFDL LURA, with the exception of partial subordination or re-subordination of receivership rights (subject to the prosed receiver entity or Affiliate not having been Debarred by the Department or on the Federal Suspended or Debarred Listing).

(3) Workout Arrangements. Changes required to the Department's loan terms or amounts that are part of an approved Asset Management Division work out arrangement may be approved after Construction Completion.

(d) Contract Assignments and Assumptions of MFDL Liens. The Executive Director or authorized designee may approve the Contract Assignment and Assumption of MFDL Liens following approval of an Ownership Transfer request if the conditions in paragraphs (1) - (3) of this subsection are met:

(1) The assignment or assumption is not prohibited by the Contract, Loan Documents, or regulations;

(2) The assignment or assumption request is based on either subparagraph (A) or (B) of this paragraph:

(A) There are insufficient funds available in the transaction to fully repay the Direct Loan at the time of acquisition, for which Deferred Developer Fee, Development Owner or Affiliate Contributions, or other similar liabilities will not be considered in determining whether the Direct Loan could be repaid at the time of acquisition; or

(B) The new superior lien will be directly applied to property improvements as evidenced by the loan or security agreements, exclusive of fees association with the new financing and any required reserves; and

(3) The corresponding Ownership Transfer has been approved in accordance with all requirements in 10 TAC §10.406 of this title (relating to Ownership Transfers), and no prospective Owner including person, or affiliate, as those terms are defined in 2 CFR Part 180 and 2 CFR Part 2424, Subpart I, has been subject to state Debarment or are on the Federal Suspended or Debarred Listing. This includes Board Members and Limited Partners.

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 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 4. SCHOOL LIBRARY PROGRAMS SUBCHAPTER A. STANDARDS AND GUIDELINES

13 TAC §4.2

The Texas State Library and Archives Commission (commission) adopts new §4.2, School Library Programs: Collection Development Standards. The new section is adopted with changes to the proposed text as published in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6291) and will be republished.

EXPLANATION OF ADOPTED NEW SECTIONS. The new section establishes collection development standards a school district must adhere to in developing or implementing the district's library collection development policies. The new rule is adopted to implement House Bill 900, 88th R.S. (2023) (HB 900), which amended Education Code, §33.021, to require the commission, with approval by majority vote of the State Board of Education (SBOE), to adopt these standards by January 1, 2024. The SBOE approved the standards at their December 13, 2023, meeting.

New §4.2(a) requires each public school district board of trustees or governing body to approve and institute a collection development policy that describes the processes and standards by which a school library acquires, maintains, and withdraws materials.

New §4.2(b) provides that school library collections should include a range of materials that are age appropriate and suitable to the campus and students the school library serves, offering guidance on the overall goals of a school library's collection. Under this guidance, a collection should enrich and support the Texas Essential Knowledge and Skills (TEKS) while taking into consideration students' varied interests, maturity levels, abilities, and learning styles; foster growth in factual knowledge, literary appreciation, aesthetic values, and societal standards; encourage the enjoyment of reading, foster high-level thinking skills, support personal learning, and encourage discussion based on rational analysis; and represent the ethnic, religious, and cultural groups of the state and their contribution to Texas, the nation, and the world.

New §4.2(c) enumerates multiple requirements for a school library collection development policy, including the requirements stated in HB 900.

New §4.2(d) defines "evaluation of materials" to include consideration of the factors proposed to guide library collections generally in subsection (b), which includes that the materials are age appropriate and suitable to the campus and students the library serves, local priorities and school district standards, and at least two additional factors, such as recommendations from parents, guardians, and local community members; consultation with educators and library staff; an extensive review of the text; the context of a work; or authoritative reviews.

New §4.2(e) provides that a reconsideration process should ensure that any parent or legal guardian of a student enrolled in the district or current school district employee may request the reconsideration of a specific item in their school district's library catalog. The rule further requires that a reconsideration process establish a uniform procedure an individual must follow when filing a request. The process should also include a reasonable timeframe for the review and final decision and establish a uniform process for the treatment of any library material undergoing reconsideration by a committee charged with review of the item in its entirety. The process should include a review and appeal process and provide that if an item has gone through the reconsideration process and remains in the collection, the school district may not be required to reconsider an item within two calendar years of final decision. For example, if a final decision on an item under reconsideration is made on March 1, 2025, the school district could not be required to reconsider the item again until March 2, 2027.

New §4.2(f) encourages a school district to ensure a State Board for Educator Certification certified professional librarian or other dedicated professional library staff trained on proper collection development standards is responsible for the selection and acquisition of library materials.

New §4.2(g) requires a school district to develop collection assessment and evaluation procedures to periodically appraise the quality of library materials in the school library to ensure the library's goals, objectives, and information needs are serving its school community.

New §4.2(h) recommends school districts review their collection development policies at least every three years, a practice that will ensure the policy remains up-to-date and consistent with current district priorities.

New §4.2(i) allows school districts to add procedures to the minimum requirements to satisfy local needs so long as the added procedures do not conflict with the minimum requirements.

Lastly, new §4.2(j) provides that school districts are responsible for ensuring their school libraries implement and adhere to these collection development standards. The commission has no enforcement authority with respect to school libraries.

SUMMARY OF COMMENTS. The Commission received 26 comments during the comment period on the proposed rule as discussed below.

COMMENT. The Commission received multiple comments expressing support for the proposed rule. The Lewisville Independent School District (LISD) provided comment in support of the following components of the proposed collection development standards:

Section 4.2(i), which establishes the standards as a minimum ensuring districts maintain local control;

Section 4.2(c)(7)A), which recognizes that parents are the primary decision-makers regarding their individual student's access to library materials;

Section 4.2(d), which includes multiple sources for selection aids in having a high-quality library collection; and

Section 4.2(e), which limits the reconsideration process to a parent or legal guardian of students within the district.

The Children's Defense Fund - Texas (CDF-Texas) provided comment largely in support of the proposed standards, commending the Commission's efforts to balance compliance with the law with healthy respect for local districts, individual needs, and community input. Specifically, CDF-Texas expressed support for the following three elements of the standards: allowing school districts to use their discretion to craft local policies that meet the unique needs of their students; prioritizing district parents, students, and employees in the reconsideration process; and recognizing the value of professional reviews in guiding library collection and acquisition decisions.

The Texas Library Association (TLA) submitted a comment supporting the standards, noting they will provide guidance and a strong foundation upon which school districts can build policies that support the educational needs of Texas students.

Five individuals also provided general comments of support regarding the proposed rule, with one commenter requesting the standards be approved as written, one commenter noting we have a moral duty to protect children from sexually explicit material, one commenter expressing they were happy the new standards included references to Texas law, one individual thanking the Commission for §4.2(c)(7) and expressing hope the adopted rules can be enforced for the children's sake, and one individual providing information regarding personal experience to demonstrate support of the collection development standards.

RESPONSE. The Commission appreciates the comments in support of the proposed rule.

COMMENT. Two individuals provided comment regarding the economic impact of the proposed rule. One individual commented that the statements in the preamble noting no anticipated economic costs to persons required to comply with the proposed new section and no adverse economic impact on small businesses, micro-businesses, or rural communities are incorrect. The commenter noted that school staff will have to write policies incorporating this policy into their own policies and librarians will have to develop new procedures for handling material labeled "sexually relevant," move library materials to accommodate a special shelf area and develop processes for tracking these changes across all the vendors they utilize. The commenter also noted a huge cost to booksellers. The other individual commented on the fiscal impact of HB 900, noting the costs involved in local committee meetings, librarians reviewing state laws and contested materials, bookseller ratings of materials and determining process for access, and policy reviews every two years.

RESPONSE. The Commission disagrees that the proposed rule would have an economic impact on persons required to comply with the rule or on small businesses, micro-businesses, or rural communities. The Commission notes that any potential economic impact and costs to schools described in the comments are not a result of the Commission's rule regarding collection development standards. Rather, any potential costs result from the statute (Education Code, §33.021) requiring school districts to adhere to the standards and explicitly specifying content for inclusion in the standards. Similarly, the requirement for different treatment of library materials rated as sexually relevant is required by Education Code, §35.005 (Parental Consent Required for Use of Certain Library Materials) and merely restated in the rule as required by Education Code, §33.021. Finally, the requirement for ratings by vendors is not a result of the Commission's rule. That requirement is specified in Education Code, §35.002 (Ratings Required).

COMMENT. One individual commented that the rule should require challenges to be submitted individually, as long lists of books for reconsideration prevent the process from occurring in a timely manner.

RESPONSE. The Commission appreciates the comment. Section 4.2(i) authorizes school districts to add procedures to the minimum requirements to satisfy local needs so long as the added procedures do not conflict with the minimum requirements. School districts are encouraged to create a reconsideration process that meets the individual school district's needs, which could include a requirement that requests for reconsideration be submitted individually. The Commission declines to make this change in the rule, however, as individual school districts have varying capacities for managing reconsideration requests.

COMMENT. LISD requested the Commission add superintendent or superintendent designee to §4.2(e)(3) to ensure district administration can support campuses through the reconsideration process.

RESPONSE. The Commission agrees with the comment and replaces "campus administrator" with "superintendent or superintendent designee" to ease the administrative burden on school districts and ensure campuses have flexibility.

COMMENT. One individual commented that §4.2(e) should require a complainant to read the entire book, encourage an informal meeting with a librarian and/or administrator, and require that the book in question be reviewed in its entirety.

RESPONSE. The Commission appreciates the comment. Section 4.2(i) authorizes school districts to add procedures to the minimum requirements to satisfy local needs so long as the added procedures do not conflict with the minimum requirements. While a school district may stipulate this requirement in its individual reconsideration policy, the Commission declines to make this change in the rule and concludes this decision is best left to school districts. The Commission does, however, confirm that a review committee must read an item under reconsideration in its entirety, and has made a clarifying change on adoption in §4.2(e)(4) in response to comments.

COMMENT. TLA and one individual commented on the inclusion of "authority" in §4.2(e)(4). TLA noted that the reference to an authority is vague and that it is important that those charged with the review of a library book reflect the community of the school it serves rather than an individual or group of individuals who do not know the campus. The individual commented that the reference to a committee or authority is unclear, asking how such a committee would be formed and whether it would vary from year to year.

RESPONSE. The Commission agrees that further clarification is needed, and amends §4.2(e)(4) to delete "authority" and clarify

that a district "should convene a review committee in accordance with criteria established by the district to ensure a thorough and fair process."

COMMENT. CDF-Texas and Students Engaged in Advancing Texas (SEAT) both commented that books should remain available while under review and reconsideration. SEAT further commented that all books currently on school library shelves already go through an extensive review by qualified educators and librarians.

RESPONSE. The Commission notes that this issue was discussed during the November 3, 2023, Commission meeting and the Commission ultimately decided to allow local districts to assess their own needs and comfort level with potential risks involved in removing books from the shelves rather than mandate uniform treatment of books statewide. The Commission declines to make this recommended change.

COMMENT. TLA and two individuals commented that a book undergoing reconsideration should be reviewed in its entirety. TLA further noted that to make an informed decision about material being reconsidered, it is important for the review committee to read the material in its entirety and not rely on a summary, excerpts of text, or a contextual review as such information does not provide an adequate understanding of the material.

RESPONSE. The Commission agrees with this comment and notes this was the intent of the proposed provision. For clarity, the Commission will make the suggested change in §4.2(e)(4).

COMMENT. TLA, LISD, and three individuals commented that the time frame within which a book may not be reconsidered after it has gone through the reconsideration process should be extended (ranging from three to five years), as reconsideration processes require significant time and resources. LISD commented that reconsideration of materials requires eight to ten hours of work by a district committee, so allowing for reconsideration of a single title every year would create an undue burden on the district. An individual expressed concern about opportunities in the rule for abuse that could clog library and school district time and resources, specifically noting that the one-year provision related to reconsideration would result in an inefficient use of a school's resources.

RESPONSE. The Commission agrees that a one-year time frame for a subsequent reconsideration of an item that has gone through the reconsideration process and remained in the collection could result in an inefficient use of school district resources. However, rather than mandate a minimum timeframe, the Commission is modifying the language of §4.2(e)(7) to provide that if an item has gone through the reconsideration process and remains in the collection, a school district may not be required to reconsider an item within two calendar years of final decision. The Commission believes this change provides districts with additional flexibility to manage reconsideration requests, appropriately and effectively consider items in the school library collection, and make efficient use of school district resources.

COMMENT. SEAT requested that a line be included in §4.2(c)(7)(F) explicitly recommending schools communicate with parents regarding books being removed from their child's library, informing families of newly created gaps in their student's literary options in the interest of transparency to parents.

RESPONSE. The Commission appreciates the comment and encourages school districts to communicate with parents regarding the school library collection and reconsideration process but declines to add the suggested language mandating this specific communication statewide. The Commission also notes that school districts are subject to the Public Information Act and this information could be obtained on request. A school district that receives numerous requests for this type of information may well decide to make this information available to parents regularly.

COMMENT. TLA and five individuals provided comment suggesting the time period specified for policy review in §4.2(h) be extended (ranging from three to five years), citing the significant time and cost involved in policy reviews and updates and implementation of new policies, which may require new processes and additional training.

RESPONSE. The Commission agrees that the minimum time period for policy review should be extended from at least every two years to at least every three years. The Commission also notes that the rule only requires a policy update if the update is necessary.

COMMENT. LISD and four individuals provided comment expressing concern over inclusion of classroom libraries in the collection development standards. One individual noted that classroom libraries are not governed by school libraries or school librarians. One individual similarly noted that school librarians are not in charge of classroom libraries nor are they responsible for what a teacher chooses to have on their shelves. Another individual expressed concern over the additional time that would be required of librarians to ensure compliance with all books in every teacher's classroom, which would take away from student instruction. LISD noted that the inclusion of classroom libraries in the standards creates an undue burden on classroom teachers to catalog and maintain collections. LISD recommended that classroom libraries have their own standards that consider the context of a classroom, a classroom teacher's job responsibilities, and resources available to classroom teachers to meet standards.

RESPONSE. While the Commission does not disagree that this requirement could place an additional burden on public school librarians, the Commission notes that this portion of the rule is a required element of HB 900, specifically Education Code, §33.021(d)(2)(C). Therefore, the Commission is required by law to include this element in the collection development rule and declines to make the requested change. The Commission will, however, change the rule language to mirror the statute to ensure no statutory intent is lost by changing "apply to" to "be required for."

COMMENT. One individual requested flexibility within the school district book purchasing process by allowing school librarians to purchase "unrated" books provided the books have been reviewed and sanctioned by reputable outside sources and extending the deadline for the bookstores to create and agree on their rating system.

RESPONSE. The Commission notes that this comment addresses matters outside the scope of proposed §4.2. However, the Commission points out that the collection development standards apply to a library's entire collection, not just books that have been rated by library material vendors. The Commission anticipates that most books sold by library material vendors will appropriately have "no rating."

COMMENT. TLA requested that §4.2(f) be modified to add that professional library staff must have successfully completed a collection development course.

RESPONSE. While the Commission agrees with this comment, the Commission notes that the intent of the language as proposed was to provide that if a school district does not have a professional librarian certified by the State Board for Educator Certification on staff, they should ensure the person responsible for the selection and acquisition of library materials is a professional library staff member who has received training on school library collection development. Because the language as proposed is substantially similar to the language recommended by TLA with added flexibility regarding training, the Commission declines to make the requested change.

COMMENT. TLA and one individual requested the addition of "maturity level" to §4.2(b)(1). TLA noted that it is important that materials selected for the library collection take into consideration the varied maturity levels of the students served. The individual noted that this addition would allow for readers to have access to books that will challenge them if they have a high reading level, noting this is especially important for students at the upper range of elementary, middle school, and high school.

RESPONSE. The Commission agrees with the comment and has made the change. The Commission notes that libraries support Gifted and Talented programs, and that it is important for library resources to support all levels of curriculum.

COMMENT. TLA and one individual requested the addition of "critical" before "thinking skills" in §4.2(b)(3). TLA noted that critical thinking is a higher order skill that goes beyond basic thinking skills of observation of facts and memorization. The individual noted that critical thinking is a very important component of the TEKS.

RESPONSE. The Commission agrees with the comment but added "high-level" instead of "critical" for clarity.

COMMENT. TLA requested the addition of the word "school" before "community" to clarify the school library serves the school community - its students, teachers, parents, and other school stakeholders.

RESPONSE. The Commission agrees with the comment and has made the suggested change.

COMMENT. LISD commented that school districts could benefit from additional clarification and definition of harmful material, pervasively vulgar, educationally unsuitable, and obscene content as used in §4.2(c)(7)(B) and (C).

RESPONSE. The Commission declines to expand on the definitions of "harmful material," "pervasively vulgar," "educationally unsuitable," and "obscene content" in rule, as such terms are either already defined in statute or case law or could be subject to differing definitions depending on specific circumstances. School districts are advised to consult with their district's legal counsel or the TEA for assistance with compliance.

COMMENT. One individual suggested that §4.2(c)(7) be divided into two sections, stating that several items under subsection (c)(7) are not about any legal requirement at any level of government. The individual suggested adding subsection (c)(8) listing the items that are not about legal compliance.

RESPONSE. The Commission notes that everything listed under §4.2(c)(7) stems from Education Code, §33.021 as amended by HB 900. See Educ. Code §33.021(d) (requiring that the standards adopted by the Commission

"must . . . include a collection development policy that: (A) prohibits the possession, acquisition, and purchase of: (i) harmful material, as defined by §43.24, Penal Code; (ii) library material rated sexually explicit material by the selling library material vendor; or (iii) library material that is pervasively vulgar or educationally unsuitable as referenced in Pico v. Board of Education, 457 U.S. 853 (1982); (B) recognizes that obscene content is not protected by the First Amendment to the United States Constitution; (C) is required for all library materials available for use or display, including material contained in school libraries, classroom libraries, and online catalogs; (D) recognizes that parents are the primary decisionmakers regarding a student's access to library material; (E) encourages schools to provide library catalog transparency; (F) recommends schools communicate effectively with parents regarding collection development; and (G) prohibits the removal of material based solely on the: (i) ideas contained in the material; or (ii) personal background of: (a) the author of the material; or (b) characters in the material.").

Because this information is required by Education Code, §33.021, the Commission declines to make this change.

COMMENT. LISD provided comment regarding §4.2(c)(5), pointing out that vendors have not yet rated books, limiting a district's ability to comply. Two individuals also suggested deleting §4.2(c)(5), noting the terminology is unclear, currently in litigation, and in conflict with state law.

RESPONSE. The Commission notes that HB 900 established a deadline of April 1, 2024, for library material vendors to rate books. If the collection development standards are effective prior to books being rated by vendors, then the portion of the collection development standards regarding books rated by vendors would be inapplicable. The Commission also notes that the lawsuit challenging HB 900 is currently on appeal. If the law changes in the future in such a way as to impact the Commission's rule, the statute would prevail. Furthermore, the Commission would amend its rule to be consistent with the law. Therefore, the Commission declines to make a change based on these comments.

COMMENT. One individual requested the addition of provisions that address how to enforce the new guidelines, accountability for school districts who do not remove applicable books, and checks and balances on school librarians who do not remove applicable books or who continue to purchase obscene and sexually explicit books. The commenter also asked what the deadline is for districts to develop and implement a new policy related to these standards and what is the deadline for school district library book publishers to adhere to each new district policy.

RESPONSE. The Commission notes that it has no enforcement authority over school districts or school district employees, including librarians. Section 4.2(j) of the proposed rule explicitly notes that school districts are responsible for ensuring their school libraries implement and adhere to these collection development standards. The Commission would expect the districts to communicate expectations related to enforcement and deadlines. In addition, the Commission notes that HB 900 granted the Texas Education Agency (TEA) broad rulemaking authority related to Education Code, Chapter 35, Regulation of Certain Library Materials, so such concerns could be further addressed by TEA.

COMMENT. One individual noted that the "societal standards" referenced in §4.2(b)(2) is vague.

RESPONSE. The Commission notes that "societal standards" is a common term used to refer to standards of acceptable behavior or "social norms."

COMMENT. One individual requested changing §4.2(c)(4) to "Are appropriate for the reading levels and understanding of students," as current language implies censorship if young readers access a 4th grade book.

RESPONSE. The Commission disagrees that the proposed language implies censorship and also points to §4.2(b), which should be read in conjunction with §4.2(c). The Commission declines to make this change.

COMMENT. Two individuals provided comments related to input of the community on a library's collection development. One individual noted that community members should have limited influence on a school library's collection development, citing the statement in §4.2(c)(7)(F)(iii), and noted that a school library is not a public library and therefore does not serve the community at large. The other individual commented that the proposal for library collection selection should be limited to students, parents, guardians, and teachers, and that the local community should not have a say in what books can and cannot be read in a school library.

RESPONSE. The Commission appreciates the concern. While the rule directs districts to allow students, parents, educators, and community members the opportunity to provide feedback on library materials and services, the district may determine how best to integrate feedback, in whatever form the district requests, into its library services and collections. The Commission declines to make a change.

COMMENT. One individual commented that she does not want vendors, who may not understand a community's particular needs, having the final say in what her children can and cannot read, and that parents can have conversations with their children about what is or is not sexually relevant.

RESPONSE. The Commission appreciates the comment but notes this comment addresses a matter outside the scope of the Commission's rulemaking authority.

COMMENT. One individual provided comments in opposition to HB 900, stating it takes responsibility away from parents and caregivers and places the onus on book sellers and vendors. The individual notes that parents and caregivers have an important role to play in what their children read, noting that if a book a child brings home does not align with the family's ideals, the book should be returned and the parent/caregiver should discuss with the child why the book was not a good fit for their family.

RESPONSE. The Commission appreciates the comment but notes this comment addresses a matter outside the scope of the Commission's rulemaking authority.

COMMENT. CDF-Texas recommended the rule explicitly affirm the right of students to read freely by adding a clause in §4.2(c) that recognizes students as important decision makers in their own rights.

RESPONSE. The Commission agrees that students are important decision makers in shaping their educational experience and will underscore this point by amending §4.2(b)(3) to read "Encourage the enjoyment of reading to foster thinking skills, support personal learning, and encourage discussion based on rational analysis."

COMMENT. SEAT requested the addition of the statement "Recognize that students are the primary stakeholders regarding their access to library material" to §4.2(c)(7), noting that such a statement emphasizes that while HB 900's statement about parents being the primary decision makers still stands, the state recognizes that students and students' futures will be directly affected by the new standards. Similarly, one individual commented that students should be involved in book challenges by being allowed to voice their opinions about what is best for their reading as an appropriate representation of their age group, especially in secondary school.

RESPONSE. The Commission agrees that students' perspectives should be considered. Students are included stakeholders in §4.2(c)(7)(F)(iii) in providing feedback on library collections and services. Districts may include students in their reconsideration processes but given the potential rigor, time commitments, and other potential conflicts for participation in a reconsideration process, districts are best suited to determine the appropriate level of student involvement. While the Commission agrees with the point, the Commission declines to make any additional change.

COMMENT. One individual asked for Commission support of the removal of all text and images that are sexually explicit or refer to human biological facts as non-factual and any statements that this nation is a racist nation, regarding white supremacy, or that are not historically proven facts of matter.

RESPONSE. The Commission underscores that sexually explicit material in public school libraries is prohibited by HB 900. The other topics addressed by this comment do not relate to the proposed rule.

COMMENT. One individual commented that HB 900 is "wrongheaded," "vague," and "misleading," and that the Commission's amendment of the Education Code while the law is on appeal is an effort to be complicit with the draconian law.

RESPONSE. The Commission notes that the portion of HB 900 that requires the Commission to adopt collection development standards has not been enjoined. The Commission is still required to adopt the collection development standards by January 1, 2024.

COMMENT. One individual commented that a policy is needed to purge school district libraries that promote promiscuity, homosexuality, bisexuality, and transgenderism.

RESPONSE. The Commission notes that the proposed rule adheres to the parameters of HB 900.

COMMENT. The Commission was copied on an email from an individual to two SBOE members regarding specific books she wants removed from a specific library.

RESPONSE. As this comment is unrelated to the rule, no Commission response is necessary.

COMMENT. One individual commented that they are very against adult content or pornographic books in Texas libraries.

RESPONSE. The Commission agrees that books in public school libraries should be age-appropriate and focused on the needs of the students the library serves.

COMMENT. One individual commented that the statement "parents are the primary decision makers regarding their student's access to library material" should not be part of the collection development policy.

RESPONSE. The Commission notes that this statement is required in the standards as mandated by Education Code, §33.021(d)(2)(D). The Commission declines to make this change.

The commission received three comments after the comment period closed but notes the substance of these comments was very similar to other comments received during the comment period.

STATUTORY AUTHORITY. The new section is adopted under Education Code, §33.021, which requires the commission to adopt standards for school library collection development that a school district shall adhere to in developing or implementing the district's library collection development policies.

§4.2. School Library Programs: Collection Development Standards.

(a) Each Texas public school district board or governing body must approve and institute a collection development policy that describes the processes and standards by which a school library acquires, maintains, and withdraws materials.

(b) A school library collection should include materials that are age appropriate and suitable to the campus and students it serves and include a range of materials. A school library collection should:

(1) Enrich and support the Texas Essential Knowledge and Skills (TEKS) and curriculum established by Education Code, §28.002 (relating to Required Curriculum), while taking into consideration students' varied interests, maturity levels, abilities, and learning styles;

(2) Foster growth in factual knowledge, literary appreciation, aesthetic values, and societal standards;

(3) Encourage the enjoyment of reading, foster high-level thinking skills, support personal learning, and encourage discussion based on rational analysis; and

(4) Represent the ethnic, religious, and cultural groups of the state and their contribution to Texas, the nation, and the world.

(c) A school library collection development policy must:

(1) Describe the purpose and collection development goals;

(2) Designate the responsibility for collection development;

(3) Establish procedures for the evaluation, selection, acquisition, reconsideration, and deselection of materials;

(4) Consider the distinct age groups, grade levels, and possible access to materials by all students within a campus;

(5) Include a process to determine and administer student access to material rated by library material vendors as "sexually relevant" as defined by Education Code, §35.001 consistent with any policies adopted by the Texas Education Agency and local school board requirements;

(6) Include an access plan that, at a minimum, allows efficient parental access to the school district's library and online library catalog; and

(7) Comply with all applicable local, state, and federal laws and regulations. Specifically, a collection development policy must:

(A) Recognize that parents are the primary decision makers regarding their student's access to library material;

(B) Prohibit the possession, acquisition, and purchase of harmful material, as defined by Penal Code, §43.24, library material rated sexually explicit material by the selling library material vendor under Education Code, §35.002, or library material that is pervasively vulgar or educationally unsuitable as referenced in Pico v. Board of Education, 457 U.S. 853 (1982);

(C) Recognize that obscene content is not protected by the First Amendment to the United States Constitution;

(D) Be required for all library materials available for use or display, including material contained in school libraries, classroom libraries, and online catalogs;

(E) Ensure schools provide library catalog transparency, including, but not limited to:

(i) Online catalogs that are publicly available; and

(ii) Information about titles and how and where material can be accessed;

(F) Recommend schools communicate effectively with parents regarding collection development, including, but not limited to:

(i) Access to district/campus policies relating to school libraries;

(ii) Consistent access to library resources; and

(iii) Opportunities for students, parents, educators, and community members to provide feedback on library materials and services; and

(G) Prohibit the removal of material based solely on the ideas contained in the material or the personal background of the author of the material or characters in the material.

(d) Evaluation of materials as referenced in this section includes a consideration of the factors described in subsection (b) of this section, consideration of local priorities and school district standards, and at least two of the following:

(1) Consideration of recommendations from parents, guardians, and local community members;

(2) Consultation with the school district's educators and library staff and/or consultation with library staff of similarly situated school districts and their collections and collection development policies;

(3) An extensive review of the text of item;

(4) The context of a work, including consideration of the contextual characteristics, overall fit within existing school library collection, and potential support of the school curriculum; or

(5) Consideration of authoritative reviews of the items from sources such as professional journals in library science, recognized professional education or content journals with book reviews, national and state award recognition lists, library science field experts, and highly acclaimed author and literacy expert recommendations.

(e) A reconsideration process as referenced in this section should ensure that any parent or legal guardian of a student currently enrolled in the school district or employee of the school district may request the reconsideration of a specific item in their school district's library catalog. A reconsideration process should:

(1) Establish a uniform procedure an individual must follow when filing a request;

(2) Require a school district to include a form to request a reconsideration of an item on the school's public internet website if the school has a public internet website or ensure the form is publicly available at a school district administrative office;

(3) Require that the completed request for reconsideration form be distributed to the superintendent or superintendent designee, school librarian, and school district board of trustees or governing body at the time of submission;

(4) Include a reasonable timeframe, approved by the school board, for the review and final decision by a committee charged with the review of the item in its entirety. A district should convene a review committee in accordance with criteria established by the district to ensure a thorough and fair process. A reasonable timeframe should take into account:

(A) The time necessary to convene a committee to meet and review the item;

(B) Flexibility that may be necessary depending on the number of pending reconsideration requests; and

(C) Other factors relevant to a fair and consistent process, including informing the requester on the progress of the review in a timely fashion;

(5) Establish a uniform process approved by the school district board of trustees or governing body for the treatment of any library material undergoing reconsideration;

(6) Include a review and appeal process approved by the school district board of trustees or governing body; and

(7) Provide that if an item has gone through the reconsideration process and remains in the collection, a school district may not be required to reconsider an item within two calendar years of the final decision.

(f) School districts should ensure a professional librarian certified by the State Board for Educator Certification or other dedicated professional library staff trained on proper collection development standards is responsible for the selection and acquisition of library materials.

(g) A school district must develop collection assessment and evaluation procedures to periodically appraise the quality of library materials in the school library to ensure the library's goals, objectives, and information needs are serving its school community and should stipulate the means to weed or update the collection.

(h) A school district's collection development policy should be reviewed at least every three years and updated as necessary.

(i) School districts may add procedures to these minimum requirements to satisfy local needs so long as the added procedures do not conflict with these minimum requirements.

(j) School districts are responsible for ensuring their school libraries implement and adhere to these collection development standards.

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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

SUBCHAPTER K. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter K, §§60.500-60.504, 60.510, 60.512, 60.514, 60.516, and 60.519; adopts a new rule at Subchapter K, §60.518; and adopts the repeal of an existing rule at Subchapter K, §60.518, regarding the Procedural Rules of the Commission and the Department, without changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5609). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 60, Subchapter K, implement Texas Occupations Code, Chapter 51, General Provisions Related to Licensing; Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses; and the license portability provisions of the federal Servicemembers' Civil Relief Act found at 50 U.S.C. §4025a.

The adopted rules are necessary to implement Senate Bill (SB) 422, 88th Legislature, Regular Session (2023), and the federal Servicemembers' Civil Relief Act by: (1) updating current rule definitions and terms to comport with federal and state law; (2) extending the license portability of out-of-state occupational licenses for military service members stationed in Texas consistent with federal and state law; (3) extending residency status for non-resident license applicants to military service members; and (4) implementing a three-year recognition of out-of-state occupational licenses for military spouses whose status as a spouse changes due to a divorce or other occurrence. The adopted rules also repeal the issuance of a three-year temporary license "formerly available in conjunction with the recognition of an out-of-state license" for eligible military members, as it is redundant with other licensing options. The adopted rules also introduce new §60.518 to implement the provisions of SB 422 and the federal legislation. Current §60.518 is repealed by the adopted rules.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §60.500, Military Subchapter, to include a reference to the license portability provisions of the federal Servicemembers' Civil Relief Act found at 50 U.S.C. §4025a.

The adopted rules amend §60.501, Definitions, by: (1) expanding the definition of "active duty" to include an added portion of the federal definition for "military service" from 50 U.S.C. §3911(2)(C) which requires any period during which a person is absent from duty on account of sickness, wounds, leave, or other lawful cause to be classified as active duty; and (2) shortening the length of defined terms used throughout the rules.

The adopted rules amend §60.502, Determining the Amount of Military Experience, Service, Training, or Education, to remove redundant or unnecessary language.

The adopted rules amend §60.503, Exemption from Late Renewal Fees, to remove redundant or unnecessary language.

The adopted rules amend §60.504, Extension of Certain Deadlines, to remove redundant or unnecessary language.

The adopted rules amend §60.510, License Requirements for Applicants with Military Experience, Service, Training, or Education, to remove redundant or unnecessary language.

The adopted rules amend §60.512, Expedited Alternative Licensing Requirements--Substantially Equivalent License, to remove redundant or unnecessary language.

The adopted rules amend §60.514, Expedited Alternative Licensing Requirements--Previously Held Texas License, to remove redundant or unnecessary language.

The adopted rules amend §60.516, Expedited Alternative Licensing Requirements--Demonstration of Competency by Alternative Methods, to remove redundant or unnecessary language.

The adopted rules add new §60.518, Recognition of Out-of-State License of Military Service Members and Military Spouses, which describes the out-of-state license recognition process related to a regulated business or occupation for eligible service members and their spouses. The new rule will: (1) implement pertinent provisions of the federal Servicemembers' Civil Relief Act alongside SB 422 to provide for recognition of out-of-state occupational licenses for service members and spouses; (2) describe the specific prerequisites and procedure by which the department will grant recognition to out-of-state occupational licenses to eligible persons; (3) repeal the department's issuance of a three-year temporary license to an eligible person whose out-of-state occupational has been recognized; (4) authorize a military spouse who is recognized to engage in a business or occupation in Texas under a current out-of-state license to continue to engage in that business or occupation for three years after formal department recognition, in the event of divorce or similar event that affects the spouse's status as a military spouse; (5) acknowledge the applicability of interstate licensure compacts to state law; and (6) remove redundant or unnecessary language. This rule replaces existing §60.518.

The adopted rules amend §60.519, License Eligibility-Establishing License Residency Requirement for Out-of-State Military Service Members and Military Spouses, to: (1) acknowledge the applicability of interstate licensure compacts to state law; and (2) remove redundant or unnecessary language.

The adopted rules repeal existing §60.518.

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 September 29, 2023, issue of the *Texas Register* (48 TexReg 5609). The public comment period closed on October 30, 2023. The Department did not receive any comments from interested parties on the proposed rules.

COMMISSION ACTION

At its meeting on December 1, 2023, the Commission adopted the proposed rules as published in the *Texas Register.*

16 TAC §§60.500 - 60.504, 60.510, 60.512, 60.514, 60.516, 60.518, 60.519

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 55, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 55, and the Federal Servicemembers Civil Relief Act at 50 U.S.C. §4025a, 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 adopted rules are proposed to be adopted is Senate Bill 422, 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 December 11, 2023.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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Proposal publication date: September 29, 2023
For further information, please call: (512) 475-4879

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16 TAC §60.518

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 55, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51 and 55, and the Federal Servicemembers Civil Relief Act at 50 U.S.C. §4025a, 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 adopted repeals are proposed to be adopted is Senate Bill 422, 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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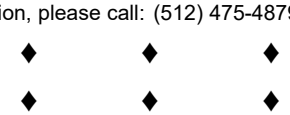

CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

16 TAC §§76.22, 76.24, 76.25, 76.27, 76.70, 76.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 76, §§76.22, 76.24, 76.25, 76.27, 76.70, and 76.80, regarding the Water Well Drillers and Pump Installers program, without changes to the proposed text as published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5801). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 76, implement Texas Occupations Code, Chapter 1901, Water Well Drillers, and Chapter 1902, Water Well Pump Installers.

Implementation of HB 3744

The adopted rules implement House Bill 3744, 88th Legislature, Regular Session (2023). This legislation establishes that a license issued under Sections 1901.155 and 1902.155 of the Texas Occupations Code, relating to water well drillers and water well pump installers, is valid for one or two years, as determined by commission rule.

The adopted rules are necessary to establish a change in the length of the license terms for certain license holders. Beginning on January 1, 2024, the license terms for initial licenses for the driller, pump installer, and combination driller and pump installer license types change from one to two years.

Additionally, the adopted rules are necessary to establish that existing licenses renewed by the Department are valid for one year if renewed before March 1, 2024, or for two years if renewed on or after March 1, 2024. The adopted rules will allow for the change in the license terms to be phased in as the license holders renew their licenses. The continuing education requirements and the fees are also adjusted accordingly for holders of those licenses.

Changes to State Well Reports

Lastly, the adopted rules implement staff changes. The adopted rules establish that well drillers shall now deliver a copy of their well log to the Department electronically through the Texas Well Report Submission and Retrieval System (TWRSRS). The adopted rules are necessary to streamline the state well report process which will save well drillers and the state resources.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §76.22. Applications for Licenses and Renewals. The adopted rules establish that, beginning on January 1, 2024, a license issued by the Department will no longer expire annually from the date issued. Instead, licenses issued by the Department are valid for two years from the date issued. Any license issued before January 1, 2024, will continue to be valid for one year.

The adopted rules amend §76.24. License Renewal. The adopted rules remove the requirement of paying an annual fee to the Department for license renewal and establishes that it must instead be paid on or before the expiration date of the license. Licensees must show proof of continuing education to renew. Licenses that are renewed before March 1, 2024, are valid for one year while those renewed on or after March 1, 2024, are valid for two years. This change ensures that revenue from licensees is received in odd-numbered and even-numbered years.

The adopted rules amend §76.25. Continuing Education. The adopted rules update the continuing education hour requirements for licensees to correspond with the changes in the license terms. For licensees who renew before March 1, 2024, four hours of continuing education are required to renew a license: one hour of instruction dedicated to Water Well Driller/Pump Installer statutes and rules and three hours of topics directly related to the water well industry. For licensees who renew on or after March 1, 2024, eight hours of continuing education are required to renew a license: one hour of instruction dedicated to Water Well Driller/Pump Installer statutes and rules and seven hours of topics directly related to the water well industry.

The adopted rules amend §76.27. Registration for Driller and/or Pump Installer Apprenticeship. The adopted rules rename the section "Registration for Driller and/or Pump Installer Apprenticeship; Renewal." The adopted rules establish that an apprentice registration issued by the Department is valid for one year and establish the renewal requirements for apprentices.

The adopted rules amend §76.70. Responsibilities of the Licensee--State Well Reports. The existing rules establish that every driller who drills, deepens, or alters a well shall maintain a State of Texas Well Report and provide a copy of the well log to: the Department; the Texas Commission on Environmental Quality; the owner of the well or the person for whom the well was drilled; and the groundwater conservation district in which the well is located, if any. The adopted rules establish that the driller shall deliver a copy of the well log to: the Department, electronically, through the Texas Well Report Submission and Retrieval System; the owner of the well or the person for whom the well was drilled; and the groundwater conservation district in which the well is located, if any. The adopted rules remove the requirement of delivering a copy of the well log to the Texas Commission on Environmental Quality.

The adopted rules amend §76.80. Fees. The adopted rules update the application and renewal fees for licensees. Beginning January 1, 2024, application fees are doubled to reflect the change from a one-year to a two-year license. Licenses that are renewed before March 1, 2024, will not see an increase in renewal fees, but for licenses that are renewed on or after March 1, 2024, the renewal fees are doubled to reflect the change from a one-year to a two-year license. This change ensures that revenue from licensees is received in odd-numbered and even-numbered years.

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 October 6, 2023, issue of the *Texas Register* (48 TexReg 5801). The public comment period closed on November 6, 2023. The Department received comments from two interested parties on the proposed rules. The public comments are summarized below.

Comment: One comment from Rolling Plains GCD was in support of the effort to require electronic submission of state well reports.

Department Response: The Department appreciates the comment in support of the proposed rule.

Comment: One comment from an interested party was against the effort to require electronic submission of state well reports unless there is a method of selecting information that can be duplicated between documents.

Department Response: The Department disagrees with this comment - electronic submission, in the aggregate, will save time and redirect resources to areas such as water well quality assurance and abandoned and deteriorated wells mitigation to better protect the public's groundwater resources. The Department did not make any changes as a result of this comment.

ADVISORY COUNCIL RECOMMENDATIONS AND COMMISSION ACTION

The Water Well Drillers and Pump Installers Advisory Council met on September 21, 2023, to discuss the proposed rules. The Advisory Council voted and recommended that the proposed rules be published in the *Texas Register* for public comment with additional recommended changes to §76.25(c). The Advisory Council recommended to increase the number of continuing education hours for an apprentice registrant from one hour to four hours, with one hour dedicated to statutes and rules and three hours dedicated to topics directly related to the water well industry. The Department did not include the Advisory Council's recommendation regarding §76.25(c) in this adoption, but it will take it into consideration for a future rulemaking. At its meeting on December 1, 2023, the Commission adopted the proposed rules as published in the *Texas Register.*

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 1901, and 1902 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, 1901, and 1902. 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 proposed to be adopted is House Bill 3744, 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 91. DOG OR CAT BREEDERS PROGRAM

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 91, §§91.10, 91.20, 91.22 - 91.24, 91.27 - 91.30, 91.50 - 91.55, 91.57, 91.58, 91.66, 91.73 - 91.74,

91.76, 91.77, 91.80, 91.90 - 91.92, 91.100 - 91.105, 91.107, 91.112, and 91.202; adopts new rules at §§91.61, 91.63 - 91.65; and adopts the repeal of existing rule §91.65, regarding the Licensed Breeder program, without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5347). These rules will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC Chapter 91, §§91.53, 91.62 and 91.80, regarding the Licensed Breeder program, with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5347). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 91, implement Texas Occupations Code, Chapter 802. This rulemaking implements Senate Bill 876, 88th Legislature, Regular Session (2023), which amended Chapter 802.

S.B. 876 made four significant changes to Chapter 802. First, it lowered the minimum number of adult intact female dogs or cats possessed by a person who is engaged in the business of breeding and selling them from 11 to five, thus increasing the number of breeders now required to obtain a license. Second, the condition that a person sell at least 20 animals per year before being subject to licensure was removed, so the number of dogs or cats sold is now irrelevant to the license requirement. Third, a new exemption from licensing was added for those who breed dogs primarily for breed or conformation shows or similar organized performance events. Finally, the existing exemptions for breeders engaged in breeding dogs primarily for personal use for herding or other agricultural uses; hunting, including tracking, chasing, pointing, flushing, or retrieving game; or for competing in field trials, hunting tests, or similar organized performance events were expanded to exempt those who breed dogs for these activities to sell or exchange.

In addition to implementing these statutory changes, the rules add a new license fee for breeders newly subject to the licensing requirement because they possess five to 10 intact adult female animals and are in the business of breeding them for direct or indirect sale or for exchange in return for consideration. The adopted rules also make minor changes to the responsibilities of license holders, as well as numerous changes that are non-substantive and update, correct, or clarify language, terminology, usage, grammar, punctuation, citations, numbering, and lettering.

Chapter 802 requires the Department to impose on licensed dog or cat breeders the federal specifications for the humane handling, care, treatment, and transportation of dogs and cats in Title 9 of the Code of Federal Regulations (CFR). The new state legislation requires those breeders who are now subject to the requirement to hold a license to do so by January 1, 2024. Given the limited time available to adopt updated rules to implement the statutory changes, the Department decided to forego substantial rule amendments unrelated to the changes brought by S.B. 876 in this rulemaking. A substantive rulemaking will follow that more thoroughly updates the rules to match the CFR requirements, resolves other outstanding issues, and addresses comments and staff recommendations collected during the most recent four-year review of Chapter 91.

The adopted rules add a new authorization from the CFR allowing license holders to keep records for animals housed in a group in a single group record rather than requiring an individual record for each animal. Further, the adopted rules authorize the license holder to make corrective actions that fit the license holder's budget and resources, as long as the actions achieve compliance, instead of having to make corrective actions in a manner recommended by TDLR. The adopted rules also authorize an applicant for an initial license to provide evidence to TDLR that deficiencies noted in a pre-license inspection have been corrected and the facility meets the requirements of the rules, rather than requiring the applicant to request and pay for another pre-license inspection.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §91.10, Definitions, by adding a definition for "the Act," "licensee," and "representative," and correcting a citation and adding a reference to the CFR that was moved from §91.100. The definition of a "dog or cat breeder" is amended for consistency with the new statutory language. The provisions in the section are renumbered.

The adopted rules amend §91.20, Applicability, to update a citation to the Texas Racing Act.

The adopted rules amend §91.22, License Required, to clarify the license requirement and to provide the date by which those who are newly subject to the licensing requirement must be licensed.

The adopted rules amend §91.23, License Requirements, to update, clarify, and reorganize the section.

The adopted rules amend §91.24, License Renewal, to update and clarify language.

The adopted rules amend §§91.27, 91.28, and 91.29, relating to notice to licensees and term of license, to remove outdated language that refers to registration.

The adopted rules amend §91.30, Exemptions, to add an exemption from the licensing requirement for dogs bred with the intent that they will be used primarily for breed or conformation shows. Existing exemptions are also expanded, and language is amended to match the new statutory provisions for exemptions. A cross-reference has also been updated.

The adopted rules amend §91.50, Inspections-Prelicense, to clarify that licensees need not request and pay for a second inspection to demonstrate that deficiencies have been corrected but may instead provide evidence of corrected deficiencies to the Department.

The adopted rules amend §91.51, Inspections-Prelicense Exemption, to make the rule language more concise.

The adopted rules amend §91.52, Inspections-Periodic, to update language and to provide that the Department may indicate recommended corrective actions for violations noted in an inspection report.

The adopted rules amend §91.53, Out-of-Cycle Inspections, to update language and to provide that the Department may indicate recommended corrective actions for violations noted in an inspection report. Minor grammatical edits to §91.53(b), changing "licensee" to "licensees," and §91.53(h), adding "a" to read "a Tier 2 out-of-cycle inspection," were approved at adoption.

The adopted rules amend §91.54, Corrective Actions Following Periodic or Out-of-Cycle Inspections, to clarify that licensees are not obligated to perform corrective actions recommended by the Department but may choose alternative corrective actions to achieve compliance.

The adopted rules amend §91.55, Responsibilities of the Department--Directory, to clarify language.

The adopted rules amend §91.57, Responsibilities of the Department--Consumer Interest Information, to add provisions stemming from Occupations Code Chapter 51 regarding complaint handling and immunity from liability for qualified persons who aid in Department investigations.

The adopted rules amend §91.58, Responsibilities of the Departmentâ--Donations, Disbursements and Reporting, to correct a term.

The adopted rules create new §§91.61-91.65 to update existing requirements and add standard provisions for advisory committee duties, membership, terms, vacancies, officers, and meetings.

The adopted rules repeal §91.65, Advisory Committee, to move, update, and standardize advisory committee requirements in new §§91.61-91.65.

The adopted rules amend §91.66, Responsibilities of Inspectors--Inspections, Investigations, and Reports of Animal Cruelty, to update and correct language.

The adopted rules amend §91.73, Responsibilities of Licensee--Onsite Availability of Law and Rules, to clarify the wording of the requirement and to allow licensed breeders to maintain electronic copies of the Act and program rules.

The adopted rules amend §91.74, Responsibilities of Licensee--Mandatory Contract Provisions, to remove unnecessary language.

The adopted rules amend §91.76, Responsibilities of Licensee--Annual Inventory, to clarify language.

The adopted rules amend §91.77, Responsibilities of Licensee--Animal Records Content, Availability, and Retention Period, to correct terminology and to implement a CFR change that allows routine husbandry records for a group of animals to be kept on a single record.

The adopted rules amend §91.80, Fees, to add license and license renewal fees for the new category of licensed breeders who possess for breeding and sale between five and ten adult intact female animals. Standard provisions relating to Department fees are also added and language is updated and corrected. On recommendation from staff, three instances of the word "adult" were added for internal consistency in the rules and were approved by the Advisory Committee when it recommended adoption of the rules.

The adopted rules amend §§91.90, 91.91, and 91.92, relating to penalties and enforcement, to update and clarify language.

The adopted rules amend §91.100, Standards of Care--Housing Generally, to move a provision from this section to §91.10, Definitions, and to renumber the section.

The adopted rules amend §91.101, Standards of Care--Indoor Housing Facilities, to correct a term.

The adopted rules amend §§91.102 and 91.103, relating to sheltered housing and outdoor housing, to clarify language.

The adopted rules amend §91.104, Standards of Care--Primary Enclosure, to clarify language and to renumber the provisions of the section.

The adopted rules amend §91.105, Standards of Care--Compatible Grouping, to clarify and renumber the provisions.

The adopted rules amend §91.107, Standards of Care--Feeding, to clarify that measures must be taken to ensure that self-feeders are free from molding, deterioration, or caking of feed.

The adopted rules amend §91.112, Standards of Care--Veterinary Care, to update a citation to the Veterinary Licensing Act and clarify language.

The adopted rules amend §91.202, Transportation Standards--Primary Enclosure Used to Transport Live Dogs and Cats, to clarify language.

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 September 22, 2023, issue of the *Texas Register* (48 TexReg 5347). The public comment period closed on October 23, 2023. The Department received comments from 253 interested parties, including 21 organizations. The public comments are summarized below.

Many written comments from individuals indicated an affiliation with an organization but did not specify that the comment was made on behalf of, or as a representative of, the organization. More than one individual submitted comments stating that they represent an organization, so for some of the listed organizations comments were submitted by more than one individual. The Department does not verify whether a person is authorized to comment as a representative of an organization. The organizations for which comments were submitted are the following:

A. American Kennel Club;

B. Anderson County Humane Society;

C. Animal Connection of Texas, Inc.;

D. Animal Legal Defense Fund;

E. Aussie Rescue of North Texas;

F. Barrio Dogs, Inc.;

G. Best Friends Animal Society;

H. Find Your Riley Fund;

I. Houston PetSet;

J. Humane Tomorrow;

K. Kerrville Pets Alive!;

L. Lucky Two Times Animal Sanctuary and Advocacy Programs;

M. Metro Animals;

N. People Assisting Animal Control;

O. Responsible Pet Owners Alliance;

P. SPCA;

Q. SPCA of Dallas Texas;

R. SPCA of Texas;

S. TAP Newsletter;

T. Texas Animal Control Association; and

U. Texas Humane Legislation Network.

For conciseness in this response these organizations are identified by the letter preceding the name in the list above.

The Department must respond to comments on the proposed rules. 251 of the 253 interested parties who commented expressed support for the rules, but many also raised concerns for their implementation and effect. The Department believes it is appropriate to acknowledge these areas of concern and is doing so in its response. The Department is also initiating a new rulemaking to update the standards of care, as required by law, during which these concerns may be further addressed.

The public comments received did not include recommendations for specific changes to the rule text as proposed. The Department may not insert text changes at the time of rule adoption that depart in any significant way from the rules as proposed. Therefore, the following comment summaries and responses address the topics and issues raised without identifying word-for-word rule text changes that are not being made in this rulemaking but that might be made in the future.

Comment: 120 individuals and four organizations (P, Q, R, U) submitted the following comment. Some of the submissions included additional details about how the commenter contacted his or her legislators, and word choices varied somewhat from person to person, but the same main statements were made:

"I supported the passage of S.B. 876 during the regular legislative session as it fixed two major loopholes preventing the Texas Licensed Breeders Program from working as intended. AKC wants more loopholes for breeders to operate outside the law. Please ignore AKC's attempt to undermine the Legislature and the Program by muddying the waters on the exceptions passed by the Legislature. I fully support the legislation and the rules as proposed to make much-needed improvements to the Texas Licensed Breeder Program."

32 individuals and two organizations (B, U) submitted the following, similar comment with minor variations in wording:

"I advocated for my Representative and Senator to support and vote to pass S.B. 876 during the regular legislative session, as it fixed two major loopholes preventing the Texas Licensed Breeders Program from working as intended. I fully support the legislation and the rules as proposed to make much-needed improvements to the Texas Licensed Breeder Program. Please ignore other organizations' attempts to make additional changes and create needless loopholes within the rules and laws surrounding breeding dogs and cats in the State of Texas."

In addition to the multiple similar comments from 152 individuals and five organizations just described above:

Sixty-three additional individuals and 11 organizations (C, D, E, G, H, I, K, Q, R, T, U) expressed their support for S.B. 876 and the proposed rules. Four organizations (A, L, M, N) expressed support specifically for the proposed rules.

Fourteen additional individuals and eight organizations (C, D, G, H, K, N, T, U) expressed strong concern about not creating loopholes in the rules that would weaken them such that breeders could unfairly qualify for exemptions from licensing or otherwise evade complying with the law and rules. Another 24 individuals and 10 organizations (E, F, H, I, J, N, P, Q, R, U) commented specifically against the American Kennel Club (AKC) attempting to open loopholes in the rules that would reduce protections for dogs and urged the Department not to respond to this pressure.

Fifty-two individuals and 15 organizations (C, D, F, G, H, I, J, K, M, N, P, Q, R, T, U) expressed support for the rules but emphasized their desire that no further changes be made to the rules, stating concern that the rules might be made less stringent if modified. Eight individuals and one organization (S) commented that the rules should be more stringent than currently proposed.

Nine individuals commented that the standards in the rules are very important and must be maintained. Four individuals and two organizations (F, H) commented that the proposed rules will improve the Licensed Breeder program.

Department Response: The Department acknowledges and appreciates the expressions of support for the proposed rules. The Department agrees with the commenters that the rules should not be made less stringent. No changes have been made to the proposed rules in response to these comments.

Comment: Thirty-four individuals and five organizations (D, F, S, T, U) supporting the rules expressed negative feelings toward "unscrupulous" and "unaccountable" animal breeders for causing an animal overbreeding and overpopulation problem in Texas. Thirteen individuals and two organizations (D, H) expressed concern over an increasing number of those animals needing rescue or rehabilitation or being euthanized in Texas.

Seventeen individuals and three organizations (D, H, J) specifically expressed concern about maltreatment, cruelty, substandard care, abuse, or poor living conditions of animals possessed by breeders or so-called "puppy mills."

Sixteen individuals and three organizations (C, H, I) made comments stating that breeders are greedy and make money off of the suffering and poor care given to the animals they possess without regard for the animals' health, well-being, or life.

Department Response: The Department appreciates the commenters' support for the proposed rules and acknowledges the seriousness of their concerns. The Department agrees with the comments pointing out various problems related to the care of animals in Texas and will be working with the public, stakeholders, and the Licensed Breeder Advisory Committee to identify and implement rule or procedure changes, where possible, that will help to address these problems. While the Act imposes minimum standards for the care and treatment of the animals in a licensed breeder's possession, it does not require licensed breeders to ensure that every animal receives a home and does not specify how excess animals must be handled. Legislative action would be required to update the Act to include such subject matter. The Department has made no changes to the proposed rules in response to these comments.

Comment: The American Kennel Club commented that the Department must clarify how the changes to the law and rules regarding applicability and exemptions will be applied to those who own but are not actively breeding five or more intact female dogs. The commenter also asked the Department to explain how the exemption for breed and conformation shows will apply to dogs that are more than six months old but are not yet being shown despite having been bred to be shown.

Department Response: This comment relates to the interpretation of both existing and new provisions in the law and rules. In accordance with §91.21 of the rules, "[E]ach adult intact female animal possessed by a person engaged in the business of breeding animals for direct or indirect sale or for exchange in return for consideration is presumed to be used for breeding purposes unless the person establishes to the satisfaction of the department,

based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding." Section 91.30 states that "a dog bred with the intent that it be used primarily for competing in field trials, hunting tests, breed or conformation shows, or similar organized performance events" may not be counted for purposes of determining the number of adult intact female animals possessed by a person. Possession of an animal is defined as "To have custody of or control over."

The issue of ownership of an animal is irrelevant to determining if the animal is possessed by a breeder. A breeder in possession of adult intact female animals who is in the business of breeding them must demonstrate for each animal that it qualifies for one of the exemptions in the law or that it is not being used for breeding. Otherwise, it must be counted among the animals possessed by that breeder that may subject the breeder to the licensing requirement. An adult intact female dog for which the breeder can demonstrate that it was bred with the intent that it be used primarily for breed or conformation shows or similar organized performance events need not be counted among the animals that may subject the breeder to the licensing requirement. The Department agrees that it is obligated to enforce the law and rules as written, but it is not obligated to prove that exemptions or exceptions apply. No changes to the proposed rules have been made in response to these comments.

Comment: Included in the comments on the proposed rules were a number of concerns regarding issues and subjects that are not within the scope of the proposed rules:

- Three individuals commented that breeders are selling animals for cash, thus avoiding paying state sales tax on potentially hundreds of thousands of dollars per year per breeder.

- Four individuals and two organizations (D, H) commented that the costs associated with breeders' excess animals are being borne by taxpayers, local jurisdictions, and animal welfare organizations and that these costs should be assigned to breeders.

- All breeders of any number of dogs should be required to be licensed and adhere to required ethical breeding standards (S).

- Small-scale service-dog breeders should be exempt from the rules or less stringent rules should be adopted for them or they will be put out of business (O).

- The Licensed Breeder Act applies to both dogs and cats so rules should be adopted to exempt cats bred for breed or conformation shows (O).

- The USDA is failing to enforce and regulate properly under the Animal Welfare Act (AWA) because it is stretched too thin and the AWA standards are too low (D).

Department Response: The Department agrees that the comments raise issues of concern, but it is not currently empowered by the law to address them. The Act does not authorize the Department to regulate outside of the parameters of the Act. At present, the Act does not impose any restrictions regarding cash sales of animals; however, other laws may apply. No requirements are in place for disposition of excess animals by a licensed breeder. Likewise, no mechanism exists in the Act that would enable local jurisdictions or other entities to recoup their costs related to excess animals produced by breeders, so the Department may not create rules to do so.

The number of adult intact female dogs that a breeder possesses that may subject the breeder to the licensing requirement is five or more; therefore, the Department is not authorized to require breeders who possess fewer than five non-exempt dogs to be licensed. Only breeders that are subject to the licensing requirement are required to comply with the Department standards for licensed breeders. The exemptions in the Act do not apply to breeders of service dogs even if they are nonprofit or charitable organizations unless the dogs also qualify for one of the existing exemptions. The Department is not authorized to create exemptions that are not included in the Act. Likewise, the Department may not open the §91.30 exemptions currently available only for breeders of dogs to breeders of cats without such a provision in the Act.

Finally, the Department is required by the Act to adopt into Department rules and enforce the Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats, which are minimum federal standards of the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture. The Department rules in §91.23 may waive certain licensing requirements for Texas breeders who hold a Class A or Class B federal animal dealers' license issued under the Animal Welfare Act, but these breeders are obligated to comply with Department rules for standards of care like any other Texas-licensed breeder. A breeder who is subject to both the federal and state license requirements may not violate Department rules regardless of whether that breeder is in compliance with the requirements to hold the federal license. The Department does not have jurisdiction to enforce the federal regulations against a Texas breeder who holds a federal license but may enforce the state rules if that breeder holds or is required to hold a Texas breeder license. The Department has no jurisdiction or control over the operations of the federal APHIS. No changes to the proposed rules have been made in response to these comments.

ADVISORY COMMITTEE RECOMMENDATIONS AND COMMISSION ACTION

The Licensed Breeder Advisory Committee met on November 1, 2023, 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 §91.80 made in response to a staff recommendation. The word "adult" was inserted in three provisions for internal consistency in the rules. At its meeting on December 1, 2023, the Commission adopted the proposed rules as recommended by the Advisory Committee with minor grammatical edits to §91.53(b), changing "licensee" to "licensees," and §91.53(h), adding "a" to read "a Tier 2 out- of-cycle inspection."

16 TAC §§91.10, 91.20 - 91.24, 91.27 - 91.30, 91.50 - 91.55, 91.57, 91.58, 91.61 - 91.66, 91.73, 91.74, 91.76, 91.77, 91.90 - 91.92, 91.100 - 91.105, 91.107, 91.112, 91.202

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 802, 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 and 802. 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 proposed to be adopted is Senate Bill 876, 88th Legislature, Regular Session (2023).

§91.53. Out-of-Cycle Inspections.

(a) Out-of-cycle inspections are those required in addition to periodic inspections required under §91.52 for licensed facilities to ensure compliance with this chapter.

(b) To determine which licensees will be subject to out-of-cycle inspections, the department has established criteria and frequencies for inspections.

(c) The owner of the facility shall pay the fee required under §91.80 for each out-of-cycle inspection.

(d) Facilities subject to out-of-cycle inspections may be scheduled for inspection based on the following risk criteria and inspection frequency:
Figure: 16 TAC §91.53(d) (No change.)

(e) At the time of inspection of a licensee, the licensee or representative must, upon request, make available to the inspector, records, notices and other documents required by this chapter.

(f) On completion of the out-of-cycle inspection and while at the facility, the inspector shall leave with the licensee or representative a preliminary report on a form approved by the department listing the items not meeting the requirements of this chapter. The preliminary report required by this section is in addition to the completed report required by this chapter and does not affect the validity of the completed detailed report.

(g) The inspection report will identify violations that must be corrected by the licensee. The report may also indicate recommended corrective actions required to address the violations. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations identified during the out-of-cycle inspection.

(h) Facilities on a Tier 1 out-of-cycle inspection schedule that have two inspections with no violations or a Tier 2 out-of-cycle inspection schedule that have three inspections with no violations may be moved to a less frequent out-of-cycle inspection schedule or returned to a periodic schedule of inspections. The department will notify the licensee, in writing, if there is a change in the facility's out-of-cycle schedule or if the facility is returned to a periodic inspection schedule.

§91.62. Advisory Committee--Membership.

(a) The advisory committee consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two members who are licensed breeders;

(2) two members who are veterinarians;

(3) two members who represent animal welfare organizations, each of which has an office based in this state;

(4) two members who represent the public; and

(5) one member who is an animal control officer as defined in §829.001, Health and Safety Code.

(b) Except for the members described by subsection (a)(1), a person may not be a member of the advisory committee if the person or a member of the person's household:

(1) is required to be licensed under this chapter;

(2) is an officer, employee, or paid consultant of an entity required to be licensed under this chapter;

(3) owns or controls, either directly or indirectly, more than a 10 percent interest in an entity required to be licensed under this chapter; or

(4) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of an entity required to be licensed under this chapter.

(c) The presiding officer of the commission may remove from the advisory committee a member who is ineligible for membership under subsection (b).

§91.80. Fees.

(a) Application Fees

(1) Dog or Cat Breeder License, 5-10 Adult Intact Female Animals

(A) Original Application--$150

(B) Renewal--$150

(2) Dog or Cat Breeder License, 11-25 Adult Intact Female Animals

(A) Original Application--$300

(B) Renewal--$300

(3) Dog or Cat Breeder License, 26 or more Adult Intact Female Animals

(A) Original Application--$500

(B) Renewal--$500

(b) Out-of-Cycle Inspections--$150

(c) Revised/Duplicate License--$25

(d) Late renewal fees for licenses under this chapter are provided under §60.83.

(e) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82.

(f) The fee for a criminal history evaluation letter is the fee prescribed under §60.42.

(g) All fees paid to the department are nonrefundable.

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 December 11, 2023.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3306

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16 TAC §91.65

STATUTORY AUTHORITY

The repealed rules are repealed under Texas Occupations Code, Chapters 51 and 802, 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 repealed rules are those set forth in Texas Occupations Code, Chapters 51 and 802. No other statutes, articles, or codes are affected by the repealed rules. The legislation that enacted the statutory authority under which the repealed rules are proposed to be adopted is Senate Bill 876, 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 111. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 111, Subchapter A, §111.2; Subchapter U, §111.201; and Subchapter W, §111.220; and adopts a new rule at Subchapter A, §111.3, regarding the Speech-Language Pathologists and Audiologists program, without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5369). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 111 implement Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists, and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department).

The adopted rules implement changes made to Texas Occupations Code, Chapter 401 by Senate Bill (SB) 2017, 88th Legislature, Regular Session (2023); implement changes made by the U.S. Food and Drug Administration (FDA) in its final rule regarding over-the-counter hearing aids and prescription hearing aids; and clarify the requirements regarding medical statements for sales of hearing instruments to individuals under 18 years of age.

Implementation of SB 2017 and the FDA Hearing Aid Rule

The adopted rules are necessary to implement the provisions of SB 2017, which changed Chapter 401 of the Occupations Code governing Speech-Language Pathologists and Audiologists, to address the new category of "over-the-counter hearing aids" established in federal law and rule.

In 2022, the FDA revised its federal rules, repealed prior rules, and adopted new rules for hearing instruments to include an "over-the-counter hearing aid" category of hearing instruments found in 21 CFR §800.30. The FDA Hearing Aid rule created a definition and framework for a new "over-the-counter hearing aid" category. The changes in the FDA Hearing Aid rule were designed to provide easier access to over-the-counter hearing aids by removing restrictions on the sale of those devices. To remain consistent with federal law, the state statutes and rules regulating the sale of hearing instruments required changes to reflect this new category and the new regulatory framework. The FDA Hearing Aid Rule may be found under Medical Devices; Ear, Nose, and Throat Devices; Establishing Over-the-Counter Hearing Aids, 87 Fed. Reg. 50698 (August 17, 2022) (later codified at 21 CFR Parts 800, 801, 808 and 874).

Since the definition of "hearing instrument" in Texas law would have included "over-the-counter hearing aids", SB 2017 changed Chapters 401 and 402 of the Occupations Code to reflect the changes in Federal law and to clarify the sale of "over-the-counter hearing aids" consistent with the FDA Hearing Aid Rule.

The adopted rules also make changes to reflect the FDA Hearing Aid Rule that repealed requirements related to certain medical waiver forms. To the extent that the Department has received prior comments during rule review or other rulemakings related to conformity of the Speech-Language Pathologists and Audiologists rules to the FDA rules, the Department has proposed changes to conform these rules to SB 2017 and the FDA Hearing Aid Rule.

Clarifying Requirements for Sales to Individuals under 18

The adopted rules amend the requirement to obtain a medical statement or waiver before the sale of a hearing instrument. The FDA ceased enforcement of the waiver requirement in 2017 and repealed that requirement as part of the FDA Hearing Aid Rule in 2022. The adopted rules require a written medical statement only when the client is under 18 years of age, as required in Texas Occupations Code §401.404. This ensures consistency with the repeal of the FDA waiver requirements and the requirements of Occupations Code §401.404.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

The adopted rules amend §111.2, Definitions. The adopted rules amend definitions for "fitting and dispensing hearing instruments," "hearing instrument," and "sale" (previously "sale or purchase"); create definitions for "hearing aid" and "over-the-counter hearing aid"; and renumber the remaining definitions. These new definitions and revisions incorporate statutory changes made by SB 2017.

The adopted rules add new §111.3, Over-the-Counter Hearing Aids. This new rule incorporates the exemption language added to the statute by SB 2017.

New §111.3(a) clarifies that except as provided in §111.3, Chapter 111 does not apply to the activities related to over-the-counter hearing aids.

New §111.3(b) provides that a person is not required to obtain a license to perform activities described in subsection (a).

New §111.3(c) provides that a person may not use the term "licensed dispenser" or "licensed seller" in regard to the sale of over-the-counter hearing aids unless the person is licensed as an audiologist or audiologist intern under this chapter or as a hearing instrument fitter and dispenser under Chapter 112.

New §111.3(d) provides that supervision, prescription, order, involvement, or intervention of a licensee is not required for a consumer to access over-the counter hearing aids.

New §111.3(e) provides that a licensee may engage in the activities described in subsection (a) regarding over-the-counter hearing aids, but that those activities do not exempt a licensee from any applicable provision of Chapter 111 unrelated to the activities in §111.3(a).

Subchapter U. Fitting and Dispensing of Hearing Instruments.

The adopted rules amend §111.201, General Practice Requirements of Audiologists and Interns in Audiology Who Fit and Dispense Hearing Instruments.

The adopted rules amend §111.201(1) to delete references to the repealed federal rules 21 CFR §801.420, Hearing aid devices; professional and patient labeling, and 21 CFR §801.421, Hearing aid devices; conditions for sale. The adopted rules references new federal rule 21 CFR §801.422, which addresses prescription hearing aids. The adopted rules reflect the changes made by the FDA Hearing Aid Rule.

The adopted rules amend §111.201(2) to change "insure" to "ensure."

The adopted rules amend §111.201(3) because that section incorporated the legal requirements of 21 CFR §801.421 and that section has been repealed. The FDA ceased enforcement of the waiver requirement in 2017 and subsequently repealed that requirement as part of the FDA Hearing Aid Rule in 2022. The adopted rules now read to require a written statement of a medical evaluation in instances where the client is under 18 as required in Texas Occupations Code §401.404. The adopted rule clarifies that a written statement is not required for clients 18 years of age or older.

Subchapter W. Joint Rule Regarding the Sale of Hearing Instruments.

The adopted rules amend §111.220. Requirements Regarding the Sale of Hearing Instruments.

The adopted rules amend §111.220(b) and §111.220(b)(1) to clarify that the 30-day trial period referenced relates to a hearing instrument.

The adopted amendments remove §111.220(b)(6) because it incorporates a reference to waiver forms required by 21 CFR §801.421 and §111.201(3). Since 21 CFR §801.421 was repealed by the FDA Hearing Aid Rule and §111.201(3) was amended, this paragraph was also removed. The remaining paragraphs in this subsection are renumbered.

The adopted rules amend §111.220(d)(3) to require medical evaluations or waivers of evaluation to be maintained only if they are provided. This change also reflects the changes in §111.201(3). This change reflects the previously referenced repeal of waiver requirements in 21 CFR 801.421 and is made for consistency with the amendments to §112.140(c)(6).

Since §111.220 is a joint rule required by Texas Occupations Code §401.2021 and §402.1021 to be adopted by the Commission with the assistance of the Speech-Language Pathologists and Audiologists Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, §111.220 will mirror the text of §112.140.

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 September 22, 2023, issue of the *Texas Register* (48 TexReg 5369). The public comment period closed on October 23, 2023. The Department received comments from three interested parties on the proposed rules. The public comments are summarized below.

Comment: An individual submitted a comment concurring with the proposed rules and stating that the proposed changes to the medical waiver requirements are timely and necessary based on the FDA changes in the over-the-counter market. The individual expressed appreciation for ensuring that the state licensure requirements are contemporary and consistent with the federal requirements.

Department Response: The Department appreciates the comment in support of the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Texas Medical Association (TMA) submitted a combined comment letter on the Speech-Language Pathologists and Audiologists (SPA) proposed rules under 16 TAC Chapter 111 and the Hearing Instrument Fitters and Dispensers (HFD) proposed rules under 16 TAC Chapter 112.

TMA stated that the FDA federal rules for hearing instruments no longer require certain medical evaluations and waivers, and that the Department's proposed rules remove the corresponding medical evaluation requirements in SPA rule §111.201 for an adult prospective hearing aid user. TMA offered the following comments in its letter: "TMA has concerns that removing these requirements will leave adult patients [uninformed] about when it is recommended to undergo medical evaluation for hearing loss. The hearing aid labeling requirements in the new federal rules contain a list of "Red Flag" conditions for which a hearing aid dispenser should refer a prospective hearing aid user to a physician." In summary, TMA commented: "Though the federal rule underlying [the medical evaluation] requirement has been removed, to promote patient safety, TMA recommends that TDLR's adopted rules should still contain the new federal "Red Flag" guidelines for when a patient should be medically evaluated."

TMA recommended that the Department amend SPA rule §111.201 to include new suggested language that tracks the "Red Flag" labeling requirements in new FDA rule §801.422. TMA also recommended making the corresponding change to HFD rule §112.96, either by adding the same new suggested language or by adding a cross-reference to SPA rule §111.201.

Department Response: The Department reviewed the comment, but disagrees with the comment. The Department did not make any changes to the proposed rules in response to this comment for the following reasons.

First, the proposed rules align with the federal FDA rule changes. While the HFD rules did not include the same separate medical evaluation and waiver provisions as the SPA rules, both sets of rules previously required compliance with the former FDA rules 21 CFR §801.420 and §801.421. Former FDA rule §801.420 included the "red flag" conditions, and former FDA rule §801.421 included the medical evaluation and waiver provisions. These two FDA rules were repealed as part of the FDA Hearing Aid Rule, and new FDA rule §801.422 Prescription Hearing Aid Labeling, was adopted. The HFD and SPA proposed rules align with these FDA rule changes.

Second, the Department cannot add new substantive requirements to the rules at this stage of the rulemaking process, since the public has not had notice and opportunity to comment on those substantive changes. If the Department agreed that substantive changes needed to be made, the Department would either have to withdraw the proposed rules, republish them with the new provisions, and start the public comment period over, or the Department would have to add the substantive changes in the future in a separate future rulemaking.

Finally, the suggested changes are unnecessary. The comment suggested adding the requirements regarding the "red flag" conditions from FDA rule 21 CFR §801.422, Prescription Hearing Aid Labeling, into SPA rule §111.201 and HFD rule §112.96. The proposed changes to SPA rule §111.201 and HFD rule §112.96, however, already require compliance with new FDA rule §801.422, which includes the requirements regarding the "red flag" conditions along with other requirements. It is not necessary to have a separate provision in the SPA rules or the HFD rules specifically addressing the "red flag" conditions.

Comment: The Texas Academy of Audiology (TAA) submitted a comment letter in support of the proposed rules. TAA offered the following comments in its letter: (1) TAA stated that the proposed rules bring the rules under 16 TAC Chapter 111 in alignment with the FDA final rule regarding over-the-counter (OTC) hearing aids. (2) TAA appreciates and agrees with the updated definitions that align with the new classifications for OTC hearing aids and prescription hearing aids, along with the other rule changes that follow the definition changes. (3) TAA appreciates the timeliness of the proposed rules and that the proposed rules provide necessary clarifications for practicing audiologists related to OTC hearing aids. (4) TAA agrees with the changes related to the medical waiver requirement as it relates to persons 18 years and older. TAA stated that the medical waiver requirement brought little public health benefit and served as a barrier to hearing healthcare accessibility. The proposed rules align with the FDA's repeal of the requirement in the FDA final rule on OTC hearing aids. (5) TAA agrees with retaining the medical evaluation requirement including a written statement from a physician for persons under age 18. (6) TAA appreciates the clarification to maintain the medical evaluation and the medical evaluation waiver on file if provided.

Department Response: The Department appreciates the comment in support of the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Speech-Language Pathologists and Audiologists Advisory Board met on October 31, 2023, 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.* At its meeting on December 1, 2023, the Commission adopted the proposed rules as recommended by the Advisory Board and the Department.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §111.2, §111.3

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 401, 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 and 401, and 402 as applicable. 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 U. FITTING AND DISPENSING OF HEARING INSTRUMENTS

16 TAC §111.201

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 401, 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 and 401, and 402 as applicable. 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 W. JOINT RULE REGARDING THE SALE OF HEARING INSTRUMENTS

16 TAC §111.220

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 401, 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 and 401, and 402 as applicable. 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 112. HEARING INSTRUMENT FITTERS AND DISPENSERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 112, Subchapter A, §112.2; Subchapter H, §112.70; Subchapter J, §112.92 and §112.96; and Subchapter O, §112.140; and adopts a new rule at Subchapter A, §112.3, regarding the Hearing Instrument Fitters and Dispensers program, without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5375). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 112 implement Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers, and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department).

The adopted rules implement changes made to Texas Occupations Code, Chapter 402 by Senate Bill (SB) 2017, 88th Legislature, Regular Session (2023); implement changes made by the U.S. Food and Drug Administration (FDA) in its final rule regarding over-the-counter hearing aids and prescription hearing aids; make changes to provide continuing education credit for proctors of the practical test; and update language to reference the Department's website in contracts and signs.

Implementation of SB 2017 and the FDA Hearing Aid Rule

The adopted rules are necessary to implement the provisions of SB 2017, which changed Chapter 402 of the Occupations Code governing Hearing Instrument Fitters and Dispensers, to address the new category of "over-the-counter hearing aids" established in federal law and rule.

In 2022, the FDA revised its federal rules, repealed prior rules, and adopted new rules for hearing instruments to include an "over-the-counter hearing aid" category of hearing instruments found in 21 CFR §800.30. The FDA Hearing Aid rule created a definition and framework for the new "over-the-counter hearing aid" category. The changes in the FDA Hearing Aid rule were designed to provide easier access to over-the-counter hearing aids by removing restrictions on the sale of those devices. To remain consistent with federal law, the state statutes and rules regulating the sale of hearing instruments required changes to reflect this new category and the new regulatory framework. The FDA Hearing Aid Rule may be found under Medical Devices; Ear, Nose, and Throat Devices; Establishing Over-the-Counter Hearing Aids, 87 Fed. Reg. 50698 (August 17, 2022) (later codified at 21 CFR Parts 800, 801, 808 and 874).

Since the definition of "hearing instrument" in Texas law would have included "over-the-counter hearing aids," SB 2017 changed Chapters 401 and 402 of the Occupations Code to reflect the changes in federal law and to clarify the sale of "over-the-counter hearing aids" consistent with the FDA Hearing Aid Rule.

The adopted rules also make changes to reflect the FDA Hearing Aid Rule that repealed requirements related to certain medical waiver forms. To the extent that the Department has received prior comments during rule review or other rulemakings related to conformity of the Hearing Instrument Fitters and Dispensers rules to the FDA rules, the Department has proposed changes to conform these rules to SB 2017 and the FDA Hearing Aid Rule.

Continuing Education Credit for Proctors of the Practical Test

The adopted rules amend the continuing education categories to allow for continuing education credit for a licensee who proctors the practical test. A licensee may receive a single continuing education credit hour for each practical test date, not to exceed four continuing education credit hours per license term. The adopted rules are necessary to assist the program's function by making sure there is an adequate number of proctors for the practical test.

Update Language to Reference the Department's Website in Contracts and Signs

The adopted rules amend existing rules requiring that the Department's email address be included in every contract and on a sign in the licensee's primary place of business. The adopted rules require that the contracts and signs include the Department's website address instead of email address. This change is necessary to ensure proper complaint handling and to assist the public in contacting the Department in accordance with complaint handling processes.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

The adopted rules amend §111.2, Definitions. The adopted rules amend definitions for "fitting and dispensing hearing instruments," "hearing instrument," and "sale" (previously "sale or sell"); create definitions for "hearing aid" and "over-the-counter hearing aid"; and renumber the remaining definitions. These new definitions and revisions incorporate statutory changes made by SB 2017.

The proposed rules add new §112.3, Over-the-Counter Hearing Aids. This new rule incorporates the exemption language added to the statute by SB 2017.

New §112.3(a) clarifies that except as provided in §112.3, Chapter 112 does not apply to activities related to over-the-counter

hearing aids including servicing, marketing, selling, dispensing, providing customer support for, acquiring, or distributing over-the-counter hearing aids.

New §112.3(b) provides that a person is not required to obtain a license to perform activities described in subsection (a).

New §112.3(c) provides that a person may not use the term "licensed dispenser" or "licensed seller" in regard to the sale of over-the-counter hearing aids unless the person is licensed as a hearing instrument fitter and dispenser or as an audiologist or audiologist intern under Chapter 111.

New §112.3(d) provides that supervision, prescription, order, involvement, or intervention of a licensee is not required for a consumer to access over-the counter hearing aids.

New §112.3(e) provides that a licensee may engage in the activities described in subsection (a) regarding over-the-counter hearing aids, but that those activities do not exempt a licensee from any applicable provision of Chapter 112 unrelated to the activities in subsection (a).

Subchapter H. Continuing Education Requirements.

The adopted rules amend §112.70. Continuing Education--Hours and Courses. The adopted rules amend §112.70(g)(2) and (3) by shifting "and/or" from (g)(2) to (g)(3) due to the addition of (g)(4).

New §112.70(g)(4) provides that a licensee who serves as a proctor for the practical test may receive up to one continuing education credit hour for each test date, with a maximum of four continuing education hours of credit earned each license term.

Subchapter J. Responsibilities of the Licensee.

The adopted rules amend §112.92, Consumer Information and Client Records. The adopted rules require a licensee to inform each client of the website address of the Department in each written contract for services and on a sign prominently displayed in their primary place of business. This is a change from the existing requirement to inform clients of the email address of the Department.

The adopted rules amend §112.96 to delete references to the repealed federal rules 21 CFR §801.420, Hearing aid devices; professional and patient labeling, and 21 CFR §801.421, Hearing aid devices; conditions for sale. The adopted rule references new federal rule 21 CFR §801.422, which addresses prescription hearing aids. The adopted rules reflect the changes made by the FDA Hearing Aid Rule.

Subchapter O. Joint Rule Regarding the Sale of Hearing Instruments.

The adopted rules amend §112.140. Requirements Regarding the Sale of Hearing Instruments.

The adopted rules amend §112.140(b) and §112.140(b)(1) to clarify that the 30-day trial period referenced in this rule relates to a hearing instrument.

The adopted amendments remove §112.140(c)(6) because it incorporates a reference to waiver forms required by 21 CFR §801.421. Since 21 CFR §801.421 was repealed by the FDA in the FDA Hearing Aid Rule, this paragraph is also being proposed for deletion. The remaining paragraphs in this subsection are renumbered.

The adopted rules amend §112.140(d)(3) to require medical evaluations or waivers of evaluation to be maintained only if they are provided. This change reflects the previously referenced repeal of waiver requirements in federal law and is made for consistency with proposed amendments to §112.140(c)(6).

Since §112.140 is a joint rule required by Texas Occupations Code §401.2021 and §402.1021 to be adopted by the Commission with the assistance of the Speech-Language Pathologists and Audiologists Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, §112.140 will mirror the text of §111.220.

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 September 22, 2023, issue of the *Texas Register* (48 TexReg 5375). The public comment period closed on October 23, 2023. The Department received comments from two interested parties on the proposed rules. The public comments are summarized below.

Comment: An individual submitted a comment on proposed new rule §112.3, subsections (a) and (b), regarding Over-the-Counter Hearing Aids. The commenter stated that the proposed rules only apply to people living in Texas, but there are companies and individuals who sell all types of hearing aids to Texas consumers by the internet and by mail. The commenter expressed concerns that out-of-state providers are not required to be licensed in Texas. The commenter asked why people who live in Texas are required to be licensed if they want to sell all types of hearing aids to Texas consumers and asked if a Texas license was optional and not mandatory.

Department Response: The Department reviewed but disagrees with the comment. The Department did not make any changes to the proposed rules in response to this comment for the following reasons.

New rule §112.3, Over-the-Counter Hearing Aids, closely mirrors the provision in Occupations Code, Chapter 402, §402.004, Over-The-Counter Hearing Aids, which was added by SB 2017. The new statute and rules align with FDA rule 21 CFR §800.30, Over-the-counter hearing aid controls, and the federal law, FDA Reauthorization Act of 2017 (H.R. 2430, Public Law 115-52) (Section 709 of the Act, Regulation of Over-the-Counter Hearing Aids).

The proposed rules implement SB 2017 and the federal changes related to over-the-counter hearing aids. As provided by the federal law, the FDA rules, and Occupations Code, Chapter 402, as amended by SB 2017, a person does not need a license under Chapter 402 or 401 to sell or dispense over-the-counter hearing aids.

The proposed rules, however, do not make any changes to the licensing requirements under the Texas statutes or rules related to hearing instruments (prescription hearing aids). A person is still required to be licensed in Texas to fit and dispense hearing instruments (prescription hearing aids) to persons in Texas.

Comment: The Texas Medical Association (TMA) submitted a combined comment letter on the Speech-Language Pathologists and Audiologists (SPA) proposed rules under 16 TAC Chapter 111 and the Hearing Instrument Fitters and Dispensers (HFD) proposed rules under 16 TAC Chapter 112.

TMA stated that the FDA federal rules for hearing instruments no longer require certain medical evaluations and waivers, and that the Department's proposed rules remove the correspond-

ing medical evaluation requirements in SPA rule §111.201 for an adult prospective hearing aid user. TMA offered the following comments in its letter: "TMA has concerns that removing these requirements will leave adult patients [uninformed] about when it is recommended to undergo medical evaluation for hearing loss. The hearing aid labeling requirements in the new federal rules contain a list of "Red Flag" conditions for which a hearing aid dispenser should refer a prospective hearing aid user to a physician." In summary, TMA commented: "Though the federal rule underlying [the medical evaluation] requirement has been removed, to promote patient safety, TMA recommends that TDLR's adopted rules should still contain the new federal "Red Flag" guidelines for when a patient should be medically evaluated."

TMA recommended that the Department amend SPA rule §111.201 to include new suggested language that tracks the "Red Flag" labeling requirements in new FDA rule §801.422. TMA also recommended making the corresponding change to HFD rule §112.96, either by adding the same new suggested language or by adding a cross-reference to SPA rule §111.201.

Department Response: The Department reviewed the comment, but disagrees with the comment. The Department did not make any changes to the proposed rules in response to this comment for the following reasons.

First, the proposed rules align with the federal FDA rule changes. While the HFD rules did not include the same separate medical evaluation and waiver provisions as the SPA rules, both sets of rules previously required compliance with the former FDA rules 21 CFR §801.420 and §801.421. Former FDA rule §801.420 included the "red flag" conditions, and former FDA rule §801.421 included the medical evaluation and waiver provisions. These two FDA rules were repealed as part of the FDA Hearing Aid Rule, and new FDA rule §801.422 Prescription Hearing Aid Labeling, was adopted. The HFD and SPA proposed rules align with these FDA rule changes.

Second, the Department cannot add new substantive requirements to the rules at this stage of the rulemaking process, since the public has not had notice and opportunity to comment on those substantive changes. If the Department agreed that substantive changes needed to be made, the Department would either have to withdraw the proposed rules, republish them with the new provisions, and start the public comment period over, or the Department would have to add the substantive changes in the future in a separate future rulemaking.

Finally, the suggested changes are unnecessary. The comment suggested adding the requirements regarding the "red flag" conditions from FDA rule 21 CFR §801.422, Prescription Hearing Aid Labeling, into SPA rule §111.201 and HFD rule §112.96. The proposed changes to SPA rule §111.201 and HFD rule §112.96, however, already require compliance with new FDA rule §801.422, which includes the requirements regarding the "red flag" conditions along with other requirements. It is not necessary to have a separate provision in the SPA rules or the HFD rules specifically addressing the "red flag" conditions.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Hearing Instrument Fitters and Dispensers Advisory Board met on October 31, 2023, 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.* At its meeting on December 1, 2023, the Commission adopted the proposed rules as recommended by the Advisory Board and the Department.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §112.2, §112.3

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, 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 and 402, and 401 as applicable. 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.

Filed with the Office of the Secretary of State on December 11, 2023.

TRD-202304685
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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Proposal publication date: September 22, 2023
For further information, please call: (512) 463-3306

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SUBCHAPTER H. CONTINUING EDUCATION REQUIREMENTS

16 TAC §112.70

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, 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 and 402, and 401 as applicable. 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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For further information, please call: (512) 463-3306

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SUBCHAPTER J. RESPONSIBILITIES OF THE LICENSEE

16 TAC §112.92, §112.96

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, 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 and 402, and 401 as applicable. 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 O. JOINT RULE REGARDING THE SALE OF HEARING INSTRUMENTS

16 TAC §112.140

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, 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 and 402, and 401 as applicable. 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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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §§402.200 (General Restrictions on the Conduct of Bingo), 402.203 (Unit Accounting) 402.400 (General Licensing Provisions), 402.401 (Temporary License), 402.404 (License Classes and Fees), 402.405 (Temporary Authorization), 402.413 (Military Service Members, Military Veterans, and Military Spouses), 402.420 (Qualifications and Requirements for Conductor's License), 402.451 (Operating Capital), 402.452 (Net Proceeds), 402.503 (Bingo Gift Certificates), 402.600 (Bingo Reports and Payments), 402.706 (Schedule of Sanctions), and 402.707 (Expedited Administrative Penalty Guideline) without changes to the proposed text as published in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6301). The rules will not be republished. The purpose of the amendments is to implement statutory changes required by House Bill 639 (HB 639), Senate Bill 422 (SB 422), and Senate Bill 643 (SB 643) from the Regular Session of the 88th Texas Legislature.

The amendments implementing HB 639 increase the maximum yearly number of temporary bingo licenses that a non-regular authorized organization may receive from 6 to 12.

The amendments implementing SB 422 allow military members to engage in bingo without a license or worker registration for up to three years while they are stationed at a military base in Texas, provided they are similarly licensed or registered and in good standing in another state.

The amendments implementing SB 643 amend the definition of "regular license" to mean a 2-year license to conduct bingo that is not a temporary license; require the Texas Lottery Commission (Commission) to issue to regular licensees 48 temporary licenses (up from 24) for each 12-month period ending on the anniversary of their licensing date; increase the maximum prize value that can be awarded during an occasion from $2,500 to $5,000 and eliminate the $750 prize limit for a single game; allow bingo accounting units three days to deposit bingo funds into their bank account; provide that all of the members of a unit may not be penalized for a violation that is wholly attributable to a specific member or members of the unit; change the required net proceeds period from 12 months to 24 months; and specify that prize fees retained or held in escrow by the authorized organization for remittance to the Commission, a county, or a municipality are not included in the calculation of the organization's operating capital.

On November 13, 2023, the Commission held a public hearing to receive comments on this proposal. No one appeared at the hearing and the Commission did not receive any written comments on the proposed amendments during the public comment period.

SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.200, §402.203

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

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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Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5392

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SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.400, 402.401, 402.404, 402.405, 402.413, 402.420, 402.451, 402.452

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

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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Bob Biard
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SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §402.503

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

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Bob Biard
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SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §402.600

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

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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Bob Biard
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For further information, please call: (512) 344-5392

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §402.706, §402.707

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

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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Bob Biard
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER HH. STANDARDS FOR REASONABLE COST CONTROL AND UTILIZATION REVIEW FOR CHEMICAL DEPENDENCY TREATMENT CENTERS

The commissioner of the Texas Department of Insurance (TDI) adopts the repeal of 28 TAC §§3.8001 - 3.8005 and §§3.8007 - 3.8030, and adopts new 28 TAC §3.8001, concerning chemical dependency treatment standards. The new section is adopted with changes to the proposed text published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3829). The rule will be republished. Section 3.8001 was revised in response to public comment and to reference up-to-date criteria.

REASONED JUSTIFICATION. The repeals of 28 TAC §§3.8001 - 3.8030 are necessary to remove existing dated and obsolete standards. New §3.8001 requires group health benefit plan issuers subject to Insurance Code Chapter 1368 to use the applicable treatment criteria published in the 27th edition of the MCG Care Guidelines (formerly Milliman Care Guidelines), the 3rd edition of the American Society of Addiction Medicine (ASAM) Criteria, or the 4th edition, Volume I, Adults, of the ASAM Criteria for any utilization review of treatment required under Insurance Code Chapter 1368. Both the 3rd edition ASAM Criteria and the 4th edition, Volume 1, are in effect and are collectively referred to as the ASAM Criteria. This provides group health benefit plans flexibility to select the treatment standards that work best for their utilization review systems. Following the MCG Care Guidelines and the ASAM Criteria will ensure that group health benefit plan issuers cover an appropriate continuum of care for treatment of substance use disorders and support the health, safety, and welfare of Texas insureds.

New §3.8001 identifies the treatment standards that must be used for coverage of chemical dependency treatment. Subsection (a) explains that the purpose of the rule is to implement Insurance Code §1368.007. Subsection (b) clarifies that the section applies to a group health benefit plan that is subject to Insurance Code Chapter 1368. Subsection (c) specifies the treatment standards adopted by the section. Subsection (d) requires that group health benefit plans use either the MCG Care Guidelines or the ASAM Criteria for any treatment required to be covered under Insurance Code Chapter 1368.

In response to a comment, subsection (c) of new §3.8001 is adopted with changes to the text as proposed. Subsection (c) is modified to add a reference the 4th edition, Volume I, Adults, of the ASAM Criteria, which was released in October 2023, in addition to the 3rd edition of the ASAM Criteria referenced in the proposal.

These changes will not result in the rule affecting people who were not on notice by the proposal, nor do they materially alter the issues addressed in the proposal. The proposal notified insurers, other third-party reimbursement sources, and chemical dependency treatment centers that the new section was intended to reference current and valid criteria, and that TDI intends to update the referenced criteria in the section as needed. TDI has reviewed the updates to the ASAM Criteria 4th edition, Volume I, Adults, and determined that they will not significantly change how insurers, other third-party reimbursement sources, and chemical dependency treatment centers use it for Insurance Code §1368.007. The 3rd edition of the ASAM Criteria remains valid and is still needed until other volumes of the 4th edition are released.

Additionally, the new rule will not become effective until 180 days after adoption, to provide adequate time for group health benefit plans to transition to the new standards. TDI provided notice of its intent to delay the effective date of this rule in the rule proposal.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from one commenter, Texas Association of Health Plans (TAHP), which also had a representative speak on its behalf at a public hearing on the proposal held on August 8, 2023. TAHP supports the proposal with changes.

General comments

Comment. A commenter states that it supports the proposed rule.

Agency Response. TDI appreciates the support.

Comment. A commenter recommends that TDI remove reference to specific editions of the standards to avoid the regulatory burden of having to adjust this rule regularly. The commenter notes that the 4th edition of the ASAM Criteria will soon replace the 3rd edition that was proposed.

Agency Response. TDI appreciates the comment and has modified subsection (c) of §3.8001 as proposed to adopt the 4th edition, Volume I, Adults, of the ASAM Criteria, as released in October 2023, in addition to the 3rd edition, which remains part of the ASAM Criteria. However, TDI declines to remove reference to specific editions of the standards, as this provides the public

with clear notice of the specific editions providing the standards that are applicable.

Commenter for the proposal with changes

Comment. A commenter suggests that TDI include an additional treatment standard, specifically InterQual Criteria. The commenter asserts that along with MCG Care Guidelines, InterQual is one of the two more commonly used criteria for chemical dependency.

Agency Response. TDI declines to adopt the InterQual Criteria. TDI recognizes that patients, plans, and providers need to have the flexibility to use and access the most current and patient-specific treatment standards available, but TDI has determined that the MCG Care Guidelines and the ASAM Criteria sufficiently meet this need and address the treatment standard requirements under Insurance Code §1368.007. These guidelines and criteria are widely used by most health benefit plans and will ensure that group health benefit plan issuers cover an appropriate continuum of care for the treatment of substance use disorders.

28 TAC §§3.8001 - 3.8005, 3.8007 - 3.8030

STATUTORY AUTHORITY. The commissioner adopts the repeal of §§3.8001 - 3.8030 under Insurance Code §§1355.258, 1368.007, 4201.003, and 36.001.

Insurance Code §1355.258 requires the commissioner to adopt rules necessary to implement Chapter 1355, Subchapter F.

Insurance Code §1368.007 requires that TDI adopt by rule chemical dependency treatment standards for use by insurers, other third-party reimbursement sources, and chemical dependency treatment centers. These standards must provide for (1) reasonable control of costs necessary for inpatient and outpatient treatment of chemical dependency, including guidelines for treatment periods; and (2) appropriate utilization review of treatment, as well as necessary extensions of treatment.

Insurance Code §4201.003 authorizes the commissioner to adopt rules to implement Chapter 4201.

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.

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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Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: June 11, 2024
Proposal publication date: July 14, 2023
For further information, please call: (512) 676-6555

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28 TAC §3.8001

STATUTORY AUTHORITY. The commissioner adopts new §3.8001 under Insurance Code §§1355.258, 1368.007, 4201.003, and 36.001.

Insurance Code §1355.258 requires the commissioner to adopt rules necessary to implement Chapter 1355, Subchapter F.

Insurance Code §1368.007 requires that TDI adopt by rule chemical dependency treatment standards for use by insurers, other third-party reimbursement sources, and chemical dependency treatment centers. These standards must provide for (1) reasonable control of costs necessary for inpatient and outpatient treatment of chemical dependency, including guidelines for treatment periods; and (2) appropriate utilization review of treatment, as well as necessary extensions of treatment.

Insurance Code §4201.003 authorizes the commissioner to adopt rules to implement Chapter 4201.

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.

§3.8001. Chemical Dependency Treatment Standards.

(a) Purpose. This section implements Insurance Code §1368.007, concerning Treatment Standards.

(b) Applicability. This section applies to a group health benefit plan that is subject to Insurance Code Chapter 1368, concerning Availability of Chemical Dependency Coverage.

(c) Treatment standards. For the purpose of this section, the department adopts the treatment standards in the 27th edition of the MCG Care Guidelines; the 3rd edition of the American Society of Addiction Medicine (ASAM) Criteria; and the 4th edition Volume I, Adults, of the ASAM Criteria.

(d) Coverage required. For any treatment for which coverage is required under Insurance Code Chapter 1368, a group health benefit plan must use the MCG Care Guidelines or ASAM Criteria, as applicable to the treatment and care provided.

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 21. TRADE PRACTICES

The commissioner of insurance adopts amendments to 28 TAC §§21.4902, 21.5002, 21.5003, and 21.5040, concerning the independent dispute resolution (IDR) process, and adopts new §§21.5060, 21.5070, and 21.5071, concerning submission requirements for certain entities. The commissioner adopts §§21.4902, 21.5002, and 21.5003 without changes to the proposed text published in the September 1, 2023, issue of the

Texas Register (48 TexReg 4774). These sections will not be republished. Sections 21.5040, 21.5060, 21.5070, and 21.5071 are adopted with changes made in response to public comment and will be republished.

REASONED JUSTIFICATION. The amendments to §§21.4902, 21.5002, 21.5003, and 21.5040, and new §21.5060 are necessary to implement House Bill 1592, 88th Legislature, 2023, and Insurance Code Chapter 1275. Insurance Code §1275.002 as amended by HB 1592 permits a plan sponsor of a self-insured or self-funded plan established by an employer under the Employee Retirement Income Security Act of 1974 (ERISA) (29 USC §1001 et seq.) to opt in to the Texas IDR process under Insurance Code Chapter 1467 by electing to apply Insurance Code Chapter 1275 to the plan during the relevant plan year. Insurance Code Chapter 1275 creates similar requirements for out-of-network billing that already exist for HMOs and preferred provider benefit plans, as well as for health benefit plans administered by the Employees Retirement System of Texas and Teacher Retirement System of Texas plans under Insurance Code Chapters 1551, 1575, and 1579.

The amendments to §§21.4902, 21.5002, and 21.5003 clarify that a plan sponsor may elect to apply Insurance Code Chapter 1275 to its self-insured or self-funded plan. Under Insurance Code §1275.004, Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies.

The amendments to §21.5040 require health benefit plans offered by nonprofit agricultural organizations and ERISA plans to include additional information in the explanation of benefits (EOB) provided to physicians or providers. The additional information includes a disclaimer that the plan opted in to the Texas IDR process for the relevant plan year and that the claim must proceed through the Texas IDR process. Amendments to §21.5040 also require health benefit plans offered by nonprofit agricultural organizations and ERISA plans to display a signifier on the ID card issued to enrollees that identifies the Texas IDR process as the IDR process claims must proceed through. The ID card requirement will apply to plans delivered, issued for delivery, or renewed on or after 90 days following the effective date of the section. The proposed text of this section has been modified in response to comment. Additional amendments to this section are discussed in the subsequent paragraphs as they relate to the implementation of Senate Bill 2476, 88th Legislature, 2023.

The adoption also adds new Division 7 and new §21.5060 to prescribe the form and manner of identifying information that plan sponsors must include to make an election for the relevant plan year under Insurance Code §1275.002. The identifying information must be submitted to TDI as specified on TDI's website at www.tdi.texas.gov.

Amendments to §21.5040 and new Division 8, consisting of §21.5070 and §21.5071, are necessary to implement SB 2476. This bill authorizes political subdivisions to submit rates for emergency medical services (EMS) to TDI for use in payment by health benefit plans. SB 2476 requires health benefit plans to cover ground emergency medical services at (1) the rates submitted to TDI by a political subdivision; or (2) if no rates have been submitted, the lesser of either the EMS provider's billed charge or 325% of the current Medicare rate.

Additional amendments to §21.5040 require the explanation of benefits to include transport as added by SB 2476 and clarify that the right to pursue mediation or arbitration applies only to out-of-network claims subject to Insurance Code Chapter 1467.

New §21.5070 and §21.5071 prescribe the form and manner that political subdivisions must use if they wish to submit rates to TDI for use in EMS billing, and the EMS payment standards that apply to an applicable health benefit plan issuer or administrator. The rate submission must be submitted to TDI as specified on TDI's website at www.tdi.texas.gov. The proposed text of these sections has been modified in response to comment.

New §21.5070 and §21.5071 adopt a single rate submission deadline. A modification to the rate submission schedule was requested by commenters and replaces the quarterly schedule that was included in the proposed text. The adopted text also requires health plans to apply the published rate data based on the date the claim is incurred, rather than basing payments on the data published at the time the claim is submitted. The publication schedule will remove the ability of a political subdivision to submit rates to TDI more than once. For a rate to be reflected in the updated rate publication, a political subdivision must submit a rate by the submission deadline.

Health benefit plans must apply the rates, as reflected in the published rate database, to claims incurred during any plan year that begins before September 1, 2024. Claims incurred during a plan year that begins on or after September 1, 2024, are paid based on the lesser of the billed charge, the reported rate increased by 10%, or the reported rate increased by the Medicare Economic Index rate that applies to the first day of the new plan year.

The adopted text permits a political subdivision to submit EMS rates until the submission deadline of 30 days after the date the section is effective. TDI will publish the submitted rates no later than 10 business days after the submission deadline. The final submission deadline is modified from what was proposed in response to comment to better align with SB 2476, which requires health benefit plans to adjust the payment rates each plan year with reference to the provider's previous calendar year rates. The payment standard is clarified to prevent requiring a health benefit plan issuer or administrator to pay more than the EMS provider charges. Figure: 28 TAC §21.5071(e) provides illustrative examples of how the published rates apply, subject to maximum rate increase amounts for plans that renew on or after September 1, 2024.

The deadline for rate data will require health benefit plans to quickly update software and internal databases to reflect the published rates. SB 2476 applies to emergency medical services provided on or after January 1, 2024, and requires TDI to establish the publicly accessible database by January 1, 2024.

SB 2476 requires health benefit plans to make the payment using the submitted rate, if applicable, and the bill provides 30 or 45 days for payment of the claim, depending on whether the claim is electronic. The 30- or 45-day period provided by SB 2476 will provide health benefit plans with some lead time to update internal systems.

TDI recognizes that multiple political subdivisions may submit rates associated with the same ZIP code and that health benefit plans may occasionally have difficulty determining which rate applies to the EMS claim. TDI encourages health benefit plans and EMS providers to collaborate when multiple rates apply to a ZIP code and to use existing internal processes to resolve any claims in which an overpayment or underpayment occurs.

The new and amended sections are described in the following paragraphs.

Section 21.4902. The amendments to §21.4902 clarify that the section provides definitions for use in Subchapter OO and that an administrator as defined in Insurance Code §1467.001 may also include an administrator of a self-insured or self-funded plan under Insurance Code Chapter 1275 when election by a plan sponsor has occurred. The amendments expand the definition of "health benefit plan" to include a self-insured or self-funded plan for which the plan sponsor has elected to apply Insurance Code Chapter 1275. The amendments also add a definition of "ERISA" to reflect agency drafting style and plain language preferences.

The amendments add "Insurance Code" to a citation, add "an administrator of" to the definition of "administrator" for consistency in §21.4902(1), renumber paragraphs to reflect the expansion of definitions, and amend punctuation and grammar throughout.

Section 21.5002. This section describes the scope of Subchapter PP. The amendments to §21.5002 expand the applicability of Subchapter PP to a self-insured or self-funded plan if election by the plan sponsor is submitted according to the requirements in new §21.5060. Amendments also change punctuation and grammar to reflect the addition of new paragraph (4) and add "Insurance Code" to an incomplete citation.

Section 21.5003. This section provides definitions for use in Subchapter PP. The amendments to §21.5003 clarify that, in addition to having the meaning assigned by Insurance Code §1467.001, for purposes of 28 TAC Chapter 21, Subchapter PP, "administrator" also includes an administrator of a self-insured or self-funded plan under Insurance Code Chapter 1275 when election by a plan sponsor has occurred. The amendments expand the definition of "health benefit plan" to include a self-insured or self-funded plan for which the plan sponsor has elected to apply Insurance Code Chapter 1275. The amendments also add a definition of "ERISA" to reflect agency drafting style and plain language preferences.

Amendments add "Insurance Code" to a citation, add "an administrator of" to the definition of "administrator" for consistency in §21.5003(1), renumber paragraphs to reflect the expansion of definitions, and amend punctuation and grammar throughout the section.

Section 21.5040. This section provides the contents required in an explanation of benefits for to an enrollee, physician, and provider. The amendments clarify that a plan subject to §21.5040 must give written notice in an EOB as specified in the section in connection with transport provided by a non-network or out-of-network provider, as added by SB 2476. The amendments also clarify that the notice explaining that a physician or provider may request mediation or arbitration for a payment dispute should be included only for a claim that is subject to mediation or arbitration under Insurance Code Chapter 1467. The amendments to the titles of Division 5 and §21.5040 reflect the expanded scope of the ID card requirements.

The amendments also add new subsections (b) and (c). Section 21.5040(b) includes additional requirements for EOBs provided by certain health benefit plans. Section 21.5040(c) adds information that must be included in the ID card provided to enrollees. To reflect the addition of subsections (b) and (c), the previously existing rule text has been designated as subsection (a). The new requirements in §21.5040(b) and (c) apply only to a health benefit plan offered by a nonprofit agricultural organization or a self-funded or self-insured plan under ERISA where a plan sponsor has elected to apply Insurance Code Chapter 1275.

Section 21.5040(b)(1) requires a health benefit plan offered by a nonprofit agricultural organization under Insurance Code Chapter 1682 to include in the EOB to physicians and providers instructions to identify the plan type as "Ag Plan" when requesting mediation or arbitration. Similarly, §21.5040(b)(2) requires health benefit plans offered by ERISA plans that have opted in to the Texas IDR process under Insurance Code Chapter 1275 to include in the EOB a statement about the opt-in, a prohibition against using the federal IDR process, and instructions to physicians and providers to identify the plan type as "ERISA Opt-In" when requesting mediation or arbitration.

The text of §21.5040(b)(2) as proposed has been modified in response to comment. As adopted, §21.5040(b)(2) does not include the proposed requirement to provide the plan name and effective date of the election and instead substitutes a more general disclosure in the EOB.

Section 21.5040(c) requires a health benefit plan offered by a nonprofit agricultural organization or self-insured or self-funded ERISA plan to include the letters "TXI" on the ID cards issued to enrollees. This requirement applies to a plan that is delivered, issued for delivery, or renewed on or after 90 days following the section's effective date.

The text of §21.5040(c) as proposed has been modified in response to comment to replace "TXIDR" with "TXI" on the front of the ID card and to add quotation marks in the rule text around "TXI." In addition, a clarifying modification to §21.5040(c) replaces "of" with "following" to state that the requirements apply 90 days following the effective date of §21.5040.

Section 21.5060. New §21.5060, in new Division 7, provides submission requirements for a plan sponsor that elects to apply Insurance Code Chapter 1275 to a self-insured or self-funded plan for the relevant plan year. Submission requirements include:

- the name and contact information of both the plan sponsor and, if applicable, the administrator;

- the health benefit plan year start and end dates;

- the requested effective date of the election, which must be at least 30 days after the date the identifying information is submitted;

- the group number of the health benefit plan; and

- the number of enrollees covered under the health benefit plan.

Identifying information must be submitted to TDI as specified on TDI's website at www.tdi.texas.gov. This requirement ensures that a plan sponsor is able to successfully elect to apply Insurance Code Chapter 1275 (including the Texas IDR process) and that IDR claims submitted by physicians or providers are correctly matched to the ERISA plan.

The text of §21.5060(a) as proposed has been modified in response to comment to delete the phrase "in out-of-network claim dispute resolution," to clarify that an ERISA plan that elects to apply Insurance Code Chapter 1275 must comply with all the provisions in that chapter, not just those related to the dispute resolution process. In addition, the text of §21.5060(a)(3) as proposed has been modified to correct a grammatical error by adding an "s" at the end of "dates."

The text of §21.5060(a)(4) as proposed has been modified in response to comment to clarify that the requested effective date must be the same as the start date of the relevant plan year, except as provided in newly added subsection (d). Section 21.5060(d) is a new addition from the text as it was proposed and provides an exception to the modified rule text in §21.5060(a)(4). Section 21.5060(d) clarifies that a plan with a plan year start date between September 1, 2023, and February 1, 2024, may make an election with a requested effective date that is after the first day of the relevant plan year if the information required under §21.5060(a) is provided no later than 45 days after the effective date of the section.

The text of §21.5060(b) as proposed has been changed in response to comment to clarify that the election applies to all of Insurance Code 1275, and not just the Texas IDR process, and applies to claims incurred during the relevant plan year.

The section requires a plan sponsor to renew its election each plan year, update identifying information required in the section, and make the election 30 days before the date the relevant plan year begins. Once a plan sponsor opts in to the Texas IDR process for the relevant plan year, the plan sponsor may not opt out until the end of the relevant plan year.

Section 21.5070. New §21.5070, in new Division 8, provides EMS rate submission and claims requirements. Section 21.5070 provides the form and manner for a political subdivision to submit rates for emergency medical services. Political subdivisions that choose to submit rates to TDI must comply with the data submission requirements, including providing certain identifying information and submitting rate information using the method provided on TDI's website at www.tdi.texas.gov.

Identifying information includes:

- the political subdivision's name and contact information;

- the National Provider Identification number of each EMS provider that is subject to the rates set by the political subdivision, if known;

- each ZIP code subject to the rates set, controlled, or regulated by the political subdivision; and

- applicable billing codes, code types, and dollar amounts for each health care service, supply, or transport rate that is set, controlled, or regulated by the political subdivision.

A claim submitted by an EMS provider or its designee must include the ZIP code in which the health care service, supply, or transport originated. A political subdivision or EMS provider subject to the rule may not issue a bill that exceeds the amount of the rate set, controlled, or regulated by the political subdivision.

Political subdivisions that choose to submit rates to TDI must comply with the single submission deadline adopted in §21.5070(d). The text of §21.5070(d) and (e) as proposed has been modified in response to comment to replace the quarterly schedule with a single deadline for submission and publication. Data for calendar year 2024 is due 30 days after the section's effective date. TDI will publish data within 10 business days of the reporting deadline. Because the reporting schedule is simplified from the proposed rule, proposed §21.5070(h) and Figure §21.5070(h) are not adopted.

Political subdivisions are not required to submit rates under SB 2476. However, if a political subdivision chooses not to submit rates by the submission deadline and has no published rates for a particular health care service, supply, or transport, then the health benefit plan must determine the applicable rate according to the formulas in SB 2476 and implemented in §21.5071(b)(2).

Additionally, because some of the text of §21.5070(d) and (e) as proposed has been modified to allow submission once during the effective period of SB 2476, §21.5070(f) as proposed is not adopted. As proposed, subsection (f) permitted a political subdivision to remove a submitted rate according to the proposed submission schedule. Because §21.5060(f) is not adopted, subsection (g) as proposed has been designated as new subsection (f).

Section 21.5071. New §21.5071, in new Division 8, provides emergency medical service rate payment requirements. Section 21.5071 clarifies that certain health benefit plans must pay EMS provider claims under SB 2476. Health benefit plan issuers and administrators must pay EMS provider claims at the rate submitted by a political subdivision or, if no rate has been submitted under §21.5070, according to the rate specified in SB 2476 and implemented in §21.5071(b)(2).

The text of §21.5071(b)(1) as proposed has been modified in response to comment to clarify that the health benefit plan must pay the lesser of the billed charge or the applicable rate published by TDI. TDI has also modified §21.5071(b)(1) and (2) to remove the phrase, "consistent with the time frames addressed in subsection (c) of this section." This phrase is no longer needed, since the rate data will only be published once.

Health benefit plan issuers and administrators must apply published rates by the implementation schedule in §21.5071(c) and (d). In response to comment, TDI has replaced the proposed quarterly schedule in §21.5071(c) with a single implementation date to align with the single submission deadline in §21.5070(d). In response to comment, TDI has also replaced the proposed references to the claim submission date with references to the claim incurred date.

For claims incurred during a plan year that starts before September 1, 2024, plans must apply the applicable rate published in TDI's rate database for 2024. For claims incurred during a plan year that starts on or after September 1, 2024, plans must pay the lesser of the billed charge, the published rate for 2024 increased by 10%, or the published rate for 2024 increased by the Medicare Economic Index rate.

SB 2476 uses the term "Medicare Inflation Index." TDI interprets that term to mean the Medicare Economic Index (MEI), a measure of inflation faced by physicians with respect to their practice costs and general wage levels that is updated annually. The MEI is available on the CMS website at www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/medicareprogramratesstats/marketbasketdata. The MEI rate is established on a calendar year basis. TDI adds text to clarify that the applicable MEI rate is the rate that applies to the first day of the new plan year. For a plan year that renews in September of 2024, the MEI for calendar year 2024 applies. For a plan year that renews in January of 2025, the calendar year 2025 MEI applies.

TDI has modified the text of §21.5071(d) in response to comment to clarify that a health benefit plan issuer or administrator must adjust the applicable rate required by SB 2476 for a plan year that starts on or after September 1, 2024. TDI has modified the text of §21.5071(d) to simplify the explanation for how rates must be adjusted for a new plan year, and align this section with the modifications in §21.5071(b) that clarify that the payment standard is the lesser of the billed charge or the applicable rate. The

proposed definitions for "plan year" and "calendar year rate" are not adopted because they are no longer needed within the simplified text of the subsection. For claims incurred during a plan year that starts on or after September 1, 2024, plans must pay the lesser of the billed charge, the published rate for 2024 increased by 10%, or the published rate for 2024 increased by the Medicare Economic Index rate that applies to the first day of the new plan year.

Figure: 28 TAC §21.5071(e) provides examples of the published rates health benefit plans must use when adjusting a payment under SB 2476, depending on the renewal date of the health benefit plan. These examples have been updated from those proposed to conform to the changes made in §21.5071 and previously contained in §21.5071(d)(2).

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received five written comments and two commenters spoke at a public hearing on the proposal held on September 26, 2023. Commenters in support of the proposal with changes were Emergency Department Practice Management Association, Texas Association of Health Plans, Texas EMS Alliance, Texas Medical Association, Texas Ophthalmological Association, Texas Orthopaedic Association, Texas Osteopathic Medical Association, and Texas Society of Anesthesiologists, and U.S. Anesthesia Partners.

Comments on §21.5003

Comment: One commenter recommends adding the title of Insurance Code Chapter 1682 in §21.5003(11)(C).

Agency Response: TDI declines to make the change because the chapter title for Insurance Code Chapter 1682 is provided in §21.5003(1). Consistent with TDI drafting and style preferences, the title is listed only for the first instance in which the chapter is cited within each section.

Comments on §21.5040

Comments: One commenter states their support for including information on the EOB that indicates that the plan has opted in to the Texas IDR system, but the commenter emphasizes that requiring the plan name and effective date of election as proposed in §21.5040(b)(2) will create significant administrative challenges without providing additional value. Another commenter supports including the information on the EOB as proposed and has requested that the EOB specify the entire plan year, not just the effective date.

Agency Response: The purpose of the EOB notice is to inform the provider that the claim contained on the EOB is subject to the Texas IDR process. TDI agrees with the first commenter that the EOB notice does not need plan-specific information in order to serve its purpose and has modified §21.5040(b)(2) to remove the plan-specific language. As a result, TDI declines to specify the entire plan year on the EOB, as suggested by the second commenter.

Comments: One commenter asks TDI to clarify in §21.5040 that the EOB and ID card requirements for ERISA plans that have opted in apply only to Texas residents. The commenter notes that (1) Texas does not have jurisdiction over services provided to nonresidents, (2) the benchmarking database used by arbitrators in the Texas IDR system includes only rate data for Texas ZIP codes, and (3) IDR for out-of-state claims is effectively unworkable.

Agency Response: TDI agrees that Insurance Code Chapter 1275 applies to plans issued to Texas residents and to claims for services provided by Texas providers. TDI declines to make a change, but affirms that the requirements in §21.5040 do not apply to ID cards issued to non-Texas residents, or to EOBs issued for claims provided by out-of-state providers.

Comments: Two commenters support the new requirements for the ID card and EOBs to indicate participation in the Texas IDR system. The commenters state that this information is critical for physicians and providers to properly process claim disputes. While the vast majority of claims are submitted electronically, and EOBs are returned electronically in an 835-remittance file, the commenters note that some carriers in Texas have provided information about a claim's eligibility for IDR only in a paper or PDF format, which creates a significant administrative burden. The commenters request that the rules require that for claims submitted electronically, the information required on the EOB must be "provided in the form of a searchable, standardized remark code or similar searchable language in an electronic explanation of benefits file."

Agency Response: TDI appreciates the commenters' support for the new requirements and agrees that the information on the ID cards and EOB is needed to enable providers to discern which claims are subject to the Texas IDR process. The submission of ineligible claims creates a substantial burden for TDI and the responding health plans. TDI agrees that health plans should use a standardized and searchable electronic method for providing the required information within EOBs. TDI will monitor this issue and consider addressing it in future rules if health plans do not conform to best practices for conveying this information.

Comments: One commenter requests that the ID card requirement in §21.5040(c) be modified to include only three characters, as requiring the five characters in "TXIDR" would require one or more health plans to make programming changes. Another commenter supports retaining the five characters, as fewer characters would not adequately inform the physician, provider, or enrollee of which IDR program a claim arising under the health plan must proceed through.

Agency Response: TDI agrees to make a change to shorten "TXIDR" to a three-character descriptor. TDI replaces "TXIDR" as proposed with "TXI." TDI recognizes that a shorter descriptor conveys less information but recognizes that the EOB contains the most pertinent information. TDI seeks to balance the benefit of requiring additional information with the cost of implementing new requirements.

Comment: One commenter requests that quotation marks be added to the requirement in §21.5040(c), for ID cards to include the letters "TXIDR." The commenter also asks that the rule require "TXIDR" to be prominently displayed on the front of the ID card and on other forms of identifying an enrollee's plan information, such as electronic ID cards. The commenter states that these changes would align with corresponding rules for TDI-regulated HMO and PPO plans in §21.2820.

Agency Response: TDI agrees in part and has modified the rule to add quotation marks to the new three-character descriptor "TXI," and require the information to be located on the front of the ID card. TDI declines to broaden the ID card requirement to apply to other documents but believes the rule text is sufficiently clear to require the information on any ID card, whether it is issued electronically or in physical form.

Comments: Two commenters request that TDI publish information listing each ERISA plan that opts in to the Texas IDR process. One of the commenters suggests additional rule text that would address this issue.

Agency Response: TDI agrees that this information may be of use to the public but declines to make a change to the rule text, as it is outside the scope of this rule as proposed. TDI will have the information available and will review the best method for providing this information to the public.

Comments on §21.5060

Comment: One commenter notes that the language in §21.5060 may create confusion by referring to a plan sponsor electing to "participate in out-of-network dispute resolution under Insurance Code Chapter 1275," when the law refers to an election to apply Chapter 1275 in its entirety to the plan for the relevant plan year.

Agency Response: TDI agrees and has modified §21.5060 in two places to delete the words "in out-of-network claim dispute resolution," and clarify that the election refers to Insurance Code Chapter 1275.

Comment: One commenter recommends that TDI modify §21.5060 to state that an election made by an ERISA plan to apply Insurance Code Chapter 1275 must span the entire plan year and must be made 60 days in advance of the plan year. The commenter also suggests clarifying that the election applies to claims that are incurred during the relevant plan year, including a dispute that may proceed through the Texas IDR process after the end of the relevant plan year.

Agency Response: TDI declines to increase the election requirement from 30 to 60 days, as 30 days provides sufficient time for TDI to update its website. In general, TDI agrees that Insurance Code §1275.002 requires that an ERISA plan opt in for the entirety of a plan year. However, TDI believes an exception is appropriate for plan years that started after the statute became effective and before TDI's rules were operational. TDI added new subsection (d) to §21.5060 to clarify that an election applies to the entirety of the plan year, except for plans starting between September 1, 2023, and February 1, 2024. Such plans may elect an effective date after the first day of the relevant plan year if they submit the election within 45 days of this rule taking effect. TDI also modified §21.5060(b) to clarify that the election applies with respect to claims incurred during the plan year to which the election applies, even if the dispute occurs after the relevant plan year ends.

Comment: One commenter asks for clarification on §21.5060(a)(6), which requires ERISA plans to provide the number of enrollees covered by the plan when opting to participate in Insurance Code Chapter 1275. The commenter notes that this number changes frequently, and asked whether it should be reported as of a specific date, or if plans can provide an approximate number.

Agency Response: A plan sponsor should provide the number of enrollees covered under the health plan based on the best information available at the time the information is submitted--such as the number of enrollees on the last day of the previous month. While TDI understands that this number changes frequently, this data will inform policymakers on the general number of Texans participating in plans under Insurance Code Chapter 1275.

General comments on Division 8

Comment: One commenter requests that the rules clarify that an out-of-network EMS provider may not balance bill a patient, and suggests TDI adopt language similar to that used in 28 TAC §21.4903.

Agency Response: TDI agrees that the Insurance Code, as amended by SB 2476, prohibits an EMS provider from balance billing for EMS services provided between January 1, 2024, and August 31, 2025. However, TDI declines to make a change to the rule text because the statutory prohibition is sufficiently clear and does not need to be repeated in rule.

Comment: One commenter notes that political subdivisions typically establish EMS mileage rates in addition to base transport charges. Mileage rates are not flat fees, but are multiplied by the number of miles that the patient is transported.

Agency Response: TDI thanks the commenter for this information. TDI's data portal includes HCPCS code A0425, which political subdivisions may use to report their mileage rates. The data portal also allows political subdivisions to enter any other applicable codes for which rates are set.

Comment: Two commenters note that claim information may not always be sufficient to determine the applicable political subdivision and recommend that the rules include how incorrect payment amounts should be addressed. Another commenter suggests that when there is uncertainty about the correct payment amount, the health plan should be permitted to pay either rate and handle corrections through an internal appeals process.

Agency Response: TDI appreciates the challenge posed by the fact that standard claim fields may be insufficient to determine the applicable payment amount but declines to make a change. TDI expects health plans to act in good faith to attempt to determine the correct payment amount and encourages health benefit plans and EMS providers to work together to determine that amount.

Comment: One commenter suggests specifying timeframes for notifications of and corrections to underpayments and overpayments, consistent with 28 TAC §21.2809. Another commenter suggests that any incorrect payments should be resolved through an internal appeals process.

Agency Response: TDI appreciates the suggestion regarding timeframes but declines to make the change, as it is outside the scope of this rule project. TDI encourages health plans and EMS providers to use existing internal processes to resolve any underpayments or overpayments that may occur.

Comments on §21.5070

Comments: Two commenters recommend replacing the reporting schedule in §21.5070(e), which as proposed allows for four opportunities to report, with an annual reporting schedule. The commenters indicate that allowing rates to change up to four times in a plan year creates administrative and pricing challenges for plans. They state that the intent of the legislation was to limit opportunities to increase rates, since the statute specifically addresses rate increases. One of the two commenters suggests an alternative approach that would not allow a political subdivision to submit its rates more than once.

Agency Response: TDI agrees with the commenters and has modified §21.5070(d) and (e) to replace the four reporting periods with a single reporting deadline. The adopted rule extends the rate submission deadline to 30 days from the date the rule is adopted for political subdivisions to submit data for calendar

year 2024. Since the data reporting schedule has been simplified, TDI has not adopted Figure: 28 TAC §21.5070(h). Instead, §21.5070(e) clarifies that TDI will publish data no later than 10 business days following the data reporting deadline. Likewise, §21.5071(c) is simplified to indicate that the data reported for calendar year 2024 applies to claims incurred during a plan year that starts before September 1, 2024. TDI makes a conforming change to §21.5071(d) to clarify the adjusted payment standard for a plan that renews on or after September 1, 2024. The examples are moved to Figure 28 TAC §21.5071(e) and updated consistent with the modified reporting deadline and simplified instructions for adjusting the payment rate at plan renewal.

Comments on §21.5071

Comment: One commenter notes that in §21.5071(c), the proposal used the term "claims submitted," while the examples used "claims submitted" and "claims incurred" interchangeably. The commenter asks TDI to clarify that the relevant date is the date the service is provided--that is, the date the claim is incurred--and not the date the claim is submitted.

Agency Response: TDI agrees and has changed the language in §21.5071(c) to use the term "claim incurred." TDI also makes conforming changes in §21.5071(d), and in the examples contained in Figure: 28 TAC §21.5071(e).

Comment: One commenter recommends that TDI modify §21.5071(d) to refer to Medicare's Ambulance Inflation Factor (AIF), rather than the Medicare Economic Index, because CMS uses the AIF to adjust Medicare's ambulance fee schedule.

Agency Response: TDI declines to make the requested change. TDI maintains its interpretation that when the statute uses the term "Medicare Inflation Index," it is referring to the Medicare Economic Index.

Comment: Two commenters indicate that the rate increase provision in §21.5071(d) was intended to apply only to the extent that a political subdivision has increased its rates. The commenters state that the purpose of the provision was to limit the amount of such increases. Without clarification, the automatic adjustment of required payments could result in health plans reimbursing providers more than the locally set rates.

Agency Response: TDI appreciates the commenters' concerns and has made changes to address the issue. First, TDI notes that §21.5070(b) makes clear that a billed charge is prohibited from exceeding the rate set by the political subdivision. TDI agrees that it would be inappropriate to require payment of a rate that exceeds the amount billed. Therefore, TDI modifies §21.5071(b)(1) to clarify that the issuer or administrator must pay the lesser of the billed charge or the applicable rate for the political subdivision. TDI makes conforming changes to §21.5071(d) to clarify that the subsection does not require a payment to exceed the amount billed.

SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §21.4902

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.4902 under Insurance Code §§1275.002, 1275.004, 1467.003, and 36.001.

Insurance Code §1275.002 authorizes a plan sponsor to elect to apply Insurance Code Chapter 1275 to a self-insured or self-funded plan established by an employer for the benefit of the employer's employees in accordance with the Employee Retirement Income Security Act of 1974 (29 USC §1001 et seq.).

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Insurance Code Chapter 1275 applies is an administrator for purposes of Insurance Code Chapter 1467.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

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.

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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Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6555

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SUBCHAPTER PP. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION
DIVISION 1. GENERAL PROVISIONS

28 TAC §21.5002, §21.5003

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5002 and §21.5003 under Insurance Code §§1275.002, 1275.004, 1467.003, and 36.001.

Insurance Code §1275.002 authorizes a plan sponsor to elect to apply Insurance Code Chapter 1275 to a self-insured or self-funded plan established by an employer for the benefit of the employer's employees in accordance with the Employee Retirement Income Security Act of 1974 (29 USC §1001 et seq.).

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Insurance Code Chapter 1275 applies is an administrator for purposes of Insurance Code Chapter 1467.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

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.

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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DIVISION 5. EXPLANATION OF BENEFITS

28 TAC §21.5040

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5040 under Insurance Code §§1275.004, 1301.007, 1467.003, and 36.001.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Insurance Code Chapter 1275 applies is an administrator for purposes of Insurance Code Chapter 1467.

Insurance Code §1301.007 authorizes the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of this state.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

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.

§21.5040. Required Explanation of Benefits and Enrollee Identification Card Information.

(a) General requirements for explanation of benefits. A health benefit plan issuer or administrator subject to Insurance Code §1271.008, concerning Balance Billing Prohibition Notice; §1275.003, concerning Balance Billing Prohibition Notice; §1301.010, concerning Balance Billing Prohibition Notice; §1551.015, concerning Balance Billing Prohibition Notice; §1575.009, concerning Balance Billing Prohibition Notice; or §1579.009, concerning Balance Billing Prohibition Notice must provide written notice in accordance with this section in an explanation of benefits in connection with a health care or medical service or supply or transport provided by a non-network provider or an out-of-network provider:

(1) to the enrollee and physician or provider, which must include:

(A) a statement of the billing prohibition, as applicable; and

(B) the total amount the physician or provider may bill the enrollee under the health benefit plan and an itemization of in-network copayments, coinsurance, deductibles, and other amounts included in that total; and

(2) to the physician or provider, for a claim that is subject to mediation or arbitration under Insurance Code Chapter 1467, concerning Out-of-Network Claim Dispute Resolution, a conspicuous statement in not less than 10-point boldface type that is substantially similar to the following: "If you disagree with the payment amount, you can request mediation or arbitration. To learn more and submit a request, go to www.tdi.texas.gov. After you submit a complete request, you must notify {HEALTH BENEFIT PLAN ISSUER OR ADMINISTRATOR NAME} at {EMAIL}."

(b) Specific requirements for explanation of benefits provided by health benefit plans subject to Insurance Code Chapter 1275. In addition to the requirements in subsection (a) of this section, the following requirements apply.

(1) For a health benefit plan offered by a nonprofit agricultural organization under Insurance Code Chapter 1682, concerning Health Benefits Provided by Certain Nonprofit Agricultural Organizations, the notice to a physician or provider for a claim must also include the following instruction that is substantially similar to the following: "The request for mediation or arbitration must identify the plan type as 'Ag Plan.'"

(2) For a self-insured or self-funded plan under ERISA where the plan sponsor has elected to apply Insurance Code Chapter 1275, concerning Balance Billing Prohibitions and Out-Of-Network Claim Dispute Resolution for Certain Plans, to the plan for the relevant plan year, the notice to a physician or provider for a claim must also include a statement that is substantially similar to the following: "The plan sponsor has opted in to the Texas Independent Dispute Resolution Process under Insurance Code Chapter 1275 for this plan year. A dispute related to this claim must proceed through the Texas process and may not proceed through the Federal No Surprises Act Independent Dispute Resolution Process. The request for mediation or arbitration must identify the plan type as 'ERISA Opt-In.'"

(c) Requirements for ID cards issued to enrollees of health benefit plans subject to Insurance Code Chapter 1275. For a plan that is delivered, issued for delivery, or renewed on or after 90 days following the effective date of this section, a health benefit plan issuer or administrator that is subject to Insurance Code §1275.003 must include the letters "TXI" on the front of the ID card issued to enrollees.

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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DIVISION 7. SUBMISSION REQUIREMENTS FOR ELECTION BY ERISA PLANS

28 TAC §21.5060

STATUTORY AUTHORITY. The commissioner adopts new §21.5060 under Insurance Code §§1275.002, 1275.004, 1467.003, and 36.001.

Insurance Code §1275.002 authorizes the commissioner to prescribe the form and manner in which a plan sponsor may elect to apply Insurance Code Chapter 1275 to a self-insured or self-

funded plan established by an employer for the benefit of the employer's employees in accordance with the Employee Retirement Income Security Act of 1974 (29 USC §1001 et seq.).

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Insurance Code Chapter 1275 applies is an administrator for purposes of Insurance Code Chapter 1467.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

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.

§21.5060. Election Submission Requirements.

(a) A plan sponsor of a self-insured or self-funded plan may elect to participate under Insurance Code Chapter 1275, concerning Balance Billing Prohibitions and Out-of-Network Claim Dispute Resolution for Certain Plans, by providing identifying information to the Texas Department of Insurance as specified on the department's website at www.tdi.texas.gov, including:

(1) the name and contact information of the plan sponsor;

(2) the name and contact information of the administrator of the health benefit plan, if applicable;

(3) the health benefit plan year start and end dates;

(4) the requested effective date, which, except as provided in subsection (d) of this section, must be the same as the start date of the relevant plan year and at least 30 days after the date the identifying information is submitted;

(5) the group number of the health benefit plan; and

(6) the number of enrollees covered under the health benefit plan.

(b) Election under subsection (a) of this section applies only to the relevant plan year. A plan sponsor must elect to apply Insurance Code Chapter 1275 (which includes an election to participate in out-of-network claim dispute resolution for applicable claims incurred during the relevant plan year) with respect to each plan year and must provide or update identifying information required by this section. A plan sponsor that elects to apply Insurance Code Chapter 1275 to a plan for the relevant plan year may not opt out until the end of that relevant plan year.

(c) A plan sponsor or its authorized representative may provide the identifying information required by this section.

(d) A health benefit plan with a plan year start date between September 1, 2023, and February 1, 2024, may make an election with a requested effective date that is after the first day of the relevant plan year if the information required under subsection (a) of this section is submitted not later than 45 days after the effective date of this section. An election for a plan year with a start date after February 1, 2024, must apply for the entirety of the plan year.

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

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For further information, please call: (512) 676-6555

DIVISION 8. EMERGENCY MEDICAL SERVICE RATE SUBMISSION AND PAYMENT REQUIREMENTS

28 TAC §21.5070, §21.5071

STATUTORY AUTHORITY. The commissioner adopts new §21.5070 and §21.5071 under Insurance Code §§38.006, 1301.007, and 36.001.

Insurance Code §38.006 authorizes the commissioner to prescribe the form and manner by which political subdivisions may submit rates for ground ambulance services.

Insurance Code §1301.007 directs the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

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.

§21.5070. Rate Database for Emergency Medical Services Providers.

(a) Consistent with Insurance Code §38.006, concerning Emergency Medical Services Provider Balance Billing Rate Database, this section applies to:

(1) a political subdivision that sets, controls, or regulates a rate charged for a health care service, supply, or transport provided by an emergency medical services (EMS) provider, other than an air ambulance; and

(2) an EMS provider or its designee that provides a health care service, supply, or transport on behalf of a political subdivision that sets, controls, or regulates a rate.

(b) A political subdivision or EMS provider subject to this section may not issue a bill for a health care service, supply, or transport that exceeds the amount of the rate set, controlled, or regulated by the political subdivision.

(c) A political subdivision that chooses to submit data to the Texas Department of Insurance (TDI) under this section must submit data using the data submission method available at www.tdi.texas.gov and must include at a minimum:

(1) the political subdivision's name and contact information;

(2) if known, the National Provider Identification (NPI) number of each EMS provider that provides a health care service, supply, or transport that is subject to rates set, controlled, or regulated by the political subdivision;

(3) each ZIP code that is subject to the rates set, controlled, or regulated by the political subdivision; and

(4) the applicable billing code, code type, and dollar amount for each health care service, supply, or transport rate that is set, controlled, or regulated by the political subdivision.

(d) The data submission deadline for a political subdivision that chooses to submit data is 30 days after the date this section becomes effective.

(e) TDI will publish data reported by a political subdivision no later than 10 business days after the data reporting deadline specified in subsection (d) of this section.

(f) A claim submitted by an EMS provider or its designee for a health care service, supply, or transport provided on behalf of a political subdivision must include the ZIP code in which the health care service, supply, or transport originated.

§21.5071. Payments to Emergency Medical Services Providers.

(a) This section applies to a health benefit plan issuer or administrator that is subject to one of the following statutes:

(1) Insurance Code §1271.159, concerning Non-Network Emergency Medical Services Provider;

(2) Insurance Code §1275.054, concerning Out-of-Network Emergency Medical Services Provider Payments;

(3) Insurance Code §1301.166, concerning Out-of-Network Emergency Medical Services Provider;

(4) Insurance Code §1551.231, concerning Out-of-Network Emergency Medical Services Provider Payments;

(5) Insurance Code §1575.174, concerning Out-of-Network Emergency Medical Services Provider Payments; or

(6) Insurance Code §1579.112, concerning Out-of-Network Emergency Medical Services Provider Payments.

(b) For a covered health care or medical service, supply, or transport that is provided to an enrollee by an out-of-network emergency medical services (EMS) provider, a health benefit plan issuer or administrator must pay:

(1) for a service or transport that originated in a political subdivision that sets, controls, or regulates the rate, the lesser of the billed charge or the applicable rate for that political subdivision that is published in the EMS provider rate database established by the department and adjusted as required in subsection (d) of this section; or

(2) if there is not a rate published in the EMS provider rate database for the political subdivision in which the service or transport originated, the lesser of:

(A) the provider's billed charge; or

(B) 325% of the current Medicare rate, including any applicable extenders or modifiers.

(c) For claims incurred during a plan year that starts before September 1, 2024, for a claim for emergency medical services that is provided on or after January 1, 2024, and before September 1, 2025, a health benefit plan issuer or administrator that must make a payment consistent with subsection (b)(1) of this section must use the rate data published in the department's EMS provider rate database for calendar year 2024.

(d) For claims incurred during a plan year that starts on or after September 1, 2024, a health benefit plan issuer or administrator that must make a payment consistent with subsection (b)(1) of this section must pay the lesser of:

(1) the billed charge;

(2) the rate published in the department's EMS provider rate database for calendar year 2024 increased by 10%; or

(3) the rate published in the department's EMS provider rate database for calendar year 2024 increased by the Medicare Economic Index rate that applies to the first day of the new plan year.

(e) Figure: 28 TAC §21.5071(e) provides examples illustrating how a health benefit plan should apply published rates to a plan year under subsection (d) of this section.
Figure: 28 TAC §21.5071(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.

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Jessica Barta
General Counsel
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 94. NURSE AIDES

40 TAC §94.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Title 40, Part 1, Chapter 94, Nurse Aides, consisting of §94.1.

The repeal of Chapter 94 is adopted without changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6198). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption removes unnecessary rules from the Texas Administrative Code. As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to HHSC in accordance with Texas Government Code §531.0201 and §531.02011. In September 2018, the rules pertaining to Nurse Aides in Chapter 94 were repealed and proposed as new rules in Title 26, Part 1, Chapter 556, and a reference to those rules was adopted in Chapter 94. This reference is no longer needed and not the current practice for repealing and proposing new rules.

COMMENTS

The 31-day comment period ended November 20, 2023.

During this period, HHSC did not receive any comments regarding the proposed repeal.

STATUTORY AUTHORITY

The repeal is authorized by 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 §531.0202(b), abolishing DADS, after all of its functions were transferred to HHSC in accordance with Texas Government Code §531.0201 and §531.02011.

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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Karen Ray
Chief Counsel
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For further information, please call: (512) 221-9021

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CHAPTER 95. MEDICATION AIDES--PROGRAM REQUIREMENTS

40 TAC §95.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Title 40, Part 1, Chapter 95, Medication Aides--Program Requirements, consisting of §95.1.

The repeal is adopted without changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6199). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption removes unnecessary rules from the Texas Administrative Code. As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to HHSC in accordance with Texas Government Code §531.0201 and §531.02011. In September 2018, the rules pertaining to Medication Aides--Program Requirements in Chapter 95 were repealed and proposed as new rules in Title 26, Part 1, Chapter 557, and a reference to those rules was adopted in Chapter 95. This reference is no longer needed and not the current practice for repealing and proposing new rules.

COMMENTS

The 31-day comment period ended November 20, 2023.

During this period, HHSC did not receive any comments regarding the proposed repeal.

STATUTORY AUTHORITY

The repeal is authorized by 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 §531.0202(b), abolishing DADS, after all of its functions were transferred to HHSC in accordance with Texas Government Code §531.0201 and §531.02011.

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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Karen Ray
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For further information, please call: (512) 221-9021

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CHAPTER 99. DENIAL OR REFUSAL OF LICENSE

40 TAC §99.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Title 40, Part 1, Chapter 99, Denial or Refusal of License, consisting of §99.1.

The repeal is adopted without changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6200). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption removes unnecessary rules from the Texas Administrative Code. As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to HHSC in accordance with Texas Government Code §531.0201 and §531.02011. In September 2018, the rules pertaining to Denial or Refusal of License in Chapter 99 were repealed and proposed as new rules in Title 26, Part 1, Chapter 560, and a reference to those rules was adopted in Chapter 99. This reference is no longer needed and not the current practice for repealing and proposing new rules.

COMMENTS

The 31-day comment period ended November 20, 2023.

During this period, HHSC did not receive any comments regarding the proposed repeal.

STATUTORY AUTHORITY

The repeal is authorized by 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 §531.0202(b), abolishing DADS, after all of its functions were transferred to HHSC in accordance with Texas Government Code §531.0201 and §531.02011.

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Subchapter B, General Permits, §§219.11, 219.13, and 219.14; Subchapter C, Permits for Over Axle and Over Gross Weight Tolerances, §§219.30-219.36; Subchapter D, Permits for Oversize and Overweight Oil Well Related Vehicles, §219.41 and §219.43; and Subchapter E, Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles, §219.61 and §219.63 without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4810). The rules will not be republished.

The adopted amendments implement legislation; modify language to be consistent with statutes and other sections in Chapter 219 of Title 43; delete language that is already contained in statute; delete language for which the department does not have rulemaking authority; clarify the language; modify language to be consistent with current practice; amend certain application requirements to provide the department with additional information that will help it administer and enforce Subtitle E of Title 7 of the Transportation Code and that the department will provide to law enforcement officers who use the information to enforce the laws regarding size and weight under Subtitle E of Title 7 of the Transportation Code; and update application requirements to allow applicants that are required to file a surety bond under Transportation Code, §623.075 to file an electronic copy, rather than a paper copy.

REASONED JUSTIFICATION.

The amendment to §219.11(c)(1) creates an exception for a permit application under §219.14(b), which prescribes the permit application requirements that are unique to a manufactured house as defined by Transportation Code, §623.091. A permit applicant for a permit regarding a manufactured house under §219.14 must provide additional specific information to the department, as explained below regarding the amendments to §219.14(b). The amendment to §219.11(c)(1) clarifies that the more specific requirements in §219.14(b) control over the more general requirements in §219.11(c)(1).

The amendments to §219.11(c)(1)(A) and (B) modify the application requirements to provide the department with the information it needs to process an application and to contact the correct person if there are updates to the permit restrictions. The amendments require the applicant to provide the department with the name, telephone number, and email address of the contact person, and delete the requirement for the applicant to provide the department with the applicant's telephone number and email address. The applicant could be a large corporation with different contact people for different permits. Having the contact person's email address and telephone number enables the department to communicate more efficiently with the applicant and any permit holder. The amendments also move the requirement for the applicant to provide its customer identification number from subparagraph (B) to subparagraph (A).

An amendment to §219.11(c)(1)(C) removes the requirement for a permit applicant under Subchapter B of Chapter 219 to provide their motor carrier registration (MCR) number to the department. An MCR number is issued to a motor carrier in a certificate of registration under Transportation Code, Chapter 643. The department no longer needs the MCR number in an application for a permit under Subchapter B of Chapter 219 because the department's Texas Permitting and Routing Optimization System (TxPROS or permitting system) can search the federal motor carrier system by using the applicant's United States Department of Transportation (USDOT) Number to determine if the applicant has an MCR number under Transportation Code, Chapter 643 if necessary. Transportation Code, §623.075 and §623.094 state when it may be necessary for the department to know if a permit applicant under Subchapter B of Chapter 219 has an MCR number.

An amendment to §219.11(c)(1)(C) clarifies whether the permit applicant must provide their USDOT Number. The amendment replaces the words "if applicable" with the more precise explanation "if applicant is required by law to have a USDOT Number" because federal law and Texas law prescribe when a motor carrier must have a USDOT Number. For example, 49 U.S.C. §31134 requires an employer or person to be registered by the Secretary of Transportation and obtain a USDOT Number in order to operate a commercial motor vehicle in interstate transportation. Transportation Code, §643.064 requires a motor carrier to have and maintain a USDOT Number if they are required to register with the department under Subchapter B of Chapter 643 of the Transportation Code to engage in intrastate transportation in Texas.

A motor carrier's USDOT number is used as its identification number in state and federal agencies' databases and tracking systems that contain information the department needs to evaluate an applicant for a permit. To leverage this ease of reference and consistent identification that a USDOT number provides, amendments to the following sections conform with the requirement in §219.11(c)(1)(C) for a permit applicant to provide their USDOT Number if the applicant is required by law to have a USDOT Number: §§219.14(b), re-lettered 219.30(c)(2), 219.31(b)(2), 219.32(c)(2), 219.33(b)(2), 219.34(b)(2), 219.35(b)(2), 219.36(b)(2), 219.41(b), and 219.61(b). As previously explained, the department's permitting system can search the federal motor carrier system by using the motor carrier's USDOT Number to determine if the applicant has a certificate of registration under Chapter 643, which allows the department to determine, for example, whether certain applicants for permits for oil well-related vehicles are eligible for a permit because an applicant is not eligible if the applicant has a certificate of registration under Chapter 643. As another example, the department needs the permit applicant's USDOT Number to query the federal motor carrier system to determine the following: 1) whether the Federal Motor Carrier Safety Ad-

ministration (FMCSA) placed the applicant out of service, which prohibits the applicant from engaging in interstate transportation on a public roadway; or 2) whether the Texas Department of Public Safety (DPS) issued the applicant an order to cease, which prohibits the applicant from engaging in intrastate transportation on a public roadway. Transportation Code, §623.004, which was enacted by House Bill 2620, 86th Legislature, Regular Session (2019), authorizes the department to deny a permit application under Subtitle E of Title 7 of the Transportation Code if the applicant is subject to an out-of-service order issued by FMCSA, if DPS determined the applicant has an unsatisfactory safety rating under 49 C.F.R. Part 385, or if DPS determined the applicant has multiple violations of Transportation Code, Chapter 644, a rule adopted under Chapter 644, or Subtitle C of Title 7 of the Transportation Code. Making the USDOT number a consistent application requirement for permits is necessary for the department to get the information it needs to vet the permit applications under Transportation Code, §623.004.

Amendments to §219.11(l)(1) delete language regarding hazardous conditions during which movement of a permitted vehicle is prohibited and renumber the remaining paragraphs. This amendment is necessary because DPS and FMCSA, rather than the department, have the statutory authority to determine when road conditions are hazardous for vehicle movement. Transportation Code, §644.051 gives DPS the authority to adopt rules regulating the safe operation of commercial motor vehicles, including the authority to adopt by reference all or part of the federal safety regulations. DPS adopted 49 C.F.R. §392.14 by reference in 37 TAC §4.11(a). Section 392.14 regulates the operation of a commercial motor vehicle regarding hazardous conditions. Together, 49 C.F.R. §392.14 and 37 TAC §4.11(a) regulate the operation of a commercial motor vehicle regarding hazardous conditions for both interstate and intrastate transportation. Also, even if a permittee is not operating a commercial motor vehicle, the Rules of the Road (Subtitle C of Title 7 of the Transportation Code) include provisions that govern the safe operation of a vehicle, such as Transportation Code, §545.401, which says a person commits an offense if the person drives a vehicle in willful or wanton disregard for the safety of persons or property. To align with the amendments to §219.11(l), the following provisions were also amended to delete the language regarding hazardous conditions during which movement of a permitted vehicle is prohibited and to renumber or re-letter the remaining subdivisions within these sections as necessary: §§219.13(e)(6), 219.32(h), 219.33(c), 219.34(e), 219.35(g), 219.36(g), 219.41(d), and 219.61(d).

Additionally, other sections cross-reference §219.11(l). While these sections were not amended, the meaning of the provisions that cite to §219.11(l) were impacted by the amendments to §219.11(l). The deletion of the language regarding hazardous conditions in §219.11(l) had the effect of removing hazardous conditions from §§219.13(a), 219.13(e)(1)(C), 219.16(e), and 219.31(h).

An amendment to §219.11(n) authorizes applicants for permits to file an electronic copy of a surety bond that a permit applicant must file with the department under Transportation Code, §623.075(c). Transportation Code, §623.074(d) authorizes the department to adopt a rule to authorize an applicant to submit an application electronically. Prior to this amendment, permit applicants were required to file an original surety bond (the paper version with the original signature) with the department under §219.11(n)(1)(A)(iv) and (2)(B). New §219.11(n)(4) allows permit applicants to file their bonds electronically, providing a convenience for permit applicants that want to file their bonds electronically, potentially reducing costs for the department, and potentially streamlining the department's process. An electronic copy of a surety bond is legally enforceable under Texas Business and Commerce Code, §322.007. Moreover, the department currently maintains its records in electronic format, scanning a copy of the original surety bond and destroying the original as authorized by the Texas Department of Transportation (TxDOT). The amendment removes the scanning step from the department's process to the extent the applicant chooses to file an electronic copy of its surety bond with the department, rather than filing the original surety bond.

Amendments to §219.11(n) delete language that was inconsistent with the amendment to allow a permit applicant to file an electronic copy of the surety bond. The department deleted the following: the requirement for the bond to have an original signature under §219.11(n)(1)(A)(iv), the authority for an applicant to file a facsimile or electronic copy of the surety bond as long as the original surety bond is received by the department within 10 days under §219.11(n)(2)(B), and the restriction on the department issuing the applicant a permit until the original surety bond has been received by the department under §219.11(n)(2)(B). None of these requirements were necessary because new §219.11(n)(4) allows electronic filing of surety bonds.

Other amendments to §219.11(n) removed language in §219.11(n)(1)(C) regarding TxDOT's process for making a claim on a surety bond. TxDOT's process for making a claim against a surety bond should not be included in the department's rules because the department does not have statutory authority to set processes for TxDOT through rule. Section 219.11(n)(1)(C) was a relic from a time when TxDOT was responsible for implementing and administering Subtitle E of Title 7 of the Transportation Code and was no longer necessary or appropriate in the department's rule. This amendment also removes the reference to a bond under Transportation Code, §623.163 because the §623.163 bond is addressed in §219.3.

New §219.11(n)(1) through (3) set out the procedures for filing surety bonds with the department for clarity and ease of reference. New paragraphs (1) through (3) consist of rearranged and edited language found in the following subdivisions that existed under §219.11(n) prior to the adoption of these amendments: §§219.11(n)(1)(A)(ii) (minus the unnecessary language that provides an example), 219.11(n)(1)(A)(iii), 219.11(n)(1)(A)(iv), 219.11(n)(1)(A)(v), 219.11(n)(1)(A)(vi), 219.11(n)(1)(B), and 219.11(n)(2)(A).

Other amendments to §219.11(n) remove all or part of the language in the following subdivisions that existed under §219.11(n) prior to the adoption of these amendments because the language was redundant and duplicative of Transportation Code, §623.075, and therefore unnecessary in rule: §§219.11(n)(1)(A)(i), 219.11(n)(1)(D), and 219.11(n)(2)(E) and (F). The deletion of §219.11(n)(2)(F) also removed the reference to Chapter 645 of the Transportation Code because Senate Bill 1814, 87th Legislature, Regular Session (2021) removed the reference to Chapter 645 from Transportation Code, §623.075. Amendments deleted §219.11(n)(2)(C) and (D) because they were unnecessary interpretations of the exemption in Transportation Code, §623.075(b)(1).

Amendments to §219.14(b) update the permit application requirements to be consistent with the format and application requirements in §219.11(c), while omitting unnecessary requirements and customizing the requirements to comply with Sub-

chapter E of Chapter 623 of the Transportation Code. Amended §219.14(b)(1) clarifies that the permit applicant must submit the application to the department.

Amendments to §219.14(b)(2) modify the application requirements to provide the department with the information it needs to process an application and to contact the correct person if there are updates to the permit restrictions. The amendments require the applicant to provide the department with the name, customer identification number, and address of the applicant. The department needs the name of the applicant, so the department has the name of the person to whom the department issues a permit. The applicant's name and address will help law enforcement to enforce Transportation Code, §621.511, which makes it an offense if a person operates or moves a vehicle on a public highway under a permit when the person is not the person named on the permit or an employee of the person named on the permit. Also, the department cannot issue a permit unless the applicant provides their customer identification number, which the applicant can obtain from the department at no cost.

The amendments also require the applicant to provide the department with the name, telephone number, and email address of the contact person. Having the contact person's email address and telephone number enables the department to communicate more efficiently with the applicant and any permit holder. The applicant could be a large corporation with different contact people for different permits.

The amended §219.14(b)(2) also includes rearranged and edited language found in §219.14(b)(1) prior to the adoption of these amendments and incorporates the specific requirements which are unique to manufactured houses as defined by Transportation Code, §623.091. The permit applicant must provide a description of the manufactured home and the dimensions of the manufactured home to the department, so the department can include certain information on the permit as required by Transportation Code, §623.093. Amended §219.14(b)(2) also states that the permit applicant must provide any other information required by law, including the information listed in Transportation Code, §623.093(a).

An amendment to §219.14(b) deletes the following language which is included in Transportation Code, §623.093 because it is not necessary to repeat statutory language in a rule: "If the manufactured home is being moved to or from a site in this state where it has been, or will be, occupied as a dwelling, the permit must also show the name of the owner of the home, the location from which the home is being moved, and the location to which the home is being delivered." An amendment to §219.14(b) deleted the language §219.14(b)(2) that existed prior to the adoption of these amendments because the language was an unnecessary cross-reference that did not add clarity.

Amendments to §219.30 removed language that was duplicative with statute because it is not necessary to repeat statutory language in a rule. An amendment to §219.30(c) deleted language that is in Transportation Code, §623.011(b)(1). An amendment to re-lettered §219.30(d) deleted language that is in Transportation Code, §623.012 and the reference to the state highway system, which was removed by Senate Bill 1814, 87th Legislature, Regular Session (2021). Amendments to §219.30 re-lettered the remaining subsections, as well as an internal cross-reference to re-lettered subsection (e), due to the deletion of subsections (c) and (d).

An amendment to re-lettered §219.30(c)(1) updated the language to be consistent with the language in other sections of Chapter 219 regarding permit applications by stating the person must submit an application to qualify for the permit. An amendment to re-lettered §219.30(c)(2)(A) requires the applicant to provide its customer identification number because the department cannot issue a permit without the customer's identification number. The applicant can obtain a customer identification number from the department at no cost. An amendment to §219.30(c)(2)(B) rearranged the language for clarity. An amendment to re-lettered §219.30(c)(2)(B) also requires the applicant to provide an email address for its contact person to enable the department to communicate more efficiently with the applicant's contact person. Having an email address for the permittee's contact person enables the department to disseminate information more quickly and easily. For example, if the department wants to amend the permit because of a new restriction provided by TxDOT, the department will be able to send an email to the permit holders regarding the new restriction, so they can receive the update as soon as possible and print an updated permit. As another example, when a safety issue arises like a new height restriction on a specific roadway that includes a bridge, the permit holders need to know about the new height restriction as soon as possible. The department will be able to send an email to the permit holders regarding the new height restriction, which will reach the permittees more quickly than phone calls, which can be a slow process, especially if the department must call a large number of permit holders. Also, the department's permitting staff currently contact applicants and permit holders by both email and telephone, depending on the issue. For these reasons, similar amendments were made to the following sections to require applicants to provide email addresses: §§219.14(b), 219.31(b), 219.32(c), 219.33(b), 219.34(b), 219.35(b), and 219.36(b).

An amendment to re-lettered §219.30(c)(2)(C) requires the applicant to provide vehicle registration information because Transportation Code, §623.011(b)(1) says the vehicle must be registered under Transportation Code, Chapter 502 for the maximum gross weight applicable to the vehicle under Transportation Code, §621.101, not to exceed 80,000 pounds. Other amendments to re-lettered §219.30(c)(2)(C) require the permit applicant to provide the truck year and vehicle identification number. The department needs the vehicle information for investigations regarding possible administrative enforcement actions and to provide to law enforcement officers who use the information to enforce the laws regarding size and weight under Subtitle E of Title 7 of the Transportation Code. For example, law enforcement officers use vehicle information to verify whether a permit is being used for more than one vehicle in violation of the law.

Amendments to re-lettered §219.30(h)(4) substitute the word "permittee" for the word "applicant" and add the replacement of the letter of credit or bond to be consistent with Transportation Code, §623.012(c) and (d). An amendment to re-lettered §219.30(h) replaces the reference to deleted §219.30(d) with a reference to Transportation Code, §623.012, which contains the relevant language. Amendments to §219.30 delete subsections (k) and (l) because the applicable statutes do not provide the authority to void the permit for the reason stated in subsection (k).

An amendment to §219.31(b)(2)(A) requires the applicant to provide its customer identification number because the department cannot issue a permit without the customer's identification number. The applicant can obtain a customer identification

number from the department at no cost. An amendment to §219.31(b)(2)(A) also deletes the requirement for the applicant to provide its telephone number and email address because §219.31(b)(2)(B) already requires the applicant to provide the department with the contact information for the applicant's contact person. An amendment to §219.31(b)(2)(B) also rearranges the language for clarity.

An amendment to §219.32(c)(2)(A) requires the applicant to provide its customer identification number because the department cannot issue a permit without the customer's identification number. The applicant can obtain a customer identification number from the department at no cost. An amendment to §219.32(c)(2)(B) also rearranges the language for clarity. For these reasons, similar amendments were made to the following sections: §§219.33(b), 219.34(b), 219.35(b), and 219.36(b).

An amendment to re-lettered §219.32(h) clarifies that the city's curfew movement restrictions do not apply unless the department publishes the curfew movement restrictions. The department only publishes the curfew movement restrictions if TxDOT approves the restrictions. Currently, the department publishes the curfew movement restrictions on the department's website.

Amendments to §219.33(a), (c), and (d) delete reference to an emergency declared by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. §5121, *et seq.)* (Stafford Act) because Transportation Code, §623.341(a) and 23 U.S.C. §127(i) only authorize the federal disaster relief permit if the president of the United States issues a major disaster declaration. The federal disaster relief permit authorizes an overweight vehicle that will be used to deliver relief supplies to exceed legal weight up to the axle weights and gross weight listed in §219.33(c), even if the vehicle is transporting a divisible load. Subject to the restrictions and conditions in §219.33, the permitted vehicle is authorized to exceed legal weight on state highways, including the National System of Interstate and Defense Highways.

Although 23 U.S.C. §127(i) uses the term "emergency," §127(i)(1)(A) says a state may issue these special permits if the president has declared the emergency to be a "major disaster" under the Stafford Act. An emergency declaration is different than a major disaster declaration under the Stafford Act. Section 5170 of the Stafford Act provides the procedures for the president to declare a major disaster, which is defined in §5122 of the Stafford Act. Section 5191 of the Stafford Act provides the procedure for the president to declare an emergency, which is defined in §5122.

The Federal Highway Administration (FHWA) is a government agency within the United States Department of Transportation that supports state and local governments in the design, construction, and maintenance of the U.S. highway system. FHWA's website explains that through financial and technical assistance to state and local governments, FHWA is responsible for ensuring that America's roads and highways continue to be among the safest and most technologically sound in the world.

FHWA issued a memo on June 5, 2013, regarding the Public Law which enacted 23 U.S.C. §127(i) in which FHWA stated as follows: "Section 1511 of MAP-21 extends the States' authority to issue Special Permits to vehicles with divisible loads that are delivering relief supplies during a Presidentially-declared emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act") (42 U.S.C. 5121 et seq.)." The memo, titled "MAP-21, Section 1511 - Special Permits During Periods of National Emergency Implementation Guidance, Revised," was available on FHWA's website as of October 31, 2023. FHWA's June 5, 2013, memo is from FHWA's Associate Administrator for Operations to the Division Administrators, Directors of Field Services, and Director of Technical Services. Although the department previously relied on FHWA's June 5, 2013, memo when enacting §219.33, the department amended §219.33(a), (c), and (d) to delete the reference to an emergency because Transportation Code, Section §623.341(a) and 23 U.S.C. §127(i) only authorize this special permit if the president issues a major disaster declaration for the reasons previously stated.

Amendments to §219.33(c)(3) and re-numbered (c)(4) were necessary to clarify that the city's curfew movement restrictions do not apply unless the department publishes the curfew movement restrictions. The department only publishes the curfew movement restrictions if TxDOT approves the restrictions. Currently, the department publishes the curfew movement restrictions on its website.

An amendment to re-numbered §219.33(c)(7) specifies that a permit will expire 120 days after the date of a disaster because the department's permitting system does not calculate the expiration date for each federal disaster relief permit. Under Transportation Code, §623.341(b) and 23 U.S.C. §127(i), the permit expires not later than the 120th day after the date the president declares a major disaster. The department's permitting system issues permits for 120 days after the major disaster declaration and does not print the expiration date on the permits. The amendment to re-numbered §219.33(c)(7) deleted language that said the expiration date is listed in the permit and replaced that language with language that says the permit will expire 120 days after the date of the major disaster declaration. The amended language is consistent with Transportation Code, §623.341(b) and 23 U.S.C. §127(i).

Amendments to §219.33(d) were necessary because in practice, only the notice of the president's major disaster declaration is available on the White House website and the Federal Emergency Management Agency's website. The official declaration that is signed by the president does not appear to be readily available to the public, so the department should only require a person to carry a copy of the notice of declaration in the permitted vehicle, along with the permit. If the permittee is stopped by law enforcement, the documentation will help the peace officer determine whether the permit was issued under a major disaster declaration issued by the president and whether the permit is valid under §219.33 and Transportation Code, §623.341.

Amendments to §219.41(b) modified the application requirements to provide the department with the information it needs to process an application under Subchapter D of Chapter 219 and to contact the correct person if there are updates to the permit restrictions. An amendment to §219.41(b)(1) requires the applicant to provide its customer identification number because the department cannot issue a permit without the customer's identification number. The applicant can obtain a customer identification number from the department at no cost. An amendment to §219.41(b)(1) also deleted the requirement for the applicant to provide its telephone number and email address because an amendment to §219.41(b)(2) requires the applicant to provide the department with the name, telephone number, and email address for the applicant's contact person. The applicant could be a large corporation with different contact people for different permits. Having an email address for the

permittee's contact person enables the department to disseminate information more quickly and easily, including information that could impact the safety of the traveling public, such as a new permit restriction provided by TxDOT. Transportation Code, §623.145 requires the board of the Texas Department of Motor Vehicles (board) and the Texas Transportation Commission to consider the safety and convenience of the general traveling public when adopting rules regarding the issuance of permits for oil well servicing and drilling machinery under Subchapter G of Chapter 623 of the Transportation Code. An amendment to §219.41(b)(2) and (3) removed the year and make of the unit from paragraph (2) and combined this language with the language in paragraph (3) regarding the identification number of the unit. For these reasons, similar amendments were made to §219.61(b) regarding an application for a crane, which provisions apply to permit applications under Subchapter E of Chapter 219. Transportation Code, §623.195 requires the board and the Texas Transportation Commission to consider the safety and convenience of the general traveling public when adopting rules regarding the issuance of permits for cranes (a/k/a unladen lift equipment motor vehicles) under Subchapter J of Chapter 623 of the Transportation Code.

An amendment to §219.41 deletes subsection (e) regarding void permits because it overstates the language in Transportation Code, §623.146 regarding the ramifications of an owner's or an owner's representative's violation of a rule of the board or a violation of a condition placed on the permit. An amendment to §219.41 deleted subsection (g) regarding records retention because §219.102(b) already includes language that requires the permit to be kept in the permitted vehicle until the permit terminates or expires. Amendments to §219.41 re-lettered the remaining subsections due to the deletion of subsections (e) and (g).

Amendments to §219.43(f) and §219.63(a)(7) eliminated the implication that a hubometer serial number is required to be listed on the permit and conformed the language to current practice. An amendment to §219.43(f) and §219.63(a)(7) clarified that an amendment can be made to the hubometer serial number on the permit if a hubometer serial number is listed on the permit.

Transportation Code, §623.145 and §623.195 require the board to consult with the Texas Transportation Commission prior to the adoption of certain rules regarding oversize and overweight permits for the operation of oil well servicing and drilling machinery and unladen lift equipment motor vehicles. To comply with these statutory requirements, the board consulted with the Texas Transportation Commission on the amendments to 43 TAC §§219.41, 219.43, 219.61, and 219.63. The department provided the proposed amendments to the Texas Transportation Commission through TxDOT's staff. The Texas Transportation Commission considered the proposed amendments at its public meeting on October 26, 2023, and entered a Minute Order to document compliance with Transportation Code, §623.145 and §623.195.

SUMMARY OF COMMENTS.

No comments on the proposed amendments were received.

SUBCHAPTER B. GENERAL PERMITS

43 TAC §§219.11, 219.13, 219.14

STATUTORY AUTHORITY.

The department adopts amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.004, which authorizes the department to deny a permit application if the applicant is subject to an out-of-service order issued by FMCSA or an order to cease issued by DPS; Transportation Code, §623.070, *et seq.* which authorize the department to issue a permit to an applicant to move certain equipment or commodities and prescribe the application requirements for such permits; Transportation Code, §623.074(d), which authorizes the department to adopt a rule to authorize an applicant to submit an application electronically; Transportation Code, §623.095(c), which authorizes the department to adopt rules concerning the requirements for a permit under §623.095(c) regarding an annual permit for a person authorized to be issued permits under Transportation Code, §623.094 for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble.

CROSS REFERENCE TO STATUTE. The amendments implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

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

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For further information, please call: (512) 465-5665

SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES

43 TAC §§219.30 - 219.36

STATUTORY AUTHORITY.

The department adopts amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to

implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.004, which authorizes the department to deny a permit application if the applicant is subject to an out-of-service order issued by FMCSA or an order to cease issued by DPS; Transportation Code, §623.342, which authorizes the board to adopt rules that are necessary to implement Subchapter R of Chapter 623 of the Transportation Code regarding federal disaster relief permits; Transportation Code, §623.411, which authorizes the department to adopt rules that are necessary to implement Subchapter U of Chapter 623 of the Transportation Code regarding the permit for intermodal shipping containers; Transportation Code, §623.427, which authorizes the department to adopt rules that are necessary to implement Subchapter V of Chapter 623 regarding the permit for fluid milk; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble.

CROSS REFERENCE TO STATUTE. The amendments implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

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SUBCHAPTER D. PERMITS FOR OVERSIZE AND OVERWEIGHT OIL WELL RELATED VEHICLES

43 TAC §219.41, §219.43

STATUTORY AUTHORITY.

The department adopts amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.004, which authorizes the department to deny a permit application if the applicant is subject to an out-of-service order issued by FMCSA or an order to cease issued by DPS; Transportation Code, §623.145, which authorizes the board, in consultation with the Texas Transportation Commission, by rule to provide for the issuance of permits under Subchapter G of Chapter 623 of the Transportation Code regarding oil well servicing and drilling machinery; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble.

CROSS REFERENCE TO STATUTE. The amendments implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

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. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR VEHICLES

43 TAC §219.61, §219.63

STATUTORY AUTHORITY.

The department adopts amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.004, which authorizes the department to deny a permit application if the applicant is subject to an out-of-service order issued by FMCSA or an order to cease issued by DPS; Transportation Code, §623.195, which authorizes the board, in consultation with the Texas Transportation Commission, by rule to provide for the issuance of permits under Subchapter J of Chapter 623 of the Transportation Code regarding cranes; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble.

CROSS REFERENCE TO STATUTE. The amendments implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

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

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Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

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Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 1, Part 15, of the Texas Administrative Code:

Chapter 376, Refugee Social Services

Subchapter A Purpose and Scope

Subchapter B Contractor Requirements

Subchapter C General Program Administration

Subchapter D Employment Services: Refugee Social Services (RSS)

Subchapter E Employment Services: Refugee Cash Assistance (RCA)

Subchapter F English as A Second Language (ESL) Services

Subchapter G Other Employability Services

Subchapter H Targeted Assistance Grant (TAG) Services

Subchapter I Unaccompanied Refugee Minor (URM) Program

Subchapter J Local Resettlement Agency Requirements

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 376, Refugee Social Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 376" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 1, Part 15, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304724
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: December 13, 2023

♦ ♦ ♦

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 Texas Administrative Code (TAC) Chapter 66, State Adoption and Distribution of Instructional Materials, pursuant to Texas Government Code (TGC), §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 66 establish procedures for the adoption, purchase, and distribution of instructional materials and are organized under the following subchapters: Subchapter A, General Provisions, Subchapter B, State Adoption of Instructional Materials, and Subchapter C, Local Operations.

As required by the TGC, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 66, Subchapters A-C, continue to exist.

The public comment period on the review begins Friday, December 29, 2023, and ends at 5:00 p.m. on January 29, 2024. A form for submitting public comments on the proposed rule review is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE-_Rules_(TAC)/State_Board_of_Education_Rule_Review. The SBOE will take registered oral and written comments on the review at the appropriate committee meeting in January-February 2024 in accordance with the SBOE board operating policies and procedures.

TRD-202304733
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 14, 2023

♦ ♦ ♦

Texas Funeral Service Commission

Title 22, Part 10

The Texas Funeral Service Commission (Commission) files this Notice of Intention to Review 22 TAC, Part 10 to include the following chapters:

- Chapter 201 - Licensing and Enforcement--Practice and Procedure

- Chapter 203 - Licensing and Enforcement--Specific Substantive Rules

- Chapter 204 - Fees

- Chapter 205 - Crematories

- Chapter 207 - Alternative Dispute Resolution

- Chapter 209 - Ethical Standards for Persons Licensed by the Commission

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the Commission will assess whether the reasons for initially adopting the rules in Chapters 201, 203, 204, 205, 207, and 209 continue to exist.

Submittal of Comments

The Commission invites public comment on this preliminary review of the rules in Chapters 201, 203, 204, 205, 207, and 209. Written comments may be submitted to Sarah Hartsfield, Staff Attorney, Texas Funeral Service Commission, 1801 Congress Avenue, Suite 11-800, Austin, Texas 78701 or by email at sarah.hartsfield@tfsc.texas.gov or info@tfsc.texas.gov. File size restrictions may apply to comments being submitted via email. If it does, please contact the Commission at the number provided below for an alternative method of submission. All comments should reference TFSC Quadrennial Rule Review, and identify the specific chapter or rule number for which the comments relate. Comments must be received within 30 days of publication. For further information, please contact Sarah Hartsfield at (512) 936-2474.

TRD-202304832
James White
Executive Director
Texas Funeral Service Commission
Filed: December 15, 2023

♦ ♦ ♦

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 227, Minimum Guidelines for Human Donor Milk Banks

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 227, Minimum Guidelines for Human Donor Milk Banks, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 227" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304745
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: December 14, 2023

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC), on behalf of Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 230, Specific Additional Requirements for Drugs

Subchapter A Average Manufacture Price and Purchase Price Reporting for Pharmaceuticals

Subchapter B Limitations on Sales of Products Containing Ephedrine, Pseudoephedrine, And Norpseudoephedrine

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 230, Specific Additional Requirements for Drugs, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 230" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304744
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: December 14, 2023

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 295, Occupational Health

Subchapter A Hazard Communication

Subchapter B Fees for Asbestos Services

Subchapter D Occupational Health Guidelines

Subchapter F Guidelines for Selection and Use of Face and Eye Protection in Public Schools

Subchapter G Sanitation at Temporary Places of Employment

Subchapter I Texas Environmental Lead Reduction

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule con-

tinue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 295, Occupational Health, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 295" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304723
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: December 13, 2023

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Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 350, Early Childhood Intervention Services

Subchapter A General Rules

Subchapter B Procedural Safeguards and Due Process Procedures

Subchapter C Staff Qualifications

Subchapter D Case Management for Infants and Toddlers With Developmental Disabilities

Subchapter E Specialized Rehabilitative Services

Subchapter F Public Outreach

Subchapter G Referral, Pre-Enrollment, And Developmental Screening

Subchapter H Eligibility, Evaluation, And Assessment

Subchapter J Individualized Family Service Plan (IFSP)

Subchapter K Service Delivery

Subchapter L Transition

Subchapter M Child and Family Outcomes

Subchapter N Family Cost Share System

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 350, Early Childhood Intervention Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 350" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304920
Jessica Miller
Director, Rules Coordination Officer
Health and Human Services Commission
Filed: December 20, 2023

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 361, Guardianship Services

Subchapter A General Provisions

Subchapter B Eligibility and Assessment of Individuals for Guardianship Services

Subchapter C Contractor Requirements

Subchapter D Records Management

Subchapter E Contract Monitoring and Compliance

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 361, Guardianship Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 361" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304921
Jessica Miller
Director, Rules Coordination Office
Health and Human Services Commission
Filed: December 20, 2023

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Texas Department of Motor Vehicles

Title 43, Part 10

The Texas Department of Motor Vehicles (department) will review and consider whether to readopt, readopt with amendments, or repeal 43 Texas Administrative Code, Chapter 206, Management; Chapter 215, Motor Vehicle Distribution; and Chapter 221, Salvage Vehicle Deal-

ers. This review is being conducted pursuant to Government Code, § 2001.039.

The board will assess whether the reasons for initially adopting these rules continue to exist and whether the rules should be repealed, readopted, or readopted with amendments.

If you want to comment on this rule review proposal, submit your written comments by 5:00 p.m. CST on January 28, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

Proposed changes to sections of these chapters are published in the Proposed Rules section of this issue of the *Texas Register* and are open for a 30-day public comment period.

TRD-202304738
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Filed: December 14, 2023

♦ ♦ ♦

Adopted Rule Reviews

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 85, Subchapter B, concerning Rules for Crafted Precious Metal Dealers. The rule review was conducted under Texas Government Code, §2001.039.

Before publishing notice of the review in the *Texas Register,* the Office of Consumer Credit Commissioner (OCCC) issued an informal advance notice of the rule review to stakeholders. In response to the advance notice, the OCCC received one informal precomment from an individual in the gold buying business. This precomment suggested "that the current rules be left alone" because "they seem to be sufficient."

Notice of the review of 7 TAC Chapter 85, Subchapter B was published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5827). The commission received no official comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 85, Subchapter B continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202304839
Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
Filed: December 15, 2023

♦ ♦ ♦

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 221, Meat Safety Assurance

Subchapter A Transporting Dead Animals and Rendering

Subchapter B Meat and Poultry Inspection

Notice of the review of this chapter was published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5553). HHSC and DSHS received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 221 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agencies determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 221. Any amendments or repeals to Chapter 221 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's and DSHS' review of 25 TAC Chapter 221 as required by the Texas Government Code, §2001.039.

TRD-202304726
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: December 13, 2023

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Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intention to Review these rules in the June 30, 2023 issue of the *Texas Register* (48 TexReg 3523).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 114 are required to implement programs and control measures that reduce emissions from on-road motor vehicles and non-road equipment. Chapter 114 includes provisions for several major mobile-source programs implemented to meet federal Clean Air Act requirements for attainment and maintenance of the National Ambient Air Quality Standards established by the United States Environmental Protection Agency. These include the Vehicle Inspection and Maintenance Program; oxygenated fuel, low emission diesel, and regional low Reid vapor pressure fuel programs; and transportation conformity. The chapter also includes provisions for voluntary mobile-source programs that support the State Implementation Plan. These include vehicle idling restrictions, the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, and the Texas Emissions Reduction Plan.

Public Comment

The public comment period closed on August 1, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 114 continue to exist and readopts these sections in accordance with the requirements Texas Government Code, §2001.039.

TRD-202304841
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 15, 2023

♦ ♦ ♦

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 290, Public Drinking Water, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3523).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 290 are required because Subchapters D - F and H protect the public health and welfare by assuring the microbiological, chemical, and radiological quality of public water supplies; assuring an adequate quantity of drinking water; assuring that new systems are financially stable and technically sound; establishing fees for these services; and assuring minimally acceptable operating practices for public water systems. Specifically, Subchapters D - F and H set forth the requirements for water treatment plant design, operation, and maintenance; establish fees for services provided by TCEQ to public water systems; identify standards regarding drinking water quality and monitoring and reporting requirements; and provide the minimum requirements for the content of annual consumer confidence reports. These rules implement the provisions in the Texas Health and Safety Code (THSC), Chapter 341, Subchapter C, including, but not limited to, THSC, §341.031, which allows TCEQ to adopt and enforce rules to implement the federal Safe Drinking Water Act; THSC, §341.0315, which provides TCEQ with the authority to ensure that public drinking water supply systems supply safe drinking water; THSC, §341.034, which requires TCEQ to adopt rules establishing classes of certificates, duration of certificates, and fees; THSC, §341.035, which requires the executive director to approve a business plan and the plans and specifications for a system before a system may begin construction of a public water supply system; and THSC, §341.041, which allows TCEQ to charge fees to a person who owns, operates, or maintains a public drinking water supply system.

The rules in Subchapter G establish procedures for listing plumbing fixtures meeting the water saving performance standards; to establish labeling requirements for clothes washing and dishwashing machines and lawn sprinklers; and to provide for fees and penalties. These rules implement the provisions in THSC, Chapter 372, including, but not limited to, THSC, §372.002, which requires TCEQ to maintain a current list of plumbing fixtures that are certified to TCEQ by the manufacturer or importer to meet the saving performance standards established by THSC, §372.002(b), and §372.003, which requires TCEQ to adopt rules for the marking or labeling of plumbing fixtures.

Public Comment

The public comment period closed on August 1, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 290 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202304842
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 15, 2023

♦ ♦ ♦

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 330, Municipal Solid Waste, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3524).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 330 are required because the rules implement critical provisions of the Texas Health and Safety Code (THSC) including the Solid Waste Disposal Act (THSC, Chapter 361) and the Texas Clean Air Act (THSC, Chapter 382) as well as satisfy the requirements of federal programs delegated to the state of Texas from the United States Environmental Protection Agency.

The rules in Chapter 330 cover aspects of municipal solid waste (MSW) management and air emissions from MSW facilities and apply to any persons involved in any aspect of the management and control of MSW and MSW facilities including, but not limited to, storage, collection, handling, transportation, processing, and disposal subject to the authority of the commission.

Public Comment

The public comment period closed on August 1, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 330 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202304843
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 15, 2023

♦ ♦ ♦

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3524).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 335 are required because they implement the state's approved hazardous waste program which controls, from point of generation to ultimate disposal, those wastes that have been

identified as hazardous by the administrator of the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 261. The rules also implement the commission's industrial solid and municipal hazardous waste programs, household hazardous waste program, pollution prevention program, and risk reduction program. TCEQ identified changes that may be addressed during future rulemaking.

Public Comment

The public comment period closed on August 1, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 335 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Changes to the rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-202304844
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 15, 2023

♦ ♦ ♦

Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board (TWDB) files the adoption of its review of rules in 31 Texas Administrative Code, Title 31, Part 10, Chapter 354.

This review was conducted in accordance with the requirements of the Texas Government Code §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years.

Notice of the review of the aforementioned chapter was published in the August 11, 2023, issue of the *Texas Register* (48 TexReg 4402). TWDB received no comments during the comment period.

TWDB conducted its review in accordance with the requirements of the Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. TWDB considered whether the initial factual, legal, and policy reasons for adopting each rule in these subchapters continued to exist and determined that the original reasons for adopting these rules continue to exist and readopts these rules. This concludes TWDB's review of 31 TAC, Title 31, Part 10, Chapter 354.

TRD-202304910
Ashley Harden
General Counsel
Texas Water Development Board
Filed: December 19, 2023

♦ ♦ ♦

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts adopts the review of Texas Administrative Code, Title 34, Part 1, Chapter 1, concerning Central Administration, Chapter 4, concerning Treasury Administration, Chapter 5, concerning Funds Management (Fiscal Affairs), and Chapter 6, concerning Investment Management. This review is being conducted in accordance with Government Code, §2001.039. The review assessed whether the reasons for adopting the chapters continue to exist.

The comptroller received no comments on the proposed review, which was published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5829).

Relating to the review of Chapter 1, the comptroller finds that the reasons for adopting Chapter 1 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, §1.72 and §1.73 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 4, the comptroller finds that the reasons for adopting Chapter 4 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 5, the comptroller finds that the reasons for adopting Chapter 5 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, §§5.1, 5.40, 5.41, 5.48, 5.51, 5.54, 5.61, and 5.140 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 6, the comptroller finds that the reasons for adopting Chapter 6 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 1, Chapter 4, Chapter 5, and Chapter 6.

Filed: December 18, 2023.

TRD-202304875
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: December 18, 2023

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §228.13(f)

Component 1: Governance (19 TAC Chapter 228, Subchapters B & C)	
If the TAC Requirement Includes…	Acceptable Evidence of Compliance is…
• Written notification provided to individuals or entities	✓ Letter with signature and date; or ✓ Email with to/from identified and date stamp; or ✓ Signed and dated form. ✓ Website posting (as applicable).
• Official notifications to TEA	✓ Letter with signature of Legal Authority and date.
• Attendance at meetings or training	✓ Meeting minutes; and ✓ Training materials; and ✓ Sign-In Sheet with date
• Qualifications of individuals	✓ Resume (certification, experience, accomplishment, employment history). ✓ Valid educator certificate (certification); and ✓ Official service records (experience); and ✓ K-12 campus/district report card (accomplishment). ✓ Signed reference letter(s) or recommendation(s) (certification, experience, accomplishment)
Component 2: Admission (19 TAC Chapters 227, 239, 241, & 242)	
If the TAC Requirement Includes…	Acceptable Evidence of Compliance is…
• GPA • College coursework completed • College credit • Conferred degrees	✓ Official transcripts; or ✓ For out-of-country applicants: Credential evaluation from approved service (course by course evaluation with GPA and degree conferred)
• Basic skills	✓ Official transcripts or foreign credential evaluation reflecting a degree, college level coursework complete, or TSI complete; or ✓ SAT/ACT/GRE scores.
• English language proficiency	✓ Official transcripts reflecting bachelor's degree or higher conferred in the U.S. or country listed in Figure: 19 TAC §230.11(b)(5)(C); or ✓ TOEFL-iBT score report.
• Notification provided to individuals or entities	✓ Letter with date and signature; or ✓ Email with to/from identified and date stamp; or ✓ Signed and dated form.
• Performance Assessments • Screens	✓ Copy of assessment or screen; and ✓ Aligned rubric with proficiency score identified.
• Application	✓ Document reflecting applicant and program information (paper or electronic).
• Qualifications of applicants	✓ Valid educator certificate (certification), as applicable; ✓ Official service records (experience), as applicable; ✓ Copy of license and/or certificate (as required in the SOQ, as applicable)

• Work experience	✓ Resume. ✓ Official service records. ✓ Signed letters of reference. ✓ SOQ (as applicable).
• Licensure and/or certification	✓ Copy of license and/or certificate
• Completion of training/prior coursework completed	✓ Transfer form. ✓ Certificate(s) of completion. ✓ Dated sign-in sheet(s) with training topic identified. ✓ Training transcripts.
• Providing/posting information for applicants and candidates • Publishing EPP policies	✓ Published page(s) on public website; or ✓ Orientation materials: or ✓ Admission application.
Component 3: Curriculum (19 TAC Chapter 228, Subchapter D, Chapters 239, 241, & 242)	
If the TAC Requirement Includes…	Acceptable Evidence of Compliance is…
• Specified curriculum components • Standards-based	✓ Standards alignment charts; and ✓ Published Course / Module syllabus reflecting information; or ✓ Instructor lesson plans; and ✓ Course materials (presentation slides, project instructions, textbooks; and ✓ Performance assessment w/aligned rubric.
• Evidence-based • Research-based	✓ Bibliography on syllabus. ✓ Required text(s) for course.
• Assessments	✓ Published Course / Module syllabus; and ✓ Copy of assessment or project instructions; and ✓ Aligned rubric or other evaluative tool with proficiency level identified.
Component 4: Program Design & Delivery (19 TAC Chapter 228, Subchapters D, E, & F)	
If the TAC Requirement Includes…	Acceptable Evidence of Compliance is…
• Number/Hours of performance activities completed-candidate, field supervisor (e.g., FBE hours, practicum hours, clinical teaching hours, field supervisor contact hours)	✓ Signed/initialed and dated logs; and ✓ Written reflections (for FBE).
• Hours of coursework completed	✓ Official transcripts; or ✓ Time and date stamped logs or transcripts (including verifying signature if completion is not automatically recorded by technology); and ✓ Signed/initialed and dated benchmark document. ✓ Certificate of completion
• Performance Assessments • Screens • Proficiency in clinical experience	✓ Copy of assessment or screen; and ✓ Aligned rubric reflecting level of proficiency. ✓ Observation rubric reflecting level of proficiency and educational practices observed with date,

• Proficiency in pre-service coursework • Proficiency in clinical experience	start and stop time, subject, and grade level (clinical experience); and ✓ Signed recommendation from identified campus personnel and field supervisor
• Qualifications of individuals (field supervisors, mentors, cooperating teachers, site supervisors, candidate coach)	✓ Resume (certification, experience, accomplishment, employment history). ✓ Signed reference letter or letter of recommendation (accomplishment); or ✓ K-12 campus/district report card (accomplishment); and ✓ Official service records (experience); and ✓ Valid educator certificate (certification); and/or ✓ Professional license, as applicable. ✓ Signed and dated reference letter or recommendation (accomplishment) (experience, certification, and accomplishment if from employer or HR).
• Work experience	✓ Resume. ✓ Service record. ✓ Signed letter of reference.
• Licensure and/or certification	✓ Copy of license and/or certificate.
• Completion of training (field supervisors, mentors, cooperating teachers, site supervisors, candidate coach)	✓ Certificate of completion; or ✓ Dated sign-in sheet with training topic identified; or ✓ Official transcripts/training transcripts; and ✓ Training materials reflecting required content (e.g., coaching/mentoring and co-teaching.)
• Notification provided to individuals or entities	✓ Letter with date and signature; or ✓ Email with to/from identified and date stamp; or ✓ Signed and dated form.
• Coursework or training content	✓ Published syllabi for course or module; or ✓ Course materials (presentation slides, project instructions, textbooks, instructor guides); and ✓ Performance assessment with aligned rubric.
Component 5: Evaluation of Program & Candidate (19 TAC Chapters 227, 228, 230, 239, 241, & 242)	
If the TAC Requirement Includes…	Acceptable Evidence of Compliance is…
• Candidate progress or readiness (e.g., testing, certification)	✓ Benchmark document reflecting dates and requirements complete. ✓ Test scores. ✓ Rubric reflecting level of proficiency.
• Program evaluation	✓ Surveys; and ✓ Survey data. ✓ Meeting minutes (for discussions related to evaluation of program). ✓ Rubrics. ✓ Institutional plan for long term program growth/improvement

• Document retention (candidate records, EPP records)	✓ Evidence required by this chart, paper or electronic
Component 6: Professional Conduct (19 TAC Chapter 228, Subchapter D)	
If the TAC Requirement Includes…	Acceptable Evidence of Compliance is…
• Educators Code of Ethics: Attestation of understanding and adherence	✓ Handbook page reflecting attestation with signature; or ✓ Application reflecting attestation with signature or electronic acknowledgement; or ✓ Document that includes statement of adherence with signature.
Component 7: Complaints Process (19 TAC Chapter 228, Subchapter G)	
If the TAC Requirement Includes…	Acceptable Evidence of Compliance is…
• Complaints process in place	✓ Published on website with link to TEA complaint process; and ✓ Policy/process displayed at physical site; and ✓ Document on file at TEA.
• Complaints process applied	✓ Letter/email/form signed and dated; or ✓ Meeting minutes (where complaint is discussed)
Component 8: Certification Procedures (19 TAC Chapter 228, Subchapter D, Chapters 239, 241, & 242)	
If the TAC Requirement Includes…	Acceptable Evidence of Compliance is…
• Degree conferred • College coursework completed	✓ Official transcripts
• EPP requirements completed	✓ Benchmark document reflecting dates and requirements complete; or ✓ EPP Training transcript; or ✓ Official transcripts.
• Classroom teaching experience	✓ Official service records
• Licensure/certification	✓ License or certificate; and ✓ Statement of Qualifications (SOQ), as applicable
• Passing scores on examinations	✓ Official exam score report.
Component 9: Integrity of Data Submission (19 TAC Chapter 229)	
If the TAC Requirement Includes…	Acceptable Evidence of Compliance is…
• Data reported to TEA	✓ Records in ASEP or ECOS compared with dates and data on EPP evidence required by this chart (must agree).
Component 10: Instruction in Proactive Planning Techniques & Inclusive Practices (19 TAC Chapter 228, Subchapter D)	
If the TAC Requirement Includes…	Acceptable Evidence of Compliance is…
• Required content in coursework & training	✓ Standards alignment charts identifying alignment of educator standards in curriculum; and ✓ Application of required content identified in syllabi/course outlines; or ✓ Application of required content identified in course/training lesson plans.
• Proficiency in required content during clinical experience	✓ Observation rubric signed by candidate and field supervisor with date, start and stop time, subject,

	and grade level, with record of educational practices observed.

Figure: 19 TAC §228.15(b)(1)
Teacher Residency Preparation Route Evidence Sources

If the TAC Requirement Includes...	Requirements	Acceptable Evidence of Compliance is...
Coursework Requirement	**§228.37(a)**	• Residency Program Scope and Sequence (including clearly outlined timeline for gradual increase of instructional responsibility) • Methods Course Syllabus • Content Pedagogy Syllabi
Practice-Based Experience in a Classroom Setting	**§228.65(a)**	• Scope and Sequence of Residency Program • Educator Preparation Program (EPP) Handbook: Submission of guidance for gradual release and co-teaching. • Evidence of host teacher training related to best practices in co-teaching.
Instructional Setting	**§228.65(b)(1) and (3)** **§228.43(a)-(c)**	• EPP handbook: description on instructional setting selection process • Form used for determining that a candidate should have multiple placements. • EPP handbook: description of expectations for candidate completion of field-based experiences (FBEs) • Log or tracking tool of candidate FBE completion
Host Teacher	**§228.91(a), (b), (d), and (e)** **§228.95(a) and (b)**	• Host Teacher Profile or Job Description • EPP handbook includes description of host criteria, selection process, and training. • Host teacher training calendar and/or scope and sequence • Host teacher training artifacts: agenda, training materials that show evidence of focus on coaching and co-teaching practice • Host teacher job embedded support artifacts: example check in, example of observation of host teacher or debrief notes.
Co-Teaching	**§228.65(b)(2)**	• EPP Scope and Sequence and/or Handbook with description of co-teaching practices

Field Supervisors	**§228.101(a)** **§228.101(b)(1), (4), and (10)**	• EPP handbook description of Field Supervisor (FS) requirements, selection, and training • FS training calendar • FS training artifacts: sample agenda and/or training materials to show evidence of alignment to co-teaching and coaching. • Sample resume of a Field Supervisor
Teacher Resident Coaching	**§228.101(b)(7)**	• EPP Handbook: teacher resident coaching and informal observations, including protocols, observation feedback process description • Sample coaching tools • Samples of written candidate feedback that includes candidate follow up support plans
Formal Observations	**§228.103(a) and (b)**	• EPP Handbook: description of formal observation practices (observation pre- and post-practices, length of observation), FS training to meet TEA requirements. • EPP's formal observation tool • EPP's calendar of formal observations
Certification Exam Requirements	**§228.31(d) and (e)** **§230.39(b)(5)-(6)**	• EPP handbook: description of certification exam timeline requirements for teacher residents, description of supports for candidates to prepare for and access exam by EPP established deadline. • EPP handbook: description of certification requirements, surrounding processes for candidates to be recommended for and to achieve completer status within their program. • Sample recommendation form for candidates to be certified upon completion of a teacher residency program.
Evaluation of Teacher Candidate Readiness	**§228.31(c)** **§228.65(c)-(g)**	• EPP Handbook: description of progression of performance gates, description of response to candidate performance on each gate and intervention supports, description of candidate recommendation process • Submission of all performance gates for review of quality criteria • Sample intervention plan template • Candidate recommendation for certification form/document, reflecting shared decision making with district partner.
Governance	**§228.25(d)**	• Governance practices, from EPP handbook • Sample governance meeting agenda • Sample governance meeting minutes • Current MOUs from partner districts

Timelines for Pedagogy Examinations for Educator Certification

	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28
Pedagogy and Professional Responsibilities (PPR)	PPR required	PPR required	PPR required	PPR required (last operational date 8/31/26)		
edTPA	edTPA optional	edTPA optional	edTPA optional	edTPA optional	TPA required: edTPA option (All Complete = Pass)	TPA required: edTPA option (Cut Score = Pass)
Texas-specific TPA (TxTPA)	Procurement processes to develop TxTPA begin	TxTPA in development	TxTPA in development	TxTPA in development	TPA required: TxTPA pilot option (All Complete = Pass)	TPA required: TxTPA option (Cut Score = Pass)
Career and Technical Education (CTE) Fields	PPR exam or edTPA option	PPR exam, PPR for T&I, or edTPA option	PPR exam, PPR for T&I, or edTPA option	PPR exam, PPR for T&I, or edTPA option	PPR exam, PPR for T&I, or edTPA option	PPR exam, PPR for T&I, or edTPA option

Figure: 19 TAC §230.21(e) [~~**Figure: 19 TAC §230.21(e)**~~]

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]
Art			
§233.10	Art: Early Childhood–Grade 12	178 Art EC–12 Texas Examinations of Educator Standards (TExES)	160 Pedagogy and Professional Responsibilities (PPR) EC–12 TExES (last operational date 8/31/2026) or 2015 edTPA: Visual Arts [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
Bilingual Education			
§233.6	Bilingual Education Supplemental: Spanish	164 Bilingual Education Supplemental TExES **and** 190 Bilingual Target Language Proficiency (BTLPT)—Spanish TExES (last operational date 8/31/2027) or 165 Bilingual Education Spanish Supplemental TExES (Starting no earlier than 9/1/2026)	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: American Sign Language	164 Bilingual Education Supplemental TExES **and** 184 American Sign Language (ASL) EC–12 TExES **and** 073 Texas Assessment of Sign Communications—American Sign Language (TASC—ASL)	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Arabic	164 Bilingual Education Supplemental TExES **and** American Council for the Teaching of Foreign Languages (ACTFL) 614 Oral Proficiency Interview (OPI)—Arabic **and** 615 Writing Proficiency Test (WPT)—Arabic	Not Applicable: Not a Stand-alone Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]
§233.6	Bilingual Education Supplemental: Chinese	164 Bilingual Education Supplemental TExES **and** ACTFL 618 OPI—Chinese (Mandarin) **and** 619 WPT—Chinese (Mandarin)	Not Applicable: Not a Stand-alone Certificate
[~~**Bilingual Education** (continued~~])			
§233.6	Bilingual Education Supplemental: Japanese	164 Bilingual Education Supplemental TExES **and** ACTFL 616 OPI—Japanese **and** 617 WPT—Japanese	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Vietnamese	164 Bilingual Education Supplemental TExES **and** ACTFL 620 OPI—Vietnamese **and** 621 WPT—Vietnamese	Not Applicable: Not a Stand-alone Certificate
Career and Technical Education			
§233.13	Technology Education: Grades 6–12	171 Technology Education 6–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or starting on 9/1/2024, 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6–12 TExES, or 2143 edTPA: Technology and Engineering Education [~~(pilot exam)~~] or starting on 9/1/2024 2151 edTPA: Career and Technical Education or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]
§233.13	Family and Consumer Sciences, Composite: Grades 6–12	American Association of Family and Consumer Sciences (AAFCS) 200 Family and Consumer Sciences—Composite Examination	160 PPR EC–12 TExES (last operational date 8/31/2026) or starting on 9/1/2024, 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6–12 TExES, or 2117 edTPA: Family and Consumer Sciences [~~(pilot exam)~~] or starting on 9/1/2024 2151 edTPA: Career and Technical Education or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]
[~~Career and Technical Education~~ ~~(continued)~~]			
§233.13	Human Development and Family Studies: Grades 8–12	AAFCS 202 Human Development and Family Studies Concentration Examination	160 PPR EC–12 TExES (last operational date 8/31/2026) or starting on 9/1/2024, 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6–12 TExES, or 2117 edTPA: Family and Consumer Sciences [~~(pilot exam)~~] or starting on 9/1/2024 2151 edTPA: Career and Technical Education or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

§233.13	Hospitality, Nutrition, and Food Sciences: Grades 8–12	AAFCS 201 Hospitality, Nutrition, and Food Science Concentration Examination	160 PPR EC–12 TExES (last operational date 8/31/2026) or starting on 9/1/2024, 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6–12 TExES, or 2117 edTPA: Family and Consumer Sciences [~~(pilot exam)~~] or starting on 9/1/2024 2151 edTPA: Career and Technical Education or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.13	Agriculture, Food, and Natural Resources: Grades 6–12	272 Agriculture, Food, and Natural Resources 6–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or starting on 9/1/2024, 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6–12 TExES, or 2100 edTPA: Agricultural Education [~~(pilot exam)~~] or starting on 9/1/2024, 2151 edTPA: Career and Technical Education or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.13	Business and Finance: Grades 6–12	276 Business and Finance 6–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or starting on 9/1/2024, 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6–12 TExES, or 2102 edTPA: Business Education [~~(pilot exam)~~] or starting on 9/1/2024, 2151 edTPA: Career and Technical Education or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]
[~~Career and Technical Education~~ (continued)]			
§233.14	Marketing: Grades 6–12	275 Marketing 6–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026), or starting on 9/1/2024, 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6–12 TExES, or 2102 edTPA: Business Education [~~(pilot exam)~~] or starting on 9/1/2024, 2151 edTPA: Career and Technical Education or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.14	Health Science: Grades 6–12	273 Health Science 6–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026), or starting on 9/1/2024, 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6–12 TExES, or starting on 9/1/2024, 2151 edTPA: Career and Technical Education or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.14	Trade and Industrial Education: Grades 6–12	Not Applicable	[~~270 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6–12 TExES (last operational date 8/31/2021) Starting 9/1/2021~~] 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6–12 TExES

§233.14	Trade and Industrial Workforce Training: Grades 6–12	Not Applicable	370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6–12 TExES

Certificate TAC Reference	**Certificate Name**	**Required Content Pedagogy Test(s)**	**Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]**
Computer Science and Technology Applications			
§233.5	Computer Science: Grades 8–12	241 Computer Science 8–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2143 edTPA: Technology and Engineering Education [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.5	Technology Applications: Early Childhood–Grade 12	242 Technology Applications EC–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2108 edTPA: Educational Technology Specialist [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
Core Subjects			
[~~§233.2~~	~~Core Subjects: Early Childhood–Grade 6~~	~~291 Core Subjects EC–6 TExES~~	~~160 PPR EC–12 TExES or 2110 edTPA: Elementary Education: Literacy with Mathematics Task 4 (pilot exam)~~]

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]
[~~Core Subjects~~ (continued)]			
§233.2	Core Subjects with Science of Teaching Reading: Early Childhood–Grade 6	293 Science of Teaching Reading TExES **and** **[~~either:~~** ~~291 Core Subjects EC–6 TExES (last operational date 12/31/2021)~~ **~~or~~]** 391 Core Subjects EC–6 TExES [~~(starting 1/1/2021)~~]	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2110 edTPA: Elementary Education: Literacy with Mathematics Task 4 [~~(pilot exam)~~] or 2001 edTPA: Elementary Literacy or 2002 edTPA: Elementary Mathematics or 2149 edTPA: Elementary Education: Mathematics with Literacy Task 4 or 2014 edTPA: Early Childhood Education or 2016 edTPA: Middle Childhood Mathematics or 2017 edTPA: Middle Childhood Science or 2018 edTPA: Middle Childhood English Language Arts or 2019 edTPA: Middle Childhood History/Social Studies (starting no earlier than 9/1/2024) or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.2	Core with the Science of Teaching Reading: Early Childhood–Grade 6	293 Science of Teaching Reading TExES **and** 491 Core Subjects EC–6 TExES (Starting no earlier than 9/1/2027)	2110 edTPA: Elementary Education: Literacy with Mathematics Task 4 or 2001 edTPA: Elementary Literacy or 2002 edTPA: Elementary Mathematics or 2149 edTPA: Elementary Education: Mathematics with Literacy Task 4 or 2014 edTPA: Early Childhood Education or 2016 edTPA: Middle Childhood Mathematics or 2017 edTPA: Middle Childhood Science or 2018 edTPA: Middle Childhood English Language Arts or 2019 edTPA: Middle Childhood History/Social Studies or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]
[~~§233.2~~	~~Core Subjects: Grades 4–8~~	~~211 Core Subjects 4–8 TExES~~	~~160 PPR EC–12 TExES or 2016 edTPA: Middle Childhood Mathematics (pilot exam) or 2017 edTPA: Middle Childhood Science (pilot exam) or 2018 edTPA: Middle Childhood English Language Arts (pilot exam) or 2019 edTPA: Middle Childhood History/Social Studies (pilot exam)~~]

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]
[~~**Core Subjects** (continued)~~]			
§233.2	Core Subjects with Science of Teaching Reading: Grades 4–8	293 Science of Teaching Reading TExES **and** 211 Core Subjects 4–8 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2016 edTPA: Middle Childhood Mathematics [~~(pilot exam)~~] or 2017 edTPA: Middle Childhood Science [~~(pilot exam)~~] or 2018 edTPA: Middle Childhood English Language Arts [~~(pilot exam)~~] or 2019 edTPA: Middle Childhood History/Social Studies [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

§233.2	Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6	293 Science of Teaching Reading TExES **and** 492 Core Subjects EC-6 w/ Fine Arts, PE, and Health TExES (starting no earlier than 9/1/2027)	2110 edTPA: Elementary Education: Literacy with Mathematics Task 4 or 2001 edTPA: Elementary Literacy or 2002 edTPA: Elementary Mathematics or 2149 edTPA: Elementary Education: Mathematics with Literacy Task 4 or 2014 edTPA: Early Childhood Education or 2016 edTPA: Middle Childhood Mathematics or 2017 edTPA: Middle Childhood Science or 2018 edTPA: Middle Childhood English Language Arts or 2019 edTPA: Middle Childhood History/Social Studies or 2021 edTPA: K–12 Performing Arts or 2015 edTPA: Visual Arts or 2119 edTPA: Health Education or 2011 edTPA: Physical Education or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.2	Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6	293 Science of Teaching Reading TExES **and** 591 Core Subjects EC–6 w/ Special Education: TExES (starting no earlier than 9/1/2027)	2110 edTPA: Elementary Education: Literacy with Mathematics Task 4 or 2001 edTPA: Elementary Literacy or 2002 edTPA: Elementary Mathematics or 2149 edTPA: Elementary Education: Mathematics with Literacy Task 4 or 2014 edTPA: Early Childhood Education or 2016 edTPA: Middle Childhood Mathematics or 2017 edTPA: Middle Childhood Science or 2018 edTPA: Middle Childhood English Language Arts or 2019 edTPA: Middle Childhood History/Social Studies or 2012 edTPA: Special Education or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

§233.2	Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6	293 Science of Teaching Reading TExES **and** 494 Bilingual Spanish Core Subjects Early Childhood-Grade 6 TExES (starting no earlier than 9/1/2028)	2110 edTPA: Elementary Education: Literacy with Mathematics Task 4 or 2001 edTPA: Elementary Literacy or 2002 edTPA: Elementary Mathematics or 2149 edTPA: Elementary Education: Mathematics with Literacy Task 4 or 2014 edTPA: Early Childhood Education or 2016 edTPA: Middle Childhood Mathematics or 2017 edTPA: Middle Childhood Science or 2018 edTPA: Middle Childhood English Language Arts or 2019 edTPA: Middle Childhood History/Social Studies or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.2	Core/English as a Second Language with the Science of Teaching Reading: Early Childhood-Grade 6	293 Science of Teaching Reading TExES **and** 493 Core Subjects EC-6 w/ESL TExES (starting no earlier than 9/1/2028)	2110 edTPA: Elementary Education: Literacy with Mathematics Task 4 or 2001 edTPA: Elementary Literacy or 2002 edTPA: Elementary Mathematics or 2149 edTPA: Elementary Education: Mathematics with Literacy Task 4 or 2014 edTPA: Early Childhood Education or 2016 edTPA: Middle Childhood Mathematics or 2017 edTPA: Middle Childhood Science or 2018 edTPA: Middle Childhood English Language Arts or 2019 edTPA: Middle Childhood History/Social Studies or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026).
Counselor			
§239.20	School Counselor: Early Childhood–Grade 12	[~~152 School Counselor EC–12 TExES (last operational date 8/31/2021) Starting 9/1/2021~~] 252 School Counselor EC–12 TExES	Not Applicable: Not an Initial Certificate

Dance			
§233.10	Dance: Grades 6–12	279 Dance 6–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2021 edTPA: K–12 Performing Arts [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
Early Childhood			
§233.2	Early Childhood: Prekindergarten–Grade 3	292 Early Childhood: PK–3 TExES **and** 293 Science of Teaching Reading TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2014 edTPA: Early Childhood Education [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

Certificate TAC Reference	**Certificate Name**	**Required Content Pedagogy Test(s)**	**Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]**
Educational Diagnostician			
§239.84	Educational Diagnostician: Early Childhood–Grade 12	[~~153 Educational Diagnostician EC–12 TExES (last operational date 12/31/2020) Starting 1/1/2021~~] 253 Educational Diagnostician EC–12 TExES	Not Applicable: Not an Initial Certificate
English Language Arts and Reading			
[~~§233.3~~	~~English Language Arts and Reading: Grades 4–8~~	~~117 English Language Arts and Reading 4–8 TExES~~	~~160 PPR EC–12 TExES or 2018 edTPA: Middle Childhood English Language Arts (pilot exam)~~]
§233.3	English Language Arts and Reading with Science of Teaching Reading: Grades 4–8	293 Science of Teaching Reading TExES **and** [~~117 English Language Arts and Reading 4–8 TExES (last operational date 12/31/2021) or~~**]** 217 English Language Arts and Reading 4–8 TExES [~~(starting 1/1/2022)~~]	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2018 edTPA: Middle Childhood English Language Arts [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

§233.3	English Language Arts and Reading: Grades 7–12	231 English Language Arts and Reading 7–12 TExES (last operational date 8/31/2024) **or** 331 English Language Arts and Reading 7–12 TExES (starting no earlier than 9/1/2024)	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2003 edTPA: Secondary English Language Arts [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
[~~§233.3~~	~~English Language Arts and Reading/Social Studies: Grades 4–8~~	~~113 English Language Arts and Reading/ Social Studies 4–8 TExES~~	~~160 PPR EC–12 TExES or 2018 edTPA: Middle Childhood English Language Arts (pilot exam) or 2019 edTPA: Middle Childhood History/Social Studies (pilot exam)~~]
Certificate TAC Reference	**Certificate Name**	**Required Content Pedagogy Test(s)**	**Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]**
[~~English Language Arts and Reading~~ (~~continued~~)]			
§233.3	English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4–8	293 Science of Teaching Reading TExES **and** 113 English Language Arts and Reading/ Social Studies 4–8 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2018 edTPA: Middle Childhood English Language Arts [~~(pilot exam)~~] or 2019 edTPA: Middle Childhood History/Social Studies [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§239.93	Reading Specialist: Early Childhood–Grade 12	151 Reading Specialist EC–12 TExES (last operational date 8/31/2027) **or** 251 Reading Specialist EC-12 TExES (starting no earlier than 9/1/2027)	Not Applicable: Not an Initial Certificate
English as a Second Language			
§233.7	English as a Second Language Supplemental	154 English as a Second Language Supplemental TExES (last operational date 8/31/2028) or 254 English as a Second Language Supplemental TExES (starting no earlier than 9/1/2028)	Not Applicable: Not a Stand-alone Certificate
Gifted and Talented			
§233.9	Gifted and Talented Supplemental	162 Gifted and Talented TExES	Not Applicable: Not a Stand-alone Certificate
Health			

§233.11	Health: Early Childhood–Grade 12	157 Health Education EC–12 TExES (last operational date 8/31/2024) or 257 Health Education EC–12 TExES (starting no earlier than 9/1/2024)	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2119 edTPA: Health Education [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
Journalism			
§233.3	Journalism: Grades 7–12	256 Journalism 7–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2003 edTPA: Secondary English Language Arts [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

Certificate TAC Reference	**Certificate Name**	**Required Content Pedagogy Test(s)**	**Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]**
Junior Reserve Officer Training			
§233.17	Junior Reserve Officer Training Corps: Grades 6–12	Not Applicable	160 PPR EC–12 TExES (last operational date 8/31/2026) or 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6–12 TExES
Languages Other Than English			
§233.15	American Sign Language: Early Childhood–Grade 12	184 ASL EC–12 TExES **and** 073 TASC–ASL	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.15	Arabic: Early Childhood–Grade 12	ACTFL 605 OPI—Arabic **and** 600 WPT—Arabic	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

§233.15	Chinese: Early Childhood–Grade 12	ACTFL 606 OPI—Chinese (Mandarin) **and** 601 WPT—Chinese (Mandarin)	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.15	French: Early Childhood–Grade 12	610 Languages Other Than English (LOTE) French EC—12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.15	German: Early Childhood–Grade 12	611 LOTE German EC–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.15	Hindi: Early Childhood–Grade 12	ACTFL 622 OPI—Hindi **and** 623 WPT—Hindi	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

Certificate TAC Reference	**Certificate Name**	**Required Content Pedagogy Test(s)**	**Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]**
[~~Languages Other Than English~~ (~~continued~~)]			
§233.15	Italian: Early Childhood–Grade 12	ACTFL 624 OPI—Italian **and** 625 WPT—Italian	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

§233.15	Japanese: Early Childhood–Grade 12	ACTFL 607 OPI—Japanese **and** 602 WPT—Japanese	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.15	Korean: Early Childhood–Grade 12	ACTFL 630 OPI—Korean **and** 631 WPT—Korean	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.15	Latin: Early Childhood–Grade 12	612 LOTE Latin EC–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2104 edTPA: Classical Languages [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.15	Portuguese: Early Childhood–Grade 12	ACTFL 632 OPI—Portuguese **and** 633 WPT—Portuguese	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.15	Russian: Early Childhood–Grade 12	ACTFL 608 OPI—Russian **and** 603 WPT—Russian	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.15	Spanish: Early Childhood–Grade 12	613 LOTE Spanish EC–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

§233.15	Tamil: Early Childhood-Grade 12	ACTFL 634 OPI—Tamil (starting no earlier than 9/1/2025)	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

Certificate TAC Reference	**Certificate Name**	**Required Content Pedagogy Test(s)**	**Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]**
[~~Languages Other Than English~~ (~~continued~~)]			
§233.15	Turkish: Early Childhood–Grade 12	ACTFL 626 OPI—Turkish **and** 627 WPT—Turkish	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.15	Vietnamese: Early Childhood–Grade 12	ACTFL 609 OPI—Vietnamese **and** 604 WPT—Vietnamese	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2020 edTPA: World Language [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
Librarian			
§239.60	School Librarian: Early Childhood–Grade 12	150 School Librarian Early Childhood–12 TExES (last operational date 8/31/2027) **or** 250 School Librarian Early Childhood-12 TExES (starting no earlier than 9/1/2027)	Not Applicable: Not an Initial Certificate
Mathematics and Science			
§233.4	Mathematics: Grades 4–8	115 Mathematics 4–8 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2016 edTPA: Middle Childhood Mathematics [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

§233.4	Science: Grades 4–8	116 Science 4–8 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2017 edTPA: Middle Childhood Science [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.4	Mathematics/Science: Grades 4–8	114 Mathematics/ Science 4–8 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2016 edTPA: Middle Childhood Mathematics [~~(pilot exam)~~] or 2017 edTPA: Middle Childhood Science [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

Certificate TAC Reference	**Certificate Name**	**Required Content Pedagogy Test(s)**	**Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]**
[~~Mathematics and Science~~ ~~(continued)~~**]**			
§233.4	Mathematics: Grades 7–12	235 Mathematics 7–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2005 edTPA: Secondary Mathematics [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.4	Science: Grades 7–12	236 Science 7–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2006 edTPA: Secondary Science [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.4	Life Science: Grades 7–12	238 Life Science 7–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2006 edTPA: Secondary Science [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

§233.4	Physical Science: Grades 6–12	237 Physical Science 6–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2006 edTPA: Secondary Science [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.4	Physics/Mathematics: Grades 7–12	243 Physics/ Mathematics 7–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2005 edTPA: Secondary Mathematics [~~(pilot exam)~~] or 2006 edTPA: Secondary Science [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.4	Mathematics/Physical Science/Engineering: Grades 6–12	274 Mathematics/ Physical Science/ Engineering 6–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2005 edTPA: Secondary Mathematics [~~(pilot exam)~~] or 2006 edTPA: Secondary Science [~~(pilot exam)~~] or 2143 edTPA: Technology and Engineering Education [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

Certificate TAC Reference	**Certificate Name**	**Required Content Pedagogy Test(s)**	**Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]**
[~~Mathematics and Science~~ ~~(continued)~~**]**			
§233.4	Chemistry: Grades 7–12	240 Chemistry 7–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2006 edTPA: Secondary Science [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
Music			

§233.10	Music: Early Childhood–Grade 12	177 Music EC–12 TExES	160 PPR EC–12 TExES or 2021 edTPA: K–12 Performing Arts [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
Physical Education			
§233.12	Physical Education: Early Childhood–Grade 12	158 Physical Education EC–12 TExES (last operational date 8/31/2024) or 258 Physical Education EC–12 TExES (starting no earlier than 9/1/2024)	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2011 edTPA: Physical Education [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
Principal and Superintendent			
§241.20	Principal as Instructional Leader: Early Childhood–Grade 12	268 Principal as Instructional Leader TExES	Educational Testing Service (ETS) 368 Performance Assessment for School Leaders (PASL)
§241.35	Principal as Instructional Leader Endorsement	Not Applicable: Not an Initial Certificate (Individuals must already hold a valid certificate to serve in the role of principal to be eligible for this endorsement.)	Educational Testing Service (ETS) 368 Performance Assessment for School Leaders (PASL)
§242.20	Superintendent: Early Childhood–Grade 12	195 Superintendent TExES	Not Applicable: Not an Initial Certificate

Certificate TAC Reference	**Certificate Name**	**Required Content Pedagogy Test(s)**	**Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]**
Social Studies			
§233.3	Social Studies: Grades 4–8	118 Social Studies 4–8 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2019 edTPA: Middle Childhood History/Social Studies [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

§233.3	Social Studies: Grades 7–12	232 Social Studies 7–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2004 edTPA: Secondary History/Social Studies [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.3	History: Grades 7–12	233 History 7–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2004 edTPA: Secondary History/Social Studies [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
Speech Communications			
§233.3	Speech: Grades 7–12	129 Speech 7–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2003 edTPA: Secondary English Language Arts [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

Certificate TAC Reference	**Certificate Name**	**Required Content Pedagogy Test(s)**	**Required Pedagogy Test(s) [~~Pedagogical Requirement(s)~~]**
Special Education			
§233.8	Bilingual Special Education Supplemental: Early Childhood-Grade 12	187 Bilingual Special Education TExES (starting no earlier than 9/1/2027) and 165 Bilingual Education Spanish Supplemental TExES (Starting no earlier than 9/1/2026)	Not Applicable: Not a Stand-alone Certificate
§233.8	Deafblind Supplemental: Early Childhood-Grade 12	185 Deafblind Early Childhood-Grade 12 TExES (starting no earlier than 9/1/2025)	Not Applicable: Not a Stand-alone Certificate
§233.8	Special Education Specialist: Early Childhood-Grade 12	186 Special Education Specialist: Early Childhood-Grade 12 TExES (starting no earlier than 9/1/2025)	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2012 edTPA: Special Education or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

§233.8	Special Education: Early Childhood–Grade 12	161 Special Education EC–12 TExES (last operational date 08/31/2025)	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2012 edTPA: Special Education [~~(pilot exam)~~]
§233.8	Special Education Supplemental	163 Special Education Supplemental TExES (last operational date 08/31/2025)	Not Applicable: Not a Stand-alone Certificate
§233.8	Teacher of the Deaf and Hard of Hearing: Early Childhood–Grade 12	181 Deaf and Hard of Hearing EC–12 TExES **and** 072 TASC or 073 TASC—ASL (required for assignment but not for certification)	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2012 edTPA: Special Education [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)
§233.8	Teacher of Students with Visual Impairments Supplemental: Early Childhood–Grade 12	182 Visually Impaired TExES **and** 283 Braille TExES	Not Applicable: Not a Stand-alone Certificate
Theatre			
§233.10	Theatre: Early Childhood–Grade 12	180 Theatre EC–12 TExES	160 PPR EC–12 TExES (last operational date 8/31/2026) or 2021 edTPA: K–12 Performing Arts [~~(pilot exam)~~] or Texas-specific Teacher Performance Assessment (to be updated no later than 9/1/2026)

Figure: 28 TAC §21.5071(e)

Example 1. A plan renews on September 1, 2024. For claims incurred on or after September 1, 2024, the health benefit plan issuer or administrator must pay the lesser of the billed charge, the published rate increased by 10%, or the published rate increased by the Medicare Economic Index.

Example 1-a. The political subdivision adopted a new rate effective for services provided on or after June 1, 2024. The new rate is a 5% increase from the rates submitted by the political subdivision for calendar year 2024, which is higher than the Medicare Economic Index rate for calendar year 2024. Starting June 1, 2024, the provider bills the new rates established by the political subdivision.

i. For claims incurred on or after June 1, 2024, and before September 1, 2024, the health benefit plan issuer or administrator continues to reimburse based on the rate submitted for calendar year 2024.

ii. For claims incurred on or after the plan's renewal date of September 1, 2024, the health benefit plan issuer or administrator calculates the applicable rate by adding the calendar year 2024 rate to the product of the calendar year 2024 rate and the Medicare Economic Index.

Example 2. A plan renews on March 1, 2025. For claims incurred on or after March 1, 2025, the health benefit plan issuer or administrator must pay the lesser of the billed charge, the published rate increased by 10%, or the published rate increased by the Medicare Economic Index.

Example 2-a. The political subdivision adopted a new rate effective for services provided on or after January 1, 2025. The new rate is a 3% increase from the rates submitted by the political subdivision for calendar year 2024, which is less than the Medicare Economic Index rate for calendar year 2025. Starting January 1, 2025, the provider bills the new rates established by the political subdivision.

i. For claims incurred on or after January 1, 2025, and before March 1, 2025, the health benefit plan issuer or administrator continues to reimburse based on the rate submitted for calendar year 2024.

ii. For claims incurred on or after the plan's renewal date of March 1, 2025, the health benefit plan issuer or administrator pays the billed charge amount.

Figure: 34 TAC §16.222(f)

Hospital District	Dollar Amount
Anson Hospital District	$75,000
Baylor County Hospital District	$75,000
Big Bend Regional Hospital District (Presidio County)	$75,000
Chillicothe Hospital District	$25,000
Cothran County Hospital District	$75,000
Farwell Hospital District	$25,000
Follett Hospital District	$25,000
Grapeland Hospital District	$25,000
Hamlin Hospital District	$25,000
Higgins-Lipscomb Hospital District	$25,000
Knox County Hospital District	$75,000
Moore County Hospital District (Sherman County)	$75,000
Motley County Hospital District	$25,000
Moulton Community Medical Clinic District	$25,000
Muleshoe Area Hospital District (Parmer County)	$75,000
Nixon Hospital District (Gonzales County)	$25,000
Nixon Hospital District (Wilson County)	$25,000
Olney-Hamilton Hospital District (Archer County)	$75,000
Olney-Hamilton Hospital District (Young County)	$75,000
Rockdale Hospital District	$25,000
Stamford Hospital District (Haskell County)	$75,000
Stonewall County Hospital District	$75,000
Texhoma Memorial Hospital District	$25,000
Trinity Memorial Hospital District	$25,000

Yoakum Hospital District (DeWitt County)	$75,000
Yoakum Hospital District (Gonzales County)	$75,000

Figure: 34 TAC §16.222(g)

Hospital District	Percentage
Andrews County Hospital District	0.160436
Angleton-Danbury Hospital District	0.087401
Ballinger Memorial Hospital District	0.048834
Bellville Hospital District	0.030757
Bexar County Hospital District	8.831295
Big Bend Regional Hospital District (Brewster County)	0.086809
Booker Hospital District	0.041340
Bosque County Hospital District	0.109186
Burleson County Hospital District	0.061548
Caprock Hospital District	0.030328
Castro County Hospital District	0.057357
Chambers County Public Hospital District #1	0.050792
Childress County Hospital District	0.085801
Coleman County Hospital District	0.058634
Collingsworth County Hospital District	0.033171
Comanche County Consolidated Hospital District	0.098162
Concho County Hospital District	0.048098
Crane County Hospital District	0.127267
Crosby County Hospital District	0.041915
Culberson County Hospital District	0.106176
Dallam-Hartley Counties Hospital District (Dallam County)	0.082007
Dallam-Hartley Counties Hospital District (Hartley County)	0.057700
Dallas County Hospital District	19.311689
Darrouzett Hospital District	0.010292

Dawson County Hospital District	0.100566
Deaf Smith County Hospital District	0.132610
DeWitt Medical District	0.088160
Dimmit County Regional Hospital District	0.101862
Donley County Hospital District	0.012935
East Coke County Hospital District	0.017775
Eastland Memorial Hospital District	0.080398
Ector County Hospital District	1.389853
El Paso County Hospital District	4.086865
Electra Hospital District	0.057164
Fairfield Hospital District (Freestone County)	0.075729
Fairfield Hospital District (Navarro County)	0.182265
Fisher County Hospital District	0.036581
Foard County Hospital District	0.025084
Frio Hospital District	0.118072
Gainesville Hospital District	0.133475
Garza County Health Care District	0.020118
Gonzales Healthcare Systems	0.118063
Graham Hospital District	0.068916
Guadalupe Regional Medical Center	0.420866
Hall County Hospital District	0.012862
Hamilton Hospital District	0.083725
Hansford County Hospital District	0.066245
Hardeman County Hospital District	0.043279
Harris County Hospital District	24.079880
Haskell County Hospital District	0.040501
Hemphill County Hospital District	0.216620

Hopkins County Hospital District	0.313847
Houston County Hospital District	0.068250
Hunt Memorial Hospital District	0.632366
Hutchinson County Hospital District	0.123171
Iraan General Hospital District	0.163113
Jack County Hospital District	0.084793
Jackson County Hospital District	0.090823
Karnes County Hospital District	0.245865
Kimble County Hospital District	0.057192
Lavaca Hospital District	0.038789
Liberty County Hospital District #1	0.097548
Lockney General Hospital District	0.030328
Lubbock County Hospital District	3.117222
Lynn County Hospital District	0.068226
Marion County Hospital District	0.013217
Martin County Hospital District	0.536509
Matagorda County Hospital District	0.242180
Maverick County Hospital District	0.230514
McCamey County Hospital District	0.195824
McCulloch County Hospital District	0.096240
Medina County Hospital District	0.137682
Menard County Hospital District	0.039541
Midland County Hospital District	0.930275
Mitchell County Hospital District	0.449405
Montgomery County Hospital District	0.799270
Moore County Hospital District (Hartley County)	0.058939
Moore County Hospital District (Moore County)	0.113487

Muenster Hospital District	0.044014
Muleshoe Area Hospital District (Bailey County)	0.042112
Nacogdoches County Hospital District	0.279208
Nocona Hospital District	0.040821
Nolan County Hospital District	0.095098
North Runnels County Hospital District	0.048564
North Wheeler County Hospital District	0.045530
Nueces County Hospital District	3.578256
Ochiltree County Hospital District	0.051051
Palo Pinto County Hospital District	0.225589
Parker County Hospital District	0.525020
Parmer County Hospital District	0.056361
Rankin County Hospital District	0.329975
Reagan Hospital District	0.240518
Reeves County Hospital District	1.638256
Refugio County Memorial Hospital District	0.072700
Rice Hospital District	0.072287
Sabine County Hospital District	0.046051
San Augustine City-County Hospital District	0.040244
Schleicher County Hospital District	0.103173
Scurry County Hospital District	0.235290
Seminole Hospital District	0.219679
Shackelford County Hospital District	0.039956
Somervell County Hospital District	0.126352
South Limestone Hospital District	0.057054
South Randall County Hospital District	0.023023
South Wheeler County Hospital District	0.068073

Stamford Hospital District (Jones County)	0.045020
Starr County Hospital District	0.118579
Stephens Memorial Hospital District	0.054833
Stratford Hospital District	0.028007
Sutton County Hospital District	0.040993
Sweeney Hospital District	0.286515
Swisher Memorial Hospital District	0.044587
Tarrant County Hospital District	11.563455
Teague Hospital District	0.013292
Terry Memorial Hospital District	0.078520
Titus County Hospital District	0.216698
Travis County Hospital District	7.332843
Tyler County Hospital District	0.071789
Val Verde County Hospital District	0.367525
Walker County Hospital District	0.330399
West Coke County Hospital District	0.022889
West Wharton County Hospital District	0.123683
Wilbarger County Hospital District	0.104538
Willacy County Hospital District	0.016233
Wilson County Memorial Hospital District	0.084803
Winkler County Hospital District	0.094278
Winnie Stowell Hospital District	0.054735
Wood County Central Hospital District	0.119451

Figure: 43 TAC §215.139(c)

If a new license applicant is:	Maximum number of [~~metal~~]dealer's standard license plates issued during the first license term is:
1. a franchised motor vehicle dealer	5
2. a franchised motorcycle dealer	5
3. an independent motor vehicle dealer	2
4. an independent motorcycle dealer	2
5. a franchised or independent travel trailer dealer	2
6. a trailer or semi-trailer dealer	2
7. an independent mobility motor vehicle dealer	2
8. a wholesale motor vehicle dealer	1

Figure: 43 TAC §215.139(e)

If a vehicle dealer is:	Maximum number of [~~metal~~]dealer's standard license plates issued per license term is:
1. a franchised motor vehicle dealer	30
2. a franchised motorcycle dealer	10
3. an independent motor vehicle dealer	3
4. an independent motorcycle dealer	3
5. a franchised or independent travel trailer dealer	3
6. a trailer or semi-trailer dealer	3
7. an independent mobility motor vehicle dealer	3
8. a wholesale motor vehicle dealer	1

Figure: 43 TAC §215.139(f)(1)

If a vehicle dealer is:	Number of additional standard [~~metal dealer's~~]license plates issued to a dealer with a[~~that~~] demonstrated need [~~demonstrates a need~~] through proof of sales is:
1. a wholesale motor vehicle dealer	1
2. a dealer selling fewer than 50 vehicles during the previous 12-month period	1
3. a dealer selling 50 to 99 vehicles during the previous 12-month period	2[~~5~~]
4. a dealer selling 100 to 200 vehicles during the previous 12-month period	5
5[4]. a dealer selling more than 200 vehicles during the previous 12-month period	any number of standard [~~metal dealer's~~] license plates the dealer requests.

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Draft 2024 Annual Action Plan Available for Public Comment

The Texas State Affordable Housing Corporation presents for public comment its Draft 2024 Annual Action Plan, which is a component of the 2024 State Low Income Housing Plan. A copy of the Draft 2024 Annual Action Plan may be found on our website - https://www.tsahc.org/about/plans-reports

The public comment period for the Corporation's Draft 2024 Annual Action Plan is December 20, 2023 through January 25, 2024.

Written comment may be sent to Michael Wilt by email at mwilt@tsahc.org.

TRD-202304911
David Long
President
Texas State Affordable Housing Corporation
Filed: December 19, 2023

♦ ♦ ♦

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil -- November 2023

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period November 2023 is $54.15 per barrel for the three-month period beginning on June 1, 2023, and ending October 31, 2023. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of November 2023, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period November 2023 is $1.48 per mcf for the three-month period beginning on June 1, 2023, and ending October 31, 2023. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of November 2023, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of November 2023 is $77.38 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of November 2023, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of November 2023 is $3.06 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of November 2023, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

Issued in Austin, Texas, on December 18, 2023.

TRD-202304876
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: December 18, 2023

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, §303.009, §304.003 Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/25/23 - 12/31/23 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/25/23 - 12/31/23 is 18.00% for commercial[2] credit.

The postjudgment interest rate as prescribed by §304.003 for the period of 01/01/24 - 01/31/24 is 8.50%.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202304935
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 20, 2023

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Credit Union Department

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following applications:

Field of Membership - Approved

Gulf Credit Union (Groves) - See *Texas Register* dated on September 29, 2023.

Texans Credit Union (Richardson) - See *Texas Register* dated on September 29, 2023.

Southwest 66 Credit Union (Odessa) - See *Texas Register* dated on October 27, 2023.

TRD-202304924

Michael S. Riepen
Commissioner
Credit Union Department
Filed: December 20, 2023

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 31, 2024.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **January 31, 2024.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2021-0750-MWD-E; IDENTIFIER: RN101513653; LOCATION: Spring, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011314001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to comply with permitted effluent limitations; PENALTY: $30,400; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: ASAA ENTERPRISES INCORPORATED dba Stop and Save; DOCKET NUMBER: 2021-1181-PST-E; IDENTIFIER: RN102858974; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: CADDO MILLS INDUSTRIAL PARK LLC; DOCKET NUMBER: 2023-1692-WQ-E; IDENTIFIER: RN111831293; LOCATION: Caddo Mills, Hunt County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $875; ENFORCEMENT COORDINATOR: Shane Glantz, (325) 698-6124; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Brownfield; DOCKET NUMBER: 2022-0054-MWD-E; IDENTIFIER: RN103147161; LOCATION: Brownfield, Terry County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0010677001, Special Provisions Number 3, by failing to maintain and operate the treatment facility in order to achieve optimum efficiency of treatment capability; PENALTY: $1,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $1,400; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(5) COMPANY: DKRE Holdings, LLC; DOCKET NUMBER: 2022-0511-PWS-E; IDENTIFIER: RN110829652; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(6) COMPANY: Lagasse Enterprises, LLC; DOCKET NUMBER: 2022-0650-WQ-E; IDENTIFIER: RN111239877; LOCATION: Splendora, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Llano County Municipal Utility District 1; DOCKET NUMBER: 2022-0561-PWS-E; IDENTIFIER: RN101425544; LOCATION: Horseshoe Bay, Llano County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $1,462; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(8) COMPANY: PETTY, DANUL; DOCKET NUMBER: 2023-1661-WQ-E; IDENTIFIER: RN111802526; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit for stormwater discharges; PENALTY: $875; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: QUAIL RIDGE OPERATING LLC; DOCKET NUMBER: 2023-1698-WR-E; IDENTIFIER: RN111831749; LOCATION: Bowie, Montague County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to appropriating any state water or beginning

construction of any work designed for the storage, taking, or diversion of water; PENALTY: $350; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: Rincon Water Supply Corporation; DOCKET NUMBER: 2022-0567-PWS-E; IDENTIFIER: RN105670913; LOCATION: Taft, San Patricio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

TRD-202304883
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 19, 2023

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Enforcement Orders

An agreed order was adopted regarding Midland Independent School District, Docket No. 2021-1418-PST-E on December 19, 2023 assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rick Hartcraft, Docket No. 2021-1512-AIR-E on December 19, 2023 assessing $1,625 in administrative penalties with $325 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding North Dallas Honey Company, L.P., Docket No. 2022-0020-WQ-E on December 19, 2023 assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding D and W, Inc., Docket No. 2022-0151-PWS-E on December 19, 2023 assessing $4,585 in administrative penalties with $917 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Springtown, Docket No. 2022-0233-PWS-E on December 19, 2023 assessing $1,740 in administrative penalties with $348 deferred. Information concerning any aspect of this order may be obtained by contacting Wyatt Throm, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Crystal City, Docket No. 2022-0431-PWS-E on December 19, 2023 assessing $690 in administrative penalties with $138 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Halawa View Apartments Gp, Docket No. 2022-0539-PWS-E on December 19, 2023 assessing $5,440 in administrative penalties with $1,088 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez-Scott, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GUAVA CORPORATION dba The Bee Mart, Docket No. 2022-0675-PST-E on December 19, 2023 assessing $4,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Erandi Ratnayake, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Parks and Wildlife Department, Docket No. 2022-0912-PWS-E on December 19, 2023 assessing $188 in administrative penalties with $37 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Caston, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NEW SM, INC. dba Dry Clean Super Center, Docket No. 2022-0945-DCL-E on December 19, 2023 assessing $5,761 in administrative penalties with $1,152 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Fishbeck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DOUBLE DIAMOND, INC., Docket No. 2023-0046-WR-E on December 19, 2023 assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 4JC PARTNERS, LP, Docket No. 2023-0134-WQ-E on December 19, 2023 assessing $7,500 in administrative penalties with $1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Shane Glantz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding DEWALT SAND PIT COMPANY, Docket No. 2023-0148-WQ-E on December 19, 2023 assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Taylor Williamson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Big Sky Municipal Utility District, Docket No. 2023-0358-MWD-E on December 19, 2023 assessing $4,800 in administrative penalties with $960 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding J&M Pallet Recycle LLC dba Midway Truck Stop, Docket No. 2023-0951-MLM-E on December 19, 2023 assessing $6,951 in administrative penalties with $1,390 deferred. Information concerning any aspect of this order may be obtained by contacting Ramyia Wendt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Clark Wilson Builder Gc LLC, Docket No. 2023-1310-WQ-E on December 19, 2023 assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202304931
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2023

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility

Notice mailed on December 20, 2023 Proposed Registration Application No. 40338

Application. City of Waco has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40338, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, City of Waco Transfer Station Facility, will be located 0.1 miles north of the intersection of South University Parks Drive and Radle Road, Waco, Texas 76712 in McLennan County. The City of Waco is requesting authorization to process and transfer municipal solid waste that includes residential, commercial, construction and demolition waste, and Class 2 and Class 3 industrial non-hazardous waste. The registration application is available for viewing and copying at the Waco - McLennan County Library located at 1717 Austin Avenue, Waco, Texas 76701 and may be viewed online at https://www.waco-texas.com/transfer-station-permitting. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/1qaOLH0. For exact location, refer to application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from City of Waco at the mailing address P.O. Box 2570, Waco, Texas 76702 or by calling Mr. Kody Petillo at (254) 750-6627.

TRD-202304934
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2023

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Notice of Correction to Agreed Order Number 3

In the November 10, 2023, issue of the *Texas Register* (48 TexReg 6626), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 3, for DEWALT SAND PIT COMPANY; Docket Number 2023-0148-MWD-E. The error is as submitted by the commission.

The reference to the Docket Number should be corrected to read: "2023-0148-WQ-E."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202304884
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 19, 2023

♦ ♦ ♦

Notice of District Petition

Notice issued December 14, 2023

TCEQ Internal Control No. D-08232023-045; Heights Evergreen Developers, Ltd., a Texas limited partnership (Petitioner) filed a petition for the creation of Royal Street Municipal Utility District (District) of Bell County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is no lienholder on the property (3) the proposed District will contain approximately 382.370 acres of land, more or less, located within Bell County, Texas; (4) all of the land to be included within the proposed District is not located within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) construct, maintain, and operate a waterworks system, including the purchase and sale of water, for domestic purposes; (2) construct, install, maintain, purchase, and operate facilities and improvements to provide for an adequate drainage system and to control storm waters and other harmful excesses of waters; (3) construct and convey roadway facilities and improvements; and (4) construct, install, maintain, purchase, and operate such additional facilities, systems, plants, and enterprises as shall be consistent with the purposes for which the District is created. It further states that the planned residential and commercial development of the area and the present and future inhabitants of the area will benefit from the above-referenced work, which will promote the purity and sanitary condition of the State's waters and the public health and welfare of the community. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $8,400,000 ($3,750,000 for water and drainage facilities and $4,650,000 for road facilities).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202304927
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2023

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Notice of District Petition

Notice issued December 14, 2023

TCEQ Internal Control No. D-09072022-008; Bellagio 443, LLC, a Wyoming limited liability company (Petitioner), filed a petition (petition) for the creation of Kaufman County Municipal Utility District No. 15 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Megatel Capital Investments, LLC, on the property to be included in the proposed District and the aforementioned entity has consented to the creation of the district; (3) the proposed District will contain approximately 445.993 acres of land located within Kaufman County, Texas; and (4) all of the land to be included within the proposed district is located wholly within the extraterritorial jurisdiction of the City of Mesquite, Texas (City). The petition further states that the work to be done by the proposed District at the present time is the construction, maintenance and operation of a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; the construction, maintenance and operation of a sanitary sewer collection, treatment and disposal system, for domestic and commercial purposes; the construction, installation, maintenance, purchase and operation of drainage and roadway facilities and improvements; and the construction, installation, maintenance, purchase and operation of facilities, systems, plants and enterprises of such additional facilities as shall be consonant with the purposes for which the District is organized.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $64,830,000 ($56,970,000 for water, wastewater, and drainage and $7,860,000 for roads). In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, a petition was submitted to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, a petition was submitted to the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code § 54.016(c) expired and information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to proceed to the TCEQ for inclusion of the land into the District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of

the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202304928
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2023

♦ ♦ ♦

Notice of District Petition

Notice issued December 15, 2023

TCEQ Internal Control No. D-08022023-009; Maple Grove Development, LLC, a Texas limited liability company (Petitioner), filed a petition for the creation of Waller County Municipal Utility District No. 43 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Independent Bank d/b/a Independent Financial, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 257.543 acres of land located within Waller County, Texas; and (4)) all of the land within the proposed district is located within the extraterritorial jurisdiction of the City of Pattison, Texas (City). By Ordinance No. 165-2023, passed, approved, and adopted on June 8, 2023, the City gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the work to be done by the District at the present time is the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of a waterworks and sanitary sewer system for residential and commercial purposes, and the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition, to which reference is hereby made for more detailed description, and such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, parks and recreation facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created (the "Project"). According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $76,500,000 ($46,250,000 for water, wastewater, and drainage, $24,000,000 for roads and $6,250,000 for park and recreational facilities).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202304929
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2023

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Notice of Intent to Reissue General Permit TXG500000 Authorizing the Discharge of Wastewater

The Texas Commission on Environmental Quality (TCEQ) is proposing to reissue Texas Pollutant Discharge Elimination System General Permit Number TXG500000, which authorizes the discharge of process wastewater, mine dewatering, stormwater associated with industrial activity, construction stormwater, and certain non-stormwater discharges from quarries located greater than one mile from a water body within a water quality protection area in the John Graves Scenic Riverway. The John Graves Scenic Riverway is that portion of the Brazos River Basin and its contributing watershed located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas. This general permit is authorized by Texas Water Code (TWC) Chapter 26, Subchapter M and 30 Texas Administrative Code (TAC) Chapter 311, Subchapter H. Specifically, TWC, §26.553(b) requires quarries located greater than one mile from a water body to obtain a general permit. General permits are authorized by Texas Water Code, §26.040.

The existing general permit is scheduled to expire on March 29, 2024. This notice is being published to comply with 30 TAC §205.5(d), which requires the TCEQ to propose reissuance of an existing general permit at least 90 days prior to expiration. The existing general permit will remain in effect for dischargers authorized under the general permit until the date the commission takes final action on the revised draft general permit. However, no new notices of intent will be accepted or authorizations issued under the existing general permit after March 29, 2024. TCEQ will provide the additional public notice required by 30 TAC §205.3 following the United States Environmental Protection Agency approval of the revised draft general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at: *http://www.tceq.texas.gov.*

Further information may also be obtained by calling the TCEQ's Water Quality Division, Stormwater Team, at (512) 239-4671.

Si desea información en español, puede llamar (800) 687-4040.

TRD-202304922
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 20, 2023

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 31, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 31, 2024**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Alfredo Valles; DOCKET NUMBER: 2022-0077-MLM-E; TCEQ ID NUMBER: RN111124418; LOCATION: intersection of South Main Street and Balcon Street, Encinal, La Salle County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULES VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; and Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the State of Texas; PENALTY: $5,822; STAFF ATTORNEY: Benjamin Pence, Litigation, MC 175, (512) 239-2157; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: Chaparral Property Services, LLC fka MB Chaparral, LLC; DOCKET NUMBER: 2022-0090-OSS-E; TCEQ ID NUMBER: RN104385695; LOCATION: 19801 United States Highway 83 North, Paint Rock, Concho County; TYPE OF FACILITY: On-Site Sewage Facility (OSSF); RULES VIOLATED: Texas Health and Safety Code, §366.004 and §366.051(a), 30 TAC §285.3(a) and (b)(1) and Texas Commission on Environmental Quality Agreed Order Docket Number 2019-1702-OSS-E, Ordering Provision Number 2.a.i., by failing to obtain authorization prior to constructing, altering, repairing, extending, or operating an OSSF; PENALTY: $8,800; STAFF ATTORNEY: Taylor Pack Ellis, Litigation, MC 175, (512) 239-6860; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: Polasek Development, LLC; DOCKET NUMBER: 2022-0718-WQ-E; TCEQ ID NUMBER: RN110500030; LOCATION: southwest corner of Farm-to-Market Road 1750 and Nora Miller Road, Abilene, Taylor County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR15005S, Part III, Section D.2., by failing to post the TCEQ site notice near the main entrance of the construction site; TWC, §26.121(a), 30 TAC §305.125(1), and TPDES General Permit Number TXR15005S, Part III, Section F.6(d), by failing to remove accumulations of sediment at a frequency that minimizes off-site impacts; and 30 TAC §305.125(1) and TPDES General Permit Number TXR15005S, Part III, Section G.1., by failing to install and maintain best management practices at the site; PENALTY: $9,475; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-202304901

Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 19, 2023

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Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 31, 2024**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 31, 2024**. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Matthew Havard; DOCKET NUMBER: 2022-0267-MSW-E; TCEQ ID NUMBER: RN111363347; LOCATION: 4207 Oakwood Drive, Lufkin, Angelina County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $7,875; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202304902
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 19, 2023

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Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill

Notice mailed on December 19, 2023

Proposed Permit No. 62051

Application. Valley View Lane, LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for a development permit for construction over a closed municipal solid waste landfill (Proposed Permit No. 62051). The proposed development concerns a tract of land of approximately 7.357 acres located at 1751 Valley View Lane, Farmers Branch in Dallas County, Texas. The proposed development includes an office and warehouse facility consisting of 96,849 square feet of building area with concrete drive and walk areas. The development permit application is available for viewing and copying at Farmers Branch Municipal Courthouse at 3723 Valley View Lane, Farmers Branch, Texas. The permit application may be viewed online at https://whiteheadtexas.com/proposed-valley-view-lane-development-farmers-branch-texas/. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/1mq9L10. For exact location, refer to application.

Alternative Language Notice/Aviso de Idioma Alternativo. Alternative language notice in Spanish is available at www.tceq.texas.gov/goto/mswapps. El aviso de idioma alternativo en español está disponible en www.tceq.texas.gov/goto/mswapps.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application to the Office of Chief Clerk at the address included in the information section below. TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 calendar days prior to the meeting.

Executive Director Action. The executive director shall, after review of the application, issue his decision to either approve or deny the development permit application. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director's decision.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments, requests, and petitions must be submitted either electronically at http://www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name,

phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Valley View Lane, LLC at the mailing address 1700 George Bush Drive, Suite 240, College Station, Texas 77840 or by calling Mr. Grayson Hughes at (214) 208-0519.

TRD-202304933
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2023

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Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016350001

APPLICATION AND PRELIMINARY DECISION. Aqua Texas, Inc., 1106 Clayton Lane, Suite 400W, Austin, Texas 78723, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016350001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. TCEQ received this application on June 5, 2023.

The facility will be located at 6397 Highway 21, near the City of San Marcos, in Hays County, Texas 78666. The treated effluent will be discharged to an unnamed tributary of Hemphill Creek, thence to Hemphill Creek, thence to Morrison Creek, thence to Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary of Hemphill Creek and limited aquatic life use for Hemphill Creek. The designated uses for Segment No. 1808 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.843611,29.925833&level=18

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices. El aviso de idioma alternativo en español está disponible en https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, February 8, 2024 at 7:00 p.m.

Evans Auditorium, Texas State University

627 N. LBJ Drive

San Marcos, Texas 78666

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at https://www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Kyle Public Library, 550 Scott Street, Kyle, Texas. Further information may also be obtained from Aqua Texas, Inc. at the address stated above or by calling Mr. Michael Bevilacqua, P.E., Green Civil Design, LLC, at (512) 640-6590, extension 1003.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: December 19, 2023

TRD-202304926
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2023

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Notice of Public Meeting for Water Quality Land Application Permit for Municipal Wastewater New Proposed Permit No. WQ0016111001

APPLICATION. Blizexas, LLC, 258 Union Avenue, Los Gatos, California 95032, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed TCEQ Permit No. WQ0016111001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day via subsurface drip irrigation system with a minimum area of 2.75 acres of public access land. This permit will not authorize a discharge of pollutants into water in the state. TCEQ received this application on February 17, 2022.

The wastewater treatment facility and disposal site will be located approximately 0.25 mile east of the intersection of Crumley Ranch Road and Fitzhugh Road, in Hays County, Texas 78737. The wastewater treatment facility and disposal site will be located in the drainage basin of Barton Creek in Segment No. 1430 of the Colorado River Basin. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-98.025555%2C30.245555&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, January 29, 2024 at 7:00 p.m.

Dripping Springs Ranch Park

1042 Event Center Drive

Dripping Springs, Texas 78620

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at https://www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Dripping Springs Community Library, 501 Sportsplex Drive, Dripping Springs, Texas. Further information may also be obtained from Blizexas, LLC, at the address stated above or by calling Mr. Bill LeClerc at (978) 877-1798.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: December 15, 2023

TRD-202304925
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2023

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Notice of Water Quality Application

The following notices was issued on December 15, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

Cayuga Independent School District has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0013574001 to authorize the replacement of the existing plant with a decrease of flow from 0.030 million gallons per day (MGD) to 0.009 MGD. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located at 17750 North U.S. Highway 287, in Anderson County, Texas 75861.

TRD-202304930
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 20, 2023

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TCEQ Seeks Stakeholder Input on Upcoming Rulemaking Related to the Chapter 285, On-Site Sewage Facility (OSSF) Program

The Texas Commission on Environmental Quality (TCEQ) will conduct (in-person and virtual) stakeholder meetings across the state through March 2024, to solicit informal comments on rulemaking to amend 30 Texas Administrative Code (TAC), Chapter 285.

The rulemaking (Rule Project Number 2024-009-285-CE) implements changes made to the Texas Health and Safety Code, Chapter 366 by House Bill 4087 (88th Legislature, Regular Session, 2023), in addition to modernizing and clarifying requirements for OSSFs.

Stakeholder Meetings

Stakeholder meetings offer an opportunity for the public to provide informal comments before formal rulemaking begins.

Stakeholder meetings will occur at the dates and times below.

Tuesday January 9, 2024 at 2:00 p.m.

TCEQ Beaumont Regional Office

3870 Eastex Fwy.

Beaumont, Texas 77703

Wednesday January 17, 2024 at 10:00 a.m.

TCEQ Corpus Christi Regional Office

500 N. Shoreline Blvd., Ste. 500

Corpus Christi, Texas 78401

Tuesday February 13, 2024 at 2:00 p.m.

TCEQ Tyler Regional Office

2916 Teague Dr.

Tyler, Texas 75701

Wednesday February 21, 2024 at 2:00 p.m.

TCEQ Headquarters (Bldg. D, Room 191)

12100 Park 35 Circle

Austin, Texas 78759

Virtual Option Available (Microsoft Teams Live Event): https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZmI1OWNkMmQtYWZjMi00ZTVjLWFlYTYtMDQ1OWUxMDViZWY2%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Wednesday March 6, 2024 at 1:00 p.m.

Waco Convention Center (Brazos North and South)

100 Washington Ave.

Waco, Texas 76701

If you have special communication or other accommodation needs, contact Office of Legal Services at (512) 239-1802 or call 1-800-RELAY-TX (TDD). Please make these requests as soon as possible.

Written Stakeholder Comments

Written stakeholder comments may be submitted using one of the following methods:

By mail:

Program Supervisor, MC 205

Texas Register/Rule Development Team - Office of Legal Services

Texas Commission on Environmental Quality

P.O. Box 13087

Austin, Texas 78711-3087

By fax: *fax4808@tceq.texas.gov*

Online through the TCEQ Public Comment system (https://tceq.commentinput.com/). File size restrictions may apply to comments submitted.

All comments should reference rule project number 2024-009-285-CE. We will review all comments we receive but will not formally respond. All written stakeholder comments must be submitted by the close of business on March 12, 2024.

For additional information on the rulemaking, please contact the Program Support and Environmental Assistance Division at (512) 239-0400 and ask to speak with OSSF Program staff about rule project number 2024-009-285-CE.

TRD-202304923
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 20, 2023

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Everest Security Insurance Company, a foreign fire and/or casualty company. The home office is in Warren, New Jersey.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202304932
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: December 20, 2023

♦ ♦ ♦

Texas Ethics Commission

List of Delinquent Filers: PAC Semiannual July 17, 2023

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file a required report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact David Guilianelli at (512) 463-5800.

Semiannual report due July 17, 2023 for Committees

Michael Shultz, Consolidated Communications PAC, Inc. - Texas, 350 S. Loop 336 W., Conroe, Texas 77304

Christopher R. Hamm, Balch Springs Professional Firefighters Association Local 3147, 216 Canyon Dr., Keller, Texas 76248

Parker T. Winn, Richardson FOP 105, 2810 Routh Creek Pkwy. #1141, Richardson, Texas 75082

Jonathan A. Lawson III, Plano Fire Fighters Committee for Effective Government, 1506 Municipal Ave., Plano, Texas 75074

Jason Thompson, Mission Business PAC, P.O. Box 2153, Universal City, Texas 78148

Amer Shakil, American United PAC, 4609 Blackshear Tr., Plano, Texas 75093

Steven J. Schultz, South Texas Associated Builders & Contractors, Inc. PAC, 814 Arion Pkwy., Ste. 204, San Antonio, Texas 78216

Michael Sabouni, Alliance PAC, 6200 Savoy Dr., Houston, Texas 77036

Sydney C. Leonard, Fort Worth Republican Women PAC, 101 Summit Ave., Ste. 300, Fort Worth, Texas 76102

Gregory D. Duepner, Galveston Firefighters Local 571, 8220 Schiro Rd, Hitchcock, Texas 77563

Ramon M. Garcia, Tarrant County Law Enforcement Association Political Action Committee, 2501 Parkview Place 305, Fort Worth, Texas 76102

Grace P. Hefner, Brown County Republican Party Executive Committee (CEC), 13900 CR 478, May, Texas 76857

Christopher V. Tyrone, Haltom City Firefighters Committee for Responsible Government, P.O. Box 37045, Haltom City, Teaxs, 76117

Sarah M. Dougherty, Galveston County Connects PAC, 13359 N. Hwy 183 #406-143, Austin, Texas 78750

Nicole J. Donatelli, NWISD Family First PAC, 5 Llano Dr., Trophy Club, Texas 76262

Lucy Johnson, Texas Real Estate Advocacy and Defense PAC, 11601 W Hwy 290, A101-378, Austin, Texas 78737

Asher Gillaspie, We Can Keep It, 3208 Collinsworth St., Fort Worth, Texas 76107

Taylor J. Major, Lone Star Improvement Fund, P.O. Box 871, Austin, Texas 78767

Nathan Gower Schwarz, Greenpoint Urban Living Political Association & Resident's Rights Group, 4604 S. Sugar Road #928, Edinburg, Texas 78539

Karen Y. Kirkpatrick, GMP Local Union #259, 2106 Montrose, Waco, Texas 76705

Stephanie Phillips, Justice For All PAC, 7615 Burning Hills Dr, Houston, Texas 77071

Rachel Stoerkel, Texans For Working Families, Registered Agens Inc., Austin, Teaxs, 78731

Steve Klein, Friends of Good Government, 404 Ball Airport Rd., Victoria, Texas 77904

William A. Lumpkin, Texas Blue Chip PAC, 2033 Southgate Blvd., Houston, Texas 77030

Phillip Smith, Beaumont Police Officers PAC, P.O. Box 3121, Beaumont, Texas 77704

Daniel R. Yeats, University Democrats PAC, 356 Bedford Ct. E., Bedford, Texas 76022

Christina A. Koob, JOLT PAC, 1709 Alleghany Dr., Ste. B, Austin, Texas 78741

Brandon Tankersley, Save Our Schools Four Points, 2900 North Quinlan Park Rd., Austin, Texas 78732

Gustavo Guerra, United Together, 2808 Granjeno Ave., Hidalgo, Texas 78557

L. Scott Mann, WOLFF PAC, P.O. Box 1468, Lubbock, Texas 79408

Brian T. Stoller, Lone Star State of Mind PAC, 9311 N. FM 620 #148, Austin, Texas 78726

Scott Salmans, Fiscal Conservative PAC, 5045 Franklin Ave., Waco, Texas 76710

Amanda Elise Salas, New Blue Texas, 512 E. Upas Ave. Apt. 3, McAllen, Texas 78501

Oscar Saenz Jr., Judson Advancement for Children Committee, 1110 Passion Flower Way, Richmond, Texas 77406

Elizabeth Lorenz, Texas Strong PAC, 200 E. Basse Road, San Antonio, Texas 78209

Jana D. Hawkins, Jefferson County Association of Deputy Sheriffs and Correction Officers PAC, P.O. Box 20012, Beaumont, Texas 77720

John B. Austin, Texans for Justice, P.O. Box 461021, San Antonio, Texas 78217

Jeanie M. Davilla, Heart Of Texas Apartment Assoc., 4201 Lake Short Dr. Ste. H, Waco, Texas 78710

Stephanie Carrillo, Bexar Democrats 2020, 905 Santa Monica, San Antonio, Texas 78201

Aaron R. Armijo, Sugar Land Professional Fire Fighters - PAC, 29014 Hauter Way, Fulshear, Texas 77441

James Cown, Rockwall Firefighters for Responsible Government, 3772 County Road, Caddo Mills, Texas 75135

Gabriel Rosales, Senate District 26 PAC, 231 Oneoak, San Antonio, Texas 78228

Cammie D. Moody, Texarkana Texas Republican Women's Club, 1825 Moores Lane, Texarkana, Texas 75503

Yvette B. Martinez, Christians for a Better Bexar County, 1230 Duke Rd., San Antonio, Texas 78264

Brian Stoller, South East Democratic Alliance, 8905 Panhandle Dr., Austin, Texas 78747

Henry Dibrell, Texans United for Education, 4203 Glade Shadow Court, Katy, Texas 77494

Art Fierro, Texas House Border Caucus, 1790 Lee Trevino Dr. Ste 307, El Paso, Texas 79936

Eddie Rodriguez, Texas Farm-to-Table Caucus, 1108 Lavaca Street, Ste. 110-292, Austin, Texas 78701

Lyle Larson, Texas Legislative Sportsman's Caucus, Inc., P.O. Box 2910, Austin, Texas 78768

Ryan Guillen, Texas Nuclear Caucus, P.O. Box 2910, Austin, Texas 78768

Zach D. Maxwell, Hood County Republican PAC, 219 Sardius Blvd., Granbury, Texas 76049

Daniel A. Cuellar, Laredo Political Action Committee, 217 W. Village Blvd., Ste. 1, Laredo, Texas 78041

Adrian Flores Jr., Texas Pole PAC, 426 W. Craig, San Antonio, Texas 78212

Mayra Gutierrez, Rio Grande Valley Republican Women, 4900 N. 23rd St., McAllen, Texas 78504

Rachel Stoerkel, ONE Texas, Inc., 1401 Cleburne Street, Houston, Texas 77004

Richard Koetter, Roofing Contractors Association of Texas PAC Inc., 6080 S. Hulen St., Ste. 360, PMB 396, Fort Worth, Texas 76132

Becky Allen, Preferred Care Partners Political Action Committee, 5500 W. Plano Pkwy, Plano, Texas 75093

Michael J. Warner, Friends of Texas Southern University, 301 Brazos #1512, Austin, Texas 78701

Kimberly Y. Evans, Friends of Public Education 4 Frisco ISD PAC, 11625 Custer Rd #110-244, Frisco, Texas 75035

Coymelle K. Murchison, Vote For Her, 4624 Weehaven Drive, Dallas, Texas 75232

Kristen D. Johnson Eklund, A Better Grapevine, 1214 Bellaire Dr., Grapevine, Texas 76051

Michael J. Warner, A Better Texas PAC, 301 Brazos #1512, Austin, Texas 78701

Phillip W. Carpenter, A United Allen, 1702 Woodsboro Ct., Allen, Texas 75013

George A. Coats, Texas Aviation Advocacy PAC, P.O. Box 130246, The Woodlands, Texas 77393

Amer Shakil, American United PAC, 4609 Blackshear Tr., Plano, Texas 75093

Jason C. Delgado, Galveston County Conservatives, 4329 Delmar Ave., Dallas, Texas 75206

Timothy P. Hoban, GOP Mises Caucas Action PAC, Inc., 2752 Dora Ave, Tavares, Florida, 32778

Kristen Perez, Strength in Unity, 2717 Pease Dr., Forney, Texas 75126

James L. Murphy III, America First Committee, 265 E. Oakview Pl., San Antonio, Texas 78209

Chereen Fisher, Texas Professional Vacation Rental Coalition PAC, 3606 Arrowhead Dr., Austin, Texas 78731

Stephanie A. Finleon Cortez, Vote YES for LVISD Kids, 242 Ranch Country Drive, La Vernia, Texas 78121

Rodney Foster, Forward Sweetwater, Together, 11 Vista Court, Sweetwater, Texas 79556

Amy Hedtke, Vote No, Midlothian ISD, 106 Vanderbilt, Waxahachie, Texas 75165

Amy Hedtke, Vote No, Maypearl ISD, 106 Vanderbilt, Waxahachie, Texas 75165

Anthony Holm, Texans for Honesty PAC, P.O. Box 427, Austin, Texas 78767

Amy Hedtke, Vote No, Waxahachie ISD, 106 Vanderbilt, Waxahachie, Texas 75165

Lori L. Gallagher, Yes on 3 for Liberty, 201 Seward Junction Loop, Liberty Hill, Texas 78642

Amy F. Barber, Vote Yes for Crandall ISD, 1602 E. Highway 175, Crandall, Texas 75114

Amy Hedtke, Vote No, Red Oak ISD, 106 Vanderbilt, Waxahachie, Texas 75165

TRD-202304912
Aidan Shaughnessy
Program Supervisor
Texas Ethics Commission
Filed: December 19, 2023

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of December 4, 2023 to December 15, 2023. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, December 22, 2023. The public comment period for this project will close at 5:00 p.m. on Sunday January 21, 2024.

Federal Agency Activities:

Applicant: Texas Department of Transportation-Houston District

Location: The project site is located within estuarine and freshwater wetlands adjacent to the Galveston Bay, along Interstate Highway 45 south of the Causeway Bridge to 61st Street, in Galveston, Galveston County, Texas.

Latitude and Longitude: 29.286966, -94.850772

Project Description: The applicant proposes to discharge an estimated 2,330 cubic yards of fill material into 1.45 acres of waters of the U.S. to facilitate improvements to existing Interstate Highway 45. Specifically, the project plans will include reconstructing and widening IH 45 from south of the Galveston Causeway Bridge to 61st Street and adding a direct connector from northbound 61st Street to northbound IH 45. The proposed improvement would consist of eight 12-foot-wide travel lanes (four in each direction) with 4-foot-wide inside and 12-foot-wide outside shoulders. The frontage roads would include four 11-foot-wide travel lanes (two in each direction) with a 5-foot-wide bike path and 5-foot-wide sidewalk separated from the frontage roads by a 1-foot offset. Grade separated intersections, with U-turns and turning lanes would be constructed at the following intersections: Harborside Drive, 71st Street, and 61st Street onto northbound IH 45. The proposed project would require approximately 5 acres of additional right-of-way.

The applicant proposed to mitigate for the anticipated impacts by purchasing 1 credit of palustrine scrub-shrub to offset 0.0002 acres of permanent freshwater wetland loss from the Brazoria Coastal Bottomlands Mitigation Bank. For tidal emergent wetland losses totaling 1.4018 acres, the applicant proposed to purchase functional capacity units as a suite of 1.317 Biota credits, 2.012 Botanical credits, 1.298 Physical credits, and 1.275 Chemical credits from the Gulf Coastal Plains Mitigation Bank.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2023-00744. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 24-1084-F2

Applicant: U.S. Fish and Wildlife Service

Location: The project site is located in Chocolate Bay, along the shoreline of the Brazoria National Wildlife Refuge and immediately north of the Gulf Intracoastal Waterway, in Brazoria County, Texas.

Latitude and Longitude: 29.152403, -95.153641

Project Description: The applicant proposes to discharge approximately 2,595 cubic yards of graded limestone or granite material into 0.61 acre of open-bay bottom to form three breakwater segments totaling approximately 1,215 linear feet in Chocolate Bay. The breakwater segments will be positioned in a way that there will be ample space for fish passage to minimize the project impacts on near-shore fish and

invertebrate movements. The breakwater segments will tie-in to the existing hardened shoreline protection (articulated concrete blocks) on the southern end of the western shoreline of Chocolate Bay associated with an older dredge material placement area (DMPA) and the newer breakwater protecting PA1A (a Corps DMPA). The applicant is not proposing mitigation. The applicant has stated that they will be avoiding and minimizing impacts to waters of the U.S. and the environment by implementing a Shallow Water Access Plan while transporting materials and construction equipment to and from the project site. The project site consists of open-bay bottom. The applicant conducted side scan sonar surveys in addition to collecting ground truth samples and found no seagrass beds or oyster reefs within the project site.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2021-00187. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 24-1089-F2

Applicant: Texas Department of Transportation-Houston District

Location: The project site is located within Chocolate Bayou and adjacent wetlands, on Farm-to-Market (FM) Road 2004 including an existing bridge structure, in Alvin, Brazoria County, Texas.

Latitude and Longitude: 29.212956, -95.206839

Project Description: The applicant proposes to discharge 66,389 cubic yards of fill material which would in turn result in 14.42 acres of permanent wetland loss, 0.12 acres (453 linear feet) of tidal stream loss, and 0.16 acres (166 linear feet) of Chocolate Bayou loss. The fill material discharged will improve and replace approximately 0.7 mile (mi) or 3,480 feet (ft) of the FM 2004 bridge at Chocolate Bayou. The proposed Project includes an improved two-lane roadway with two 12-foot-wide travel lanes in each direction, two 13-foot-wide medians, and two 10-foot-wide shoulders. The overall width of the new bridge will be approximately 92.5-foot and will also incorporate a two-foot-wide barrier within the center of the bridge. Outside the limits of Chocolate Bayou, the roadway outer edges would have open-ditch drainage features. The proposed Project will completely replace the existing FM 2004 bridge with a concrete bridge structure immediately adjacent and west of the existing alignment, as well as reconstructing the associated approaches to the bridge. Haul roads will be installed for the transportation of materials for the new bridge and the removal of materials of the existing facility. The Project also includes deconstructing and relocating the existing boat ramp to the south (downstream) of the existing bridge. A permanent sheet pile closure wall, approximately 50 ft in overall length, would be installed at the entrance of the existing basin to facilitate dewatering and backfilling. Construction of the new boat ramp would consist of installing a new boat ramp and excavating a new basin and basin entrance. The dredge material from Chocolate Bayou would be placed in USACE-managed Dredge Material Placement Areas (DMPA) located nearby the Project Area. DMPAs include PA 1, 2, 3, 4, 5, 67, and 68 located within and adjacent to Chocolate Bayou upstream and downstream from the Project Area.

The Applicant proposes to purchase 45.773 Functional Capacity Units (FCUs) to mitigate impacts to wetlands and 9,490.93 credits for impacts to streams from Corps approved mitigation banks. Note that avoidance, minimization, and compensation for impacts to Chocolate Bayou are not included in the Public Notice as impacts to Chocolate Bayou will be authorized by a USCG bridge permit and will receive authorization under an NWP 15.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2023-00667. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 24-1096-F2

Federal License and Permit Activities:

Applicant: Port of Houston Authority

Location: The project site is located the Buffalo Bayou portion of the Houston Ship Channel, along 37 wharves, the turning basin and two wharves in the Manchester area, in Houston, Harris County, Texas.

Latitude and Longitude: 29.752168, -95.289901

Project Description: The applicant proposes to amend the existing permit to: 1) add silt blade dredging as a stand alone form of dredging, 2) add the Adloy placement area as an optional dredged material placement area, and 3) add the McCarty Road, Ralston Road and Greenshadow landfills as optional areas for dredge material placement. This project is proposed within the Houston Ship Channel and no discharge of dredged material is proposed within any wetland or other special aquatic site. No compensatory mitigation is proposed.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2005-01296. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1094-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202304873
Mark Havens
Chief Clerk
General Land Office
Filed: December 18, 2023

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Acquisition of Land - Matagorda County

Approximately 1,750 Acres at Matagorda Peninsula Coastal Management Area

In a meeting on January 25, 2024, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 1,750 acres at the Matagorda Peninsula Coastal Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department (TPWD) Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to stan.david@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at www.tpwd.texas.gov for the latest information regarding the Commission meeting.

Acquisition of Land - Briscoe County

Approximately 1,100 Acres at Caprock Canyons State Park and Trailway

In a meeting on January 25, 2024, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 1,100 acres at Caprock Canyons State Park and Trailway. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to trey.vick@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at www.tpwd.texas.gov for the latest information regarding the Commission meeting.

Exchange of Land - Cameron County

Acquisition of Approximately 477 Acres in Exchange for Approximately 43 Acres at Boca Chica State Park

In a meeting on January 25, 2024, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 477 acres near the Laguna Atascosa National Wildlife Refuge Bahia Grande Unit in exchange for approximately 43 acres from Boca Chica State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Project Manager, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email to trey.vick@tpwd.texas.gov, or via the department's web site at www.tpwd.texas.gov. Visit the TPWD website at www.tpwd.texas.gov for the latest information regarding the Commission meeting.

TRD-202304831
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: December 15, 2023

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Public Utility Commission of Texas

Notice of Amended Application to Amend Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an amended application filed with the Public Utility Commission of Texas on December 12, 2023, to amend a designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Sage Telecom Communications LLC dba Sage Wireless to Amend its Eligible Telecommunications Carrier Designation, Docket Number 55870.

The Application: Sage Telecom Communications LLC dba Sage Wireless requests that its ETC designation be amended to expand its service area to include additional wire centers for Lifeline purposes only.

Persons who wish to file a motion to intervene or comments on the application should contact the commission no later than January 18, 2024, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 55870.

TRD-202304727
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: December 13, 2023

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Name Change

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on December 13, 2023, to amend a certificate of convenience and necessity for a name change.

Docket Style and Number: Application of Windstream Sugar Land, LLC to Amend its Certificate of Convenience and Necessity, Docket Number 55883.

The Application: Windstream Sugar Land, LLC filed an application to amend its certificate of convenience and necessity number 40077 to reflect a name change to Windstream East Texas, LLC.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by electronic mail at puc.texas.gov, by phone at (512) 936-7120, or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is January 30, 2024. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 55883.

TRD-202304811
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2023

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Name Change

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on November 27, 2023, to amend a certificate of convenience and necessity for a name change.

Docket Style and Number: Application of Five Area Telephone Cooperative, Inc. to Amend its Certificate of Convenience and Necessity, Docket Number 55891.

The Application: Five Area Telephone Cooperative, Inc. filed an application to amend its certificate of convenience and necessity number 40030 to add its assumed name, Five Area Connect.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by electronic mail at puc.texas.gov, by phone at (512) 936-7120, or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is January 30, 2024. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 55891.

TRD-202304812

Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2023

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Name Change

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on November 27, 2023, to amend a certificate of convenience and necessity for a name change.

Docket Style and Number: Application of West Plains Communications, Inc. to Amend its Certificate of Convenience and Necessity, Docket Number 55892.

The Application: West Plains Communications, Inc. filed an application to amend its certificate of convenience and necessity number 40102 to add its assumed name, West Plains Communications.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by electronic mail at puc.texas.gov, by phone at (512) 936-7120, or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is January 30, 2024. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 55892.

TRD-202304833
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2023

♦ ♦ ♦

Texas Racing Commission

Racetrack Application Period from 1 February 2024 - March 31, 2024 for Cameron, Galveston, and Nueces Counties

PUBLIC ANNOUNCEMENT:

The Texas Racing Commission announces the opening of a racetrack application period for a Class 2 horse racetrack licenses in Cameron, Galveston, and Nueces Counties in accordance with 16 TEXAS ADMINISTRATIVE CODE §309.3(b), from February 1, 2024 - March 31, 2024.

STATUTORY AUTHORITY.

This application period is announced as outlined in Tex. Occ. Code § 2025, which authorizes the Commission to consider racetrack applications from qualified applicants during a period approved by the Commission on December 13, 2023.

INSTRUCTIONS.

The racetrack application form is available at www.txrc.texas.gov/publications

PUBLIC COMMENTS.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register,* by emailing the Texas Racing Commission at *customer.service@txrc.texas.gov,* or by telephone at (512) 833-6699.

TRD-202304734
Amy F. Cook
Executive Director
Texas Racing Commission
Filed: December 14, 2023

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Supreme Court of Texas

Final Approval of Amendments to Texas Rule of Appellate Procedure 24

Supreme Court of Texas

Misc. Docket No. 23-9101

Final Approval of Amendments to
Texas Rule of Appellate Procedure 24

ORDERED that:

1. On August 25, 2023, in Misc. Dkt. No. 23-9062, the Court preliminarily approved amendments to Texas Rule of Appellate Procedure 24 and invited public comment.

2. Following the comment period, the Court made revisions to the rule. This Order incorporates the revisions and contains the final version of the amended rule.

3. Amended Rules 24.1(b)(2) and 24.4(d) take effect on January 1, 2024.

4. The other amendments take effect immediately and apply only to a civil action commenced on or after September 1, 2023.

5. The Clerk is directed to:

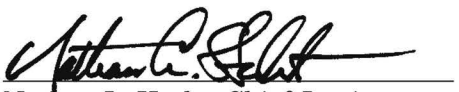
    a. file a copy of this Order with the Secretary of State;

    b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

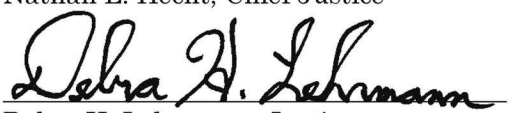
    c. send a copy of this Order to each elected member of the Legislature; and

    d. submit a copy of this Order for publication in the *Texas Register*.

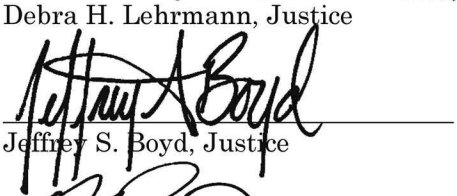
Dated: December 18, 2023.



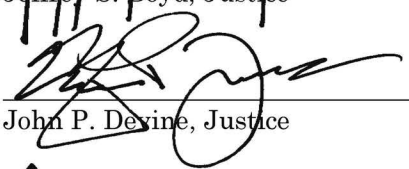
Nathan L. Hecht, Chief Justice



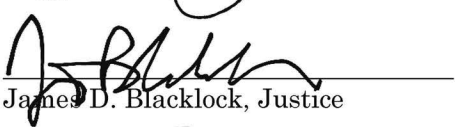
Debra H. Lehrmann, Justice



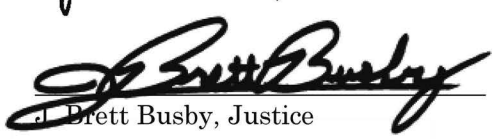
Jeffrey S. Boyd, Justice



John P. Devine, Justice



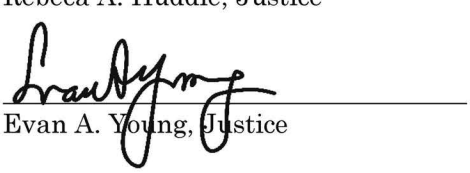
James D. Blacklock, Justice



J. Brett Busby, Justice

Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 24. Suspension of Enforcement of Judgment Pending Appeal in Civil Cases

24.1. Suspension of Enforcement

(a) *Methods*. Unless the law or these rules provide otherwise, a judgment debtor may supersede the judgment by:

(1) filing with the trial court clerk a written agreement with the judgment creditor for suspending enforcement of the judgment;

(2) filing with the trial court clerk a good and sufficient bond;

(3) making a deposit with the trial court clerk in lieu of a bond; or

(4) providing alternate security under Rule 24.2(e) or ordered by the court.

(b) *Bonds*.

(1) A bond must be:

(A) in the amount required by 24.2;

(B) payable to the judgment creditor;

(C) signed by the judgment debtor or the debtor's agent;

(D) signed by a sufficient surety or sureties as obligors; and

(E) conditioned as required by (d).

(2) ~~To be effective a bond must be approved by the trial court clerk.~~ A bond is effective upon filing. On motion of any party, the trial court will review the bond.

(c) *Deposit in Lieu of Bond*.

(1) Types of Deposits. Instead of filing a surety bond, a party may deposit with the trial court clerk:

(A) cash;

(B) a cashier's check payable to the clerk, drawn on any federally insured and federally or state-chartered bank or savings-and-loan association; or

(C) with leave of court, a negotiable obligation of the federal government or of any federally insured and federally or state-chartered bank or savings-and-loan association.

(2) Amount of Deposit. The deposit must be in the amount required by 24.2.

(3) Clerk's Duties; Interest. The clerk must promptly deposit any cash or a cashier's check in accordance with law. The clerk must hold the deposit until the conditions of liability in (d) are extinguished. The clerk must then release any remaining funds in the deposit to the judgment debtor.

(d) *Conditions of Liability*. The surety or sureties on a bond, any deposit in lieu of a bond, or any alternate security under Rule 24.2(e) or ordered by the court is subject to liability for all damages and costs that may be awarded against the debtor — up to the amount of the bond, deposit, or security — if:

(1) the debtor does not perfect an appeal or the debtor's appeal is dismissed, and the debtor does not perform the trial court's judgment;

(2) the debtor does not perform an adverse judgment final on appeal; or

(3) the judgment is for the recovery of an interest in real or personal property, and the debtor does not pay the creditor the value of the property interest's rent or revenue during the pendency of the appeal.

(e) *Orders of Trial Court*. The trial court may make any order necessary to adequately protect the judgment creditor against loss or damage that the appeal might cause.

(f) *Effect of Supersedeas*. Enforcement of a judgment must be suspended if the judgment is superseded. Enforcement begun before the judgment is superseded must cease when the judgment is superseded. If execution has been issued, the clerk will promptly issue a writ of supersedeas.

24.2. Amount of Bond, Deposit, or Security

(a) *Type of Judgment.*

(1) For Recovery of Money. When the judgment is for money, the amount of the bond, deposit, or security must equal the sum of compensatory damages awarded in the judgment, interest for the estimated duration of the appeal, and costs awarded in the judgment. But the amount must not exceed the lesser of:

(A) 50 percent of the judgment debtor's current net worth; or

(B) 25 million dollars.

(2) For Recovery of Property. When the judgment is for the recovery of an interest in real or personal property, the trial court will determine the type of security that the judgment debtor must post. The amount of that security must be at least:

(A) the value of the property interest's rent or revenue, if the property interest is real; or

(B) the value of the property interest on the date when the court rendered judgment, if the property interest is personal.

(3) Other Judgment. When the judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post. The security must adequately protect the judgment creditor against loss or damage that the appeal might cause. But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper. When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action.

(4) Conservatorship or Custody. When the judgment involves the conservatorship or custody of a minor or other person under legal

disability, enforcement of the judgment will not be suspended, with or without security, unless ordered by the trial court. But upon a proper showing, the appellate court may suspend enforcement of the judgment with or without security.

(5) For a Governmental Entity. When a judgment in favor of a governmental entity in its governmental capacity is one in which the entity has no pecuniary interest, the trial court must determine whether to suspend enforcement, with or without security, taking into account the harm that is likely to result to the judgment debtor if enforcement is not suspended, and the harm that is likely to result to others if enforcement is suspended. The appellate court may review the trial court's determination and suspend enforcement of the judgment, with or without security, or refuse to suspend the judgment. If security is required, recovery is limited to the governmental entity's actual damages resulting from suspension of the judgment.

(b) *Lesser Amount.* The trial court must lower the amount of security required by (a) to an amount that will not cause the judgment debtor substantial economic harm if, after notice to all parties and a hearing, the court finds that posting a bond, deposit, or security in the amount required by (a) is likely to cause the judgment debtor substantial economic harm.

(c) *Determination of Net Worth.*

(1) Judgment Debtor's Affidavit Required; Contents; Prima Facie Evidence. A judgment debtor who provides a bond, deposit, or security under (a)(1)(A) or (e) in an amount based on the debtor's net worth must simultaneously file with the trial court clerk an affidavit that states the debtor's net worth and states complete, detailed information concerning the debtor's assets and liabilities from which net worth can be ascertained. An affidavit that meets these requirements is prima facie evidence of the debtor's net worth for the purpose of establishing the amount of the bond, deposit, or security required to suspend enforcement of the judgment. A trial court clerk must receive and file a net-worth affidavit tendered for filing by a judgment debtor.

(2) Contest; Discovery. A judgment creditor may file a contest to the debtor's claimed net worth. The contest need not be sworn. The creditor may conduct reasonable discovery concerning the judgment debtor's net worth.

(3) Hearing; Burden of Proof; Findings; Additional Security. The trial court must hear a judgment creditor's contest of the judgment debtor's claimed net worth promptly after any discovery has been completed. The judgment debtor has the burden of proving net worth. The trial court must issue an order that states the debtor's net worth and states with particularity the factual basis for that determination. If the trial court orders additional or other security to supersede the judgment, the enforcement of the judgment will be suspended for twenty days after the trial court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced against the judgment debtor.

(d) *Injunction.* The trial court may enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

(e) *Alternative Security in Certain Cases.*

(1) Applicability. Paragraph (e) applies only to a judgment debtor with a net worth of less than $10 million.

(2) Alternative Security; Required Showing. On a showing by the judgment debtor that posting security in the amount required under (a)(1) would require the judgment debtor to substantially liquidate the judgment debtor's interests in real or personal property necessary to the normal course of the judgment debtor's business, the trial court must allow the judgment debtor to post alternative security with a value sufficient to secure the judgment.

(3) Earnings on Appeal. During an appeal, the judgment debtor may continue to manage, use, and receive earnings from interests in real or personal property in the normal course of business.

(f) *Redetermination.* If an appellate court reduces the amount of the judgment used to set the bond, deposit, or security, the judgment debtor is entitled, pending appeal of the judgment to a court of last resort, to a redetermination by the trial court of the amount of the bond, deposit, or security required to suspend enforcement.

***

24.4. Appellate Review

(a) *Motions; Review*. A party may seek review of the trial court's ruling by motion filed in the court of appeals with jurisdiction or potential jurisdiction over the appeal from the judgment in the case. A party may seek review of the court of appeals' ruling on the motion by petition for writ of mandamus in the Supreme Court. The appellate court may review:

(1) the sufficiency or excessiveness of the amount of security, but when the judgment is for money, the appellate court must not modify the amount of security to exceed the limits imposed by Rule 24.2(a)(1);

(2) the sureties on any bond;

(3) the type of security;

(4) the determination whether to permit suspension of enforcement; and

(5) the trial court's exercise of discretion under Rule 24.3(a).

(b) *Grounds of Review*. Review may be based both on conditions as they existed at the time the trial court signed an order and on changes in those conditions afterward.

(c) *Temporary Orders*. The appellate court may issue any temporary orders necessary to preserve the parties' rights.

(d) *Action by Appellate Court*. The motion must be heard at the earliest practicable time. The appellate court may require that the amount of a bond, deposit, or other security be increased or decreased, and that another bond, deposit, or security be provided ~~and approved by the trial court clerk~~. The appellate court may require other changes in the trial court order. The appellate court may remand to the trial court for entry of findings of fact or for the taking of evidence.

(e) *Effect of Ruling*. If the appellate court orders additional or other security to supersede the judgment, enforcement will be suspended for 20 days after the appellate court's order. If the judgment debtor does not comply

with the order within that period, the judgment may be enforced. When any additional bond, deposit, or security has been filed, the trial court clerk must notify the appellate court. The posting of additional security will not release the previously posted security or affect any alternative security arrangements that the judgment debtor previously made unless specifically ordered by the appellate court.

Notes and Comments

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Comment to 2023 change: New Rule 24.2(e) and (f) are added to implement section 52.007 of the Texas Civil Practice and Remedies Code.

Comment to 2024 change: Rules 24.1(b)(2) and 24.4(d) are amended to provide that a bond is effective upon filing, though the bond is still subject to challenge.

TRD-202304914
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: December 19, 2023

♦ ♦ ♦

Final Approval of Amendments to Texas Rules of Disciplinary Procedure 1.06, 2.10, 2.17, 7.08, and 7.11

Supreme Court of Texas

Misc. Docket No. 23-9100

Final Approval of Amendments to Texas Rules of Disciplinary Procedure 1.06, 2.10, 2.17, 7.08, and 7.11

ORDERED that:

1. On August 25, 2023, in Misc. Dkt. No. 23-9067, the Court preliminarily approved amendments to Texas Rules of Disciplinary Procedure 1.06, 2.10, 2.17, 7.08, and 7.11 and invited public comment.

2. Following the comment period, the Court made revisions to the rules. This Order incorporates the revisions and contains the final version of the amended rules, effective immediately.

3. The amendments apply only to a grievance filed on or after September 1, 2023. The amendments to Rule 2.17 apply only to an application for a place on the ballot filed for an election ordered on or after September 1, 2023.

4. The Clerk is directed to:

    a. file a copy of this Order with the Secretary of State;

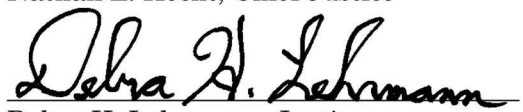
    b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

    c. send a copy of this Order to each elected member of the Legislature; and

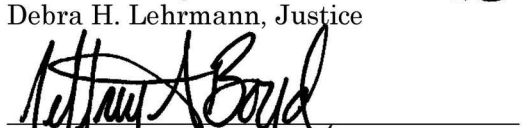
    d. submit a copy of this Order for publication in the *Texas Register*.

Dated: December 18, 2023.

Nathan L. Hecht, Chief Justice



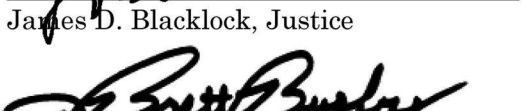
Debra H. Lehrmann, Justice



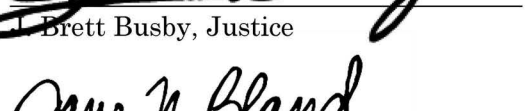
Jeffrey S. Boyd, Justice

John P. Devine, Justice

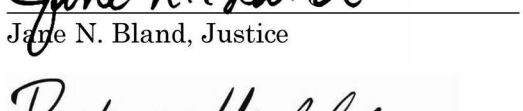
James D. Blacklock, Justice



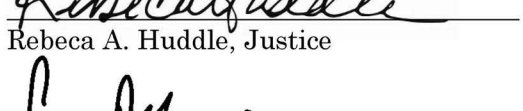
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

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1.06. Definitions:

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F. "Complainant" means the person, firm, corporation, or other entity, including the Chief Disciplinary Counsel, initiating a Complaint or Inquiry.

G. "Complaint" means a Grievance received by the Office of the Chief Disciplinary Counsel that:

1. either on its face or upon screening or preliminary investigation, alleges Professional Misconduct or attorney Disability, or both, cognizable under these rules or the Texas Disciplinary Rules of Professional Conduct; and

2. is submitted by any of the following:

a. a family member of a ward in a guardianship proceeding that is the subject of the Grievance;

b. a family member of a decedent in a probate matter that is the subject of the Grievance;

c. a trustee of a trust or an executor of an estate if the matter that is the subject of the Grievance relates to the trust or estate;

d. the judge, prosecuting attorney, defense attorney, court staff member, or juror in the legal matter that is the subject of the Grievance;

e. a trustee in a bankruptcy that is the subject of the Grievance; or

f. any other person who has a cognizable individual interest in or connection to the legal matter or facts alleged in the Grievance.

***

R. "Grievance" means a written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, or lawyer Disability, or both, received by the Office of the Chief Disciplinary Counsel.

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T. "Inquiry" means a Grievance received by the Office of the Chief Disciplinary Counsel that, even if true, does not allege Professional Misconduct or Disability or is not submitted by a person listed in paragraph G.

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FF. "Sanction" means any of the following:

1. Disbarment.

2. Resignation in lieu of discipline.

3. Indefinite Disability suspension.

4. Suspension for a term certain.

5. Probation of suspension, which probation may be concurrent with the period of suspension, upon such reasonable terms as are appropriate under the circumstances.

6. Interim suspension.

7. Public reprimand.

8. Private reprimand.

The term "Sanction" may include the following additional ancillary requirements:

a. Restitution (which may include repayment to the Client Security Fund of the State Bar of any payments made by reason of Respondent's Professional Misconduct); and

b. Payment of Reasonable Attorneys' Fees and all direct expenses associated with the proceedings.

***

2.10. Classification of Grievances: The Chief Disciplinary Counsel shall within thirty days examine each Grievance received to determine whether it constitutes an Inquiry, a Complaint, or a Discretionary Referral.

A. If the Grievance is determined to constitute an Inquiry, the Chief Disciplinary Counsel shall notify the Complainant and Respondent of the dismissal. The Complainant may, within thirty days from notification of the dismissal, appeal the determination to the Board of Disciplinary Appeals. If the Board of Disciplinary Appeals affirms the classification as an Inquiry, the Complainant will be so notified and may within twenty days amend the Grievance one time only by providing new or additional evidence. The Complainant may appeal a decision by the Chief Disciplinary Counsel to dismiss the amended Grievance as an Inquiry to the Board of Disciplinary Appeals. No further amendments or appeals will be accepted.

B. If the Grievance is determined to constitute a Complaint, the Respondent shall be provided a copy of the Complaint with notice to respond, in writing, to the allegations of the Complaint. The notice shall advise the Respondent that the Chief Disciplinary Counsel may provide appropriate information, including the Respondent's response, to law enforcement agencies as permitted by Rule 6.08. The Respondent shall deliver the response to both the Office of the Chief Disciplinary Counsel and the Complainant within thirty days after receipt of the notice. The Respondent may, within thirty days after receipt of notice to respond, appeal to the Board of Disciplinary Appeals the Chief Disciplinary Counsel's determination that the Grievance constitutes a Complaint. If the Respondent perfects an appeal, the pendency of the appeal automatically stays the Respondent's deadline to respond to the Complaint and the deadlines pertaining to the investigation and determination of Just Cause. If the Board of Disciplinary Appeals reverses the Chief Disciplinary Counsel's determination, the Grievance must be dismissed immediately as an Inquiry. If the Board of Disciplinary Appeals affirms the Chief Disciplinary Counsel's determination, the Respondent must respond to the allegations in the Complaint within thirty days after the Respondent receives notice of the affirmance.

C. If the Grievance is determined to be a Discretionary Referral, the Chief Disciplinary Counsel will notify the Complainant and the Respondent of the referral to the State Bar's Client Attorney Assistance Program (CAAP). No later than sixty days after the Grievance is referred, CAAP will notify the Chief Disciplinary Counsel of the outcome of the referral. The Chief Disciplinary Counsel must, within fifteen days of notification from CAAP, determine whether the Grievance should be dismissed as an Inquiry or proceed as a Complaint. The Chief Disciplinary Counsel and CAAP may share confidential information for all Grievances classified as Discretionary Referrals.

***

2.17. Evidentiary Hearings: Within fifteen days of the earlier of the date of Chief Disciplinary Counsel's receipt of Respondent's election or the day following the expiration of Respondent's right to elect, the chair of a Committee having proper venue shall appoint an Evidentiary Panel to hear the Complaint. The Evidentiary Panel may not include any person who served on a Summary Disposition or an Investigatory Panel that heard the Complaint and must have at least three members but no more than one-half as many members as on the Committee. Each Evidentiary Panel must have a ratio of two attorney members for every public member. Proceedings before an Evidentiary Panel of the Committee include:

***

P. Decision:

1. After conducting the Evidentiary Hearing, the Evidentiary Panel shall issue a judgment within thirty days. In any Evidentiary Panel proceeding where Professional Misconduct is found to have occurred, such judgment shall include findings of fact, conclusions of law and the Sanctions to be imposed.

2. The Evidentiary Panel may:

a. dismiss the Disciplinary Proceeding and refer it to the voluntary mediation and dispute resolution procedure;

b. find that the Respondent suffers from a disability and forward that finding to the Board of Disciplinary Appeals for referral to a district disability committee pursuant to Part XII; or

c. find that Professional Misconduct occurred and impose Sanctions.

3. The Evidentiary Panel must impose a public sanction listed in Rule 1.06(FF)(1)-(7) against the Respondent if the Evidentiary Panel finds that the Respondent knowingly made a false declaration on an application for a place on the ballot as a candidate for the following judicial offices:

a. chief justice or justice of the supreme court;
b. presiding judge or judge of the court of criminal appeals;

c. chief justice or justice of a court of appeals;

d. district judge, including a criminal district judge; or

e. judge of a statutory county court.

***

7.08. Powers and Duties: The Board of Disciplinary Appeals shall exercise the following powers and duties:

A. Propose rules of procedure and administration for its own operation to the Supreme Court of Texas for promulgation.

B. Review the operation of the Board of Disciplinary Appeals and periodically report to the Supreme Court and to the Board.

C. Affirm or reverse a determination by the Chief of Disciplinary Counsel that a Grievance constitutes either:

1. an Inquiry as opposed to a Complaint; or

2. a Complaint as opposed to an Inquiry.

***

7.11. Judicial Review: An appeal from a determination of the Board of Disciplinary Appeals shall be to the Supreme Court. Within fourteen days after receipt of notice of a final determination by the Board of Disciplinary Appeals, the party appealing must file a notice of appeal directly with the Clerk of the Supreme Court. The record must be filed within sixty days after the Board of Disciplinary Appeals' determination. The appealing party's brief is due thirty days after the record is filed, and the responding party's brief must be filed within thirty days thereafter. Except as herein expressly provided, the appeal must be made pursuant to the then applicable Texas Rules of Appellate Procedure. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court may affirm a decision on the Board of Disciplinary Appeals by order without written opinion. Determinations by the Board of Disciplinary Appeals that a statement constitutes either an Inquiry or a Complaint, or transferring cases, are conclusive, and may not be appealed to the Supreme Court.

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TRD-202304913
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: December 19, 2023

♦ ♦ ♦

Preliminary Approval of Texas Rule of Appellate Procedure 34.5a and of Amendments to Texas Rules of Appellate Procedure 35.3 and 38.6

Supreme Court of Texas

Misc. Docket No. 23-9106

Preliminary Approval of Texas Rule of Appellate Procedure 34.5a and of Amendments to Texas Rules of Appellate Procedure 35.3 and 38.6

ORDERED that:

1. The Court invites public comments on proposed new Texas Rule of Appellate Procedure 34.5a and amendments to Texas Rules of Appellate Procedure 35.3 and 38.6.

2. To effectuate the Act of May 28, 2023, 88th Leg., R.S., ch. 861 (H.B. 3474, codified in TEX. CIV. PRAC. & REM. CODE § 51.018), new Rule 34.5a and the amendments to Rules 35.3 and 38.6 are effective January 1, 2024. But changes may be made in response to public comments. The Court requests public comments be submitted in writing to rulescomments@txcourts.gov by April 1.

3. New Rule 34.5a is demonstrated in clean form, and the amendments to Rules 35.3 and 38.6 are demonstrated in redline form.

4. The new rule and amendments apply only when a party files a notice of appeal on or after January 1, 2024.

5. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of this Order for publication in the *Texas Register*.

Dated: December 18, 2023.

Nathan L. Hecht, Chief Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

James D. Blacklock, Justice

J. Brett Busby, Justice

Jane N. Bland, Justice

Rebeca A. Huddle, Justice

Evan A. Young, Justice

***

34.5a Appendix in Lieu of Clerk's Record in a Civil Case

(a) *Notice of Election.* Within 10 days after the date that an appellant files a notice of appeal for a civil suit, an appellant may file a notice of election with the trial court and the court of appeals stating that the appellant will file an appendix that replaces the clerk's record for the appeal.

(b) *Time to File Original Appendix.* The appellant filing a notice of election under (a) must file the appendix with the appellant's brief. Except by order of the court under Rule 38.6(d), the brief and appendix must be filed within 30 days—or 20 days in an accelerated appeal—after the later of:

(1) the date the appellant filed the notice of election under (a); or

(2) the date the reporter's record, if any, is filed with the court of appeals.

(c) *Supplemental or Joint Appendices.* If the appellant files an appendix under (b), any other party may file a supplemental appendix with that party's brief. The parties may agree under Rule 6.6 to file a joint appendix.

(d) *Court-Directed Supplement.* The court of appeals may direct the appellant to file a supplemental appendix containing items described by the court of appeals. If the appellant fails to supplement as requested, and the record fails to establish the court of appeals' jurisdiction, the court of appeals may dismiss the appeal. In cases where the court of appeals has jurisdiction, and the appellant fails to supplement as requested, the court of appeals may presume that the missing items support the trial court's judgment.

(e) *Contents of Original Appendix.* The appendix filed under (b) must contain a copy of:

(1) each document required by Rule 34.5(a) for a civil case; and

(2) any other item in the record and referenced in the appellant's brief.

(f) *Contents of All Appendices.* When available, the contents of an appendix must be file-stamped. An appendix must not contain a document that was not filed with the trial court, except:

(1) if the document was issued by the trial court; or

(2) by agreement of the parties under Rule 6.6.

(g) *Filing Requirements for All Appendices.* An appendix must be filed separately from any other document, and the pages must be consecutively numbered. An appendix must meet the applicable filing requirements of Rules 9.4, 9.8, and 9.9. A nonconforming appendix is subject to court action under Rule 9.4(k). A conforming appendix becomes a part of the appellate record under Rule 34.1

(h) *No Clerk's Record.* A court clerk must not prepare or file a clerk's record or assess a fee for preparing a clerk's record if a party files an appendix under this rule.

***

Notes and Comments

***

Comment to 2024 Change: New Rule 34.5a is added to implement Texas Civil Practice and Remedies Code section 51.018. It allows the parties in a civil case to file appendices in lieu of a clerk's record and applies only when a party files a notice of appeal on or after January 1, 2024.

Rule 35. Time to File Record; Responsibility for Filing Record (Redline Version)

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35.3. Responsibility for Filing Record

(a) *Clerk's Record.* Except when an appendix is filed under Rule 34.5a, the trial court clerk is responsible for preparing, certifying, and timely filing the clerk's record if:

(1) a notice of appeal has been filed, and in criminal proceedings, the trial court has certified the defendant's right of appeal, as required by Rule 25.2(d); and

(2) the party responsible for paying for the preparation of the clerk's record has paid the clerk's fee, has made satisfactory arrangements with the clerk to pay the fee, or is entitled to appeal without paying the fee.

***

Rule 38. Requisites of Briefs (Redline Version)

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38.6. Time to File Briefs

(a) *Appellant's Filing Date*. Except in a habeas corpus or bail appeal, which is governed by Rule 31, or when an appendix is filed under Rule 34.5a, an appellant must file a brief within 30 days — 20 days in an accelerated appeal — after the later of:

(1) the date the clerk's record was filed; or

(2) the date the reporter's record was filed.

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TRD-202304915
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: December 19, 2023

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Texas Tech University System

Notice of Intent to Award Consulting Services

In accordance with the provisions of Texas Government Code, Chapter 2254, Texas Tech University Health Sciences Center ("TTUHSC") will be seeking Requests for Proposals to hire a consultant to provide expertise to support TTUHSC in strategically designing the administrative structure and staffing of the comprehensive inpatient and outpatient services at the Relational Health Center.

The President of Texas Tech University Health Sciences Center has made a finding of fact that the consulting services are necessary. TTUHSC does not currently have the in-house expertise to complete this project.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by TTUHSC.

Parties interested in a copy of the Request for Proposal should visit the Texas Comptroller of Public Accounts' Electronic State Business Daily Search or contact:

Managing Director of Purchasing

Purchasing Office

Texas Tech University Health Sciences Center

3601 4th Street | STOP 6217

Lubbock, Texas 79430

Email: solicitations@ttuhsc.edu

The proposal submission deadline will be January 31, 2024, at 4:30 p.m. Central Standard Time.

TRD-202304889
John Haynes
Managing Director, Procurement Services
Texas Tech University System
Filed: December 19, 2023

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "48 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 48 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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