PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER U. CITRUS CANKER QUARANTINE

4 TAC §19.401

The Texas Department of Agriculture (the Department) proposes amendments to Title 4, Chapter 19, Subchapter U, Citrus Canker Quarantine, §19.401, relating to Quarantined Areas.

The proposed amendments to §19.401 remove the quarantined area in Harris County due to the absence of citrus canker disease in this quarantined area for over 2 years. In addition, the proposed amendments remove all descriptions of quarantined areas in §19.401(b), which the Department will post on an ongoing basis on its website as new detections are identified. Due to ongoing pest surveys, modifications to the citrus canker quarantined areas occur with high frequency. The Department posts notifications of quarantined area changes on the Department’s website in accordance with §19.401(c), which will be redesignated as §19.401(b). The proposed amendments will increase clarity and understanding of the citrus canker quarantined areas in Texas.

Citrus canker is a non-systemic plant disease caused by strains or pathotypes of the bacterium Xanthomonas citri subsp. citri. The disease produces leaf-spotting, fruit rind-blemishing, defoliation, shoot dieback, fruit drop, and can predispose fruit to secondary infection by decay organisms. The marketability of symptomatic fresh fruit is greatly reduced compared to non-infected fruit.

The Department takes action to eradicate citrus canker from Texas by conducting pest surveys in residential areas and retail nurseries within and near the citrus canker quarantined areas and by destroying any plant determined to be infected with citrus canker.

The Harris Citrus Canker Quarantined Area (also known as the Houston Quarantined Area or the Braeswood Quarantined Area) has been without citrus canker infestations since the two citrus canker positive trees were removed in 2016. This quarantined area has been comprehensively surveyed twice since the positive trees were discovered and in neither survey were citrus trees found to be infected with citrus canker. The early detection and rapid response to the pest threat in this quarantined area has successfully eradicated the pest.

Since citrus canker is also a federally quarantined pest, the Department requested on December 30, 2020, concurrence with the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine (USDA-APHIS-PPQ) to remove this quarantined area from the Citrus Canker Quarantined Areas. On February 1, 2021, the USDA-APHIS-PPQ agreed with the Department’s determination to remove this quarantined area. This will be the first reduction in the Citrus Canker Quarantined Area since this pest was eradicated from Texas in 1947.

The movement, distribution or sale of citrus plants, and other regulated articles, within, into, through, or out of the Harris Quarantined Area will be not be regulated as a result of the proposed rule amendments.

The Department will continue to monitor this area and respond to any suspect citrus canker detections. The Department will continue to work with the Texas A&M University AgriLife Extension Service, the Texas Citrus Pest and Disease Management Corporation, and the Texas Nursery and Landscape Association for outreach initiatives in the Houston area. This area, along with other areas throughout the Greater Houston region, will continue to be monitored and targeted for outreach and future pest surveys.

Mr. Perry Cervantes, Director for Environmental and Biosecurity Programs, has determined that for the first five-year period the proposed rule amendments are in effect, there will be no fiscal implications for state or local governments.

Mr. Cervantes has also determined that for each year of the first five years the proposed rule amendments are in effect, the public benefit anticipated as a result of administering the proposed rule amendments will be the continued growth of the Texas citrus fruit production industry and the Texas citrus nursery industry. There will be a minimal positive economic impact on small businesses or persons required to comply with the proposed amendments.

Mr. Cervantes has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of implementing the proposed rule amendments, for the first five years the proposed rule amendments are in effect:

(1) no new or current government or Department programs will be created or eliminated;
(2) no employee positions will be created, nor will any existing Department staff positions be eliminated;
(3) there will not be an increase or decrease in future legislative appropriations to the Department;
(4) there will be no increase or decrease in fees paid to the Department;
(5) there will be no new regulations created by the proposal;
(6) there will be a repeal of existing regulations, specifically the Harris Quarantined Area;
(7) there will be a decrease in the number of individuals subject to the rule's applicability; and
(8) the proposal will have a slight positive impact on the Texas economy, as the cost of compliance to landscapers and nurseries in the Harris Quarantined Area will be eliminated.

Written comments on the proposal may be submitted to Mr. Perry Cervantes, Director for Environmental and Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: RuleComments@Texas-Agriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The amendments are proposed under the Texas Agriculture Code, §73.004, which authorizes the Department to establish quarantines against citrus diseases and pests it determines are injurious; and §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a program to manage or eradicate exotic citrus diseases, including citrus canker and citrus greening.

Chapters 71 and 73 of the Texas Agriculture Code are affected by the proposal.

§19.401. Quarantined Areas.

(a) Quarantined areas are described [in this section, and as defined] on the Department's website at www.TexasAgriculture.gov. A map of the quarantined area is also available on the Department's website.

[b] Quarantined areas include:

(1) In Fort Bend and Harris Counties: The quarantine boundary is described, as starting at a point described as N29.7166139524 degrees and W95.60132688080 degrees, then South along Shady Breeze Drive to a point described as N29.7142932806 degrees and W95.6013334915 degrees, then East along Westpark Tollway to a point described as N29.7146800592 degrees and W95.5962987587 degrees, then South along Cook Road to a point described as N29.6763889689 degrees and W95.5959119801 degrees, then East along Bissonnet Street to a point described as N29.6655591655 degrees and W95.5885631843 degrees, then South along Kirkwood Road to a point described as N29.6415788853 degrees and W95.5723184784 degrees, then East along Westport Boulevard to a point described as N29.644929481 degrees and W95.5388621218 degrees, then South East along South Loop 8 to a point described as N29.6172118282 degrees and W95.555547819 degrees, then West along U.S. Highway 90 to a point described as N29.629588746 degrees and W95.5922378522 degrees, then South West along Interstate Highway 69 to a point described as N29.6168250495 degrees and W95.6061616155 degrees, then South East to a point described as N29.6141101474 degrees and W95.603673847 degrees, then South West along Country Club Boulevard to a point described as N29.6048394094 degrees and W95.6104161804 degrees, then North West along William Trace Boulevard to a point described as N29.5974861137 degrees and 95.6222129303 degrees, then South West along Interstate Highway 69 to a point described as N29.6007737338 degrees and 95.6314956191 degrees, then North West along State Highway 6 to a point described as N29.6090894752 degrees and W95.6438725379 degrees, then South West along University Boulevard to a point described as N29.5936183274 degrees and W95.6492874387 degrees, then West along New Territory Boulevard to a point described as N29.5898513129 degrees and W95.6774946667 degrees, then North West along State Highway 99 to a point described as N29.6573433334 degrees and W95.7154981303 degrees, then North along Harlem Road to a point described as N29.6619612082 degrees and W95.7151492059 degrees, then East along Madden Road to a point described as N29.6620781561 degrees and W95.7057571299 degrees, then North to a point described as N29.6688467839 degrees and W95.7028562893 degrees, then North to a point described as N29.6702005099 degrees and W95.7024605107 degrees, then East to a point described as N29.6698137304 degrees and W95.6945405477 degrees, then North to a point described as N29.6707806779 degrees and W95.6945405477 degrees, then East to a point described as N29.6713608449 degrees and W95.6800363467 degrees, then North to a point described as N29.683931153 degrees and W95.6810032933 degrees, then West to a point described as N29.6845113218 degrees and W95.7013091739 degrees, then North along Addicks Clodine Road to a point described as N29.7009494162 degrees and W95.7011157855 degrees, then East along Bellaire Boulevard to a point described as N29.700756026 degrees and W95.6846776911 degrees, then South along Chickory Woods Lane to a point described as N29.6984353533 degrees and W95.6846776911 degrees, then East along Espinosa Drive to a point described as N29.6982419649 degrees and W95.6792627885 degrees, then South along Caracas Drive to a point described as N29.6955345316 degrees and W95.6790693983 degrees, then East along Sinaloa Drive to a point described as N29.6959212931 degrees and W95.6765553373 degrees, then North along San Pablo Drive to a point described as N29.696948504 degrees and W95.6755839077 degrees, then East along Alametos Drive to a point described as N29.6970816296 degrees and W95.6653387553 degrees, then North East along Addicks Clodine Road to a point described as N29.7100387148 degrees and W95.6603106322 degrees, then East along Westpark Tollway to a point described as N29.7104254934 degrees and W95.6533486164 degrees, then North along Cedar Gardens Drive to a point described as N29.7140998913 degrees and W95.6529618365 degrees, then East along West Bend Drive to a point described as N29.7144866969 degrees and W95.6444527058 degrees, then South along Westpark Tollway to a point described as N29.7135197234 degrees and W95.6158310829 degrees, then North on Synott Road to a point described as N29.7170007313 degrees and 95.6154443043 degrees, then East along Brant Rock Drive to the starting point.

(2) In Harris County: The quarantine boundary is described, as starting at the intersection of Stella Link Road and North Braeswood Boulevard, then westerly along North Braeswood Boulevard to its intersection with Academy Street, then northerly along Academy Street to its intersection with Merrick Street, then easterly along Merrick Street to its intersection with Stella Link Road, then northerly along Stella Link Road to its intersection with Blue Bonnet Boulevard, then easterly along Blue Bonnet Boulevard to its intersection with Seawane Street, then northerly along Seawane Street to its intersection with Glen Haven Boulevard, then easterly along Glen Haven Boulevard to its intersection with Buffalo Speedway, then southerly along Buffalo Speedway to its intersection with South Braeswood Boulevard, then easterly along South Braeswood Boulevard to its intersection with Greenwich Drive, then southerly along Greenbush Drive to its intersection with Buffalo Speedway, then southerly along Buffalo Speedway to its intersection with Durhill Street, then westerly along Durhill Street to its intersection with Latma Drive, then northerly along Latma Drive to its intersection with Stella Link Road, then northerly along Stella Link Road to its intersection with Linkwood Drive, then northerly along Linkwood Drive.
to its intersection with South Braeswood Boulevard, then easterly along South Braeswood Boulevard to its intersection with Stella Link Road, then northerly along Stella Link Road to the starting point.)

[(3) In Cameron County: The quarantine boundary is described as, starting at a point described as N26.038113 degrees and W97.662765 degrees, then North to a point described as N26.049187 degrees and W97.663123 degrees, then North East to a point described as N26.043238 degrees and W97.661355 degrees, then North West to a point described as N26.043181 degrees and W97.662384 degrees, then North West to a point described as N26.045020 degrees and W97.664164 degrees, then North East to a point described as N26.072659 degrees and W97.640104 degrees, then North West to a point described as N26.070902 degrees and W97.645149 degrees, then North East to a point described as N26.101460 degrees and W97.627284 degrees, then South East to a point described as N26.094385 degrees and W97.617458 degrees, then South East to a point described as N26.091833 degrees and W97.615076 degrees, then South to a point described as N26.091833 degrees and W97.615076 degrees, then East to a point described as N26.080902 degrees and W97.581814 degrees, then East to a point described as N26.081021 degrees and W97.580911 degrees, then East to a point described as N26.080730 degrees and W97.579106 degrees, then East to a point described as N26.076239 degrees and W97.533750 degrees, then East to a point described as N26.070584 degrees and W97.529935 degrees, then East to a point described as N26.073305 degrees and W97.499314 degrees, then South to a point described as N26.055295 degrees and W97.503192 degrees, then South to a point described as N26.045394 degrees and W97.504870 degrees, then South to a point described as N26.001250 degrees and W97.508846 degrees, then South to a point described as N25.995337 degrees and W97.500319 degrees, then East to a point described as N25.993839 degrees and W97.495641 degrees, then South to a point described as N25.978456 degrees and W97.496850 degrees, then West to a point described as N25.978623 degrees and W97.505980 degrees, then West to a point described as N25.979620 degrees and W97.511963 degrees, then West to a point described as N25.978830 degrees and W97.518034 degrees, then South East to a point described as N25.967162 degrees and W97.514266 degrees, then South to a point described as N25.965469 degrees and W97.514076 degrees, then South to a point described as N25.945219 degrees and W97.516433 degrees, then South to a point described as N25.926488 degrees and W97.518082 degrees, then West to a point described as N25.926875 degrees and W97.522045 degrees, then North West to a point described as N25.928146 degrees and W97.524315 degrees, then North West to a point described as N25.931213 degrees and W97.526867 degrees, then North West to a point described as N25.933391 degrees and W97.530618 degrees, then South West to a point described as N25.930552 degrees and W97.537073 degrees, then North West along the Rio Grande to the starting point.)

[(4) In Brazoria County and the adjacent area of Harris County: The quarantine boundary is described as, starting at a point described as N29.62598319 degrees and W95.266691908 degrees, then East along Almeda Genoa Road to a point described as N29.627130034 degrees and W95.248026299 degrees, then North East along Clearwood Drive to a point described as N29.626563988 degrees and W95.266256089 degrees, then North along Interstate Highway 45 to a point described as N29.626563988 degrees and W95.261350728 degrees, then East along Main Street to a point described as N29.6262713805 degrees and W95.2262735226 degrees, then South East along State Highway 3 to a point described as N29.637616657 degrees and W95.211540768 degrees, then South

West along South Shaver Street to a point described as N29.626500058 degrees and W95.226619915 degrees, then South East along Interstate Highway 45 to a point described as N29.583976741 degrees and W95.181246397 degrees, then South West along Blue Spruce Vale Way to a point described as N29.5721100719 degrees and W95.190538307 degrees, then North West along Heamer Road to a point described as N29.572851511 degrees and W95.190176592 degrees, then South West along Dixie Farm Road to a point described as N29.54828365 degrees and W95.245129139 degrees, then North West along Farm to Market Road 514 to a point described as N29.564863322 degrees and W95.285403451 degrees, then North along State Highway 35 to a point described as N29.584182896 degrees and W95.286188027 degrees, then East along McHard Road to a point described as N29.582316973 degrees and W95.2695861946 degrees, then North East along Pearlard Parkway to the starting point.]

[(5) In Cameron County: The quarantine boundary is described as, starting at a point described as N26.111754 degrees and W97.629239 degrees, then West to a point described as N26.111876 degrees and W97.631816 degrees, then West to a point described as N26.112673 degrees and W97.638589 degrees, then North West to a point described as N26.119140 degrees and W97.646507 degrees, then North East to a point described as N26.122306 degrees and W97.643733 degrees, then North East to a point described as N26.128848 degrees and W97.637722 degrees, then North East to a point described as N26.129103 degrees and W97.627399 degrees, then South East to a point described as N26.127637 degrees and W97.635541 degrees, then North East to a point described as N26.129075 degrees and W97.634286 degrees, then South East to a point described as N26.121057 degrees and W97.621921 degrees, then South West to the starting point.]

(b) [ei] The department may designate additional or expanded quarantined areas, or a reduction of the quarantined area based upon the confirmation of the presence or absence of citrus canker. The designations will be effective upon the posting of the notification of the quarantined areas on the department’s website ([http://www.TexasAgriculture.gov]) Notification consists of a map and a description of the quarantined areas.

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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Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture

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For further information, please call: (512) 936-9360

SUBCHAPTER Z.  EMERALD ASH BORER QUARANTINE

4 TAC §§19.700 - 19.703

The Texas Department of Agriculture (the Department) proposes new Title 4, Chapter 19, Subchapter Z, Emerald Ash Borer Quarantine, §§19.700 - 19.703, concerning a quarantine for a dangerous plant pest, the emerald ash borer (EAB), Agrilus planipennis. The new sections are proposed to establish requirements and restrictions necessary to address dangers posed by the potential
spread of EAB infestations in Texas due to detected infestations in Bowie, Cass, Denton, Harrison, Marion, and Tarrant Counties. EAB is a highly destructive invasive wood-boring beetle native to China and other areas of East Asia that targets ash trees (Fraxinus spp.). Since its introduction into the United States in 2002, EAB has been detected in 34 states and the District of Columbia. The initial EAB detection in Texas occurred on April 29, 2016, as four adult EAB were discovered in Harrison County, Texas. In 2018, EAB was discovered in Cass, Marion, and Tarrant Counties. On May 19, 2020 new interceptions in Bowie and Denton Counties were confirmed by the United States Department of Agriculture (USDA) as EAB. During the 2020 trapping season, EAB was found in Bowie, Cass, Denton, Harrison, Marion, and Tarrant Counties.

Intrastate or interstate movement of ash nursery trees, hardwood firewood, and other ash products from quarantined areas present a risk for further spread of this invasive pest into uninfested areas. An EAB infestation could kill Texas ash tree species, such as F. albicans (= F. texensis) (Texas ash), F. americana (American ash or white ash), F. berlandieri (Berlandier ash, or Mexican ash), F. caroliniana (Carolina ash, Florida ash, pop ash, swamp ash, or water ash), F. cuspidata (fragrant ash), F. greggii (Gregg’s ash), F. papillosa (Chihuahuan ash), F. pennsylvania (green ash or red ash), F. smallii (Small’s white ash), and F. velutina (Arizona ash, desert ash, or velvet ash). In the six affected counties, there are 1,341 licensed nursery floral operations, including 92 nursery plant growers, which are at risk due to EAB infestations. EAB infestations could spread beyond the six affected counties, across Texas and nationwide, in the event quarantine restrictions are not established to prevent the transportation of infested firewood, nursery stock, and other articles in accordance with the proposed rules.

Recent EAB infestations jeopardize the health of ash trees in Texas forests, woodlands, landscapes, nurseries, and urban environments. These proposed regulations mitigate the risk of establishment and spread of this invasive insect pest, thereby protecting the vulnerable forest, landscape, nursery, and firewood industries of the state. The proposed rules are both necessary and appropriate in order to effectively combat and prevent the spread of EAB in Texas.

The Department encourages residents, arborists, and local officials to vigilantly monitor ash trees for signs of EAB infestations and report suspect detections to the Department or the Texas Forest Service. The Department also implores residents, arborists, and local officials in quarantined and non-quarantined counties to make a plan to address the threat posed by EAB, through removal or treatment of infested trees or through discouraging new ash plantings.

Mr. Perry Cervantes, Director for Environmental and Biosecurity Programs, has determined that for the first five-year period the proposal is in effect, there will be minimal fiscal implications for state or local government.

Mr. Cervantes has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the proposed rules will be the reduction in the spread of EAB in Texas resulting in many urban and forested ash trees being saved from infestation. There will be small economic impact on small businesses, municipalities, and persons required to comply with the proposed rules. There will be treatment costs to quarantined article producers, processors, and vendors, including small businesses and micro-businesses that move quarantined articles within or from quarantined areas, but these depend on many factors and cannot be calculated. However, there will be a small positive economic impact on persons and businesses in non-quarantined areas that ship products interstate, as other states will consider those areas free of EAB and will not require quarantine.

Mr. Cervantes has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

1. no new or current government or Department programs will be created or eliminated;
2. no employee positions will be created, nor will any existing Department staff positions be eliminated;
3. there will not be an increase or decrease in future legislative appropriations to the Department;
4. there will be no increase or decrease in fees paid to the Department;
5. new regulations, which have been previously adopted on an emergency basis, will be created;
6. there will be no expansion, limitation, or repeal of existing regulations;
7. there will be an increase in the number of individuals subject to the rule’s applicability; however, most of those individuals were previously subject to these regulations adopted on an emergency basis; and
8. the proposal will have a slight negative impact on the Texas economy, as there are minor costs associated with the proposal and its enforcement.

Written comments on the proposal may be submitted to Mr. Perry Cervantes, Director for Environmental and Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: RuleComments@Texas-Agriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The new sections are proposed under the Texas Agriculture Code, §§71.001 and 71.002, which authorizes the Department to establish quarantines against in-state and out-of-state diseases and pests; and §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of quarantined articles.

Chapter 71 of the Texas Agriculture Code is affected by the proposal.

§19.700. Quarantined Pest.
The quarantined pest is the emerald ash borer, Agrilus planipennis, in any life stage.

§19.701. Quarantined Areas.
(a) The quarantined areas are those areas described on the department’s website (http://www.TexasAgriculture.gov) as quarantined areas under this subchapter.
(b) The Department may designate additional or expanded quarantined areas, or a reduction of the quarantined area, based upon the confirmation of the presence or absence of the emerald ash borer.
The designations will be effective upon the posting of the notification of the quarantined areas on the department's website.

§19.702. Quarantined Articles.
The quarantined articles are:

1. the quarantined pest;
2. firewood of all hardwood (non-coniferous) species;
3. ash (Fraxinus spp.) nursery stock; and
4. any other material living, dead, cut, or fallen, including green lumber, logs, stumps, roots, branches, and composted and un-composted chips of the genus Fraxinus.


(a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through the free areas of Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions.

1. Processed lumber that is free of bark or has been kiln dried or fumigated.
2. Finished wood products without bark.

(c) Exceptions.

1. Quarantined articles from quarantined areas are allowed entry into or through the free areas of Texas if:
   (A) treated or processed as prescribed by the department; and
   (B) accompanied by a phytosanitary certificate, compliance agreement, or other phytosanitary document, issued by an authorized inspector of the state of origin certifying that the article was treated or processed as prescribed and is free of the quarantined pest.

2. Quarantined articles that originate outside the quarantined area may transit through the quarantined area without a certificate if:
   (A) the article is safeguarded in an enclosed vehicle or with adequate covering against infestation;
   (B) the points of origin and destination are specified on the waybill accompanying the shipment; and
   (C) the article is moved directly through the quarantined area without stopping beyond the time required for simple transit.

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

File with the Office of the Secretary of State on April 12, 2021.
TRD-202101510
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: May 23, 2021
For further information, please call: (512) 936-9360

CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) proposes a new rule at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.3; and amendments to existing rules at Subchapter C, §84.44 and §84.45; Subchapter D, §84.50; Subchapter L, §84.400; Subchapter M, §§84.500 - 84.506; and Subchapter N, §84.600, regarding the Driver Education and Safety (DES) Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 84, implement Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

The proposed rules complete the implementation of House Bill (HB) 105, 86th Legislature, Regular Session (2019), by requiring the curriculum of a specialized driving safety course to include information relating to methods of safely operating a motor vehicle near an oversize or overweight vehicle. The proposed rules also implement a recommendation by the Curriculum Rules Workgroup of the Driver Training and Traffic Safety Advisory Committee (Workgroup) and Department staff to transfer rule text relevant to the required course content and minimum instruction requirements for driver training courses from 16 TAC, Chapter 84, to Department created and published program guides for use by licensees.

HB 105

HB 105 amends Texas Education Code, Chapter 1001, by requiring that information relating to safely operating a vehicle near overweight or oversize vehicles be included in all driver training courses. The proposed rules are necessary to complete the implementation of HB 105 by adding rule text applying this requirement to specialized driving safety courses. This change was inadvertently omitted from a previous rulemaking that applied the requirement of HB 105 to all other types of driver training courses, effective March 15, 2020.

Courses and Programs of Instruction

The proposed rules amend 16 TAC, Chapter 84, Subchapters A, C, D, L, M, and N to streamline the rule chapter and efficiently organize and simplify the creation, distribution, and instruction of program curriculum. This rulemaking initiative is the product of the efforts of the Workgroup and staff. Course curriculum for driver training has traditionally been located in the administrative rules for the program but removing them from the rules and relocating the curriculum into respective program guides has long been a goal of the Workgroup and staff. Towards that end, the Workgroup began the drafting of four additional program guides to accompany the existing Program of Organized Instruction (POI-DE) guide for the Minor and Adult Driver Education Courses to transfer existing curriculum rule text into separate driver training publications. The additional program guides include the Program of Organized Instruction for the Adult Six-Hour Driver Education Course (POI-Adult Six-Hour); Course of Organized Instruction for the Driving Safety Course (COI-Driving Safety); Program of Organized Instruction for the Drug and Alcohol Driving Awareness Course (POI-DADAP); and the Course of Organized Instruction for the Specialized Driving Safety Course (COI-Specialized Driving Safety).
The proposed rules were presented to and discussed by the Driver Training and Traffic Safety Advisory Committee (Committee) at its meeting on March 10, 2021. The Committee did not make any changes to the proposed rules but did make changes that clarified language in the manuals themselves. The Advisory Committee voted and recommended that the proposed rules with changes to the manuals be published in the Texas Register for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules add new §84.3, Materials Adopted by Reference, to: (1) identify the Department-created program guides containing transferred DES rule text; (2) to adopt these publications by reference, consistent with the requirements of the Secretary of State at 1 TAC §91.40; and (3) provide guidance to licensees in the creation of DES course curriculum that is consistent with existing law and rule.

The proposed rules amend §84.44, Driver Education Instructor License, to update rule subsections to reference DES program guides.

The proposed rules amend §84.45, Student Progress, to update rule subsections to reference DES program guides.

The proposed rules amend §84.50, Parent Taught Driver Education Program Requirements, to update rule subsections to reference DES program guides.

The proposed rules amend §84.400, Administrative Penalties and Sanctions, to state that a licensee’s violation of executive orders issued by the Governor pursuant to the declaration of a state of emergency under Chapter 418, Texas Government Code, could result in Department enforcement action.

The proposed rules amend §84.500, Courses of Instruction for Driver Education Schools, to: (1) update rule subsections to reference applicable DES program guides; (2) remove driver education rule subsections related to minimum curriculum requirements for transfer to the appropriate DES program guides; and (3) correct language.

The proposed rules amend §84.501, Driver Education Course Alternative Method of Instruction, to: (1) update rule subsections to reference applicable DES program guides; and (2) correct language.

The proposed rules amend §84.502, Driver Safety Courses of Instruction, to: (1) update rule subsections to reference applicable DES program guides; (2) remove driving safety rule subsections related to minimum curriculum requirements for transfer to the applicable DES program guides; and (3) correct language.

The proposed rules amend §84.503, Specialized Driving Safety Courses of Instruction, to: (1) include information about safe motor vehicle operation near oversize or overweight vehicles in the educational objectives curriculum of specialized driving safety courses, implementing HB 105 bill language; (2) update rule subsections to reference applicable DES program guides; (3) remove specialized driver safety rule subsections related to minimum curriculum requirements for transfer to the appropriate DES program guides; and (4) correct language.

The proposed rules amend §84.504, Driving Safety Course Alternative Delivery Method, to: (1) update rule subsections to reference applicable DES program guides; and (2) correct language.

The proposed rules amend §84.505, Drug and Alcohol Driving Awareness Programs of Instruction, to: (1) update rule subsections to reference applicable DES program guides; (2) remove drug and alcohol driving awareness rule subsections related to minimum curriculum requirements for transfer to the appropriate DES program guides; and (3) correct language.

The proposed rules amend §84.506, Drug and Alcohol Driving Awareness Programs Alternative Delivery Method, to: (1) update rule subsections to reference applicable DES program guides; and (2) correct language.

The proposed rules amend §84.600, Program of Organized Instruction, to: (1) update rule subsections to reference applicable DES program guides; (2) remove driver education rule subsections related to minimum curriculum requirements for transfer to the appropriate DES program guides; and (3) correct language.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

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

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

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the proposed rule changes allow for the department to more efficiently adapt to legislative mandates regarding changes in curriculum requirements for driver education and traffic safety by removing the curricula from the rules. These changes will also centralize curriculum requirements in easy reference guides by course for ease of curriculum development for licensees and organize curriculum information for licensees and the public.

Moreover, for the bill implementation of HB 105 as it relates to inclusion of instruction in specialized driving safety course curriculum on motor vehicle operation around oversize or overweight vehicles, future drivers and the general public would benefit from specific education on how to operate around such vehicles, which may help reduce the chances of accidents, deaths, personal injury and property damage.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL
Mr. Couvillon has determined that for each year of the first five-year period the proposed rules related to the transfer of curriculum rule text to program guides are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

The courses of instruction of specialized driving safety school providers related to the implementation of HB 105 may have to be minimally altered as to time and content to include information on safely operating a vehicle near oversize or overweight vehicles in the curriculum. However, the cost, if any, to such providers of changing the content of the courses would be de minimis.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do create a new regulation. The proposed rules create a new regulation by adopting material by reference. The minimum requirements for course content, classroom instruction, in-car, simulation, and range training required by the rules for the various types of driver education and driving safety courses will be incorporated into the standards established in the various Programs of Organized Instruction and Courses of Organized Instruction. The inclusion of such information into the program guides will allow for easy reference and guidance for licensees.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal an existing regulation by removing some course and material requirements from the various types of driver education and driving safety courses, which will be incorporated into the standards established in the various Programs of Organized Instruction and Courses of Organized Instruction and update all relevant references to the content. Moreover, the proposed rules require specialized driving safety course providers to now include information on safely operating a motor vehicle near oversize or overweight vehicles.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §84.3

STATUTORY AUTHORITY

The new rule is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rule.

§84.3. Materials Adopted by Reference.

(a) The minimum requirements for course content, classroom instruction, in-car, simulation, and range training required by this chapter for a minor and adult driver education course are the standards established in the Program of Organized Instruction in Driver Education and Traffic Safety (POI-DE), February 2021 Edition, created and distributed by the department, which is adopted into these rules by reference.

(b) The minimum requirements for course content and instruction for a driver education course exclusively for adults are the standards established in the Program of Organized Instruction in Driver Education and Traffic Safety Exclusively for Adults Six-Hour Course (POI-Adult Six-Hour), February 2021 Edition, created and distributed by the department, which is adopted into these rules by reference.

(c) The minimum requirements for course content and instruction for a driving safety course are the standards established in the Course of Organized Instruction for Driving Safety, (COI-Driving
(d) The minimum requirements for course content and instruction for a driving safety course are the standards established in the Course of Organized Instruction for Specialized Driving Safety (COI-Specialized Driving Safety), February 2021 Edition, created and distributed by the department, which is adopted into these rules by reference.

(e) The minimum requirements for course content and instruction for a Drug and Alcohol Driving Awareness course are the standards established in the Program of Organized Instruction for Drug and Alcohol Driving Awareness Programs, (POI-DADAP), February 2021 Edition, created and distributed by the department, which is adopted into these rules by reference.

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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Brad Bowman
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SUBCHAPTER C. DRIVER EDUCATION SCHOOLS AND INSTRUCTORS

16 TAC §84.44, §84.45

STATUTORY AUTHORITY

The rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

§84.44. Driver Education Instructor License.

(a) Application for licensing as a driver education instructor must be made on forms prescribed by the department. A person applying for an original driver education instructor license must:

(1) have a high school diploma or equivalent;

(2) hold a valid class A, B, C, or CDL driver's license, other than a learner license or provisional license, for the preceding three years, that has not been revoked or suspended in the preceding three years;[+]

(3) submit a completed application with non-refundable application fee as prescribed by the department;

(4) submit the instructor licensing fees;

(5) submit a national criminal history record information review fee;

(6) submit documentation showing that all applicable educational requirements have been met; and

(7) provide fingerprints to the Texas Department of Public Safety (DPS) through the Fingerprint Application Service of Texas (FAST) or any other method required by the DPS.

(b) Driver education instructor license endorsement qualifications and responsibilities:

(1) Supervising teacher qualifications:

(A) must have a valid driver education teacher instructor license, issued by the department, for at least one year; and

(B) must have an official transcript indicating completion of 15 semester hours of driver and traffic safety education from an accredited college or university; or

(C) must have evidence of completion of a department-approved supervising instructor development course that is equivalent to 15 semester hours of driver and traffic safety education from an accredited college or university.

(2) Supervising teacher responsibilities:

(A) may perform instruction and administration of the classroom and in-car phases of driver education, as prescribed in the POI-DE, and the classroom phase of the POI-Adult Six-Hour;

(B) may perform instruction of a department-approved supervising instructor development course; or

(C) may perform instruction of a department-approved supervising instructor development course.

(3) Driver education teacher qualifications:

(A) must have an official transcript indicating completion of 9 semester hours of driver and traffic safety education from an accredited college or university; or

(B) evidence of completion of a department-approved instructor development course that is equivalent to 9 semester hours.

(4) A driver education teacher may perform instruction and administration of the classroom and in-car phases of driver education, as prescribed in the POI-DE, and the classroom phase of the POI-Adult Six-Hour.

(5) Teaching assistant qualifications:

(A) must have an official transcript indicating completion of six semester hours of driver and traffic safety education from an accredited college or university; or

(B) must have evidence of completion of a department-approved instructor development course that is equivalent to six semester hours.

(6) A teaching assistant may teach or provide only in-car instruction, as prescribed in the POI-DE.

(7) Rehabilitative driver education in-car instructor qualifications:

(A) must have evidence of employment from a specific hospital or approved community rehabilitation program; and

(B) must have a valid teaching assistant license issued by the department; or

(C) must have evidence of completion of an approved driver education program for certification as a teaching assistant that is equivalent to at least six semester hours.
(8) Rehabilitative driver education in-car instructor responsibilities:

(A) may only perform in-car instruction, as prescribed in the POI-DE; and

(B) the endorsement will be valid while the instructor is employed by or under contract with the specified hospital or approved community rehabilitation program.

(c) An application for renewal of an instructor license shall be submitted on forms prescribed by the department. A complete application shall include the following:

(1) annual licensing fee; and

(2) evidence of completing continuing education during the individual license renewal period.

(d) Continuing education requirements include the following.

(1) Driver education instructors shall participate in and provide evidence of completion of at least one of the following to obtain credit for continuing education. Credit will be given only for courses that were completed during the appropriate licensing period.

(A) Instructors may participate in a department-approved driver education continuing education course. Evidence of completion of continuing education shall be provided for each instructor during the individual license renewal period on department forms or the equivalent. The instructor receiving instruction and the facilitator, presenter, or the school owner providing the instruction shall sign the form.

(B) Credit may also be given for any of the following:

(i) successful completion of a postsecondary course that pertains to instruction techniques or instruction related to driver education as provided by an accredited college or university. Evidence of completion shall be a copy of official school documentation indicating a passing grade;

(ii) successful completion of national, state, or regionally sponsored in-service workshops, seminars, or conferences. These programs must pertain to subject matters that relate to the practice of driver education or teaching techniques;

(iii) successful completion of an approved six-hour driving safety, specialized, or drug and alcohol driving awareness course once every three years if the licensee is not endorsed or has not been endorsed as an instructor in that program for a period of one year previous to class attendance;

(iv) successful completion of an approved continuing education course provided by a licensed driver education school;

(v) successful completion of an eight-hour school bus driver recertification training course; or

(vi) successful completion of a Drug Offender Education Program.

(2) Carryover credit of continuing education hours is not permitted.

(3) A licensee may not receive credit for completing the same course more than once every three years.

(4) A licensed driver education instructor who teaches an approved driver education continuing education course may receive credit for attending continuing education.

(5) A licensed driver education instructor will not receive credit for driver education continuing education by completing or teaching a driving safety continuing education course approved for driving safety only or by completing a driver education course exclusively for adults.

(6) A licensee may not receive credit for completion of a six-hour driving safety course, specialized, or drug and alcohol driving awareness course, if they have already received credit for one of these courses within the previous three years.

(e) All driver education instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes; and

(2) the annual licensing fee.

(f) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing and shall include payment of the duplicate instructor license fee.

(g) An instructor must notify the department of a change of address in writing within thirty (30) days of the change. Address changes do not require a fee.

§84.45. Student Progress.

Appropriate standards shall be implemented to ascertain the progress of the students.

(1) Progress standards shall meet the requirements of the POI-DE [Program of Organized Instruction for Driver Education] approved by the department.

(2) Each primary school shall ensure that each student who attends the primary school and all branch schools demonstrates an acceptable level of mastery of the POI-DE [Program of Organized Instruction for Driver Education]. Mastery is not related to passing the written examination for a driver's license administered by the Texas Department of Public Safety. Successful completion and mastery are prerequisites to awarding a grade of 70 percent or above.

(3) One or more of the following methods shall determine evidence of successful completion and mastery:

(A) unit tests;

(B) written assignments;

(C) skills performance checklist; and

(D) comprehensive examinations of knowledge and skills.

(4) The instructor must certify that each student successfully mastered all course content before the student is awarded successful completion of a driver education program.

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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SUBCHAPTER D. PARENT TAUGHT DRIVER EDUCATION

16 TAC §84.50

STATUTORY AUTHORITY

The rule is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

§84.50. Parent Taught Driver Education Program Requirements.

(a) Prior to teaching a department-approved parent taught driver education course, a parent or other individual authorized under §1001.112 of the Code, must submit a completed Request for Parent Taught Driver Education Program Guide form with a non-refundable fee to the department.

(b) The person conducting the course must:

(1) Possess a valid license for the preceding three years that has not been suspended, revoked, or forfeited in the past three years for an offense that involves the operation of a motor vehicle;

(2) have not been convicted of:

(A) criminally negligent homicide or;

(B) driving while intoxicated in the past seven years;

and

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

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

(B) two or more moving violations described by Section 542.304, Transportation Code, that resulted in an accident.

(c) After receiving the Parent Taught Driver Education Program Guide, the instructor must obtain one of the department approved parent taught driver education courses to fulfill program requirements.

(d) The parent taught driver education course provider will provide the appropriate portion of a control-numbered DE-964 only to a person who has completed the objectives found in Module One: Traffic Laws of the POI-DE or who has successfully completed the entire portion of the course for which the DE-964 is being issued.

(e) The program includes both classroom and in-car instruction. Classroom instruction is limited to two hours per day and in-car instruction is limited to two hours per day.

(f) The parent, or other individual authorized under §1001.112 of the Code, may teach both or utilize a licensed or public driver education school for either phase.

(g) The fourteen (14) hours of in-car instruction must be taught under one program; either parent taught or a licensed or public driver education school. All previous driver education hours must be repeated if the method of instruction changes prior to completion of either phase.

(h) The remaining hours of classroom following Module One: Traffic Laws of the POI-DE, must be taught under one program, either parent taught or a licensed or public driver education school.

(i) The additional thirty (30) hours of behind-the-wheel practice must be completed in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(j) A student may apply to the Department of Public Safety for a learner license after completion of the objectives found in Module One: Traffic Laws of the POI-DE.

(k) Behind-the-wheel driver education instruction may be conducted in any vehicle that is legally operated with a Class C driver license on a Texas highway.

(l) Behind-the-wheel driver education instruction may begin after the student receives a learner license. The required curriculum that must be followed includes: minimum of 44 hours that includes: seven [7] hours behind the wheel instruction in the presence of a parent or other individual authorized under §1001.112 of the Code; seven [7] hours of in-car observation in the presence of a parent or other individual authorized under §1001.112 of the Code; and 30 hours of behind the wheel instruction, including at least 10 hours at night, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(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.

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SUBCHAPTER L. COMPLAINTS AND ENFORCEMENT PROVISIONS

16 TAC §84.400

STATUTORY AUTHORITY

The rule is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rule.

§84.400. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Education Code, Chapter 1001, Texas Transportation Code, Chapter 521, this chapter, or any rule or order of the executive director or commission, or an executive order issued by the Governor for the State of Texas pursuant to Chapter 418, Texas Government Code, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both
in accordance with the provisions of Texas Education Code, Chapter 1001, Texas Occupations Code, Chapter 51, and any associated rules.

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 M CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §§84.500 - 84.506

STATUTORY AUTHORITY

The rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

§84.500. Courses of Instruction for Driver Education Schools.

(a) The educational objectives of driver training courses shall include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; instruction on law enforcement procedures for traffic stops in accordance with provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature); reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; the proper use of child passenger safety seat systems; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(b) This subsection contains requirements for driver education courses. All course content and instructional material shall include current statistical data, references to law, driving procedures, and traffic safety methodology. For each course, curriculum documents and materials may be requested as part of the application for approval. For courses offered in a language other than English, the course materials shall be accompanied by a written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such course materials are subject to the approval of the department prior to its use by a driver education school.

(1) Minor and adult driver education course.

(A) The driver education classroom phase for students age 14 and over shall consist of:

(i) a minimum of 32 hours of classroom instruction. The in-car phase must consist of seven hours of behind-the-wheel instruction and seven hours of in-car observation in the presence of a person who holds a driver education instructor license; and

(ii) 30 hours of behind-the-wheel instruction, including at least 10 hours of nighttime instruction, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(j)(2). The 30 hours of instruction must be endorsed by a parent or legal guardian if the student is a minor. Simulation hours shall not be substituted for these 30 hours of instruction. Driver education training endorsed by the parent is limited to one hour per day.

(B) Schools are allowed five minutes of break per instructional hour for all phases. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(C) Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the educational objectives established by the department in the POI-DE [Program of Organized Instruction in Driver Education and Traffic Safety (POI)] and meet the requirements of this subchapter. In addition, the educational objectives that must be provided to every student enrolled in a minor and adult driver education course shall include information relating to litter prevention, anatomical gifts, safely operating a vehicle near oversize (oversized) or overweight vehicles, leaving children in vehicles unattended, distractions, motorcycle awareness, alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle, and recreational water safety.

(D) Driver education schools that desire to instruct students age 14 and over in a traditional classroom program shall provide the same beginning and ending dates for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the seventh hour of classroom instruction has begun.

(E) Students shall proceed in the sequence identified by and approved for that school.

(F) Students shall receive classroom instruction from an instructor who is approved and licensed by the department. An instructor shall be in the classroom and available to students during the entire 32 hours of instruction, including self-study assignments. Instructors shall not have other teaching assignments or administrative duties during the 32 hours of classroom instruction.

(G) Videos, tape recordings, guest speakers, and other instructional media that present concepts required in the POI-DE [POI] may be used as part of the required 32 hours of traditional classroom instruction.

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

(I) Each classroom student shall be provided a driver education textbook designated by the commissioner or access to instructional materials that are in compliance with the POI-DE [POI] approved for the school. Instructional materials, including textbooks, must be in a condition that is legible and free of obscenities.

(J) A copy of the current edition of the "Texas Driver Handbook" or instructional materials that are equivalent shall be furnished to each student enrolled in the classroom phase of the driver education course.

(K) Each student, including makeup students, shall be provided their own seat and table or desk while receiving classroom instruction. A school shall not enroll more than thirty-six (36) students,
excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the school.

(L) When a student changes schools, the school must follow the current transfer policy developed by the department.

(M) All classroom phases of driver education, including makeup work, shall be completed within the timelines stated in the original student contract. This shall not circumvent the attendance and progress requirements.

(N) All in-car lessons shall consist of actual driving instruction. No school shall permit a ratio of more than four students per instructor or exceed the seating and occupant restraint capacity of the vehicle used for instruction. Schools that allow one-on-one instruction shall notify the parents in the contract.

(O) A student must have a valid driver's license or learner license in his or her possession during any behind-the-wheel instruction.

(P) All in-car instruction provided by the school shall begin no earlier than 5:00 a.m. and end no later than 11:00 p.m.

(Q) A school may use multimedia systems, simulators, and multicar driving ranges for in-car instruction in a driver education program. Each simulator, including the filmed instructional programs, and each plan for a multicar driving range must meet state specification developed by DPS and the department. A licensed driver education instructor must be present during use of multimedia systems, simulators, and multicar driving ranges.

(R) Four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of behind-the-wheel instruction and one hour of in-car observation. Two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of behind-the-wheel instruction and one hour of in-car observation relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to actual behind-the-wheel instruction.

(S) In a minor and adult driver education program, a student may apply to the DPS for a learner license after completing the objectives found in Module One: Traffic Laws of the POI-DE.

(T) Each school owner that teaches driver education courses shall collect adequate student data to enable the department to evaluate the overall effectiveness of the driver education course in reducing the number of violations and accidents of persons who successfully complete the course. The department may determine a level of effectiveness that serves the purposes of the Code.

(U) The instructor shall be physically present in appropriate proximity to the student for the type of instruction being given. A licensed supervising teacher, licensed driver education teacher or school owner shall sign or stamp all completed classroom instruction records.

(2) Driver education course exclusively for adults. Courses offered in a traditional classroom setting or online to persons who are age 18 to under 25 years of age for the education and examination requirements for the issuance of a driver's license under Texas Transportation Code, §521.222(c) and §521.1601, must be offered in accordance with the following guidelines.

(A) Traditional approval process. The department may approve a driver education course exclusively for adults to be offered traditionally if the course meets the following requirements.

(i) Application. The driver education school shall submit a completed application along with the appropriate fee. (ii) Instructor license required. Students shall receive classroom instruction from a licensed supervising teacher or driver education teacher.

(iii) Minimum course content. The driver education course exclusively for adults shall consist of six clock hours of classroom instruction that meets the minimum course content and instruction requirements contained in the POI-Adult Six-Hour [following topics].

[(A)] Course introduction—ten minutes. Objective: The student recognizes the value of legal and responsible reduced-risk driving practices and accepts driving as a privilege with responsibilities, obligations, and potential consequences.

[(B)] Your license to drive—minimum of 20 minutes. Objective: The student reduces risk by legally and responsibly accepting or yielding the right-of-way.

[(C)] Traffic control devices—minimum of 40 minutes. Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of traffic control devices.

[(D)] Controlling traffic flow—minimum of 35 minutes. Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of laws and procedures for controlling traffic flow.

[(E)] Alcohol and other drugs—minimum of 40 minutes. Objective: The student legally and responsibly performs reduced-risk driving practices by adopting zero-tolerance driving and lifestyle practices related to the use of alcohol and other drugs and applying knowledge and understanding of alcohol and other drug laws, regulations, penalties, and consequences.

[(F)] Cooperating with other roadway users—minimum of 50 minutes. Objective: The student reduces risk by legally and responsibly cooperating with law enforcement and other roadway users, including vulnerable roadway users in emergency and potential emergency situations, and safely operating a vehicle near oversized or overweight vehicles.

[(G)] Managing risk—minimum of 40 minutes. Objective: The student reduces and manages risk by legally and responsibly understanding the issues commonly associated with motor vehicle collisions, including poor decision making, risk taking, impaired driving, distractions, speed, failure to use a safety belt, driving at night, and using a wireless communications device while operating a vehicle.

[(H)] Classroom progress assessment—25 minutes. (this shall be the last unit of instruction). The remaining 25 minutes of instruction shall be allocated to the topics included in the minimum course content under subclauses (II)-(VIII) of this clause.

(iv) Course management. An approved adult driver education course shall be presented in compliance with the following guidelines.

(i) The instructor shall be physically present in appropriate proximity to the student for the type of instruction being given. A licensed supervising teacher, licensed driver education teacher or school owner shall sign or stamp all completed classroom instruction records.
(II) A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent shall be furnished to each student enrolled in the course.

(III) Self-study assignments, videos, tape recordings, guest speakers, and other instructional media that present topics required in the course shall not exceed 150 minutes of instruction. PowerPoint slides or equivalent software solutions are considered to be approved teaching aids and does not fall into the restricted media aids.

(IV) Each student, including makeup students, shall be provided their own seat and table or desk while receiving classroom instruction. A school shall not enroll more than 36 students, excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the school.

(V) All classroom instruction, including makeup work, shall be completed within the timelines stated in the original student contract.

(VI) A minimum of 330 minutes of instruction is required.

(VII) The total length of the course shall consist of a minimum of 360 minutes.

(VIII) Thirty minutes of time, exclusive of the 330 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content.

(IX) Students shall not receive a driver education certificate of completion unless that student receives a grade of at least 70 percent on the highway signs examination and at least 70 percent on the traffic laws examination as required under Texas Transportation Code, §521.161.

(X) The driver education school shall make a material effort to establish the identity of the student.

(B) Online approval process. The department may approve a driver education course exclusively for adults to be offered online if the course meets the following requirements.

(i) Application. The driver education school shall submit a completed application along with the appropriate fee.

(ii) Request for approval. The request for approval must include a syllabus cross-reference, contract, and instructional records.

(iii) School license required. A person or entity offering an online driver education course exclusively for adults must hold a driver education school license.

(I) The driver education school shall be responsible for the operation of the online course.

(II) Students shall receive classroom instruction from a licensed supervising teacher or driver education teacher.

(iv) Course content. The online course must meet the requirements of the course identified in §1001.1015 of the Code.

(I) Course topics. The course requirements described in the POI-Adult Six-Hour [subparagraph (A)(ii)] shall be met.

(II) Length of course. The course must be six hours in length, which is equal to 360 minutes. A minimum of 330 minutes of instruction must be provided. Thirty minutes of time, exclusive of the 330 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(III) Required material. A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent shall be furnished to each student enrolled in the course.

(IV) Editing. The material presented in the online course shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(V) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(VI) Minimum content. The online course shall present sufficient content so that it would take a student 360 minutes to complete the course. In order to demonstrate that the online course contains sufficient minutes of instruction, the online course shall use the following methods.

(a) Word count. For written material that is read by the student, the course shall contain the total number of words in the written sections of the course. This word count shall be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(b) Multimedia presentations. For multimedia presentation, the online course shall calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 150 minutes.

(c) Charts and graphs. The online course may assign one minute for each chart or graph.

(d) Time allotment for questions. The online course may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(e) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 330 minutes, the online course has demonstrated the required amount of minimum content.

(f) Alternate time calculation method. In lieu of the time calculation method, the online course may submit alternate methodology to demonstrate that the online course meets the 330-minute requirement.

(v) Personal validation. The online course shall maintain a method to validate the identity of the person taking the course. The personal validation system shall incorporate one of the following requirements.

(I) School-initiated method. Upon approval by the department, the online course may use a method that includes testing and security measures that validate the identity of the person taking the course. The method must meet the following criteria.

(a) Time to respond. The student must correctly answer a personal validation question within 90 seconds.

(b) Placement of questions. At least two personal validation questions shall appear randomly during each instructional hour, not including the final examination.

(c) Exclusion from the course. The online course shall exclude the student from the course after the student has incorrectly answered more than 50 percent of the personal validation questions.

(d) Correction of answer. The online course may correct an answer to a personal validation question for a student
who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(II) Third party data method. The online course shall ask a minimum of twelve (12) personal validation questions randomly throughout the course from a bank of at least twenty (20) questions drawn from a third party data source. The method must meet the following criteria.

(a) Time to respond. The student must correctly answer a personal validation question within 90 seconds.

(b) Placement of questions. At least two personal validation questions shall appear randomly during each instructional hour, not including the final examination.

(c) Exclusion from the course. The online course shall exclude the student from the course after the student has answered more than 30 percent of the personal validation questions incorrectly.

(d) Correction of answer. The online course may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(vi) Content validation. The online course shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(I) Timers. The online course shall include built-in timers to ensure that 330 minutes of instruction have been attended and completed by the student.

(II) Testing the student's participation in multimedia presentations. The online course shall ask at least one course validation question following each multimedia clip of more than 180 seconds.

(a) Test bank. For each multimedia presentation that exceeds 180 seconds, the online course shall have a test bank of at least four questions.

(b) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without viewing the actual multimedia clip.

(c) Failure criteria. If the student fails to answer the question correctly, the online course must require the student to view the multimedia clip again. The online course shall then present a different question from its test bank for that multimedia clip. The online course may not repeat a question until it has asked all the questions from its test bank.

(d) Identification. The online course shall not identify the correct answer to the multimedia question.

(III) Course participation questions. The online course shall test the student's course participation by asking at least two questions each from Chapter Four, Topics Two through Eight in the POI-Adult Six Hour [from each of the seven topics listed in subparagraph (A)(c)(II)-(VIII)].

(a) Test bank. The test bank for course participation questions shall include at least ten questions each from Chapter Four, Topics Two through Eight in the POI-Adult Six Hour [from each of the seven topics identified in subparagraph (A)(c)(II)-(VIII)].

(b) Placement of questions. The course participation questions shall be asked at the end of the major unit or section in which the topic is covered.

(-c-) Question difficulty. Course participation questions shall be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(IV) Comprehension of course content. The online course shall test the student's mastery of the course content by administering at least 30 questions covering the highway signs and traffic laws required under Texas Transportation Code, §521.161.

(a) Test banks (two). Separate test banks for course content mastery questions are required for the highway signs and traffic laws examination as required under Texas Transportation Code, §521.161, with examination questions drawn equally from each.

(b) Placement of questions. The mastery of course content questions shall be asked at the end of the course (comprehensive final examination).

(c) Question difficulty. Course content mastery questions shall be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(vii) Retest the student. If the student misses more than 30 percent of the questions asked on an examination, the online course shall retest the student using different questions from its test bank. The student is not required to repeat the course, but may be allowed to review the course prior to retaking the examination. If the student fails the comprehensive final examination three times, the student shall fail the course.

(viii) Student records. The online course shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The school shall also ensure that the student record is readily, securely, and reliably available for inspection by a department representative. The student records shall contain the following information:

(I) the student's first, middle, and last name;

(II) the student's date of birth and gender;

(III) a record of all questions asked and the student's responses;

(IV) the name or identity number of the staff member entering comments, retesting, or revalidating the student;

(V) both answers and a reasonable explanation for the change if any answer to a question is changed by the school for a student who inadvertently missed a question; and

(VI) a record of the time the student spent in each unit and the total instructional time the student spent in the course.

(ix) Waiver of certain education and examination requirements. A licensed driver education instructor must determine that the student has successfully completed and passed a driver education course exclusively for adults prior to waiving the examination requirements of the highway sign and traffic law parts of the examination required under Texas Transportation Code, §521.161, and signing the ADE-1317 driver education completion certificate.

(x) Age requirement. A person must be at least 18 years of age to enroll in a driver education course exclusively for adults.

(xi) Issuance of certificate. Not later than the 15th working day after the course completion date, the school shall issue an ADE-1317 driver education certificate only to a person who successfully completes an approved online driver education course exclusively for adults.

(xii) Access to instructor and technical assistance. The school must establish hours that the student may access the instruc-
tor and for technical assistance. With the exception of circumstances beyond the control of the school, the student shall have access to the instructor and technical assistance during the specified hours.

(xiii) Additional requirements for online courses. Courses delivered via the Internet or technology shall also comply with the following requirements.

(I) Re-entry into the course. An online course may allow the student re-entry into the course by username and password authentication or other means that are as secure as username and password authentication.

(II) Navigation. The student shall be provided orientation training to ensure easy and logical navigation through the course. The student shall be allowed to freely browse previously completed material.

(III) Audio-visual standards. The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.

(IV) Course identification. All online courses shall display the driver education school name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(V) Domain names. Each school offering an online course must offer that online course from a single domain.

(VI) A driver education school offering an online course may accept students redirected from a website as long as the student is redirected to the webpage that clearly identifies the name and license number of the school offering the online course. This information shall be visible before and during the student registration and course payment processes.

(3) Compliance with Texas Transportation Code, §521.1601. Persons age 18 to under 25 years of age must successfully complete either a minor and adult driver education course or the driver education course exclusively for adults. Partial completion of either course does not satisfy the requirements of rule or law.

(4) Issuance of certificate. A licensed school or instructor may not issue an ADE-1317 adult driver education certificate to a person who is not at least 18 years of age.

(c) This subsection contains requirements for driver education instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in this subchapter, including current reference to the law, driving procedures, current instructor application and renewal processes, then the department may grant an approval. Schools desiring to provide driver education instructor development courses shall provide an application for approval that shall be in compliance with this section.

(1) Schools desiring to obtain approval for a driver education instructor development course shall request an application for approval from the department. All instructor development curricula submitted for approval shall meet or exceed the requirements set forth for approved programs offered at colleges, universities, school districts, or educational service centers and shall be specific to the area of specialization. Guidelines and criteria for the course shall be provided with the application packet, and the school shall meet or exceed the criteria outlined.

(A) Six-semester-hour instructor development course. The driver education instructor development program instructional objectives must be equivalent to six semester hours or 90 clock hours of driver and traffic safety education instructor training and shall include:

(i) Driver Education I—minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the Highway Transportation System (HTS) in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

(I) overview of Driver Education I;

(II) minor and adult driver education curriculum overview and course goals;

(III) school and instructor liability and responsibility;

(IV) student evaluation and assessment;

(V) instructor conduct, including professionalism and public relations;

(VI) rules, codes, and standards for driver education programs; and

(VII) classroom progress examination for Driver Education I.

(ii) Driver Education II—minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety for in-car instruction. Instruction shall address the following topics:

(I) overview of Driver Education II;

(II) minor and adult driver education in-car curriculum overview;

(III) commentary driving techniques;

(IV) factors that influence learning and habit formation;

(V) in-car lesson planning, including scheduling and designing;

(VI) vocabulary and communication;

(VII) risk management;

(VIII) general guidelines for conducting behind-the-wheel and in-car observation;

(IX) in-car debriefing techniques;

(X) proper record keeping and maintenance;

(XI) classroom progress examination for Driver Education II; and

(XII) in-car laboratory, including:

(-a) initial assessment of trainee's driving skills by instructor trainer;

(-b) observation of in-car teaching techniques as given by a licensed instructor;

(-c) practice of instructor risk-management and emergency procedures, including taking control of the vehicle under the supervision and observation of a licensed instructor;

(-d) in-car trainee student teaching under the supervision and observation of a licensed instructor; and
(e) trainee in-car student teaching final progress assessment under the supervision and observation of a licensed instructor.

(B) Nine.semester-hour instructor development course. The driver education instructor development program instructional objectives must be equivalent to nine semester hours or 135 clock hours of driver and traffic safety education instructor training and shall include:

(i) all requirements set forth in subparagraph (A); and

(ii) Driver Education III—minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety for classroom instruction. Instruction shall address the following topics:

(I) overview of Driver Education III;
(II) classroom delivery, including the Code, rules, standards, and school administrative procedures;
(III) student learning styles;
(IV) classroom management and student discipline;
(V) classroom lesson planning and designing;
(VI) scheduling driver education programs;
(VII) proper record keeping and maintenance;
(VIII) simulation theory and multcar range instruction;
IX instructor professional growth;
X classroom progress examination for Driver Education III; and

XI classroom laboratory, including:
(-a-) observation of classroom teaching techniques as given by a licensed instructor; and
(-b-) classroom practice student teaching under the supervision and observation of a licensed instructor.

(C) Supervising instructor development course. The supervising driver education instructor development program instructional objectives must be equivalent to six semester hours or 90 clock hours of driver and traffic safety education instructor training and shall include:

(i) training in administering driver education programs and supervising and administering traffic safety education

(ii) Supervising Instructor I—minimum of 45 clock hours. Instructional objectives: the instructor shall acquire the knowledge, skills, and understanding to instruct trainees in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

(I) overview of Supervising Instructor I;
(II) minor and adult driver education curriculum overview and course goals;
(III) rules, codes, and standards for driver education programs;
(IV) learning styles;
(V) factors that influence learning and habit formation;
(VI) vocabulary and communication;
(VII) lesson plan development;
(VIII) classroom management and student discipline; and

IX classroom progress examination for Supervising Instructor I.

(iii) Supervising Instructor II—minimum of 45 clock hours. Instructional objectives: the instructor shall acquire the knowledge, skills, and understanding to instruct trainees in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

(I) overview of Supervising Instructor II;
(II) student evaluation and assessment;
(III) commentary driving techniques;
(IV) in-car debriefing techniques;
(V) scheduling driver education programs;
(VI) proper record keeping and maintenance;
(VII) school and instructor liability and responsibility;
(VIII) instructor conduct, including professionalism and public relations;
IX risk management;
(X) simulation theory and multcar range;
XI professional growth;
(XII) classroom progress examination for Supervising Instructor II; and

(XIII) classroom laboratory, including:
(-a-) observation of nine.semester-hour driver education instructor development course classroom teaching techniques as given by a licensed instructor; and
(-b-) classroom practice student teaching of a nine.semester-hour driver education instructor development course under the supervision and observation of a licensed instructor.

(2) Prior to enrolling as a trainee in a driver education instructor development course, the school owner or representative must obtain proof that the enrollee has a high school diploma or equivalent. A copy of the evidence must be placed on file with the school. Further, the school shall obtain and evaluate the current official driving record from the enrollee for the preceding 36-month period prior to enrollment. The school must use the standards set forth in §84.50(b)(3) when determining the qualifications for a trainee’s enrollment.

(3) Instruction records shall be maintained by the school for each instructor trainee and shall be available for inspection by authorized department representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee’s name, address, driver’s license number, and other pertinent data; name and instructor license number of the person conducting the training; and dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee’s aptitude and development. Upon satisfactory completion of the training course, the
supervising teacher conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the school.

(4) All instructor trainee instruction records submitted for the approved instructor development courses shall be original documents.

(5) A licensed supervising teacher shall teach the instructor development courses. The supervising teacher may allow a driver education teacher, or teaching assistant to provide training under the direction of the supervising teacher in areas appropriate for their level of certification and/or licensure.

(6) The supervising teacher is responsible for certifying all independent study and research assignments that shall not exceed 25 percent of the total training program time.

(d) This subsection contains requirements for driver education continuing education courses.

(1) Driver education school owners may receive an approval for a four-hour continuing education course and provide the approved course to instructors to ensure that instructors meet the requirements for continuing education.

(2) The request for course approval shall contain the following:

(A) a description of the plan by which the course will be presented;
(B) the subject of each unit;
(C) the educational objectives of each unit;
(D) time to be dedicated to each unit;
(E) instructional resources for each unit, including names or titles of presenters and facilitators; and

(F) a plan by which the school owner will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

(3) A continuing education course may be approved if the department determines that:

(A) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of a licensed driver education instructor;
(B) the course pertains to subject matters that relate directly to the practice of driver education instruction, instruction techniques, or driver education-related subjects; and

(C) the entire course shall be taught by individuals with recognized experience or expertise in the area of driver education or related subjects. The department may request evidence of the individuals' experience or expertise.

(4) Driver education school owners may not offer the same continuing education course to instructors each year. In order to continue to offer a course, a new or revised continuing education course shall be submitted to the department for approval.

(e) A branch school may offer only one course that is approved for the primary school.

(f) Schools applying for approval of additional courses after the original approval has been granted shall submit the documents designated by the department with the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes.

An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(g) If an approved course is discontinued, the department shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the department for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the department, the refunds must be made no later than thirty (30) days after the course was discontinued. Any course discontinued shall be removed from the school's approval.

(h) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(i) The department may revoke approval of a school's courses under certain circumstances, including, but not limited to, the following:

(1) Information contained in the application for the course approval is found to be untrue.
(2) The school has failed to maintain the instructors, facilities, equipment, or courses of study on the basis of which approval was issued.
(3) The school offers a course which has not been approved or for which there are no instructors or equipment.
(4) The school has been found to be in violation of TEC, Chapter 1001, and/or this chapter.

§84.501. Driver Education Course Alternative Method of Instruction.

(a) Approval process. The department may approve an alternative method whereby a driver education school is approved to teach all or part of the classroom portion of a driver education course by an alternative method of instruction (AMI) that does not require students to be present in a classroom that meets the following requirements.

(1) Standards for approval. The department may approve a driver education school to teach all or part of the classroom portion of a driver education course by an AMI that does not require students to be present in a classroom only if:

(A) the AMI includes testing and security measures that the department determines are at least as secure as the measures available in the usual classroom setting;

(B) the course satisfies any other requirement applicable to a course in which the classroom portion is taught to students in the usual classroom setting;

(C) a student and instructor are in different locations for a majority of the student's instructional period;

(D) the AMI instructional activities are integral to the academic program; and

(E) extensive communication between a student and instructor and among students is emphasized.

(2) Application. The school shall submit a completed AMI application along with the appropriate fee. The application for AMI approval shall be treated the same as an application for the approval of a driver education traditional course, and the AMI must deliver the curriculum as aligned with POI-DE [Program of Organized Instruction for Driver Education and Traffic Safety].
(3) School license required. A person or entity offering a classroom driver education course to Texas students by an AMI must hold a driver education school license. The driver education school is responsible for the operation of the AMI.

(b) Course content. The AMI must deliver the same topics, sequence, and course content as the school's approved traditional driver education course as established by the department in the POI-DE.

(1) Course topics. The time requirements for the course content described in §84.500 [(a) and] (b)(1)(C) [(relating to Courses of Instruction)] shall be met.

(2) Editing. The material presented in the AMI shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(3) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(4) Student breaks. The AMI is allowed five minutes of break per instructional hour for all phases, for a total of 160 minutes of break time. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(5) Minimum content. The AMI shall present sufficient instructional content so that it would take a student a minimum of 32 hours (1,920 minutes) to complete the course. A course that demonstrates that it contains 1,760 minutes of instructional content shall mandate that students take 160 minutes of break time or provide additional educational content for a total of 1,920 minutes (32 hours). In order to demonstrate that the AMI contains sufficient content, the AMI shall use the following methods.

(A) Word count. For written material that is read by the student, the total number of words in the written sections of the course shall be divided by 180. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. There shall be a minimum of 120 minutes of multimedia presentation. The school owner shall calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 640 minutes.

(C) Charts and graphs. The AMI may assign one minute for each chart or graph.

(D) Examinations. The school owner may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts, graphs, and breaks equals or exceeds the minimum 1,920 minutes, the AMI has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the AMI may submit alternate methodology to demonstrate that the AMI meets the minimum 32-hour requirement.

(6) Academic integrity. The academic integrity of the AMI for a classroom driver education course shall include:

(A) goals and objectives that are measurable and clearly state what the participants should know or be able to do at the end of the course;

(B) a clear, complete driver education classroom course overview and syllabus;

(C) content and assignments that are of sufficient rigor, depth, and breadth to teach the standards being addressed;

(D) literacy and communication skills that are incorporated and taught as an integral part of the AMI;

(E) sufficient learning resources and materials to increase student success available to students before the AMI begins;

(F) instruction requirements that are consistent with course goals, representative of the scope of the course, and clearly stated;

(G) communication processes that are provided to students, parents, and mentors on how to communicate with the school and instructor, including information on the process for these communications and for timely and frequent feedback about student progress;

(H) information addressing issues associated with the use of copyrighted materials; and

(I) if online, clearly stated academic integrity and Internet etiquette expectations regarding lesson activities, discussions, e-mail communications, and plagiarism.

(7) Instructional design. Instructional design of AMI for classroom driver education shall:

(A) include a clear understanding of student needs and incorporate varied ways to learn and multiple levels of mastery of the curriculum;

(B) ensure each lesson includes a lesson overview, objectives, resources, content and activities, assignments, and assessments to provide multiple learning opportunities for students to master the content;

(C) include concepts and skills that students will retain over time;

(D) include activities that engage students in active learning;

(E) include the instructor engaging students in learning activities that address a variety of learning styles and preferences to master course content;

(F) include instruction that provides opportunities for students to engage in higher-order thinking, critical-thinking activities, and thinking in increasingly complex ways;

(G) include a statement that notifies the student of the school owner's security and privacy policy regarding student data, including personal and financial data; and

(H) include assessment and assignment answers and explanations.

(c) Personal validation. The AMI shall maintain a method to validate the identity of the person taking the course. The personal validation system shall incorporate one of the following requirements.

(1) School initiated method. Upon approval by the department, the AMI may use a method that includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.
(B) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The AMI shall exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(2) Third party data method. The online course shall ask a minimum of 60 personal validation questions randomly throughout the course from a bank of at least 200 questions drawn from a third party data source.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(B) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The AMI shall exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(d) Content validation. The AMI shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following:

(1) Timers. The AMI shall include built-in timers to ensure that 1,920 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The AMI shall ask at least one course validation question following each multimedia clip of more than 180 seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 seconds, the AMI shall have a test bank of at least four questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the AMI shall either require the student to view the multimedia clip again or the AMI shall fail the student from the course. If the AMI requires the student to view the multimedia clip again, the AMI shall present a different question from its test bank for that multimedia clip. The AMI may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The AMI shall not identify the correct answer to the multimedia question.

(3) Mastery of course content. The AMI shall test the student's mastery of the course content by asking questions from each of the modules listed in the program of organized instruction for driver education and traffic safety.

(A) Test bank. The test bank for course content mastery questions shall include at least:

(i) 20 questions each from modules 1 and 8 listed in the POI-DE [program of organized instruction for driver education and traffic safety]; and

(ii) 10 questions each from the remaining modules.

(B) Placement of questions. The mastery of course content questions shall be asked at the end of each module.

(C) Question difficulty. Course content mastery questions shall be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and retest options. The AMI may use the following options for students who fail an examination to show mastery of course content.

(A) Repeat the failed module. If the student misses more than 30 percent of the questions asked on a module examination, the AMI shall require that the student take the module again. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the module, the AMI shall again test the student's mastery of the material. The AMI shall present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest the final examination. If the student misses more than 30 percent of the questions asked on the final examination, the AMI shall retest the student in the same manner as the failed examination, using different questions from its test bank. If the student fails the same unit examination or the comprehensive final examination three times, the student shall fail the course.

(e) Student records. The AMI shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The school shall ensure that the student record is readily, securely, and reliably available for inspection by a department-authorized representative. The student records shall contain all information required in §84.81 (relating to Recordkeeping Requirements) and the following information.

(1) A record of all questions asked and the student's responses.

(2) The name or identity number of the staff member entering comments or revalidating the student.

(3) The name or identity number of the staff member retesting the student.

(4) If any answer to a question is changed by the school for a student who inadvertently missed a question, the school shall provide both answers and a reasonable explanation for the change.

(5) A record of the time the student spent in each unit of the AMI and the total instructional time the student spent in the course.

(f) Additional requirements for AMI courses. Courses delivered via the Internet or technology shall also comply with the following requirements.

(1) Course identification. All AMI courses shall display the driver education school name and license number assigned by the department on the entity's website and the registration page used by
the student to pay any monies, provide any personal information, and enroll.

(2) A driver education school offering an AMI course may accept students redirected from another website as long as the student is redirected to the webpage that clearly identifies the name and license number of the school offering the AMI course. This information shall be visible before and during the student registration and course payment processes.

(g) Additional requirements for video courses.

(1) Delivery of the material. For AMIs delivered by the use of videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a process that is approved by the department.

(2) Video requirement. The video course shall include between 60 and 640 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 1,760 minutes of required instruction shall be video material that is relevant to required course instruction content.

(A) A video AMI shall ask, at a minimum, at least one course validation question for each multimedia clip of more than 180 seconds.

(B) A video AMI shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 180 seconds.

(h) Standards for AMIs using new technology. For AMIs delivered using technologies that have not been previously reviewed and approved by the department, the department may apply similar standards as appropriate and may also require additional standards. These standards shall be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the usual classroom setting.

(i) Modifications to the AMI. Except as provided by paragraph (1), a change to a previously approved AMI shall not be made without the prior approval of the department. The licensed school for the approved course on which the AMI is based shall ensure that any modification to the AMI is implemented by all schools endorsed to offer the AMI.

(1) A school may submit to the department a request for immediate implementation of a proposed change that is insignificant or that protects the interest of the consumer such that immediate implementation is warranted. The request shall include:

(A) a complete description of the proposed change;

(B) the reason for the change;

(C) the reason the requestor believes the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted; and

(D) an explanation of how the change will maintain the course or AMI in compliance with state law and the rules specified in this chapter.

(2) The department may request additional information regarding a proposed change from the school making a request under paragraph (1).

(3) The department will respond to any request made under paragraph (1), within five (5) working days of receipt.

(A) If the department determines that the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted, the requestor may immediately implement the change. The licensed school for the approved course on which the AMI is based shall ensure that the change is implemented.

(B) If the department determines that the proposed change is neither insignificant nor protects the interest of the consumer such that immediate implementation is warranted, the department shall notify the requestor of that determination and the change may not be made unless the department approves the change following a complete review.

(4) A determination by the department to allow immediate implementation under paragraph (1), does not constitute final approval by the department of the change. The department reserves the right to conduct further review after the change is implemented and to grant or deny final approval based on whether the change complies with state law and rules specified in this chapter.

(5) If, following further review, a change in an AMI that has been immediately implemented pursuant to paragraph (1), is determined not to be in compliance with state law and rules specified in this chapter, the department,

(A) shall notify the course provider affected by the change of:

(i) the specific provisions of state law or rules with which the AMI change is not in compliance; and

(ii) a reasonable date by which the AMI must be brought into compliance;

(B) shall not, for the period between the implementation of the change and the date specified under subparagraph (A)(ii):

(i) seek any penalty relating to the non-compliance;

(ii) take any action to revoke or deny renewal of a license of a school or course provider based on the change; or

(iii) withdraw approval of a course or AMI based on the change; and

(C) is not required to specify the method or manner by which the school alters the AMI to come into compliance with state law and the rules in this chapter.

(6) If the department allows immediate implementation pursuant to paragraph (1), and later determines that the description of the change or the request was misleading, materially inaccurate, not substantially complete, or not made in good faith, paragraph (5)(B) does not apply.

(7) A school who immediately implements a change pursuant to paragraph (1) and fails to bring the AMI into compliance prior to the date allowed under paragraph (5)(A)(ii) may be determined to be in violation of state law or the rules in this chapter after that date.

(8) A school that immediately implements a change under paragraph (1) assumes the risk of final approval being denied and of being required to come into compliance with state law and the rules in this chapter prior to the date allowed under paragraph (5)(A)(ii), including bearing the cost of reversing the change or otherwise modifying the AMI to come into compliance with state law and the rules in this chapter.

(j) Termination of the school's operation. Upon termination, schools shall deliver any missing student data to the department within five days of termination.
(k) Renewal of AMI approval. The AMI approval must be renewed and updated to ensure timeliness every even-numbered year.

(1) For approval, the school shall update all the statistical data, references to law, and traffic safety methodology with the latest available data.

(2) The department may alter the due date of the renewal documents by giving the approved AMI six months notice. The department may alter the due date in order to ensure that the AMI is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor and technical assistance. The school must establish hours that the student may access the instructor and for technical assistance. With the exception of circumstances beyond the control of the school, the student shall have access to the instructor and technical assistance during the specified hours.

(m) Enrollment guidelines. The AMI for driver education classroom that desires to instruct students age 14 to under 25 years of age shall provide the same beginning and ending dates for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the sixth hour of classroom instruction has been completed.

(n) Required training. The instructor must meet the professional teaching standard established by a state licensing agency or have academic credentials in the field in which he or she is teaching and must have been trained to teach the AMI classroom driver education course. Each instructor of an AMI classroom driver education course offered by a driver education school must:

(1) have a ST, or DET driver education instructor license; and

(2) successfully complete the appropriate professional development course before teaching an AMI classroom driver education course.

§84.502. Driving Safety Courses of Instruction.

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §84.504, (relating to Driving Safety Course Alternative Delivery Method), all course content shall be delivered under the direct observation of a licensed instructor. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted by the course provider and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive course as defined in §84.2(14).

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; implementation of law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature); the proper use of child passenger safety seat systems; safely operating a vehicle near oversized or overweight vehicles; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such materials are subject to the approval of the department prior to its use in a driver safety course. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's traffic safety goal and philosophy;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F);

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) if the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All makeup lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for re-entry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course and the furniture deemed necessary to accommodate the students in the course such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials shall not be used in excess of 165 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials to be provided for use by each student as a guide to the course. The department may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and
A completed form cross-referencing the instructional units to the topics identified in Chapter Four of the COI-Driving Safety. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the department.

(C) Course and time management. Approved driving safety courses shall be presented in compliance with the following guidelines and shall include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty (60) minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(iv) Administrative procedures such as enrollment shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch.

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive examination and summation, whichever is appropriate.

(vii) The order of topics shall be approved by the department as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70 percent on the final examination.

(ix) In a traditional classroom setting, there must be sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class shall have no more than 50 students.

(x) The driving safety instructor or school shall make a material effort to establish the identity of the student.

(D) Minimum course content. Driving Safety course content, including video and multimedia, shall include current statistical data, references to law, driving procedures, and traffic safety methodology, as shown in the COI-Driving Safety to assure student mastery of the subject matter. [A driving safety course shall include, as a minimum, materials adequate to assure the student masters the following:]

{{(i) Course introduction—minimum of ten minutes (instructional objective—to orient students to the class). Instruction shall address the following topics:]}}

{{(I) purpose and benefits of the course;}]

{{(II) course and facilities orientation;}]

{{(III) requirements for receiving course credit;}]

{{(IV) student course evaluation procedures; and]}}

{{(V) Department-provided information on course content.]}}

{{(vi) The traffic safety problem—minimum of 10 minutes (instructional objectives—to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution). Instruction shall address the following topics:]}}

{{(I) identification of the overall traffic problem in the United States, Texas, and the locale where the course is being taught;}]

{{(II) death, injuries, and economic losses resulting from motor vehicle crashes in Texas; and]}}

{{(III) the top five contributing factors of motor vehicle crashes in Texas as identified by the Texas Department of Transportation.]}}

{{(iv) Factors influencing driver performance—minimum of 10 minutes (instructional objective—to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:]}}

{{(I) attitudes, habits, feelings, and emotions (aggressive driving, etc.);}]

{{(II) alcohol and other drugs;}]

{{(III) physical condition (drowsy driving, etc.);}]

{{(IV) knowledge of driving laws and procedures; and]}}

{{(V) understanding the driving task.]}}

{{(iv) Traffic laws and procedures—minimum of 50 minutes (instructional objectives—to identify the requirements of, and the rationale for, applicable driving laws and procedures and to influence drivers to comply with the laws on a voluntary basis). Instruction shall address the following topics:]}}

{{(I) passing;}]

{{(II) right-of-way;}]

{{(III) turns;}]

{{(IV) stops;}]

{{(V) speed limits;}]

{{(VI) railroad crossings safety, including statistics, causes, and evasive actions;}]

{{(VII) categories of traffic signs, signals, and highway markings;}]

{{(VIII) pedestrians;}]

{{(IX) improved shoulders;}]

{{(X) intersections;}]

{{(XI) occupant restraints;}]

{{(XII) anatomical gifts;}]

{{(XIII) litter prevention;}]

{{(XIV) law enforcement and emergency vehicles (this category will be temporary until the need is substantiated by documentation from the Department of Public Safety on the number of deaths or injuries involved because of improper procedures used by a citizen when stopped by a law enforcement officer).]}}
law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature); and

other laws as applicable (i.e., financial responsibility/compulsory insurance).

Special skills for difficult driving environments—minimum of 15 minutes (instructional objective—to identify how special conditions affect drivers and vehicle performance and identify techniques for management of these conditions). Instruction shall address the following topics:

- Inclement weather;
- Traffic congestion;
- City, urban, rural, and expressway environments;
- Reduced visibility conditions—hills, fog, curves, light conditions (darkness, glare, etc.); etc.; and
- Roadway conditions.

Physical forces that influence driver control—minimum of 10 minutes (instructional objective—to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

- Speed control (acceleration, deceleration, etc.);
- Traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and
- Force of impact (momentum, kinetic energy, inertia, etc.);

Perceptual skills needed for driving—minimum of 20 minutes (instructional objective—to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

- Visual interpretations;
- Hearing;
- Touch;
- Smell;
- Reaction abilities (simple and complex); and
- Judging speed and distance.

Defensive driving strategies—minimum of 30 minutes (instructional objective—to identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses). Instruction shall address the following topics:

- Trip planning;
- Evaluating the traffic environment;
- Anticipating the actions of others;
- Decision making;
- Implementing necessary maneuvers;
- Compensating for the mistakes of other drivers;
- Avoiding common driving errors;
- Interacting with other road users (motorcycles, bicycles, trucks, pedestrians, etc.);
- Safely operating a vehicle near oversized or overweight vehicles;
- Motorcycle awareness; including the dangers of failing to yield the right-of-way to a motorcyclist and the need to share the road with a motorcyclist; and
- Distractions relating to the effect of using a wireless communication device, including texting or engaging in other actions that may distract a driver from the safe or effective operation of a motor vehicle.

Driving emergencies—minimum of 20 minutes (instructional objective—to identify common driving emergencies and their countermeasures). Instruction shall address the following topics:

- Collision traps (front, rear, and sides);
- Off-road recovery, paths of least resistance; and
- Mechanical malfunctions (tires, brakes, steering, power, lights, etc.);

Occupant restraints and protective equipment—minimum of 15 minutes (instructional objective—to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

- Legal aspects;
- Vehicle controls;
- Crash protection;
- Operational principles (active and passive);
- Helmets and other protective equipment;
- Proper use of child passenger safety seat systems; and
- Dangers involved in locking or leaving children in vehicles unattended.

Alcohol and traffic safety—minimum of 40 minutes (instructional objective—to identify the effects of alcohol on roadway users). Instruction shall address methods to drink and drive but shall address the following topics related to the effects of alcohol on roadway users:

- Physiological effects;
- Psychological effects;
- Legal aspects; and
- Synergistic effects.

Comprehensive examination—minimum of five minutes (this shall be the last unit of instruction).

The remaining 65 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional driving safety topics that satisfy the educational objectives of the course.

E Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved driving safety course described in the applicant's driving safety course content guide. Each course provider shall submit, as part of the
application, an instructor training guide that has a table of contents and is submitted in the format or manner as prescribed by the department. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 60 minutes of instruction of the course in a regular approved course under the observation of a licensed instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(VI). The total time of the units shall contain a minimum of 16 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course and the instructor training course. The comprehensive examination for each driving safety course must include at least two questions from the required units set forth in Chapter Four, Topics Two through Eleven of the COL-Driving Safety [subparagraph (D)(iii)(a)], for a total of at least 20 questions. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions but may facilitate alternative testing. Instructors may not be certified, or students given credit for the driving safety course unless they score 70 percent or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent on the final examination. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Requirements for authorship. The course materials shall be written by individuals or organizations with recognized experience in writing instructional materials.

(H) Renewal of course approval. The course approval must be renewed every even-numbered year.

(i) For approval, the course owner shall update all the course content methodology, procedures, statistical data, and references to law with the latest available data.

(ii) The department may alter the due date of the renewal documents by giving the approved course six months' notice. The department may alter the due date in order to ensure that the course is updated six months after the effective date of new state laws passed by the Texas Legislature.

(2) Instructor development courses.

(A) If the alternative instructor training in §84.64 (relating to Driving Safety Instructor License Requirements) is not applicable, driving safety instructors shall successfully complete 28 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the driving safety course to be taught, under the supervision of a driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 28 clock hours of training for driving safety instructors, excluding those clock hours approved by department staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instructor records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized department representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the department-approved instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Driving safety instructor development courses including the practical-teaching portion of the instructor development course shall be offered at approved classroom facilities of a licensed school. A licensed instructor trainer shall present the course.
E) Applicants shall complete 28 hours of training in the driving safety curriculum that shall be taught. Of the 28 hours, 16 shall cover techniques of instruction and in-depth familiarization with materials contained in the driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 16 hours have been completed.

(3) Continuing education course.

(A) For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in this subchapter, the department may grant an approval. Course providers desiring to provide a driving safety continuing education course shall provide an application for approval that shall be in compliance with this section.

(B) Each course provider shall be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(C) The request for course approval shall contain the following:

(i) a description of the plan by which the course will be presented;

(ii) the subject of each unit;

(iii) the instructional objectives of each unit;

(iv) time to be dedicated to each unit;

(v) instructional resources for each unit, including names or titles of presenters and facilitators;

(vi) any information that the department mandates to promote the quality of the education being provided; and

(vii) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

(D) A continuing education course may be approved if the department determines that:

(i) the course is designed to enhance the instructional skills, methods, or knowledge of the driving safety instructor;

(ii) the course pertains to subject matters that relate directly to driving safety instruction, instruction techniques, or driving safety-related subjects;

(iii) the course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety instruction or driving safety-related subject matters. Evidence of the individuals’ experience or expertise may be requested by the division;

(iv) the course contains updates or approved revisions to the driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data; and

(v) any technology used to present a continuing education course meets reasonable standards for determining attendance, security, and testing.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the department and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the department shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the department for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the department, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(e) The department may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) Any information contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of the Code, and/or this chapter.

(4) The course has been found to be ineffective in meeting the educational objectives set forth in subsection (a)(1)(A).

§84.503. Specialized Driving Safety Courses of Instruction.

(a) This section contains requirements for specialized driving safety courses, instructor development courses, and continuing education. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §84.504 (relating to Driving Safety Course Alternative Delivery Method), all course content shall be delivered under the direct observation of a specialized driving safety licensed instructor. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive course as defined in §84.2(14).

(1) Specialized driving safety courses.

(A) Educational objectives. The educational objectives of specialized driving safety courses shall include, but not be limited to improving the student's knowledge and use of, compliance with, and attitude toward the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems, safe operation of a motor vehicle near oversize or overweight vehicles, and educating the student on the proper law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature).

(B) Specialized driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide a written declaration affirming that the translation of the
course materials is true and correct in the proposed language presented. Such materials are subject to the approval of the department prior to its use in a specialized driver safety course. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's goal and philosophy relative to occupant protection;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(1) progress standards that meet the requirements of subparagraph (F);

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) appropriate criteria to determine course completion. If the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) provisions for the completion of makeup work. Any period of absence for any portion of instruction will require that the student complete that portion of instruction. All makeup lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for re-entry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course and the furniture deemed necessary to accommodate the students in the course such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials shall not be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials provided for use by each student as a guide to the course. The division may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in Chapter Four, Topics Two through Eight of the COI-Specialized Driving Safety [subparagraph (D)]. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the department.

(C) Course and time management. Approved specialized driving safety courses shall be presented in compliance with the following guidelines and shall include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) A minimum of 300 minutes of instruction is required of which at least 200 minutes shall address the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(iv) Administrative procedures such as enrollment shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch.

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive examination and summation, whichever is appropriate.

(vii) The order of topics shall be approved by the department as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70 percent on the final examination.

(ix) Specialized driving safety classrooms must have sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class shall have no more than 50 students.

(x) The specialized driving safety instructor or school shall make a material effort to establish the identity of the student.

(D) Minimum course content. A specialized driving safety course shall include, as a minimum, four hours of instruction, as shown in the COI-Specialized Driving Safety, that encourages the use of child passenger safety seat systems and the wearing of seat belts, etc., and materials adequate to assure the student mastery of the subject matter. [master the following]

(1) Course introduction—minimum of ten minutes (instructive objective—to orient students to the class). Instruction shall address the following topics:

(1(i) purpose and benefits of the course;

(1(ii) course and facilities orientation;]
(iii) requirements for receiving course credit; 

(iv) student course evaluation procedures.] 

(iii) The occupant protection problem—minimum of 
15 minutes (instructional objective—to develop an understanding 
of Texas occupant protection laws and the national and state goals regarding 
occupant protection). Instruction shall address the following topics:] 

(iv) identification of Texas Occupant Protection 
Laws:] 

(iii) deaths, injuries, and economic losses relating to improper use of occupant restraint systems; and 

(ii) national and state goals regarding occupant protection.] 

(iii) Factors influencing driver performance—minimum of 25 minutes (instructional objective—to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:] 

(ii) attitudes, habits, feelings, and emotions; 

(iii) alcohol and other drugs; 

(iv) physical condition; 

(v) knowledge of driving laws and procedures including law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act (Senate Bill 10, 85th Regular Legislature); and 

(ii) understanding the driving task.] 

(iii) physical forces that influence driver control—minimum of 10 minutes (instructional objective—to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:] 

(ii) speed control (acceleration, deceleration, etc.); 

(iii) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and 

(iv) force of impact (momentum, kinetic energy, inertia, etc.); 

(ii) Perceptual skills needed for driving—minimum of 10 minutes (instructional objective—to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:] 

(ii) visual interpretations; 

(iii) hearing; 

(iv) touch; 

(vi) smell; 

(vii) reaction abilities (simple and complex); and 

(viii) judging speed and distance; 

(vii) Occupant protection equipment—minimum of 
35 minutes (instructional objective—to identify the improvements and 
technological advances in automotive design and construction). Instruction shall address the following topics:] 

(vi) anti-lock brakes; 

(v) traction control devices; 

(vi) suspension control devices; 

(vii) electronic stability/active handling systems; 

(viii) example zones; 

(ix) door latch improvements; 

(x) tempered or safety glass; 

(xi) headlights; and 

(xii) visibility enhancements; 

(ii) Occupant restraint systems—minimum of 60 minutes (instructional objective—to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:] 

(ii) safety belts, airbags, and other protective equipment; 

(iii) proper usage and necessary precautions; 

(iv) vehicle control and driver stability; 

(v) crash dynamics and protection; and 

(vi) operational principles (active versus passive); 

(ii) Child passenger safety—minimum of 120 minutes (instructional objective—to understand the child passenger safety law in Texas; the importance of child safety seats; and the risks to children that are unrestrained or not properly restrained). Instruction shall address the following topics:] 

(ii) misconceptions or mistaken ideas regarding 
child passenger safety; 

(iii) purpose of child safety seats; 

(iv) how to secure the child properly and factors to consider; 

(v) child safety seat types and parts; 

(vi) precautions regarding child safety seats; 

(vii) correct installation of a child safety restraint system; 

(viii) tips regarding child safety restraint systems; and 

(ix) dangers involved in locking or leaving children in vehicles unattended; 

(ii) The remaining 10 minutes of instruction shall 
be allocated to the topics included in the minimum course content or to additional occupant protection topics that satisfy the educational objectives of the course; 

(ii) Comprehensive examination—minimum of five 
minutes (this shall be the last unit of instruction); 

(E) Instructor training guides. An instructor training 
guide contains a description of the plan, training techniques, and 
curriculum to be used to train instructors to present the concepts of the 
approved specialized driving safety course described in the applicant's 
specialized driving safety course content guide. Each course provider 
shall submit as part of the application an instructor training guide that 
is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:
(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed specialized driving safety instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(VI). The total time of the units shall contain a minimum of 16 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the specialized driving safety course and the instructor training course. The comprehensive examination for each specialized driving safety course must include at least two questions from each unit, excluding the course introduction and comprehensive examination units. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions unless alternative testing is required. Instructors may not be certified or students given credit for the specialized driving safety course unless they score 70 percent or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent on the final examination. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Requirements for authorship. The course shall be authored by an individual who possesses a current or past National Highway Traffic Safety Association Child Passenger Safety technician or instructor certificate.

2 Specialized driving safety instructor development courses.

(A) If the alternative instructor training in §84.64 [of this chapter (relating to Driving Safety Instructor License Requirements)] is not applicable, specialized driving safety instructors shall successfully complete 28 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the specialized driving safety course to be taught, under the supervision of a specialized driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 28 clock hours of training for the instructors, excluding those clock hours approved by department staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized department representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the department approved specialized driving safety instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Specialized driving safety instructor development courses including the practical-teaching portion of the instructor development course shall be offered at approved classroom facilities of a licensed school. A licensed instructor trainer shall present the course.

(E) Applicants shall complete 28 hours of training in the specialized driving safety curriculum that shall be taught. Of the 28 hours, 16 hours shall cover techniques of instruction and in-depth familiarization with materials contained in the specialized driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 24 hours have been completed.

3 Continuing education courses.

(A) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must at-
tend the approved continuing education course conducted by the course provider.

(B) The request for course approval shall contain the following:

(i) a description of the plan by which the course will be presented;
(ii) the subject of each unit;
(iii) the instructional objectives of each unit;
(iv) time to be dedicated to each unit;
(v) instructional resources for each unit, including names or titles of presenters and facilitators;
(vi) any information that the department mandates to ensure quality of the education being provided; and
(vii) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

(C) A continuing education course may be approved if the department determines that:

(i) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of the specialized driving safety instructor;
(ii) the course pertains to subject matters that relate directly to driving safety or specialized safety instruction, instruction techniques, or driving safety-related subjects;
(iii) the entire course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety or specialized driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety or specialized driving safety instruction or driving safety-related subject matters. Evidence of the individuals’ experience or expertise may be requested by the department;
(iv) the course contains updates or approved revisions to the specialized driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data; and
(v) the department determines that any technology used to present a continuing education course meets reasonable standards for determining attendance, security, and testing.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the department and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school’s compliance is in question at the time of application.

(c) If an approved course is discontinued, the department shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the department for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the department, the refunds must be made no later than thirty (30) days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(e) The department may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) Any information contained in the application for the course approval is found to be untrue.
(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.
(3) The school and/or course provider has been found to be in violation of the Code, and/or this chapter.

§84.504. Driving Safety Course Alternative Delivery Method.

(a) Approval process. The department may approve an alternative delivery method (ADM) that delivers an approved driving safety course or an approved specialized driving course and meets the following requirements.

(1) Standards for approval. The department may approve an ADM for an approved driving safety course or a specialized driving safety course and waive any rules to accomplish this approval if the ADM delivers an approved course in a manner that is at least as secure as a traditional classroom. ADMs that meet the requirements outlined in subsections (b)-(h), shall receive ADM approval.

(2) Application. The course provider shall submit a completed ADM application along with the appropriate fee. The application for ADM approval shall be treated the same as an application for the approval of a new course and the ADM must deliver the course provider’s approved curriculum as delineated in the course content guide required by §84.502 (relating to Driving Safety Courses of Instruction) and §84.503 (relating to Specialized Driving Safety Courses of Instruction), and the COI-Driving Safety and COI-Specialized Driving Safety.

(3) Incomplete applications. An application that is incomplete may be returned to the applicant along with the application fee.

(4) School license required. A person or entity offering a driving safety course or a specialized driving course to Texas students by an alternative delivery method must hold a driving safety school license. The driving safety school is responsible for the operation of the ADM.

(5) Course provider endorsement required. The driving safety school must have an endorsement from a licensed course provider.

(b) Course content. The ADM must deliver the same topics and course content as the approved course established by the department in the COI-Driving Safety and COI-Specialized Driving Safety.

(1) Course topics. The time requirements for each unit and the course as a whole described in §84.502(a)(1)(C) and (D) and §84.503(a)(1)(C) and (D) shall be met.

(2) Topic sequence. The ADM sequencing may be different from the approved traditional course as long as the sequencing does not detract from educational value of the course. The ADM owner shall provide a key showing the topic sequence of the traditional course and where the corresponding information appears in the ADM.
(3) Editing. The material presented in the ADM shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(4) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(5) Minimum content. The ADM shall present sufficient content so that it would take a student 300 minutes to complete the course. In order to demonstrate that the ADM contains sufficient content, the ADM shall use the following methods.

(A) Word count. For written material that is read by the student, the course provider shall count the total number of words in the written sections of the course. This word count shall be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. For multimedia presentation, the course provider shall calculate the total amount of time it takes for all multimedia presentations to play.

(C) Charts and graphs. The ADM may assign one minute for each chart or graph.

(D) Examinations. The course provider may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 300 minutes, the ADM has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the ADM may submit alternate methodology to demonstrate that the ADM meets the 300-minute requirement.

(6) Student breaks. A course that demonstrates that it contains 300 minutes of instructional content shall mandate that students take 60 minutes of break time or provide additional educational content for a total of 360 minutes.

(c) Personal validation. The ADM shall maintain a system to validate the identity of the person taking the course. The personal validation system shall incorporate the following requirements.

(1) Personal validation questions. The ADM shall ask a minimum of 10 personal validation questions throughout the course.

(2) Third party data sources. The personal validation questions shall be drawn equally from at least two different databases.

(3) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(4) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the final examination.

(5) Exclusion from the course. The ADM shall exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(6) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons that the school corrected the answer.

(7) Student affidavits. A student for whom third-party database information is available from fewer than two databases (for example, a student with an out-of-state driver's license) may be issued a uniform certificate of completion upon presentation to the course provider of a notarized copy of the student's driver's license or equivalent type of photo identification and a statement from the student certifying that the individual attended and successfully completed the six-hour driving safety or specialized driving safety course for which the certificate is being issued and for which there exists a corresponding student record.

(8) Alternative methods. Upon approval by the department the ADM may use alternate methods that are at least as secure as the personal validation question method.

(d) Content validation. The ADM shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The ADM shall include built-in timers to ensure that 300 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The ADM shall ask at least one course validation question following each multimedia clip of more than 180 seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 seconds, the ADM shall have a test bank of at least four questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the ADM shall either require the student view the multimedia clip again or the ADM shall fail the student from the course. If the ADM requires the student to view the multimedia clip again, the ADM shall present a different question from its test bank for that multimedia clip. The ADM may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The ADM shall not identify the correct answer to the multimedia question.

(3) Mastery of course content. The ADM shall test the student's mastery of the course content by asking at least two questions from each of the topics listed in Chapter Four, Topics Two through Eleven of the COI-Driving Safety, and Chapter Four, Topics Two through Eight of the COI-Specialized Driving Safety [§84.502(a)(1)(D)(ii)(xii) and §84.503(a)(1)(D)(ii)(xvii)].

(A) Test bank. The test bank for course content mastery questions shall include at least ten questions from each of the topics identified in Chapter Four, Topics Two through Eleven of the COI-Driving Safety, and Chapter Four, Topics Two through Eight of the COI-Specialized Driving Safety [§84.502(a)(1)(D)(ii)(xii) and §84.503(a)(1)(D)(ii)(xvii)].

(B) Placement of questions. The mastery of course content questions shall be asked either at the end of the major unit or section in which the topic identified in Chapter Four, Topics Two through Eleven of the COI-Driving Safety, and Chapter Four, Topics Two through Eight of the COI-Specialized Driving Safety [§84.502(a)(1)(D)(ii)(xii) and §84.503(a)(1)(D)(ii)(xvii)] is covered
(unit examination) or at the end of the course (comprehensive final examination).

(C) Question difficulty. Course content mastery questions shall be short answer, multiple choice, essay, or a combination of these forms, and of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and retest options. The ADM may use either of the following options for students who fail an examination to show mastery of course content, but may not use both in the same ADM.

(A) Repeat the failed unit. If the student misses more than 30 percent of the questions asked on an examination, the ADM shall require that the student take the unit again. All timers shall be reset. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the unit, the ADM shall again test the student's mastery of the material. The ADM shall present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest the student. If the student misses more than 30 percent of the questions asked on an examination, the ADM shall retest the student in the same manner as the failed examination, using different questions from its test bank. The student is not required to repeat the failed unit but may be allowed to do so prior to retaking the examination. If the student fails the same unit examination or the comprehensive final examination three times, the student shall fail the course.

(e) Student records. The ADM shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. Each entry that verifies enrollment, identifies the question asked or the response given, documents retesting and/or revalidation, and documents any changes to the student's record shall include the date and time of the activity reported. The student records shall contain the following information.

(1) The student's name and driver's license number.

(2) A record of which personal validation questions were asked and the student's responses.

(3) A record of which multimedia participation questions were asked and the student's responses.

(4) The name or identity number of the staff member entering comments, retesting, or revalidating the student.

(5) If any answer to a question is changed by the school or course provider for a student who inadvertently missed a question, the school or course provider shall provide both answers and a reasonable explanation for the change.

(6) A record of the course content mastery questions asked and the answers given.

(7) A record of the time the student spent in each unit of the ADM and the total instructional time the student spent in the course.

(8) The school shall also ensure that the student record is readily, securely, and reliably available for inspection by the department.

(f) Additional requirements for ADM courses. Courses delivered via the Internet shall also comply with the following requirements.

(1) Course identification. All ADM courses shall display the driving safety school name, course provider name and license numbers for each assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(2) A driving safety school offering an ADM course may accept students redirected from another website as long as the student is redirected to the webpage that clearly identifies the names and license numbers of the school and course provider offering the ADM. This information shall be visible before and during the student registration and course payment processes.

(3) Domain names. Each school offering an ADM must offer that ADM from a single domain.

(g) Additional requirements for video courses.

(1) Delivery of the material. For ADMs delivered by the use of videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a process that is approved by the department.

(2) Video requirement. In order to meet the video requirement of §84.502(a)(1)(B)(v), the video course shall include between 60 and 150 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and roll footage. The remainder of the 300 minutes of required instruction shall be video material that is relevant to the required topics and produced specifically for the ADM.

(A) A video ADM shall ask, at a minimum, at least one course validation question for each multimedia clip of more than 180 seconds at the end of each major segment (chapter) of the ADM.

(B) A video ADM shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 60 seconds presented during the ADM.

(h) Standards for ADMs using new technology. For ADMs delivered using technologies that have not been previously reviewed and approved by the department, the department may apply similar standards as appropriate and may also require additional standards. These standards shall be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(i) Modifications to the ADM. Except as provided by paragraph (1) of this subsection, a change to a previously approved ADM shall not be made without the prior approval of the department. The licensed course provider for the approved course on which the ADM is based shall ensure that any modification to the ADM is implemented by all schools endorsed to offer the ADM.

(1) A course provider may submit to the department a request for immediate implementation of a proposed change that is insignificant or that protects the interest of the consumer such that immediate implementation is warranted. The request shall include:

(A) a complete description of the proposed change;

(B) the reason for the change;

(C) the reason the requestor believes the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted;

(D) an explanation of how the change will maintain the course or ADM in compliance with state law and the rules specified in this chapter.
(2) The department may request additional information regarding a proposed change from the course provider making a request under paragraph (1).

(3) The department will respond to any request made under paragraph (1), within five working days of receipt.

(A) If the department determines that the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted, the requestor may immediately implement the change. The licensed course provider for the approved course on which the ADM is based shall ensure that the change is implemented by all schools endorsed to offer the ADM.

(B) If the department determines that the proposed change is neither insignificant nor protects the interest of the consumer such that immediate implementation is warranted, the department shall notify the requestor of that determination and the change may not be made unless the department approves the change following a complete review.

(4) A determination by the department to allow immediate implementation under paragraph (1), does not constitute final approval by the department of the change. The department reserves the right to conduct further review after the change is implemented and to grant or deny final approval based on whether the change complies with state law and rules specified in this chapter.

(5) If, following further review, a change in an ADM that has been immediately implemented pursuant to paragraph (1), is determined not to be in compliance with state law and rules specified in this chapter, the department:

(A) shall notify the course provider affected by the change of:

(i) the specific provisions of state law or rules with which the ADM change is not in compliance; and

(ii) a reasonable date by which the ADM must be brought into compliance;

(B) shall require the course provider to notify any school endorsed by the course provider of the finding;

(C) shall not, for the period between the implementation of the change and the date specified under subparagraph (A)(ii):

(i) seek any penalty relating to the non-compliance;

(ii) take any action to revoke or deny renewal of a license of a school or course provider based on the change; or

(iii) withdraw approval of a course or ADM based on the change; and

(D) is not required to specify the method or manner by which the course provider alters the ADM to come into compliance with state law and the rules in this chapter.

(6) If the department allows immediate implementation pursuant to paragraph (1) and later determines that the description of the change or the request was misleading, materially inaccurate, not substantially complete, or not made in good faith, paragraph (5)(C) does not apply.

(7) A course provider who immediately implements a change pursuant to paragraph (1) and fails to bring the ADM into compliance prior to the date allowed under paragraph (5)(A)(ii) may be determined to be in violation of state law or the rules in this chapter after that date.

(8) A course provider that immediately implements a change under paragraph (1), assumes the risk of final approval being denied and of being required to come into compliance with state law and the rules in this chapter prior to the date allowed under paragraph (5)(A)(ii), including bearing the cost of reversing the change or otherwise modifying the ADM to come into compliance with state law and the rules in this chapter.

(j) Termination of the school's operation. Upon termination, schools shall deliver any missing student data to the department within five days of termination.

(k) Renewal of ADM approval. The ADM approval must be renewed every even-numbered year.

(1) For approval, the course provider shall update all the statistical data and references to law with the latest available data.

(2) The department may alter the due date of the renewal documents by giving the approved ADM six months' notice. The department may alter the due date in order to ensure that the ADM is updated six months after the effective date of new state laws passed by the Texas Legislature.

§84.505. Drug and Alcohol Driving Awareness Programs of Instruction

(a) This section contains requirements for drug and alcohol driving awareness programs and instructor development programs. For each program, the following curriculum documents and materials are required to be submitted as part of the application for approval. All program content shall be delivered under the direct observation of a licensed instructor. Programs of instruction shall not be approved which contain language that a reasonable person would consider inappropriate. Any changes and updates to a program shall be submitted and approved prior to being offered.

(1) Drug and alcohol driving awareness programs.

(A) Educational objectives. The educational objectives of drug and alcohol driving awareness programs shall include, but not be limited to: educating participants on the risks associated with alcohol or other drug use/abuse and problems associated with such use; providing information on the physiological and psychological effects of alcohol and drugs, legal aspects of alcohol and drug use; the effects of alcohol and drugs on the driving task; signs of abuse; and assisting participants in developing a plan to reduce the probability that they will be involved in alcohol/drugs and driving situations.

(B) Drug and alcohol driving awareness program content guides. A program content guide is a description of the content of the program and the techniques of instruction that will be used to present the program. For programs offered in languages other than English, the course provider shall provide a written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such materials are subject to the approval of the department prior to its use in a drug and alcohol driving awareness course. To be approved, each course provider shall submit as part of the application a program content guide that includes the following:

(i) a statement of the program's drug and alcohol driving awareness program goal and philosophy. The program must
not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies when being presented to minors;

   (ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

   (iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The following policies and administrative provisions shall be used by each school that offers the program and include the following requirements:

   (I) progress standards that meet the requirements of subsection (a)(1)(F);

   (II) appropriate standards to ascertain the attendance of students. All schools approved to use the program must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

   (III) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All make-up lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

   (IV) conditions for dismissal and conditions for reentry of those students dismissed for violating the conduct policy;

   (v) a statement of policy addressing entrance requirements and special conditions of students, such as the inability to read, language barriers, and other disabilities;

   (vi) a list of relevant instructional resources, such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the program; and the furniture deemed necessary to accommodate the students in the program, such as tables, chairs, and other furnishings. The program shall include a minimum of 60 minutes of videos, including audio; however, the videos and other relevant instructional resources cannot be used in excess of 180 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

   (vii) a clear identification of the order in which the units of instruction will be presented, and for each student, the program shall be taught in the order identified in the approved application;

   (viii) written or printed materials that shall be provided for use by each student as a guide to the program. The executive director may make exceptions to this requirement on an individual basis;

   (ix) units of instruction sufficient to present the topics identified in subsection (a)(1)(B) and any additional topics unique to the program. Each instructional unit shall include the following:

   (I) the subject of the unit;

   (II) the instructional objectives of the unit;

   (III) time to be dedicated to the unit;

   (IV) an outline of major concepts to be presented;

   (V) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the program guide shall identify the questions that will be assigned to the groups;

   (VI) instructional resources for each unit; and

   (VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the program content guide. The evaluative technique may be used throughout the unit or at the end; and

   (ix) a document that identifies the instructional units and topics and the order in which they are provided.

   (C) Program and time management. Approved drug and alcohol driving awareness programs shall be presented in compliance with the following guidelines.

   (i) A minimum of 300 minutes of instruction is required.

   (ii) The total length of the program shall consist of a minimum of 360 minutes.

   (iii) 60 minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum program content. All break periods shall be provided after instruction has begun and before the post-program exam.

   (iv) Programs conducted in a single day shall allow a minimum of 30 minutes for lunch.

   (v) Programs taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day programs. However, all breaks shall be provided prior to the last unit of the instructional day or the post-program exam, whichever is appropriate.

   (vi) The order of topics shall be approved by the department as part of the program approval, and for each student, the program shall be taught in the order identified in the approved application.

   (vii) Students shall not receive a certificate of program completion unless that student received a grade of at least 70 percent on the post-program exam.

   (viii) The program must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies when provided to minors.

   (ix) No more than 50 students per class are permitted in drug and alcohol driving awareness programs, unless the class size is limited by a restriction under another law or rule. In a traditional classroom setting, there must be sufficient seating for the number of students arranged so that all students are able to view, hear, and comprehend all instruction aids.

   (x) The drug and alcohol driving awareness school shall make a material effort to establish the identity of the student.

   (D) Minimum program content. A drug and alcohol driving awareness program shall include the minimum course content and instruction requirements as shown in the POI-DADAP, as a minimum, materials adequate to address the following topics and instructional objectives and the program as a whole:

   (i) Program administration. The objective is to enable the instructor to handle any basic in-class administrative details that are necessary prior to beginning instruction. This unit shall be limited to 15 minutes.

   (ii) Program introduction, pre-program exam, and background. The objective is to present an overview of the program and to demonstrate the nature of the problem as it relates to the use of alcohol or other drugs.
(iii) Texas laws. The objective is to provide basic information about laws related to alcohol/drug use in Texas.

(f)(i) Physiological and psychological effects of alcohol/drugs. The objective is to provide basic information about the physiological and psychological effects of alcohol and other drugs on humans.

(f)(ii) Effects of alcohol/drugs on the driving task. The objective is to explain the relationship of alcohol and other drugs to driving task abilities.

(f)(iii) Signs of a problem. The objective is to help participants recognize and understand the warning signs of a potential alcohol/drug problem.

(f)(iv) Decision making. The objective is to help participants make quality decisions about alcohol/drug use that will prevent future problems.

(f)(v) Post-program exam.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved drug and alcohol driving awareness program described in the applicant’s drug and alcohol driving awareness program guide. Each course provider shall submit as part of the application an instructor training guide. The guide shall include a table of contents and the following:

(i) a statement of the philosophy and instructional goals of the training program. The program must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies when being presented to minors;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the program curriculum;

(II) training the trainee in the techniques of instruction that will be used in the program;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainee;

(V) a minimum of 15 minutes of instruction of the program curriculum by the trainee under the observation of the instructor trainer as part of the basic training program; and

(VI) time to be dedicated to each training lesson; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(V). The total time of the units shall contain a minimum of 16 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the program guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluation technique may be used throughout the unit or at the end.

(F) Examinations [Exams]. Each course provider shall submit for approval, as part of the application, pre- and post-program exams designed to measure the knowledge of students at the completion of the drug and alcohol driving awareness program. The post-program exam for each drug and alcohol driving awareness program must contain at least 20 questions. A minimum of two questions shall be drawn from the required units set forth in Chapter Four, Topics Three through Seven of the POL-DADAP [subparagraph (D)(iii)-(vii) of this paragraph]. The post-program final exam questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the post-program exam questions but may facilitate alternative testing. Instructors may not certify or give students credit for the drug and alcohol driving awareness program unless they score 70 percent or more on the post-program exam. The program content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent on the post-program exam. The course provider may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Exam questions may be short answer, multiple choice, essay, or a combination of these forms.

(2) Instructor development programs.

(A) Drug and alcohol driving awareness program instructors shall successfully complete 24 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development program for the drug and alcohol driving awareness program to be taught, under the supervision of a licensed drug and alcohol driving awareness instructor who is designated by the course provider. Supervision is considered to have occurred when the licensed instructor is present and personally provides the 24 clock hours of training for drug and alcohol driving awareness instructors, excluding clock hours approved by the department that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and licensed instructor for each instructor trainee and shall be available for inspection by authorized department representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee’s name, address, driver’s license number, and other pertinent data: the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include unit, pre- and post-program exam grades or other means of indicating the trainee’s aptitude and development. Upon satisfactory completion of the training program, the instructor trainer conducting the training will certify a copy of the instruction record for attachment to the trainee’s application for licensing.

(C) The course provider shall sign all student instruction records submitted for the department-approved instructor development program. Original documents shall be submitted.
(D) Instructor development programs including the practical-teaching portion of the instructor development course shall be offered at approved classroom facilities of a licensed school. A licensed instructor shall present the program.

(b) Schools applying for approval of additional drug and alcohol driving awareness programs after the original approval has been granted shall submit the documents designated by the department with the appropriate fee. Programs shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional program shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved program is discontinued, the department shall be notified within five working days of discontinuance. Any program discontinued shall be removed from the list of approved programs.

(d) If, upon review and consideration of an original, renewal, or amended application for drug and alcohol driving awareness program approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(e) The department may revoke approval of any drug and alcohol driving awareness program given to a course provider or school under any of the following circumstances.

(1) A statement contained in the application for the program approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or programs of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of the Code, and/or this subchapter.

(4) The program has been found to be ineffective in carrying out the purpose of the Code.

§84.506. Drug and Alcohol Driving Awareness Programs Alternative Delivery Method.

(a) Approval process. The department may approve an alternative delivery method (ADM) that delivers an approved drug and alcohol driving awareness program and meets the following requirements.

(1) Standards for approval. The department may approve an ADM for an approved drug and alcohol driving awareness program and waive any rules to accomplish this approval if the ADM delivers an approved program in a manner that is at least as secure as a traditional classroom. ADMs that meet the requirements outlined in subsections (b)-(h), shall receive ADM approval.

(2) Application. The course provider shall submit a completed ADM application along with the appropriate fee. The application for ADM approval shall be treated the same as an application for the approval of a new program, and the ADM must deliver the course provider's approved curriculum as delineated in the program content guide required by §84.505(a)(1)(B) (relating to Drug and Alcohol Driving Awareness Programs of Instruction), and the POI-DADAP.

(3) Incomplete applications. An application that is incomplete may be returned to the applicant along with the application fee.

(4) School license required. A person or entity offering a drug and alcohol driving awareness program to Texas students by an ADM must hold a drug and alcohol driving awareness school license.

(5) Course provider endorsement required. The drug and alcohol driving awareness school must have an endorsement from a licensed course provider.

(6) Course provider responsibility. The day-to-day operations of an ADM are the responsibility of the course provider that owns the curriculum. A course provider may offer an ADM through a school that is not owned and operated by the course provider only with approval of the executive director. By accepting such approval, the course provider that offers the curriculum through a licensed drug and alcohol driving awareness school also accepts responsibility for all compliance issues that arise as a result of the operation of the ADM.

(b) Program content. The ADM must deliver the same topics and program content as the approved course established by the department in the POI-DADAP.

(1) Course topics. The time requirements for each unit and the program as a whole described in §84.505(a)(1)(B)(v), (C), and (D) shall be met.

(2) Topic sequence. The ADM sequencing may be different from the approved traditional program as long as the sequencing does not detract from educational value of the program. The ADM owner shall provide a key showing the topic sequence of the traditional program and where the corresponding information appears in the ADM.

(3) Editing. The material presented in the ADM shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(4) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the program. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the program.

(5) Minimum content. The ADM shall present sufficient content so that it would take a student 300 minutes to complete the program. In order to demonstrate that the ADM contains sufficient content, the ADM shall use the following methods.

(A) Word count. For written material that is read by the student, the course provider shall count the total number of words in the written sections of the program. This word count shall be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. For multimedia presentation, the course provider shall calculate the total amount of time it takes for all multimedia presentations to play.

(C) Charts and graphs. The ADM may assign one minute for each chart or graph.

(D) Exams. The course provider may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written program material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 300 minutes, the ADM has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the ADM may submit alternate methodology to demonstrate that the ADM meets the 300-minute requirement.
(6) Student breaks. A program that demonstrates that it contains 300 minutes of instructional content shall mandate that students take 60 minutes of break time or provide additional educational content for a total of 360 minutes.

(c) Personal validation. The ADM shall maintain a system to validate the identity of the person taking the program. The personal validation system shall incorporate the following requirements.

(1) Personal validation questions. The ADM shall ask a minimum of 10 personal validation questions throughout the program.

(2) Data sources. The personal validation questions shall be drawn equally from at least two different databases. Alternatively, the data may be drawn from student-solicited question/answer pairs obtained during enrollment.

(3) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(4) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the post-program exam.

(5) Exclusion from the course. The ADM shall exclude the student from the program after the student has incorrectly answered more than 30 percent of the personal validation questions.

(6) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question drawn from a third-party database. In such a case, the student record shall include a record of both answers and an explanation of the reasons that the school corrected the answer. A school or course provider shall not correct or change an answer for a student who enrolls in an ADM that uses student-solicited question/answer pairs for personal validation.

(7) Student affidavits. A student enrolled in a program that uses third-party database validation questions and for whom third-party database information is available from fewer than two databases (for example, a student with an out-of-state driver's license) may be issued a certificate of program completion upon presentation to the course provider of a notarized copy of the student's driver's license or equivalent type of photo identification and a statement from the student certifying that the individual attended and successfully completed the six-hour drug and alcohol driving awareness program for which the certificate is being issued and for which there exists a corresponding student record.

(8) Alternative methods. Upon approval by the department the ADM may use alternate methods that are at least as secure as the personal validation question method.

(d) Program validation. The ADM shall incorporate a program content validation process that verifies student participation and comprehension of program material, including the following.

(1) Timers. The ADM shall include built-in timers to ensure that 300 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The ADM shall ask at least one program validation question following each multimedia clip of more than 180 seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 seconds, the ADM shall have a test bank of at least four questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the ADM shall either require the student view the multimedia clip again or the ADM shall fail the student from the program. If the ADM requires the student to view the multimedia clip again, the ADM shall present a different question from its test bank for that multimedia clip. The ADM may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The ADM shall not identify the correct answer to the multimedia question.

(3) Mastery of program content. The ADM shall test the student's mastery of the program content by asking at least two questions from each of the five substantive topics listed in Chapter Four, Topics Three through Seven of the POI-DADAP [§84.505(a)(1)(D)(iii)-(vii)].

(A) Test bank. The test bank for program content mastery questions shall include at least two questions from each of the five substantive topics identified in Chapter Four, Topics Three through Seven of the POI-DADAP [§84.505(a)(1)(D)(iii)-(vii)]. For each question in a substantive topic, the test bank shall contain four alternative questions covering the same topic, for a total of at least 100 questions.

(B) Placement of questions. The mastery of program content questions shall be asked at the end of the program (post-program exam).

(C) Question difficulty. Program content mastery questions shall be short answer, multiple choice, essay, or a combination of these forms, and of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(D) Retest. If the student misses more than 30 percent of the questions asked on the post-program exam, the ADM shall retest the student in the same manner as the failed exam, using different questions from its test bank. The student is not required to repeat the failed program, but may be allowed to do so prior to retaking the exam. If the student fails the post-program exam three times, the student shall fail the program.

(e) Student records. The ADM shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the program material. Each entry that verifies enrollment, identifies the question asked or the response given, documents retesting and/or revalidation, and documents any changes to the student's record shall include the date and time of the activity reported. The school and/or course provider shall also ensure that the student record is readily, securely, and reliably available for inspection by the department. The student records shall contain the following information:

(1) the student's name and driver's license number;

(2) a record of which personal validation questions were asked and the student's responses;

(3) a record of which multimedia participation questions were asked and the student's responses;

(4) the name or identity number of the staff member entering comments, retesting, or revalidating the student;

(5) if any answer to a question is changed by the school or course provider for a student who inadvertently missed a third-party database question, the school or course provider shall maintain both an-
swers and a reasonable explanation for the change. A school or course provider shall not correct or change an answer for a student who enrolls in an ADM that uses student-solicited question/answer pairs for personal validation;

(6) a record of the program content mastery questions asked and the answers given; and

(7) a record of the time the student spent in each unit of the ADM and the total instructional time the student spent in the program.

(f) Additional requirements for ADM programs. Programs delivered via the Internet shall also comply with the following requirements.

(1) Course identification. All ADM courses shall display the drug and alcohol driving awareness school name, course provider name and license numbers for each assigned by the department on the entity’s website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(2) A drug and alcohol driving awareness school offering an ADM course may accept students redirected from another website as long as the student is redirected to the webpage that clearly identifies the names and license numbers of the school and course provider offering the ADM. This information shall be visible before and during the student registration and course payment processes.

(3) Domain names. Each school offering an ADM must offer that ADM from a single domain.

(4) ADM identification. All ADMs presented over the Internet shall display the school name and school number assigned by the department as well as the course provider name and course provider number assigned by the department on the homepage and the registration page of the entity to which the student pays any monies, provides any personal information, and in which the student enrolls.

(g) Additional requirements for video programs.

(1) Delivery of the material. For ADMs delivered by the use of videotape, digital video disc (DVD), film, or similar media, the equipment and program materials may only be made available through a process that is approved by the department.

(2) Video requirement. In order to meet the video requirement of §84.505(a)(1)(B)(v), the video course shall include between 60 and 150 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 300 minutes of required instruction shall be video material that is relevant to one of the five substantive required topics and produced by the ADM owner, course owner, or course provider specifically for the ADM.

(A) A video ADM shall ask, at a minimum, at least one program validation question for each multimedia clip of more than 180 seconds at the end of each major segment (chapter) of the ADM.

(B) A video ADM shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 180 seconds presented during the ADM.

(h) Standards for ADMs using new technology. For ADMs delivered using technologies that have not been previously reviewed and approved by the department, the department may apply similar standards as appropriate and may also require additional standards. These standards shall be designed to ensure that the program can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(i) Modifications to the ADM. Except as provided by paragraph (1), a change to a previously approved ADM shall not be made without the prior approval of the department. The licensed course provider for the approved program on which the ADM is based shall ensure that any modification to the ADM is implemented by all schools endorsed to offer the ADM.

(1) A course provider may submit to the department a request for immediate implementation of a proposed change that is insignificant or that protects the interest of the consumer such that immediate implementation is warranted. The request shall include:

(A) a complete description of the proposed change;

(B) the reason for the change;

(C) the reason the requestor believes the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted; and

(D) an explanation of how the change will maintain the program or ADM in compliance with state law and the rules specified in this chapter.

(2) The department may request additional information regarding a proposed change from the course provider making a request under paragraph (1).

(3) The department will respond to any request made under paragraph (1), within five working days of receipt.

(A) If the department determines that the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted the requestor may immediately implement the change. The licensed course provider for the approved program on which the ADM is based shall ensure that the change is implemented by all schools endorsed to offer the ADM.

(B) If the department determines that the proposed change is neither insignificant nor protects the interest of the consumer such that immediate implementation is warranted, the department shall notify the requestor of that determination and the change may not be made unless the department approves the change following a complete review.

(4) A determination by the department to allow immediate implementation under paragraph (1), does not constitute final approval by the department of the change. The department reserves the right to conduct further review after the change is implemented and to grant or deny final approval based on whether the change complies with state law and rules specified in this chapter.

(5) If, following further review, a change in an ADM that has been immediately implemented pursuant to paragraph (1), is determined not to be in compliance with state law and rules specified in this chapter, the department:

(A) shall notify the course provider affected by the change of:

(i) the specific provisions of state law or rules with which the ADM change is not in compliance; and

(ii) a reasonable date by which the ADM must be brought into compliance;

(B) shall require the course provider to notify any school endorsed by the course provider of the finding;

(C) shall not, for the period between the implementation of the change and the date specified under subparagraph (A)(ii):

(i) seek any penalty relating to the non-compliance;
(ii) take any action to revoke or deny renewal of a license of a school or course provider based on the change; or

(iii) withdraw approval of a program or ADM based on the change; and

(D) is not required to specify the method or manner by which the course provider alters the ADM to come into compliance with state law and the rules in this chapter.

(6) If the department allows immediate implementation pursuant to paragraph (1) and later determines that the description of the change or the request was misleading, materially inaccurate, not substantially complete, or not made in good faith, paragraph (5)(C) does not apply.

(7) A course provider who immediately implements a change pursuant to paragraph (1) and fails to bring the ADM into compliance prior to the date allowed under paragraph (5)(A)(ii), may be determined to be in violation of state law or the rules in this chapter after that date.

(8) A course provider that immediately implements a change under paragraph (1), assumes the risk of final approval being denied and of being required to come into compliance with state law and the rules in this chapter prior to the date allowed under paragraph (5)(A)(ii), including bearing the cost of reversing the change or otherwise modifying the ADM to come into compliance with state law and the rules in this chapter.

(j) Termination of the school's operation. Upon termination, a school shall deliver any missing student data to the department within five days of termination.

(k) Renewal of ADM approval. The ADM approval must be renewed every even-numbered year.

(1) For approval, the course provider shall update all the statistical data and references to law with the latest available data.

(2) The department may alter the due date of the renewal documents by giving the approved ADM six months' notice. The department may alter the due date in order to ensure that the ADM is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor and technical assistance. With the exception of circumstances beyond the control of the school, the student shall have adequate access to both a licensed instructor and technical assistance (help desk) throughout the program such that the flow of instructional information is not delayed.

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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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

CENTERS, AND COLLEGES OR UNIVERSITIES

SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE

16 TAC §84.600

STATUTORY AUTHORITY

The rule is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

§84.600. Program of Organized Instruction.

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

(1) Core program. This program shall consist of at least 32 hours of classroom instruction; seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

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

(3) Classroom only program. This program shall consist of at least 32 hours of classroom instruction.

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

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

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

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

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

(5) The driver education classroom phase must have uniform beginning and ending dates. Students shall proceed in a uniform sequence. Students shall be enrolled and in class before the seventh hour of classroom instruction in a 32-hour program and the 12th hour of classroom instruction in 56-hour or semester-length programs.

(6) Self-study assignments occurring during regularly scheduled class periods shall not exceed 25 percent of the course and shall be presented to the entire class simultaneously.
The driver education course shall be completed within the timelines established by the superintendent, college or university chief school official, or ESC director. This shall not circumvent attendance or progress. Variances to the established timelines shall be determined by the superintendent, college or university chief school official, or ESC director and must be agreed to by the parent or legal guardian.

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

A student shall not receive credit for more than four hours of driver education training at a public school in one calendar day no matter what combination of training is provided, excluding makeup. Further, for each calendar day, a student shall be limited to a maximum of:

(A) two hours of classroom instruction;
(B) four hours of observation time;
(C) two hours of multicar range driving;
(D) three hours of simulation instruction; and
(E) one hour of behind-the-wheel instruction.

Driver education training verified by the parent is limited to one hour per day.

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

Module One: Traffic Laws. The student legally and responsibly performs reduced-risk driving practices in the Highway Transportation System (HTS) by:

(A) accepting driving as a privilege with responsibilities, obligations, and potential consequences; and
(B) applying knowledge and understanding of Texas traffic laws, including traffic control devices, right-of-way laws and law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature).

Module Two: Driver Preparation. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) employing pre-drive tasks;
(B) using and requiring passengers to use occupant protection and restraint systems, including the proper use of child passenger safety seat systems;
(C) using vehicle symbols and devices;
(D) employing starting tasks;
(E) performing vehicle operation and control tasks;
(F) performing post-drive tasks;
(G) using baseline and progress assessment tools to evaluate and improve behind-the-wheel skill level; and
(H) formulating a driving plan.

Module Three: Vehicle Movements. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) sustaining visual attention and communication;
(B) using reference points;
(C) safely operating a vehicle near oversized or overweight vehicles;
(D) managing vehicle balance; and
(E) executing vehicle maneuvers.

Module Four: Driver Readiness. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) employing legal and responsible driving practices; and
(B) limiting and managing fatigue and aggressive driving.

Module Five: Risk Management. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) predicting, analyzing, and minimizing risk factors, including the dangers of failing to yield the right-of-way to a motorcyclist and the need to share the road with motorcycles; and
(B) employing a space management system.

Module Six: Environmental Factors. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) identifying and analyzing driving environments; and
(B) minimizing environmental risk.

Module Seven: Distractions. The student legally and responsibly performs reduced-risk driving practices in the HTS by limiting and managing distractions, including the use of a wireless communication device that includes texting, and multi-task performances.

Module Eight: Alcohol and Other Drugs. The student legally and responsibly performs reduced-risk driving practices in the HTS by adopting zero-tolerance practices related to the use of alcohol.

[10] Module Ten: Vehicle Requirements. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

[(A) assessing and managing vehicle malfunctions;]
[(B) performing preventative maintenance; and]
[(C) planning trips.]


[(A) attending to the vehicle requirements by making wise consumer decisions regarding vehicle use and ownership;]
[(B) vehicle insurance;]
[(C) environmental protection and litter prevention;]
[(D) anatomical gifts; and]
[(E) recreational water safety.]

[12] Module Twelve: Personal Responsibilities. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

[(A) using the knowledge, skills, and experiences of the Driver Education and Traffic Safety Program;]
[(B) obtaining and using a driver license; and]
[(C) continuing the lifelong learning process of reduced-risk driving practices.]

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

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

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

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

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

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

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

2) Motion picture films, slides, videos, tape recordings, and other media that present concepts outlined in the instructional objectives may be used as part of the required instructional hours of the classroom instruction. Units scheduled to be instructed may also be conducted by guest speakers as part of the required hours of instruction. Together, these shall not exceed 640 minutes of the total classroom phase.

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

4) A copy of the current edition of the "Texas Driver Handbook" published by DPS shall be furnished to each student enrolled in the classroom phase of the driver education course.

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

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

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

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

(j) Colleges and universities that offer driver education to adults shall submit and receive written approval for the course from the department prior to implementation of the program. The request for approval must include a syllabus, list of instructors, samples of instructional records that will be used with the course, and information necessary for approval of the program. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §§403.101, 403.110, 403.301, 403.600, 403.800

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §403.101 (Open Records), §403.110 (Petition for Adoption of Rule Changes), §403.301 (Historically Underutilized Businesses), §403.600 (Complaint Review Process), and §403.800 (Savings Incentive Program). The proposed rule amendments are a result of the Commission’s recent rule review conducted in accordance with Texas Government Code §2001.039.

The proposed amendments to §403.101 (Open Records) make minor, non-substantive changes to terminology from "open records" to "public information".

The proposed amendments to §403.110 (Petition for Adoption of Rule Changes) add language regarding the residency requirement for the petitioner as amended by the 84th Legislature, R.S., Ch. 343 (H.B. 763), Sec. 1, effective June 9, 2015.

The proposed amendments to §403.301 (Historically Underutilized Businesses) make minor, non-substantive changes to update a citation to the Texas Comptroller’s administrative rules.

The proposed amendments to §403.600 (Complaint Review Process) address the availability of a dedicated voicemail system for the reporting and investigation of complaints without the requisite complaint information when the facts involve a significant risk to the public or to the integrity of lottery or bingo games.

The proposed amendments to §403.800 (Savings Incentive Program) will address the statement that the Commission has no appropriated undedicated general revenue. The Charitable Bingo Operations Division currently is funded by general revenue. The Charitable Bingo program is supported only as required by bingo fees and the Commission does not foresee retaining any general revenue savings.

Finally, these amendments also include non-substantive stylistic changes including "agency" to "commission" and "Commission" to "Commission." Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

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

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

3. Implementation of the proposed rule amendments does not require an increase or decrease in future legislative appropriations to the Commission.

4. The proposed rule amendments do not require an increase or decrease in fees paid to the Commission.

5. The proposed rule amendments do not create a new regulation.

6. The proposed amendments do not expand or limit an existing regulation.

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

8. The proposed rule amendments do not positively or adversely affect this state’s economy.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Deanne Rienstra, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the Texas Register in order to be considered.

These amendments are proposed under the authority of Texas Government Code §552.230, which authorizes a state agency to promulgate reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and without delay; Texas Government Code §2001.004(1), which requires state agencies to adopt rules of practice; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission’s jurisdiction.

This proposal is intended to implement Texas Government Code, Chapters 466, 467, 552, 2001, 2108, and 2161.

§403.101. Public Information. [Open Records.]

(a) Charges for Copies of Public Records. The charges to any person requesting reproductions of any readily available record of the Texas Lottery Commission will be the charges established by rule by the Office of the Attorney General in accordance with the Texas Government Code Chapter 552, Subchapter F.

(1) Pursuant to Texas Government Code §552.275, the commission [Commission] has established a limit of 36 hours per fiscal year as the maximum amount of time [agency] personnel...
are required to spend producing public information for inspection or
duplication by a requestor, or providing copies of public information
to a requestor, without the commission [agency] recovering costs
attributable to that personnel time.

(2) The commission [agency] will provide each requestor
a written statement of the amount of personnel time spent complying
with each request for public information from the requestor and the
cumulative amount of time spent complying with requests for public
information from the requestor during the fiscal year. Subject to the
provisions of §552.275 when the 36-hour limit is met or exceeded, the
commission [agency] will require a requestor to pay costs attributable
to cost of materials, overhead, and personnel time necessary to comply
with the request.

(b) The commission [agency] may furnish public records with-
out charge or at a reduced charge if it [the agency] determines that
waiver or reduction of the fees is in the public interest.

(c) Public Information [Open Records] Requests. The follow-
ing guidelines apply to requests for records under the Public Informa-
tion Act, Texas Government Code, Chapter 552.

(1) Requests must be in writing and reasonably identify the
records requested. All requests must be submitted to the commission's
[agency's] Public Information Coordinator by one of the methods indi-
cated on the commission's [agency's] website.

(2) Records access will be by appointment only.

(3) Records access is available only during the regular
business hours of the commission [agency].

(4) Generally, unless confidential information is involved,
review may be by physical access or by duplication, at the requestor's
option. Any person, however, whose request would be unduly disrupt-
ive to the ongoing business of the office may be denied physical access
and will only be provided the option of receiving copies.

(5) When the safety of any public record is at issue, phis-
ical access may be denied, and the records will be provided by duplica-
tion as previously described.

(6) Confidential files will not be made available for inspection
or for duplication except under certain circumstances, e.g., court order.

(7) All public information [open records] requests appoint-
ments will be referred to the commission's [agency's] Public Informa-
tion Coordinator before complying with a request.

§403.110. Petition for Adoption of Rule Changes.

(a) Any interested person or agency may petition the com-
mission [Commission] requesting adoption of a rule. Petitions
shall be in writing, should be filed with the general counsel, and shall
comply with the following requirements.

(1) Each petition must state the name and address of the
petitioner.

(2) Each petition shall include:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner


(3) For the purposes of this section, an interested person
must be:

(A) a resident of this state;

(B) a business entity located in this state;

(C) a governmental subdivision located in this state; or

(D) a public or private organization located in this state
that is not a state agency.

(b) The general counsel or the general counsel's designee shall
review all petitions for compliance with this section. The petitioner
shall have the right to file a corrected petition which complies with the
requirements of this section.

(c) Upon receipt of a petition which complies with the require-
ments of this section, the general counsel or the general counsel's de-
signee will consult with the persons in the commission [Commission]
who are responsible for the area with which the rule is concerned to
evaluate the merits of the proposal. Not later than the 60th day af-
after the date of receipt of a petition, the general counsel or the general
counsel's designee shall present the petition to the commission with a
recommendation on whether a rulemaking proceeding should be initi-
ated.

(d) The commission shall deny the petition or initiate rulemak-
ing proceedings in accordance with the Administrative Procedure Act
(APA) and these rules. The commission may modify any proposed rule
to ensure that it conforms to the format of commission rules, adequately
addresses the perceived problem or other subject matter, and conforms
to the filing requirements of the Texas Register.

§403.301. Historically Underutilized Businesses.
The Texas Lottery Commission adopts by reference the rules admin-
istered by the Office of the Comptroller of Public Accounts regarding
historically underutilized businesses, which are set forth in the Texas
Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D, Division
1, §§20.281 - 20.298.


(a) Purpose. This section implements §467.111 of the Texas
Government Code, which requires the commission [Texas Lot-
tery Commission (Commission)] to maintain a system to promptly
and efficiently act on each complaint filed with the commission
[Commission] and by rule adopt and publish procedures governing the
entire complaint process from submission to disposition. The Lottery
Operations Division shall manage the process for all complaints
relating to any commission [Commission] activities, regardless of the
affected commission [Commission] division or subject matter. The
Lottery Operations Division may adopt written procedures to further
implement the requirements of §467.111 and this section.

(b) Complaint Intake. Complaints must be submitted by mail,
email, voice mail on a dedicated voice mailbox, in person, or fax.

(1) All complaints shall be monitored through the com-
plaint tracking system and all jurisdictional complaints will be tracked,
from initial intake or discovery of the complaint to final disposition.
A jurisdictional complaint is a complaint which alleges a violation of
the State Lottery Act (Government Code, Chapter 466), the Bingo Enabling Act (Occupations Code, Chapter 2001), commission
[Commission] rules, or any other applicable provisions of the Texas
Government Code or the Texas Administrative Code under which the
commission [Commission] has the authority to interpret and apply the
law.

(2) The commission [Commission] shall make avail-
able information on how to file a complaint on the commission's
3) Commission staff shall maintain and monitor a toll-free telephone number during normal working hours to assist complainants. Commission staff may also maintain and monitor a dedicated voice mailbox to assist with complaint intake.

(c) Complaint Processing. The commission [Commission] requires specific information to process and investigate a complaint. Commission staff will review all complaints to ensure they are jurisdictional [in writing] and include the complainant’s name, mailing address, and contact phone number. If a complaint is received without all necessary information, the staff will make reasonable efforts to contact the complainant and obtain the necessary information. Non-jurisdictional complaints will be entered in the complaint tracking system as contacts along with an explanation why the complaint is non-jurisdictional, but will not be referred for investigation or follow-up. Staff will notify the complainant verbally or in writing that the complaint is non-jurisdictional.

(d) If the complaint is jurisdictional and contains the required information, the complaint will be entered in the complaint tracking system and referred to the appropriate commission [Commission] division or department for investigation or follow-up. Commission staff will provide an acknowledgement notification verbally or in writing to the complainant after the complaint is processed. Commission staff will provide periodic ongoing complaint status updates verbally or in writing. A closing notification will be provided to the complainant verbally or in writing when the complaint is closed.

(e) Complaint Analysis and Reports. The commission [Commission] staff will maintain a comprehensive database of complaints in order to identify trends or issues related to violations of state laws under the commission’s [Commission’s] jurisdiction.

1) At least once each biennium, designated commission [Commission] staff will generate a trend analysis report. The report will:

(A) categorize complaints based on the type of violation alleged;

(B) track each complaint from submission to disposition;

(C) evaluate the effectiveness of the [of the] commission’s [Commission’s] enforcement process; and

(D) include any additional information the commission [Commission] considers necessary.

2) The trend analysis report shall be made available to the public.

(f) Americans with Disabilities Act Complaints. Notwithstanding the foregoing, all complaints to the commission [Commission] regarding Americans with Disabilities Act violations are governed by the provisions of §401.407 of this title (relating to Complaints Relating to Non-accessibility), and not this section.

§403.800. Savings Incentive Program.

(a) Purpose. This section implements Chapter 2108 of the Texas Government Code, which requires state agencies to provide notice to the comptroller of savings realized from appropriated undedicated general revenue and to retain a portion of the amounts verified by the comptroller. The Charitable Bingo Operations Division is funded by general revenue. However, the Bingo program is supported by fees and the commission does not foresee retaining any general revenue savings at this time. [Currently, the Commission has no appropriated undedicated general revenue and therefore may not retain any savings.] However, consistent with the statute, this section will govern any potential future savings realized from appropriated undedicated general revenue.

(b) Retention of Funds. The commission will retain one-half of the amount of savings verified by the comptroller.

(c) Use of Funds. Of the savings retained by the commission [Commission], one-half:

1) must be used to make additional principal payments for general obligation bonds issued by the commission [Commission] or on behalf of the commission [Commission] by the Texas Public Finance Authority; or

2) if there are no outstanding general obligation bonds issued by the commission [Commission] or on behalf of the commission [Commission] by the Texas Public Finance Authority, may be used to provide bonuses, distributed equally, to each commission [Commission] employee who:

(A) is a current full-time equivalent employee of the commission [Commission];

(B) worked for the commission [Commission] as a full-time equivalent employee for the entire fiscal year in which the savings were realized; and

(C) is directly responsible for or worked in a department, office, or other division within the commission [Commission] that is responsible for the savings realized.

3) If the amount of savings verified by the comptroller, expressed as a percentage of the total amount of undedicated general revenue derived from nonfederal sources appropriated to the commission [Commission] for the fiscal year in which the savings were realized, is:

(A) less than three percent, a bonus described by subsection (c)(2) of this section may not exceed $250;

(B) at least three percent but less than five percent, a bonus described by subsection (c)(2) of this section may not exceed $500;

(C) at least five percent but less than 10 percent, a bonus described by subsection (c)(2) of this section may not exceed $750; and

(D) 10 percent or more, a bonus described by subsection (c)(2) of this section may not exceed $1,000.

4) The commission [Commission] may not provide a bonus under subsection (c)(2) of this section to a [an] commission employee [of the Commission] who serves in a director-level position, including the executive director.

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

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Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 23, 2021
For further information, please call: (512) 344-5392

POPROSED RULES April 23, 2021 46 TexReg 2679
TITLE 19. EDUCATION
PART 2. TEXAS EDUCATION AGENCY
CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1007
The Texas Education Agency (TEA) proposes new §61.1007, concerning the definition of tax levy and tax collection. The proposed new rule would reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, that transferred rulemaking authority related to the definition of tax levy and tax collection for the Foundation School Program (FSP) from the State Board of Education (SBOE) to the commissioner.

BACKGROUND INFORMATION AND JUSTIFICATION: Rulemaking authority for the definition of tax levy and tax collection previously resided with the SBOE under Texas Education Code (TEC), §42.004. The SBOE adopted 19 TAC §105.1, Rules for the Definition of Tax Levy and Tax Collection, effective September 1, 1996, and last amended the rule effective October 15, 2017.

HB 3, 86th Texas Legislature, 2019, renumbered TEC, §42.004, to §48.004. The renumbered statute was amended to transfer rulemaking authority from the SBOE to the commissioner of education.

TEC, §48.004, directs the commissioner to adopt rules and take action as necessary to implement and administer the FSP. Proposed new §61.1007 would implement TEC, §48.004, by defining tax levy and tax collection for purposes of determining state aid and excess local revenue under TEC, Chapters 46 and 48. The proposed new rule is substantially similar to existing §105.1 with updates that would reflect renumbered statute and align with current school finance formulas as amended by HB 3.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, 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 beyond what the authorizing statute requires.

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 create a new regulation by establishing the definition of tax levy and tax collection under the authority of the commissioner.

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 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: Mr. Lopez 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 updated statutory references and implementation of legislation that transferred rulemaking authority to the commissioner. 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 April 23, 2021, and ends May 24, 2021. 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 April 23, 2021. 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 new section is proposed under Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019, which authorizes the commissioner of education to adopt rules as necessary to implement and administer the Foundation School Program.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019.

§61.1007. Rules for the Definition of Tax Levy and Tax Collection.
(a) General provisions. For the purpose of determining state aid and excess local revenue under the Texas Education Code (TEC), Chapter 46 and Chapter 48, calculations that include tax collections as a data element shall reference subsection (b) of this section.

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

(1) Total levy. The sum of the maintenance and operation and debt service levies generated by applying a school district’s adopted tax rates to its locally assessed valuation of property for the current tax year.

(2) Tax collection.
(A) For school districts with a fiscal year that begins on July 1, total taxes collected between July 1 and June 30 for the current and all prior years' levies.

(B) For school districts with a fiscal year that begins on September 1, total taxes collected between September 1 and August 31 for the current and all prior years' levies.

(C) For a school district that has been awarded a property value adjustment for a major taxpayer protest pursuant to TEC, §48.267, the district may petition the commissioner of education to attribute taxes that had been withheld due to the protest of valuation to the year in which the taxes were originally levied.

(3) Types of tax collections.

(A) Maintenance and operations taxes are those taxes collected during the fiscal year that are associated with the levy of local maintenance and operations tax rates, including current and delinquent taxes and any delinquent taxes related to former county education districts, but not including penalties and interest that accrue on delinquent maintenance and operations tax levies or the tax credits authorized by the Texas Tax Code, Chapter 313.

(B) Interest and sinking fund taxes are those associated with the levy of local interest and sinking fund taxes, not including penalties and interest that accrue on delinquent interest and sinking fund levies.

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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For further information, please call: (512) 475-1497

CHAPTER 153. SCHOOL DISTRICT PERSONNEL
SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT
19 TAC §153.1011

The Texas Education Agency (TEA) proposes an amendment to §153.1011, concerning the Mentor Program Allotment. The proposed amendment would update provisions related to the application process, consequences for failure to comply with statute, and the frequency of data collection.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 153.1011 describes the requirements for the Mentor Program Allotment, an optional, grant-funded program to support eligible districts that implement a mentorship program in accordance with Texas Education Code (TEC), §21.458. The allotment is authorized under TEC, §48.114.

The proposed amendment to §153.1011(c) would remove language specifying that an application and approval process will occur each year. This change would allow for greater flexibility in the frequency and cadence of the application and approval process, which would allow for district mentoring programs to be implemented over multiple consecutive years.

The proposed amendment to §153.1011(d)(2) would add specific consequences for districts that fail to comply with statute by stating that TEA may rescind eligibility of a district's current or future mentor program allotment funding. This change would implement the commissioner's authority to require districts to comply with authorizing statute and rule, including the uses of funding outlined in TEC, §48.114.

The proposed amendment to §153.1011(f) would allow for an increased frequency with which information may be requested from TEA yearly. This change would allow for greater flexibility in the collection of periodic activity/progress reports, which would allow for district mentoring programs to be implemented over multiple consecutive years.

FISCAL IMPACT: Tim Regal, associate commissioner for instructional 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 expand an existing regulation by specifying that failure to comply with program requirements may result in rescission of a district's current funding and allow an increase in the number of times TEA may request activity/progress reports.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Regal has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing school districts with the require-
ments and process to apply for funding from the Mentor Program Allotment. 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 new 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 April 23, 2021, and ends May 24, 2021. 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 April 23, 2021. 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 amendment is proposed under Texas Education Code (TEC), §21.458, which allows districts to assign mentor teachers to work with new teachers and provides requirements around mentor program design and delivery. TEC, §21.458(b), requires the commissioner to adopt rules necessary to administer the section; and TEC, §48.114, which establishes a mentor program allotment to be used for funding eligible district mentor training programs; outlines permissible use of mentor program allotment funds, which include mentor teacher stipends, scheduled release time for mentoring activities, and mentor support through providers of mentor training; and requires the commissioner to adopt a formula to determine the amount to which eligible school districts are entitled.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.458 and §48.114.

§153.1011. Mentor Program Allotment.

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

(1) Beginning teacher--A classroom teacher in Texas who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned.

(2) Classroom teacher--An educator who is employed by a school district in Texas 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. The term does not include a teacher's aide or a full-time administrator.

(A) For a school district, a classroom teacher, as defined in this paragraph, must hold an appropriate certificate issued by the State Board for Educator Certification and must meet the specifications regarding instructional duties defined in this paragraph.

(B) For an open-enrollment charter school, a classroom teacher is not required to be certified but must meet the qualifications of the employing charter school and the specifications regarding instructional duties defined in this paragraph.

(3) Mentor teacher--A classroom teacher in Texas who provides effective support to help beginning teachers successfully transition into the teaching assignment.

(4) School district--For the purposes of this section, the definition of school district includes open-enrollment charter schools.

(5) 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 and is responsible for evaluating student achievement and assigning grades.

(b) Program requirements. In order for a district mentor program to receive funds through the mentor program allotment, as described in Texas Education Code (TEC), §48.114, the program must be approved by the commissioner of education using the application and approval process described in subsection (c) of this section. To be approved by the commissioner, district mentor programs must comply with TEC, §21.458, and commit to meet the following requirements.

(1) Mentor selection. To qualify as a mentor teacher, a classroom teacher must:

(A) complete a research-based mentor and induction training program approved by the commissioner;

(B) complete a mentor training program provided by the district;

(C) have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance. Districts may use the master, exemplary, or recognized designations under TEC, §21.3521, to fulfill this requirement; and

(D) demonstrate interpersonal skills, instructional effectiveness, and leadership skills.

(2) Mentor assignment. School districts must agree to assign no more than:

(A) two beginning teachers to a mentor who serves as a teacher of record for, on average, six hours per instructional day; or

(B) four beginning teachers to a mentor who serves as a teacher of record for, on average, less than six hours per instructional day.

(3) District mentor training program. A school district must:

(A) provide training to mentor teachers and any appropriate district and campus employees, such as principals, assistant principals, and instructional coaches, who work with a beginning teacher or supervise a beginning teacher;

(B) ensure that mentor teachers and any appropriate district and campus employees are trained before the beginning of the school year;

(C) provide supplemental training that includes best mentorship practices to mentor teachers and any appropriate district and campus employees throughout the school year, minimally once per semester; and

(D) provide training for a mentor assigned to a beginning teacher who is hired after the beginning of the school year by the 45th day of employment of the beginning teacher.

(4) District roles and responsibilities. A school district must designate a specific time during the regularly contracted school day for meetings between mentor teachers and the beginning teachers they mentor, which must abide by the mentor and beginning teachers' entitled planning and preparation requirements in TEC, §21.404, and the provisions of paragraph (5)(A) of this subsection.
(5) Meetings between mentors and beginning teachers. A mentor teacher must:

(A) meet with each beginning teacher assigned to the mentor not less than 12 hours each semester, with observations of the mentor teacher by the beginning teacher being mentored or observations of the beginning teacher being mentored by the mentor teacher counting toward the 12 hours each semester; and

(B) address the following topics in mentoring sessions with the beginning teacher being mentored:

(i) orientation to the context, policies, and practices of the school district, including:

(I) campus-wide student culture routines;

(II) district and campus teacher evaluation systems;

(III) campus curriculum and curricular resources, including formative and summative assessments; and

(IV) campus policies and practices related to lesson planning;

(ii) data-driven instructional practices;

(iii) specific instructional coaching cycles, including coaching regarding conferences between parents and the beginning teacher;

(iv) professional development; and

(v) professional expectations.

(c) Application approval process. The Texas Education Agency (TEA) [Each year, TEA] will provide an application and approval process for school districts to apply for mentor program allotment funding. Funding will be limited based on availability of funds, and, annually, the commissioner shall adopt a formula to determine the amount to which approved districts are entitled. The application shall address the requirements of TEC, §21.458, and include:

(1) the timeline for application and approval;

(2) approval criteria, including the minimum requirements necessary for an application to be eligible for approval; and

(3) criteria used to determine which districts would be eligible for funding.

(d) Ongoing verification of compliance with program requirements.

(1) Each year, participating districts will be required to submit or participate in a verification of compliance with program requirements through a process to be described in the application form. The verification of compliance will include:

(A) an annual compliance report, submitted by the district, attesting to compliance with authorizing statute and commissioner rule. The report is to include the number of beginning teachers for whom the district used funds received under TEC, §48.114; and

(B) an annual survey of the district's beginning teachers and mentor teachers for whom funds were used under TEC, §48.114. The survey will be used to gather data on program implementation and teacher perceptions.

(2) Failure to comply with TEC, §21.458, and this section after receiving an allotment may result in TEA rescinding eligibility of a district's current [negative impact on a district's] future mentor program allotment funding.

(e) Allowable expenditures. Mentor program allotment funds may only be used for the following:

(1) mentor teacher stipends;

(2) release time for mentor teachers and beginning teachers limited to activities in accordance with this section; and

(3) mentoring support through providers of mentor training.

(f) District mentor program review. School districts awarded mentor program allotment funds must agree to submit all information requested by TEA through periodic activity/progress reports, which will occur at least [not more than] once per year [yearly]. Reports will be due no later than 45 calendar days after receipt of the information request and must contain all requested information in the format prescribed by the commissioner.

(g) Final decisions. Commissioner decisions regarding eligibility for mentor program allotment funds are final and appeals to the commissioner regarding such decisions will not be considered.

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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**TITLE 25. HEALTH SERVICES**

**PART 7. TEXAS MEDICAL DISCLOSURE PANEL**

**CHAPTER 601. INFORMED CONSENT**

25 TAC §601.2, §601.3

The Texas Medical Disclosure Panel (Panel) proposes amendments to §601.2, concerning Procedures Requiring Full Disclosure of Specific Risks and Hazards—List A and to §601.3, concerning Procedures Requiring No Disclosure of Specific Risks and Hazards—List B.

**BACKGROUND AND PURPOSE**

These amendments are proposed in accordance with Texas Civil Practice and Remedies Code §74.102, which requires the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. Section 601.2 contains the List A procedures requiring disclosure of specific risks and hazards to patients before being undertaken; §601.3 contains the List B procedures for which no disclosure of specific risks and hazards is required.

**SECTION-BY-SECTION SUMMARY**

Proposed amendments to §601.2 modify the list of procedures and risks and hazards in subsection (b) regarding the cardiovas-
ciliar system and subsection (o) regarding respiratory system treatments and procedures.

Proposed amendment to §601.3 removes one procedure in subsection (o) regarding respiratory system from the list of procedures requiring no disclosure of specific risks and hazards because that procedure has been moved from List B to List A.

FISCAL NOTE

Dr. Noah Appel, Panel Chairman, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal impact to state or local governments as a result of administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

The Panel has determined that during the first five years that the sections will be in effect:

(1) the proposed rules will not create or eliminate a government program;
(2) implementation of the proposed rules will not affect the number of employee positions;
(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the agency;
(4) the proposed rules will not affect fees paid to the agency;
(5) the proposed rules will not create new rules;
(6) the proposed rules will not expand existing rules;
(7) the proposed rules will not change the number of individuals subject to the rules; and
(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Chairman Appel has also determined that there will be no anticipated economic costs to small businesses, micro-businesses, or rural communities required to comply with the amendments as proposed because physicians and health care providers already have an obligation to disclose risks and hazards related to medical care and surgical procedures. The amendments will not add additional costs.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There will be no economic costs to persons required to comply with the sections as proposed, and there will be no impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; and do not impose a cost on regulated persons.

PUBLIC BENEFIT

In addition, Chairman Appel also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering these amended disclosure rules will be that patients are better informed about the risks and hazards related to medical treatments and surgical procedures they are considering.

REGULATORY ANALYSIS

The Panel has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The Panel has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Kayla Cates-Brown, Program Manager II, Advisory Committee Coordination Office, Chief Policy and Rules, Health and Human Services Commission, 701 West 51st Street, Suite 216A, Austin, Texas, 78751; Mail Code 0223, P.O. Box 13247, Austin, Texas, 78711; fax (512) 206-3984; office (512) 438-2889, or by email to HHSC_TMDP@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized under Texas Civil Practice and Remedies Code §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the form(s) for the treatments and procedures which do require disclosure.

The amendments implement Texas Civil Practice and Remedies Code Chapter 74, Subchapter C.

§601.2. Procedures Requiring Full Disclosure of Specific Risks and Hazards—List A.

(a) (No change.)

(b) Cardiovascular system.

(1) Cardiac.

(A) [Surgical.]

(i) Coronary artery bypass[. valve replacement].
(ii) [I] Acute myocardial infarction (heart attack).
(iii) [I] Hemorrhage (severe bleeding).
(iv) [I] Kidney failure.
(iv) [IV] Stroke.
(v) [IV] Sudden death.
(vi) [IV] Infection of chest wall/chest cavity.

{[III] Valve related delayed onset infection.}

(B) Heart valve replacement by open surgery, structural heart surgery:

(i) Acute myocardial infarction (heart attack).
(ii) Hemorrhage (severe bleeding).
(iii) Kidney failure.
(iv) Stroke.
(v) Sudden death.
(vi) Infection of chest wall/chest cavity.
(vii) Valve related delayed onset infection.
(viii) Malfunction of new valve.
(ix) Persistence of problem for which surgery was performed, including need for repeat surgery.

(C) [IV] Heart transplant.
(i) [IV] Infection.
(ii) [III] Rejection.
(iii) [III] Death.

(D) [II] Non-Surgical—Coronary angiography (Injection of contrast material into arteries of the heart), coronary angioplasty (opening narrowing in heart vessel), and coronary stent insertion (placement of permanent tube into heart blood vessel to open it), pacemaker insertion, AICD insertion, and cardioversion.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery [All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening [Acute myocardial infarction (heart attack)].

(iii) Hemorrhage (severe bleeding) [Rupture of myocardium (hole in wall of heart)].

(iv) Myocardial infarction (heart attack) [Life threatening arrhythmia (irregular heart rhythm)].

(v) Worsening of the condition for which the procedure is being done [Need for emergency open heart surgery].

(vi) Sudden death.

(vii) Stroke [Device related delayed onset infection (infection related to the device that happens sometime after surgery)].

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(E) Percutaneous (through the skin) or minimally invasive heart valve insertion/replacement.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Malfunction of new valve.

(xi) Need for permanent pacemaker implantation.

(F) Left atrial appendage closure (closing of small pouch on left side of heart) - percutaneous (through the skin) or minimally invasive:

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Device embolization (device moves from intended location).

(xi) Pericardial effusion (development of fluid in the sack around the heart) and cardiac tamponade (fluid around heart causing too much pressure for heart to pump properly).

(G) Patent foramen ovale/atrial septal defect/ventricular septal defect closure by percutaneous (through the skin) or minimally invasive procedure (closing of abnormal hole between the chambers of the heart):

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.
(vi) Sudden death.
(vii) Stroke.
(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).
(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.
(x) Atrial fibrillation (irregular heart rhythm).
(xi) Pulmonary embolus (development of blood clot that travels to blood vessels in lungs).
(xii) Device embolization (device moves from where it is placed).
(xiii) Cardiac perforation (creation of hole in wall of heart).

(CE) Diagnostic.

(4) Cardiac catheterization.

(ii) All associated risks as listed under paragraph (2)(B) of this subsection.

(III) Acute myocardial infarction (heart attack).

(iii) Contrast nephropathy (injury to kidney function due to use of contrast material during procedure).

(II) Heart arrhythmias (irregular heart rhythm), possibly life threatening.

(II) Need for emergency open heart surgery.

(H) (iii) Electrophysiology (Electrophysiologic) studies (exams of heart rhythm), arrhythmia ablation (procedure to control or stop abnormal heart rhythms).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Rupture of myocardium/cardiac perforation (hole in wall of heart).

(xi) Cause or worsening of arrhythmia (damage to heart electrical system causing abnormal heart rhythm), possibly requiring permanent pacemaker implantation, possibly life threatening.

(xii) Pulmonary vein stenosis (narrowing of blood vessel going from lung to heart).

(IV) Cardiac perforation.

(IV) Life threatening arrhythmias.

(III) Injury to vessels that may require immediate surgical intervention.

(I) Pacemaker insertion, AICD insertion (implanted device to shock the heart out of an abnormal rhythm).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Rupture of myocardium/cardiac perforation (hole in wall of heart).

(xi) Cause or worsening of arrhythmia (damage to heart electrical system causing abnormal heart rhythm), possibly requiring permanent pacemaker implantation, possibly life threatening.

(xii) Device related delayed onset infection (infection related to the device that happens at some time after surgery).

(J) Electrical cardioversion (shocking the heart out of an abnormal rhythm).

(i) Heart arrhythmias (abnormal heart rhythm), possibly life threatening.

(ii) Skin burns on chest.

(K) (iii) Stress testing. [–]

(i) Acute myocardial infarction (heart attack).

(ii) Heart arrhythmias (abnormal heart rhythm), possibly life threatening.

(L) (iv) Transesophageal echocardiography[–] (ultrasound exam of the heart from inside the throat).

(i) Sore throat.

(ii) Vocal cord damage.

(iii) Esophageal perforation (hole or tear in tube from mouth to stomach.

(M) Circulatory assist devices (devices to help heart pump blood).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack)
(v) Worsening of the condition for which the procedure is being done.
(vi) Sudden death.
(vii) Stroke.
(viii) Contrast nephropathy or other kidney injury (kidney damage due to the contrast agent used during the procedure or procedure itself).
(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.
(x) Hemorrhage (severe bleeding) possibly leading to sudden death.
(xi) Hemolysis (blood cells get broken apart).
(xii) Right heart failure (poor functioning of the side of heart not assisted by device).
(xiii) Acquired von Willebrand syndrome (platelets do not work).
(xiv) Arrhythmia (irregular or abnormal heart rhythm).
(xv) Cardiac or vascular injury or perforation (hole in heart or blood vessel).
(xvi) Limb ischemia (lack of blood flow or oxygen to limb that device placed through).
(xvii) Device migration or malfunction.
(xviii) Exposure of device/wound break down with need for surgery to cover/reimplant.
(N) Extracorporeal Membrane Oxygenation (ECMO).
(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.
(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.
(iii) Hemorrhage (severe bleeding).
(iv) Myocardial infarction (heart attack).
(v) Worsening of the condition for which the procedure is being done.
(vi) Sudden death.
(vii) Stroke.
(viii) Contrast nephropathy or other kidney injury (kidney damage due to the contrast agent used during the procedure or procedure itself).
(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.
(x) Thrombocytopenia (low platelets) or other coagulopathy (blood vessel or heart).
(xi) Vascular or cardiac perforation (hole in blood vessel or heart).
(xii) Seizure.
(xiii) Device migration or malfunction.
(xiv) Ischemia to limb (lack of blood flow or oxygen to limb that device placed through).
(xv) Thromboembolism (blood clots in blood vessels or heart and possibly traveling to blood vessels in lungs).
(2) Vascular.
(A) Open surgical repair of aortic, subclavian, [and] iliac, or other artery aneurysms or occlusions, arterial or venous bypass or other vascular surgery [and renal artery bypass].
(i) Hemorrhage (severe bleeding).
(ii) Paraplegia (unable to move limbs) (for surgery involving the aorta or other blood vessels to the spine).
(iii) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part) [Kidney damage].
(iv) Worsening of the condition for which the procedure is being done.
(v) Stroke (for surgery involving blood vessels supplying the neck or head).
(vi) Kidney damage.
(vii) [Acute myocardial infarction (heart attack).]
(viii) [Infection of graft (material used to repair blood vessel).]
(B) Angiography (inclusive of aortography, arteriography, venography) - Injection of contrast material into blood vessels.
(i) Injury to or occlusion (blocking) of artery which may require immediate surgery or other intervention.
(ii) Hemorrhage (severe bleeding).
(iii) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part).
(iv) Worsening of the condition for which the procedure is being done.
(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).
(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).
(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).
(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).
(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.
(C) Angioplasty (intravascular dilatation technique).
(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention [All associated risks as listed under paragraph (2)(B) of this subsection].
(ii) Hemorrhage (severe bleeding).
(iii) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part).
(iv) Worsening of the condition for which the procedure is being done.
(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Failure of procedure or injury to blood vessel requiring stent (small, permanent tube placed in blood vessel to keep it open) placement or open surgery.

(D) Endovascular stenting (placement of permanent tube into blood vessel to open it) of any portion of the aorta, iliac or carotid artery or other (peripheral) arteries or veins.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention [All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Hemorrhage (severe bleeding) [Change in procedure to open surgical procedure].

(iii) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part)[Failure to place stent/endothelial graft (stent with fabric covering it)].

(iv) Worsening of the condition for which the procedure is being done [Stent migration (stent moves from location in which it was placed)].

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head)[Vessel occlusion (blocking)].

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain)[Impotence (difficulty with or inability to obtain penile erection) (for abdominal aorta and iliac artery procedures)].

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Failure of procedure or injury to blood vessel requiring stent (small, permanent tube placed in blood vessel to keep it open) placement or open surgery.

(xi) Change in procedure to open surgical procedure.

(xii) Failure to place stent/endoluminal graft (stent with fabric covering it).

(xiii) Stent migration (stent moves from location in which it was placed).

(xiv) Impotence (difficulty with or inability to obtain penile erection) (for abdominal aorta and iliac artery procedures).

(E) Vascular thrombolysis (removal or dissolving of blood clots) - percutaneous (through the skin) (mechanical or chemical).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention [All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Hemorrhage (severe bleeding) [Increased risk of bleeding at or away from site of treatment (when using medications to dissolve clots).

(iii) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part)[For arterial procedures: distal embolus (fragments of blood clot may travel and block other blood vessels with possible injury to the supplied tissue)].

(iv) Worsening of the condition for which the procedure is being done [For venous procedures: pulmonary embolus (fragments of blood clot may travel to the blood vessels in the lungs and cause breathing problems or if severe could be life threatening)].

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head)[Kidney injury or failure which may be temporary or permanent (for procedures using certain mechanical thrombectomy devices)].

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain)[Need for emergency surgery].

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Kidney injury or failure which may be temporary or permanent (for procedures using certain mechanical thrombectomy devices).

(x) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(xi) Increased risk of bleeding at or away from site of treatment (when using medications to dissolve clots).

(xii) For arterial procedures: distal embolus (fragments of blood clot may travel and block other blood vessels with possible injury to the supplied tissue).

(xiii) For venous procedures: pulmonary embolus (fragments of blood clot may travel to the blood vessels in the lungs and cause breathing problems or if severe could be life threatening).

(xiv) Need for emergency surgery.

(F) Angiography with occlusion techniques (including embolization and sclerosis) - therapeutic.

(i) For all embolizations/sclerosis: [embolizations.]

(I) Injury to or occlusion (blocking) of blood vessel other than the one intended which may require immediate surgery or other intervention. [Angiography risks (inclusive of aortography, arteriography, venography) — injection of contrast material into blood vessels.]

[-(a—)] Unintended injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention:

(II) [(-b—)] Hemorrhage (severe bleeding).

(III) [(-c—)] Damage to parts of the body supplied or drained by the vessel [by the artery] with resulting loss of use or amputation (removal of body part).
(IV) [مكان] Worsening of the condition for which the procedure is being done.

(V) [مكان] Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(VI) [مكان] Unintended thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(VII) [مكان] Loss or injury to body parts with potential need for surgery, including death of overlying skin for sclerotherapy/treatment of superficial lesions/vessels and nerve injury with associated pain, numbness or tingling or paralysis (inability to move).

(VIII) [مكان] Infection in the form of abscess (infected fluid collection) or sepsis (infection of blood stream).

(IX) [مكان] Nontarget embolization (blocking of blood vessels other than those intended) which can result in injury to tissues supplied by those vessels.

(ii) For procedures involving the thoracic aorta and/or vessels supplying the brain, spinal cord, head, neck or arms, these risks in addition to those under clause (i) of this subparagraph:

(I) Stroke.

(II) Seizure.

(III) Paralysis (inability to move).

(IV) Inflammation or other injury of nerves (for procedures involving blood vessels supplying the spine).

(V) For studies of the blood vessels of the brain: contrast-related, temporary blindness or memory loss.

(iii) For female pelvic arterial embolizations including uterine fibroid embolization, these risks in addition to those under clause (i) of this subparagraph:

(I) Premature menopause with resulting sterility.

(II) Injury to or infection involving the uterus which might necessitate hysterectomy (removal of the uterus) with resulting sterility.

(III) After fibroid embolization: prolonged vaginal discharge.

(IV) After fibroid embolization: expulsion/delayed expulsion of fibroid tissue possibly requiring a procedure to deliver/remove the tissue.

(iv) For male pelvic arterial embolizations, in addition to the risks under clause (i) of this subparagraph: impotence (difficulty with or inability to obtain penile erection).

(v) For embolizations of pulmonary arteriovenous fistulae/malformations, these risks in addition to those under clause (i) of this subparagraph:

(I) New or worsening pulmonary hypertension (high blood pressure in the lung blood vessels).

(II) Paradoxical embolization (passage of air or an occluding device beyond the fistula/malformation and into the arterial circulation) causing blockage of blood flow to tissues supplied by the receiving artery and damage to tissues served (for example the blood vessels supplying the heart (which could cause chest pain and/or heart attack) or brain (which could cause stroke, paralysis (inability to move) or other neurological injury)).

(vi) For varicocele embolization, these risks in addition to those under clause (i) of this subparagraph:

(I) Phlebitis/inflammation of veins draining the testicles leading to decreased size and possibly decreased function of affected testis and sterility (if both sides performed).

(II) Nerve injury (thigh numbness or tingling).

(vii) For ovarian vein embolization/pelvic congestion syndrome embolization: general angiography and embolization risks as listed in clause (i) of this subparagraph.

(viii) For cases utilizing ethanol (alcohol) injection, in addition to the risks under clause (i) of this subparagraph: shock or severe lowering of blood pressure (when more than small volumes are utilized).

(ix) For varicose vein treatments (with angiography) see subparagraph (L) of this paragraph.

(G) Mesenteric angiography with infusional therapy (Vasopressin) for gastrointestinal bleeding.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention [All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Hemorrhage (severe bleeding) Ischemia/infarction of supplied or distant vascular beds (reduction in blood flow causing lack of oxygen with injury or death of tissues supplied by the treated vessel or tissues supplied by blood vessels away from the treated site including heart, brain, bowel, extremities).

(iii) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part) Antidiuretic hormone side effects of vasopressin (reduced urine output with disturbance of fluid balance in the body, rarely leading to swelling of the brain).

(iv) Worsening of the condition for which the procedure is being done.

(v) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(vi) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(vii) Ischemia/infarction of supplied or distant vascular beds (reduction in blood flow causing lack of oxygen with injury or death of tissues supplied by the treated vessel or tissues supplied by blood vessels away from the treated site including heart, brain, bowel, extremities).

(viii) Antidiuretic hormone side effects of vasopressin (reduced urine output with disturbance of fluid balance in the body, rarely leading to swelling of the brain).

(H) Inferior vena cava filter insertion and removal.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention [All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Hemorrhage (severe bleeding) [Injury to the inferior vena cava (main vein in the abdomen)].

(iii) Worsening of the condition for which the procedure is being done [Filter migration or fracture (filter could break and/or move from where it was placed)].

(iv) Contrast nephropathy (kidney damage due to the contrast agent used during procedure) [Caval thrombosis (clotting of the main vein in the abdomen and episodes of swelling of legs)].
(v) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere including caval thrombosis (clotting of main vein in abdomen and episodes of swelling of legs).

(vi) Injury to the inferior vena cava (main vein in abdomen).

(vii) Filter migration or fracture (filter could break and/or move from where it was placed).

(viii) [(v)] Risk of recurrent pulmonary embolus (continued risk of blood clots going to blood vessels in lungs despite filter).

(ix) [vi] Inability to remove filter (for "optional"/retrievable filters).

(I) Pulmonary angiography.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention [All associated risks as listed under paragraph (2)(B) of this subsection].

(ii) Hemorrhage (severe bleeding) [Cardiac arrhythmia (irregular heart rhythm) or cardiac arrest (heart stops beating)].

(iii) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part) [Cardiac injury/perforation (heart injury)].

(iv) Worsening of the condition for which the procedure is being done [Death].

(v) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(vi) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(vii) Cardiac arrhythmia (irregular heart rhythm) or cardiac arrest (heart stops beating).

(viii) Cardiac injury/perforation (heart injury).

(ix) Death.

(J) Percutaneous treatment of pseudoaneurysm (percutaneous thrombin injection through the skin versus compression).

(i) Thrombosis (clotting) of supplying vessel or branches in its territory.

(ii) Allergic reaction to thrombin (agent used for direct injection).

(K) Vascular access - nontunneled catheters, tunneled catheters, implanted access.

(i) Pneumothorax (collapsed lung).

(ii) Injury to blood vessel.

(iii) Hemothorax/hemomediastinum (bleeding into the chest around the lungs or around the heart).

(iv) Air embolism (passage of air into blood vessel and possibly to the heart and/or blood vessels entering the lungs).

(v) Vessel thrombosis (clotting of blood vessel).

(L) Varicose vein treatment (percutaneous [through the skin], via laser, radiofrequency ablation (RFA), chemical or other method) without angiography.

(i) Burns.

(ii) Deep vein thrombosis (blood clots in deep veins).

(iii) Hyperpigmentation (darkening of skin).

(iv) Skin wound (ulcer).

(v) Telangiectatic matting (appearance of tiny blood vessels in treated area).

(vi) Paresthesia and dysesthesia (numbness or tingling in the area or limb treated).

(vii) Injury to blood vessel requiring additional procedure to treat.

(c) - (n) (No change.)

(o) Respiratory system treatments and procedures.

(1) Biopsy and/or excision (removal) of lesion of larynx, vocal cords, trachea.

(A) Loss of change of voice.

(B) Swallowing or breathing difficulties.

(C) Perforation (hole) or fistula (connection) in esophagus (tube from throat to stomach).

(2) Rhinoplasty (surgery to change the shape of the nose) or nasal reconstruction with or without nasal septoplasty (surgical procedure to remove blockage in or straighten the bone and cartilage dividing the space between the two nostrils).

(A) Deformity of skin, bone or cartilage.

(B) Creation of new problems, such as perforation of the nasal septum (hole in wall between the right and left halves of the nose) or breathing difficulty.

(3) Submucous resection of nasal septum or nasal septoplasty (surgery to remove blockage in or straighten the bone and cartilage dividing the space between the two nostrils).

(A) Persistence, recurrence or worsening of the obstruction.

(B) Perforation of nasal septum (hole in the bone and/or cartilage dividing the space between the right and left halves of the nose) [wall between the right and left halves of the nose] with dryness and crustung.

(C) External deformity of the nose.

(4) Sinus surgery/endoscopic sinus surgery.

(A) Spinal fluid leak.

(B) Visual loss or other eye injury.

(C) Numbness in front teeth and palate (top of mouth).

(D) Loss or reduction in sense of taste or smell.

(E) Recurrence of disease.

(F) Empty Nose Syndrome (sensation of nasal congestion, sensation of not being able to take in adequate air through nose).

(G) Injury to tear duct causing drainage of tears down the cheek.

(H) Brain injury and/or infection.

(I) Injury to nasal septum (the bone and cartilage dividing the space between the two nostrils).

(J) Nasal obstruction.
(5) Lung biopsy (removal of small piece of tissue from inside of lung).

(A) Air leak with pneumothorax (leak of air from lung to inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery [Pneumothorax (collapsed lung)].

(B) Hemorrhage (blood in the chest around the lung) possibly requiring additional procedures.

(6) Segmental resection of lung (removal of a portion of a lung).

(A) Hemorrhage (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Air leak with pneumothorax (leak of air from lung inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery [Insertion of tube into space between lung and chest wall or repeat surgery].

(D) Need for additional surgery.

(7) Thoracotomy (surgery to reach the inside of the chest).

(A) Hemorrhage (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Air leak with pneumothorax (leak of air from lung inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery [Pneumothorax (collapsed lung)].

(D) Need for additional surgery.

(8) VATS - video-assisted thoracoscopic surgery (camera-assisted surgery to reach the inside of the chest through small incisions)

(A) Hemorrhage (blood in the chest around the lung).

(B) Abscess (infected fluid collection) in chest.

(C) Air leak with pneumothorax (leak of air from lung inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery.

(D) Need for additional surgery.

(E) Need to convert to open surgery.

(9) Percutaneous (puncture through the skin instead of incision) or Open (surgical incision) tracheostomy [Open Tracheostomy].

(A) Loss of voice.

(B) Breathing difficulties.

(C) Pneumothorax (collapsed lung) with possible need for insertion of chest drainage tube into space between lung and chest wall or additional surgery.

(D) Hemorrhage (blood in the chest around the lung).

(E) Scarring in trachea (windpipe).

(F) Fistula (connection) between trachea into esophagus (tube from throat to stomach) or great vessels.

(9) Respiratory tract/tracheobronchial balloon dilatation/stenting.

(A) Stent migration (stent moves from position in which it was placed).

(B) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(C) Mucosal injury (injury to lining of airways).

(10) Bronchoscopy (insertion of a camera into the airways of the neck and chest).

(A) Mucosal injury (damage to lining of airways) including perforation (hole in the airway).

(B) Pneumothorax (collapsed lung).

(C) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(D) Injury to vocal cords, laryngospasm (irritation/spasm of the vocal cords) or laryngeal edema (swelling of the vocal cords).

(11) Endobronchial valve placement (device inserted into airways in the lung that controls air movement into and out of abnormal portions of a lung).

(A) Mucosal injury (damage to lining of airways) including perforation (hole in the airway).

(B) Pneumothorax (collapsed lung).

(C) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(D) Injury to vocal cords, laryngospasm (irritation/spasm of the vocal cords) or laryngeal edema (swelling of the vocal cords).

(E) Migration (movement) of the stent from its original position.

(F) Airway blockage, potentially life threatening.

(G) Stent blockage.

(H) Worsening of chronic obstructive pulmonary disease (worsening of emphysema).

(I) Respiratory failure (need for breathing tube placement with ventilator support).

(12) Endobronchial balloon dilatation with or without stent placement (placement of tube to keep airway open).

(A) Mucosal injury (damage to lining of airways) including perforation (hole in the airway).

(B) Pneumothorax (collapsed lung).

(C) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(D) Injury to vocal cords, laryngospasm (irritation/spasm of the vocal cords) or laryngeal edema (swelling of the vocal cords).
(E) Migration (movement) of the stent from its original position.
(F) Airway blockage, potentially life-threatening.
(G) Stent blockage.
(H) Stent fracture (broken stent).
(I) Recurrent infections.
(J) Stent erosion into adjacent structures (stent wears a hole through the airway and injures nearby tissues).

(13) Mediastinoscopy (insertion of a camera into the space behind the breastbone and between the lungs) with or without biopsy (removal of tissue).
(A) Hemorrhage (severe bleeding) requiring open surgery.
(B) Nerve injury causing vocal cord paralysis or poor function.
(C) Pneumothorax (collapsed lung).
(D) Tracheal injury (damage to the airway/windpipe).
(14) Pleurodesis (procedure to prevent fluid build-up in space between the lung and chest wall).
(A) Respiratory failure (need for breathing tube placement).
(B) Empyema (infection/pus in the space around the lung).

(p) - (v) (No change.)

§601.3. Procedures Requiring No Disclosure of Specific Risks and Hazards--List B.
(a) - (n) (No change.)
(o) Respiratory system.
(1) Aspiration of bronchus.
(2) Reduction of nasal fracture.
(2) Percutaneous tracheostomy.
(p) - (u) (No change.)

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

Filed with the Office of the Secretary of State on April 12, 2021.
TRD-202101508
Noah Appel, M.D.
Chairman
Texas Medical Disclosure Panel
Earliest possible date of adoption: May 23, 2021
For further information, please call: (512) 497-1339

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER FF. CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH INSURANCE

DIVISION 7. EXPERIENCE CALL

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.5701, concerning statistical data and annual experience calls, and to repeal 28 TAC §3.2702, concerning instructions for preparing forms.

EXPLANATION. The current credit call rules found in 28 TAC §3.5701 and §3.5702 require insurers writing credit life insurance and accident and health insurance in Texas to send statistical and experience data to the TDI Life & Health Actuarial Office (LHAO) on an annual basis. However, there is no further administrative or statutory requirement that LHAO use the data.

The amendments to §3.5701 and the repeal of §3.5702 would change the requirement to provide that credit call data instead be kept by each company and simply be made available upon TDI's request. So rather than imposing an annual data reporting requirement, TDI will only request the data if the Commissioner needs it to determine whether rates are reasonable in relation to benefits afforded by a given policy contract together with appropriate expenses.

The amendments and repeal would (1) streamline TDI resources and data management and (2) remove a reporting burden on companies, while still providing a process to preserve relevant data.

The following paragraphs describe the proposed amendments and repeal.

Section 3.5701. The amendments to §3.5701 add language to specify that insurers writing credit life insurance and accident and health insurance in Texas must keep statistical data for no less than five years and provide it to TDI upon request in a format specified by the Commissioner when requested, remove references to TDI's mailing address and required forms, and remove the word "annual" when describing calls for credit call reports. The amendments add a new subsection (c), regarding calculations and work papers, stating that calculations and work papers will now be retained and made available upon the Commissioner's request in the same manner as other credit life and accident and health insurance experience data. Proposed new subsection (c) is similar to current §3.5702(b), which is proposed for repeal. The amendments also capitalize "Commissioner" and change "if" to "whether" to adhere to current agency style.

Section 3.5702. The repeal of §3.5702 removes a section made obsolete by the amendments in §3.5701. The forms, filing instructions, and calculations described in §3.5702(a) and (b) are unnecessary, because any data will now be retained and made available upon the Commissioner's request in the same manner as other credit life and accident and health insurance experience data. Figure: 28 TAC §3.5702(a) is unnecessary, because it lists the reporting forms, which will no longer be used. Finally, subsection (c) is unnecessary, because it details requirements to submit experience data that will be addressed under proposed amendments to §3.5701.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Barbara Snyder, chief actuary of the Life & Health Division, has determined that during each year of the first five years
the proposed amendments and repeal are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Ms. Snyder made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Snyder does not anticipate 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 and repeal are in effect, Ms. Snyder expects that administering the proposed amendments and repeal will have the public benefit of conserving agency resources and alleviating the regulatory burden on companies of aggregating and submitting data to TDI.

Ms. Snyder expects that the proposed amendments and repeal will impose a cost on stakeholders to implement the retention responsibility for this data. The cost could involve some small data storage expenses associated with the proposed record retention requirement. However, those costs are expected to be minimal and, overall, they will be offset by companies' savings from no longer being required to annually aggregate and send TDI credit call data.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments and repeal will not have an adverse economic effect on small or micro businesses, or on rural communities, because the amendments result in a net savings for stakeholders. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not result in costs for regulated persons. No additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments and repeal are in effect, the proposal:
- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI 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. 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. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on May 24, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on May 24, 2021. If TDI holds a public hearing, TDI will consider comments presented at the hearing.

28 TAC §3.5701

STATUTORY AUTHORITY. TDI proposes §3.5701 under Insurance Code §1153.005 and §36.001.

Insurance Code §1153.005 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 1153 regarding credit life insurance and credit accident and health insurance.

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.

CROSS-REFERENCE TO STATUTE. Section 3.5701 implements Insurance Code Chapter 1153, which authorizes the Commissioner to adopt premium presumptive rates for various classes of business and terms of coverage.

§3.5701. Statistical Data [and Annual Experience Codes].

(a) Insurers writing credit life insurance and accident and health insurance in Texas must [shall] keep statistical data for a period of no less than five years [in such form and manner as necessary] to enable the Commissioner [commissioner] to determine whether [if] rates are reasonable in relation to the benefits afforded by the various policy contracts together with appropriate expenses. Each such insurer must retain the statistical data relevant to their credit insurance business and provide it to the Commissioner upon request in a format specified by the Commissioner. [shall submit experience reports as shall be required by specific annual call of the commissioner upon reporting forms supplied by such call. Each insurer shall complete each of the forms in accordance with the instructions that the department provides with the forms. Additional copies of the forms can be obtained from the Texas Department of Insurance, Filings Intake Division, MC 1106-1E, P.O. Box 149010, Austin, Texas 78714-0104. The forms can also be obtained from the department's internet web site at http://www.tdi.state.tx.us.]

(b) The retention of data [experience reports] required by subsection (a) of this section does [shall] not replace other annual reports of credit insurance experience. That data is [and are] separate and distinct from the NAIC annual statement and from the deviation request permitted by §3.5601 of this title (relating to Deviation by Case Allowed) and is [are] not used in any manner to determine the financial condition of the company.
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 April 6, 2021.
TRD-202101431
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: May 23, 2021
For further information, please call: (512) 676-6584

28 TAC §3.5702

STATUTORY AUTHORITY. TDI proposes the repeal of §3.5702 under Insurance Code §§1153.005 and §36.001. Insurance Code §1153.005 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 1153 regarding credit life insurance and credit accident and health insurance.

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.

CROSS-REFERENCE TO STATUTE. The proposed repeal of §3.5702 implements Insurance Code Chapter 1153, which authorizes the Commissioner to adopt rules regarding credit life insurance and credit health insurance and to adopt premium presumptive rates for various classes of business and terms of coverage.

§3.5702. Instructions for Preparing Forms.
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-202101432
James Person
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

SUBCHAPTER T. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT POLICIES

28 TAC §3.3307

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.3307, concerning loss ratio standards and refund or credit of premiums.

EXPLANATION. The current Medicare Supplement Data Call rule in 28 TAC §3.3307(f) requires Medicare supplement individual or group policy issuers to annually submit to TDI their refund or credit calculations on Medicare supplement insurance policies, to document the calculations they must make each year in determining any need to refund premiums to policyholders. TDI’s Actuarial Data Team currently collects this calculation data; however, there is no further requirement on the team to subsequently use it. This results in a depletion of TDI manpower and resources to create a large repository of frequently unused data.

Amendments to §3.3307 would change the requirement to provide the data to TDI, to simply provide that issuers keep the data and make it available to TDI upon request. This change will ease this potentially costly burden on issuers, as they would no longer be required to annually file their calculations with TDI, while maintaining TDI’s access to that data when needed. Insurers would keep the calculations on file and make them available should the Commissioner need that information to review trends in loss ratio standards and refund or credit of premiums in the interest of consumer protection and market fairness.

The amendments to §3.3307(f) remove the reporting requirement to submit an issuer’s refund or credit calculation to TDI by May 31 each year. The amendments replace this with a requirement that issuers retain documentation supporting their refund or credit calculations for five years and that they provide the information to TDI upon request and in the manner prescribed by the Commissioner. An amendment is also proposed for Figure: 28 TAC §3.3307(f), to remove the final page of the Medicare Supplement Refund Calculation Form. This page is used only for reporting data under the section, and it is no longer necessary because issuers will no longer be required to report that data to TDI.

In addition to the previously described amendments, for consistency with current agency style, TDI proposes to change the word “percent” to the percent symbol in §§3.3307(a)(1) and (2); (c)(1) and (2); and (d)(1)(F), (3), and (4)(B) and (C).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Barbara Snyder, chief actuary of the Life and Health Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Ms. Snyder made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Snyder 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, Ms. Snyder expects that administering the proposed amendments will have the public benefit of conserving agency resources and alleviating the regulatory burden on companies of aggregating and submitting data to TDI.

Ms. Snyder expects that the proposed amendments will impose a cost on stakeholders to implement the retention responsibility for this data. The cost could involve small data storage expenses associated with the proposed record retention requirement. However, those costs are expected to be minimal and, overall, they will be offset by companies’ savings from no longer being required to annually aggregate and send TDI data.
ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities, because the amendments result in a net savings for stakeholders. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal results in a net savings for regulated persons. No additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:
- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule’s applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI 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. 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. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on May 24, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on May 24, 2021. If TDI holds a public hearing, TDI will consider comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes §3.3307 under Insurance Code §1652.103 and §36.001.

Insurance Code §1652.103 provides that the Commissioner may adopt rules that provide for a process for reviewing and approving or disapproving a proposed premium increase relating to a Medicaid Supplement Benefit Plan.

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.

CROSS-REFERENCE TO STATUTE. Section 3.3307 implements Insurance Code Chapter 1652, which requires the Commissioner to establish minimum loss ratio standards for Medicare supplement benefit plans.

§3.3307. Loss Ratio Standards and Refund or Credit of Premiums.
(a) Minimum aggregate loss ratio standard. A Medicare supplement individual or group policy form may not be delivered or issued for delivery unless the individual or group policy form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregated benefits (not including anticipated refunds or credits) provided under the individual policy form or group policy form, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by an HMO on a service, rather than reimbursement, basis and earned premiums for the applicable period, not including any changes in additional reserves and in accordance with generally accepted actuarial principles and practices:

(1) at least 75% [percent] of the aggregate amount of premiums earned in the case of group policies; or

(2) at least 65% [percent] of the aggregate amount of premiums earned in the case of individual policies.

(b) HMO loss ratio standard. An HMO loss ratio, where coverage is provided on a service rather than reimbursement basis, must be calculated on the basis of incurred claims experience or incurred health care expenses and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by an HMO may not include:

(1) home office and overhead costs;
(2) advertising costs;
(3) commissions and other acquisition costs;
(4) taxes;
(5) capital costs;
(6) administrative costs; and
(7) claims processing costs.

(c) Calendar-year experience loss ratio standard. For the most recent calendar year, the ratio of incurred losses to earned premiums for all policies or certificates that have been in force for three years or more, as of December 31st of the most recent year, must be equal to or greater than:

(1) at least 75% [percent] in the case of group policies; and

(2) at least 65% [percent] in the case of individual policies.

(d) Filing of rates and rating schedules. All filings of rates and rating schedules must demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions must also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards. For individual or group policies issued before March 1, 1992, the provisions of paragraph (3) of this subsection must be met with respect to expected claims in relation to premiums. For purposes of submitting a rate filing under this section, policy forms, whether for open or closed blocks of business, providing for similar benefits must be combined. But for purposes of the required combination set out in this section, issuers may
distinguish between policy forms providing for similar benefits for individuals 65 years of age or over and policy forms providing for similar benefits for individuals under age 65. Once policy forms have been combined, they remain so for all rating purposes. When forms have been combined, a rate revision request must not differentiate between the experience of the individual forms. Where significant inconsistencies between rate levels exist among forms providing similar benefits, some deviation in rate revision must be allowed to reduce the significant inconsistencies.

(1) Each Medicare supplement policy or certificate form must be accompanied, on submission for approval, by an actuarial memorandum. The memorandum must be prepared and signed by a qualified actuary in accordance with generally accepted actuarial principles and practices, and must contain the information listed in the following subparagraphs:

(A) the form number that the actuarial memorandum addresses;
(B) a brief description of benefits provided;
(C) a schedule of rates to be used;
(D) a complete explanation of the rating process, including assumptions, claims data, methodology, and formulae used in developing the gross premium rates;
(E) a statement of what experience base will be used in future rate adjustments;
(F) a certification that the anticipated aggregate loss ratio is at least 65% \([\text{percent}]\) (for individual coverage) or at least 75% \([\text{percent}]\) (for group coverage), which should include a statement of the period over which the aggregate loss ratio is expected to be realized; and
(G) a table of anticipated loss ratio experience for representative issue ages for each year from issue over the period during which the aggregate loss ratio is to be realized; and

(H) a certification that the premiums are reasonable in relation to the benefits provided.

(2) Subsequent rate adjustment filings, except for those rates filed solely due to a change in the Part A calendar year deductible, must also provide an actuarial memorandum, prepared by a qualified actuary in accordance with generally accepted actuarial principles and practices, which must contain the following information:

(A) the form number addressed by the actuarial memorandum;
(B) a brief description of benefits provided;
(C) a schedule of rates before and after the rate change;
(D) a statement of the reason and basis for the rate change;
(E) a demonstration and certification by the qualified actuary to show that the past plus future expected experience after the rate change, will result in an aggregate loss ratio equal to, or greater than, the required minimum aggregate loss ratio;

(i) this rate change and demonstration must be based on the experience of the named form in Texas only, if that experience is fully credible, as set out in paragraph (3) of this subsection;

(ii) this rate change and demonstration must be based on experience of the named form nationwide, with credibility factors as set out in paragraph (3) of this subsection applied, if the named form is used nationwide and the Texas experience is not fully credible;

(iii) this rate change and demonstration must be based on experience of the named form in Texas only, with credibility factors as set out in paragraph (3) of this subsection applied, if the named form is used in Texas only and the Texas experience is not fully credible;

(F) for policies or certificates in force less than three years, a demonstration to show that the third-year loss ratio is expected to be equal to or greater than the applicable percentage; and

(G) a certification by the qualified actuary that the resulting premiums are reasonable in relation to the benefits provided.

(3) For purposes of this subsection, if a group or individual policy form has 2,000 or more policies in force, then full credibility \((100\% \text{ [percent]})\) must be given to the experience. If fewer than 500 policies are in force, then no credibility \((0\% \text{ [percent]})\) must be given to the experience. The principle of linear interpolation must be used for in force numbers between 500 and 2,000. For group policy forms, the reference in this paragraph to the number of in force policies means the number of in force certificates under group policies. For purposes of this section, “in force” means either the average number of policies in force for the experience period used to support the need for a rate revision, or the number of policies in force as of the ending date of the experience period used to support the need for a rate revision. Once an issuer makes a decision as to which definition it will apply to a particular policy form, the decision is irrevocable. An issuer may submit specific alternate credibility standards to the department for consideration. In order for an alternate standard of credibility to be acceptable for application, the issuer must demonstrate that the standards are based on sound actuarial principles, and that the resulting loss ratios are in substantial compliance with the requirements of subsections (a), (b), and (c) of this section.

(4) For individual policies issued before March 1, 1992, the expected claims in relation to premiums must meet:

(A) the originally filed anticipated loss ratio when combined with the actual experience since inception;

(B) a loss ratio of at least 65% \([\text{percent}]\) when combined with actual experience beginning with June 1, 1996, to date; and

(C) a loss ratio of at least 65% \([\text{percent}]\) over the entire future period for which the rates are computed to provide coverage.

(e) Annual filing of premium rates required. Every issuer of Medicare supplement policies and certificates issued before or after March 1, 1992, in this state must file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums, for the most recent calendar year broken down by calendar year of issue or by policy duration, for purposes of demonstrating that the issuer is in compliance with the loss ratio standards and for approval by the department in accordance with the filing requirements of this section and the requirements of §3.3323 of this title (relating to Increases to Premium Rates). The supporting documentation must also demonstrate, in accordance with actuarial standards of practice using reasonable assumptions, that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration must exclude active life reserves. An expected third-year loss ratio that is greater than or equal to the applicable percentage must be demonstrated for policies or certificates in force less than three years. The annual filing requirements in this subsection must be as follows:

(1) the NAIC Medicare supplement experience exhibit, which summarizes the experience of each individual form with business in force in Texas;
(2) the NAIC Medicare supplement experience exhibit, which summarizes the experience of each group form with business in force in Texas;

(3) rates and rating schedules for each form with business in force in Texas;

(4) a certification by the qualified actuary that the policies or certificates in force less than three years are anticipated to produce a third-year loss ratio that is greater than or equal to the applicable loss ratio percentage; and

(5) a certification by the qualified actuary that the expected losses in relation to premiums over the entire period for which the policy is rated comply with the required minimum aggregate loss ratio standard.

(f) Refund or credit calculation. An issuer must perform the refund or credit calculation consistent with the instructions [use the online reporting form found on the department's website at www.tdi.texas.gov and electronically submit the data required by this section, which is] contained in Figure: 28 TAC §3.3307(f) of this section. Issuers must retain documentation supporting the calculations required by this subsection for a period of five years and provide the calculations and supporting documentation to the Commissioner on request and in the manner prescribed by the Commissioner. [submit the report to the department no later than May 31 of each year.] Figure: 28 TAC §3.3307(f)

(1) If, on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation must be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year must be excluded.

(2) A refund or credit will be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund must include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary, but in no event may it be less than the average rate of interest for 13-week treasury notes. A refund or credit against premiums due must be made by September 30 following the experience year on which the refund or credit is based.

(3) For an individual or group policy or certificate issued before March 1, 1992, the issuer, for purposes of complying with this subsection, must make the refund or credit calculation separately for all individual policies combined and all group policies combined for experience after June 1, 1996.

(g) Premium adjustments to conform with minimum standards for loss ratios. As soon as practicable, but before the effective date of enhancements to Medicare benefits, every issuer of Medicare supplement insurance policies, contracts, or coverage in this state must file with the Commissioner, in accordance with the applicable filing procedures of this state, the items required in paragraphs (1) and (2) of this subsection.

(1) Issuers must file the appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or contracts. Documents necessary to justify the adjustment must accompany the filing.

A. Every issuer of Medicare supplement insurance or benefits to a resident of this state under Insurance Code Chapter 1652 must make premium adjustments:

(i) necessary to produce an expected loss ratio under the policy or contract that will conform with the minimum loss ratio standards for Medicare supplement policies; and

(ii) expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premium by the issuer for the Medicare supplement insurance policies or contracts.

B. No premium adjustment that would modify the loss ratio experience under the policy, other than the adjustments described in this subsection, should be made with respect to a policy at any time other than on its renewal date or anniversary date.

C. If an issuer fails to make premium adjustments that are acceptable to the Commissioner, the Commissioner may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by this section.

2) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement insurance modifications necessary to eliminate benefit duplications with Medicare must be filed. The riders, endorsements, or policy forms must provide a clear description of the Medicare supplement benefits provided by the policy or contract.

(h) Maintenance of data. Inured claims and earned premium experience must be maintained for each policy form with business in force in Texas, by calendar year of issue, and must be made available 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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James Person
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For further information, please call: (512) 676-6584

§§57.371 and the repeal of 31 TAC §§57.372 - 57.374, concerning Commercially Protected Finfish. The proposed amendment and repeals would eliminate regulatory language that is explicitly and implicitly duplicative of the statutory provisions of Parks and Wildlife Code, Chapter 47, and replaces that language with succinct references to specific statutory pro-

**PROPOSED RULES  April 23, 2021  46 TexReg 2697**
visions. The proposed amendment also would add a reference to the statutory provisions regarding punishments for a violation of the rules.

Jarret Barker, Assistant Commander, Law Enforcement Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Barker also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be clearer regulations and the elimination of duplication.

Under provisions of Government Code, Chapter 2001, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. Those guidelines state that an agency need only consider a proposed rule’s "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean an analysis that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the rules do not impose any requirement that is not already imposed by statute, there will be no adverse economic effect on small businesses or microbusinesses as a result of the rules. The proposed rules do not affect rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2001, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create or expand a regulation, but will eliminate duplicative regulations; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Jarret Barker, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650; email: jarret.barker@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

31 TAC §57.371

The amendment and repeals are proposed under Parks and Wildlife Code, §66.020, which authorizes the commission to require by proclamation that fish imported under a finfish import license be tagged, packaged, and labeled and accompanied by an invoice as prescribed by rule of the commission.

The proposed amendment and repeals affect Parks and Wildlife Code, Chapter 66.

§57.371. Applicability: Commercially Protected Finfish.

(a) A commercially protected finfish is any fish listed in Parks and Wildlife Code, §66.020(a). [The fish listed in this subsection may be imported only by the holder of a finfish import license. To be lawfully imported, sold or purchased in Texas, the fish must be raised and fed a prepared feed containing 20% or more of plant protein or grain by-products as a primary food source.]

(b) The provisions of Parks and Wildlife Code, §§47.0181-47.0183, apply to the possession and transportation of commercial finfish under a valid finfish import license issued by the department. [Except as provided in Parks and Wildlife Code, §66.020, it is unlawful for any person to buy, offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, barter, or exchange the species listed in this subsection:]

- Bass of the genus Micropterus;
- Bass, striped;
- Bass, white;
- Bass, yellow;
- Catfish, flathead;
- Crappie, black;
- Crappie, white;
- Drum, red;
- Grouper, goliath (formerly called jewfish);
- Marlin, blue;
- Marlin, white;
- Muskellunge;
- Pike, northern;
- Sailefish;
- Sauger;
- Seatrout, spotted;
- Snook;
- Spearfish, longbill;
- Tarpon;
- Walleye;
- Hybrids of any of these fish.

(c) A person who violates a provision of this subchapter is subject to the penalties prescribed by Parks and Wildlife Code, §66.012. 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 April 8, 2021.
§57.372. Packaging Requirements. §57.373. Package Labels. §57.374. Delegation of Authority. 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 April 8, 2021.

31 TAC §§57.372 - 57.374
The repeals are proposed under Parks and Wildlife Code, §66.020, which authorizes the commission to require by proclamation that fish imported under a finfish import license to be tagged, packaged, and labeled and to be accompanied by an invoice as prescribed by rule of the commission.

The proposed repeals affect Parks and Wildlife Code, Chapter 66.

In promulgating the rules, the department inadvertently overlooked the inclusion of violations of state and federal airborne hunting laws in the list of predicate offenses for which the department could refuse to issue or renew an AMP. The department believes it is intuitively obvious that rules regarding the refusal of issuance or renewal of AMPs should include provisions regarding violations of either or both the state and federal law governing the management of wildlife from aircraft. The proposed amendment would remedy that oversight.

The department notes that in all cases the denial of AMP issuance or renewal as a result of an adjudicative status listed in the rule is not automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to issue or renew an AMP based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations was the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

Stormy King, Assistant Commander, Law Enforcement Division, has determined that for each of the first five years that the rule is proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. King also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule.
will be more effective oversight of persons authorized to manage a public resource and the benefits to public resources occurring as a result of sound management activities.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule’s "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rule regulates a permit that privileges individual persons to manage wildlife resources in this state and therefore does not directly affect small businesses, micro-businesses, or rural communities. The department additionally notes that the rule does not impose a requirement, but rather makes a potential action available to the department predicated on the adjudicated criminal behavior of persons seeking issuance or renewal of a permit. There will be no adverse economic effect on small businesses or micro-businesses as a result of the rules. On this basis, the department has determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state’s economy.

Comments on the proposed rule may be submitted to Stormy King, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4627; email: stormy.king@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §43.109, which provides the commission with authority to make regulations governing the management of wildlife or exotic animals by the use of aircraft under this subchapter, including forms and procedures for permit applications; procedures for the management of wildlife or exotic animals by the use of aircraft; limitations on the time and the place for which a permit is valid; es-

The proposed amendment affects Parks and Wildlife Code, Chapter 43, Subchapter G.

§65.154. Issuance of Permit; Amendment and Renewal.
(a) - (c) (No change.)
(d) The department may refuse to issue to or renew an AWMP for any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or assessed an administrative penalty for a violation of:
(1) Parks and Wildlife Code, Chapter 43, Subchapter C, E, G, L, R, or R-1;
(2) (No change.)
(3) Parks and Wildlife Code, §63.002; 43 TAC 43.
(4) the Lacey Act (16 U.S.C. §§3371-3378); or
(5) 16 U.S.C. §742j-l (commonly referred as the Airborne Hunting Act, or AHA).
(e) - (h) (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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James Murphy
General Counsel
Texas Parks and Wildlife Department
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SUBCHAPTER H. PUBLIC HUNTING [LANDS] PROCLAMATION
31 TAC §65.191, §65.202

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §65.191 and §65.202, concerning the Public Lands Proclamation. The proposed amendments would alter the title of the subchapter, changing it to "Public Hunting Proclamation" to more accurately reflect the subject material addressed by the subchapter. The proposed amendment to §65.191, concerning Definitions, would alter the definition of "loaded firearm" to include modern firearms that are loaded through the muzzle but utilize a propellant cartridge rather than traditional methods employing priming charges or loose powder, and to include an additional type of traditional muzzleloader.

The proposed amendment to §65.202, concerning the Public Lands Proclamation, would eliminate a provision regarding the minimum age for participation in youth-only waterfowl hunting during the federal youth waterfowl season. Current rules define a youth as any person less than 17 years of age; however, federal youth-only waterfowl season rules have until recently limited participation in the federal youth-only season to persons 15 years of age and younger. Recent federal action allows individual states to establish any minimum age for participation, pro-

46 TexReg 2700  April 23, 2021  Texas Register
vided it is less than 18. Removing the current provision will allow the department to have a uniform standard for participation in public hunting opportunities for youth. Finally, the proposed amendments would alter the title of the subchapter, changing it to "Public Hunting Proclamation" to more accurately reflect the subject material addressed by the subchapter.

Justin Dreibelbis, Director of the Private Lands and Public Hunting Program, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed amendments.

Mr. Dreibelbis also has determined that for each of the first five years that the rules as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be clear regulations governing public hunting activities.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2001, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on such entities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rules will not directly affect small businesses, micro-businesses, or rural communities. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; will not create a new regulation; will not effectively expand, limit, or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

The amendments are proposed under the authority of Parks and Wildlife Code, §81.006, which prohibits the take, attempted take, or possession of any wildlife or fish from a wildlife management area except in the manner and during the times permitted by the department under Chapter 81, Subchapter E, and under Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish an open season on wildlife management areas and public hunting lands, authorizes the executive director to regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands, and authorizes the commission to adopt rules governing recreational activities in wildlife management areas.

The proposed amendments affect Parks and Wildlife Code, Chapter 81.

§65.191. Definitions.
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in §65.3 of this title (relating to Statewide Hunting and Fishing Proclamation).

(1) - (24) (No change.)

(25) Loaded firearm--A firearm containing:

(A) a live round of ammunition within the chamber and/or the magazine; or

(B) a round in the muzzle and a propellant charge or propellant cartridge in the breech; or

(C) [ , or ] if the firearm is a muzzleloader, muzzleloading; one which has] a cap on the nipple, [or] a priming charge in the pan, or a primer charge in the primer well.

(26) - (49) (No change.)


(a) - (b) (No change.)

[ (c) Youth participating in a youth waterfowl hunt during the federal youth waterfowl hunting season must be 15 years of age or younger ]

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 April 8, 2021.

TRD-202101487

James Murphy

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 23, 2021

For further information, please call: (512) 389-4775

* * * * *

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION
The Comptroller of Public Accounts proposes amendments to §9.419, concerning procedures for determining property tax exemptions for motor vehicles leased for personal use. The comptroller proposes amendments to implement statutory requirements and new legislation. The proposed amendments change the heading of §9.419 from "Procedures for Determining Property Tax Exemption for Motor Vehicles Leased for Personal Use" to "Property Tax Exemption for Certain Leased Motor Vehicles". The proposed amendments §9.419 delete subsection (a) prescribing the effective date of the rule as redundant with the legislation enacting Tax Code, §11.252 and unnecessary as the subsection states the section is effective for motor vehicles leased on or after January 2, 2001, approximately nineteen years ago. The proposed amendments re-letter subsequent subsections. The proposed language of re-lettered subsection (a)(1), prescribing the definition of a lease, complies with Tax Code, §11.252(h) and conforms to the definition of a lease in Tax Code, §152.001(6). The proposed language of re-lettered subsection (a)(2), prescribing the definition of a lessee, conforms with the definition of a lease under re-lettered subsection (a)(1). The proposed language of re-lettered subsection (a)(3), prescribing the definition of a lessor, conforms with the definition of a lease under re-lettered subsection (a)(1). The proposed language of re-lettered subsection (a)(4), prescribing the definition of a Lessee's Affidavit, conforms the language to newly amended Tax Code, §11.252. The proposed language of re-lettered subsection (a)(6), prescribing the definition of reasonable time, provides more concise language. The proposed language of re-lettered subsection (b)(1) deletes the word "model" from the description of forms in the section. The proposed language of re-lettered subsection (b)(1)(A) conforms the title of the Lessee's Affidavit to the language of newly amended Tax Code, §11.252. The proposed language of newly re-lettered subparagraph (b)(1)(B) changes the title of Form 50-288 from "Lessor's Rendition or Property Report Leased Automobiles" to "Lessor's Rendition or Property Report Leased Automobiles". The proposed re-lettered subsection (b)(2) adds lessees to the parties required to use the comptroller's forms adopted by reference in the section, and states that the forms are available from the Comptroller of Public Accounts Property Tax Assistance Division. The proposed amended forms may be viewed at comptroller.texas.gov/taxes/property-tax/rules/index.php. The proposal amends subsection (b)(2) to amend subparagraph (A) to replace the word "model" with the word "comptroller" in reference to the forms. The proposal further amends subsection (b)(2) to amend subparagraph (B) to replace the word "comptroller's model" with the word "comptroller" in reference to the forms. The proposal amends re-lettered subsection (b)(3) to eliminate unnecessary language in order to make the subsection more concise, and adds language to conform to newly amended language in Tax Code, §11.252. The proposal amends re-lettered subsection (b) by removing paragraph (4) as a redundant provision. The proposal re-numbers subsequent paragraphs. The proposed amendments re-letter and re-number paragraph (4) to add the statutory authority for chief appraisers to enter into agreements for the electronic exchange of information under Tax Code, §1.085 and confirm that nothing in the section should be construed to limit that authority. The proposal adds new paragraph (5) to clarify that nothing in the section is to be construed to limit the electronic execution of documents according to the laws of the State of Texas. The new subsection (c) is proposed to adopt appropriate procedures and requirements for a lessee's affidavit in connection with the appropriate procedures and exemption application requirements of this section to determine if a motor vehicle subject to a lease qualifies for exemption under Tax Code, §11.252. The proposed new paragraph (1) complies with the language of Tax Code, §11.252, to require that a lessee must not hold a motor vehicle subject to a lease for the production of income, and that the motor vehicle must be used primarily for activities that do not include the production of income. The proposal adds new paragraph (2), subparagraphs (A), (B) and (C), and clauses (i) and (ii) to comply with newly amended language in Tax Code, §11.252 concerning the presumption of use primarily for motor vehicles that are not involved in the production of income. The proposal deletes subsection (d). The proposal adds new subsection (d) to prescribe the use of the Lessor's Rendition or Property Report Leased Automobiles (Form 50-288) to be used by the lessor to report each leased vehicle owned and whether the lessee has designated the vehicle as not held for the production and not used for the production of income in accordance with Tax Code, §11.252(i). The proposal adds new paragraphs (1)(A), (B), (C) and (D) to require on the lessor report: the year, make, model and vehicle identification number of each leased vehicle; the name of the lessee and address at which the leased vehicle is kept; whether the lessee has designated the vehicle as not held for the production and not used for the production of income; and whether the lessor maintains a lessee's affidavit, electronic image of the lessee's affidavit, or a certified copy of the lessee's affidavit for the leased vehicle. The proposal adds new paragraph (2) to require that the lessor provide the Lessor's Rendition or Property Report Leased Automobiles (Form 50-288) to the chief appraiser in the manner provided by subchapter B, Chapter 22, Tax Code in accordance with Tax Code, §11.252(j). The proposal adds new paragraph (3) to prescribe that the lessor must use the Lessor's Rendition or Property Report Leased Automobiles (Form 50-288) to render each leased vehicle reported on the Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286) for which the lessor does not maintain a lessee's affidavit, an electronic image of a lessee's affidavit, or a certified copy of a lessee's affidavit.
The proposal adds new subsection (e) to require that the lessor to submit the Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286) to the chief appraiser in order to apply for the exemption available under Tax Code, §11.252.

The proposal deletes subsection (f). Tax Code, §11.252 does not provide authority for the lessee's affidavit to be prima facie evidence of qualification for a motor vehicle to be exempt and Tax Code, §11.252 does not authorize a limit or expansion on the chief appraiser's discretion under Tax Code, §11.43 and §11.45 in considering evidence of an exemption.

The proposal deletes subsections (g) and (h). Tax Code, §11.252 does not authorize a limit or expansion on a chief appraiser's authority for review and action on an exemption application. The review and action on the exemption application is authorized for chief appraisers under Tax Code, §11.43 and §11.45.

The proposal re-lettered subsequent subsections.

The proposal amends re-lettered subsection (f) to add the language "...electronic images of the affidavits, or certified copies of the affidavits..." to subparagraph (A), (B) & (C) to conform to newly amended language in Tax Code, §11.252 and to combine with existing paragraph (1).

The proposal re-numbers existing subparagraphs A, B, C, and E to new paragraphs numbered 1-4.

The proposal deletes subparagraph (D) as unnecessary and redundant language with subsection (b) of the section.

The proposal amends re-lettered subparagraph (D) to add the language "...electronic images of the affidavits, or certified copies of the affidavits...".

The proposal deletes re-numbered paragraph (2) as the exemption is for the lessor of a qualifying motor vehicle under lease and the chief appraiser has discretionary authority under Tax Code, §11.45 to act on an application for exemption and Tax Code, §11.252 does not provide separate or additional authority for a chief appraiser to request information from the lessees.

The proposal amends re-lettered subsection (g) to change title of Form 50-286 from "Lessor's Application for Personal Use Lease Automobile Exemptions" to "Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286)".

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amendments: 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. This proposal amends current rules.

Mr. Currah also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendments would benefit the public by improving the administration of local property valuation and taxation. There would be no anticipated significant economic cost to the public. The proposed amendments would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Korry Castillo, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the Texas Register.

The comptroller proposes the amendments under Tax Code, §11.252 (Motor Vehicles Leased for use Other than Production of Income) which requires the comptroller to adopt procedural rules to establish exemption application requirements, appropriate procedures to determine whether a motor vehicle subject to a lease qualifies for an exemption under the section, adoption of a form to be completed by lessees for use by lessors in application for the exemption, and the prescription of a property report form to be used by owners of vehicles subject to a lease.

The comptroller further proposes the amendments under Tax Code, §22.24 (Rendition and Report Forms) which authorizes the comptroller to prescribe and approve forms for the rendition and reporting of property.

These amendments implement Tax Code, §11.252 (Motor Vehicles Leased for Use Other than Production of Income).

§9.419. Property Tax Exemption for Certain Leased Motor Vehicles

(Procedure for Determining Property Tax Exemption for Motor Vehicles Leased for Personal Use)

(a) Effective Date. This section is effective for motor vehicles that are leased on or after January 1, 2001-

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Lease--An agreement, other than a rental as defined by Tax Code, §152.001(5), whereby an owner of a motor vehicle gives exclusive use of the motor vehicle to another for consideration, [whereby an owner of a motor vehicle for consideration gives exclusive use of a motor vehicle to another] for a period that is longer than 180 days.

(2) Lessee--A person who enters into a lease for a specific motor vehicle [primarily for the personal use of the lessee or the lessee's family].

(3) Lessor--The owner of a motor vehicle that is subject to a lease. [A person who owns a motor vehicle that is leased to another person.]

(4) Lessee's Affidavit or Affidavit--A properly notarized sworn statement that a lessee or authorized representative of the lessee if the lessee is an entity described by Tax Code, §11.252(b) executes to attest that the lessee does not hold the leased motor vehicle for the production of income and the leased motor vehicle is used primarily for activities that do not involve the production of income. [does not primarily use the leased motor vehicle for the production of income.]

(5) Motor vehicle--A passenger car or truck with a shipping weight of 9,000 pounds or less.

(6) Reasonable date and/or time--A time that is after 10:00 a.m. and before 5:00 p.m., Monday through Friday, excluding holidays, unless the appraisal district and the lessor agree otherwise. [A work week day, Monday through Friday, and a time that is after 8:00 a.m. and before 5:00 p.m., unless the appraisal district and the lessor agree otherwise.]

(b) The comptroller will make available [model] forms that are adopted by reference in paragraph (1) of this subsection.
Copies of the forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

(1) The comptroller adopts by reference the following [model] forms:

(A) Lessee's Affidavit Motor Vehicle Use Other than Production of Income [of Primarily Non Income Producing Vehicle Use] (Form 50-285); and

(B) Lessor's Rendition or Property Report [for] Leased Automobiles (Form 50-288).

(2) A chief appraiser, lessee and [or] lessor must use the comptroller's [model] forms [that are] adopted by reference in paragraph (1) of this subsection, available from the Comptroller of Public Accounts Property Tax Assistance Division unless the [non-model] form:

(A) substantially complies with the corresponding comptroller [model] form by using the same language in the same sequence as the comptroller [model] form;

(B) is an electronic version of a comptroller [model] form and preserves the same language in the same sequence as the comptroller [model] form; or

(C) is a rendition form [has been] approved by the comptroller in writing before the form is used.

(3) A lessor shall maintain the affidavit, an electronic image of the affidavit, or a certified copy of the affidavit and must produce the affidavit, electronic image of the affidavit, or certified copy of the affidavit to the chief appraiser for inspection or copying when requested, subject to the conditions of subsection (f)(1) of this section. [After a lessee's affidavit is signed by a lessee and properly notarized, a lessor may make an electronic image of the lessee's affidavit and may produce the electronic image of the affidavit to the chief appraiser when an inspection is requested, subject to the condition of subsection (e)(1)(D) of this section.]

[f14] Subject to the limitations that are provided in paragraph (2) of this subsection, if a chief appraiser uses a form other than the one that is required by law, the chief appraiser may not use the form that is not authorized by law. [Revised by this section in a format agreed to by the chief appraiser and the comptroller.]

(4) [f15] No provision in this section should be construed as limiting the chief appraiser's authority to enter into an agreement for electronic exchange of information under Tax Code, §1.085. [Covered by this section in a format agreed to by the chief appraiser and the comptroller.]

(5) No provision in this section should be construed as limiting the ability to electronically execute a document according to the laws of the State of Texas.

(c) The Lessee's Affidavit for Motor Vehicle Use Other than Production of Income (Form 50-285) should be completed by lessees and the affidavit, electronic image of the lessee's affidavit, or certified copy of the lessee's affidavit should be maintained by lessors in connection with applying for the exemption available under Tax Code, §11.252.

(1) For lessee to qualify for the exemption, the Lessee must not hold the motor vehicle for the production of income and the motor vehicle must be used primarily for activities that do not include the production of income:

(2) A motor vehicle is presumed to be used primarily for activities that do not involve the production of income if:

(A) 50% or more of the miles the motor vehicle is driven in a year are for non-income producing purposes;

(B) the motor vehicle is leased to the State of Texas or a political subdivision of the State of Texas;

(C) the motor vehicle:

(i) is leased to an organization that is exempt from federal income taxation under Internal Revenue Code, §501(a), as an organization described by Internal Revenue Code, §501(c)(3); and

(ii) would be exempt from taxation if the vehicle were owned by the organization.

(d) The Lessor's Rendition or Property Report Leased Automobiles (Form 50-288) shall be used as the property report form required by Tax Code, §11.252(i).

(1) To meet the reporting requirements of Tax Code, §11.252(ii), the lessor shall list each leased vehicle the lessor owns on January 1, regardless of whether the leased vehicle qualifies for an exemption under Tax Code, §11.252, and provide the following:

(A) the year, make, model, and vehicle identification number for each leased vehicle;

(B) the name of the lessee and address at which the leased vehicle is kept;

(C) whether the lessee has designated the leased vehicle as not held for the production of income and used primarily for activities that do not involve the production of income; and

(D) whether the lessor maintains a lessee's affidavit, electronic image of the lessee's affidavit, or a certified copy of the lessee's affidavit for the leased vehicle.

(2) To meet the reporting requirements of Tax Code, §11.252(j), the lessor shall provide the form to the chief appraiser in the manner provided by Subchapter B, Chapter 22, Tax Code.

[f16] A lessor satisfies the requirements of Tax Code, §11.252, for exemption of leased motor vehicles if the lessor:

[(f)] properly completes and timely files with the chief appraiser the Lessor's Rendition or Property Report Leased Automobiles (Form 50-288);

[(g)] properly completes and timely files with the chief appraiser the comptroller-provided model application form (Lessor's Application for Personal Use Lease Automobile Exemptions);

[(h)] receives Lessor's Affidavit of Primarily Non Income Producing Vehicle Use (Form 50-285) that the lessee executed on or before the date on which the required forms that are enumerated in paragraphs (f) and (g) of this subsection have been filed; and

[(i)] maintains each Lessor's Affidavit of Primarily Non Income Producing Vehicle Use (Form 50-285) that pertains to each leased motor vehicle for which the lessor seeks an exemption.

(e) To apply for the exemption allowed under Tax Code, §11.252(a), the lessor shall submit a fully completed and properly executed Lessor's Exemption Application Motor Vehicles Leased for Use Other than Production of Income (Form 50-286) to the chief appraiser pursuant to Tax Code, §11.43 and §11.45, and indicate at the appropriate space on the form that the lessor is applying for the exemption allowed under Tax Code, §11.252(a) for each qualifying leased vehicle.
(f)  [72] A chief appraiser may inspect and/or obtain copies of lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits that the lessor maintains.

(4)  Unless agreed to otherwise, a lessor and a chief appraiser shall use the following procedures when the chief appraiser proposes to inspect and/or copy lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits on leased motor vehicles for which the lessor seeks an exemption.

1.  [(A)] No less than 10 days prior to the inspection, the chief appraiser shall provide the lessor with notice of the chief appraiser's intention to inspect and/or copy the lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits in the lessor's possession or control. The notice must state a reasonable [date and] time when the chief appraiser proposes to inspect and/or copy the lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits and shall identify the affidavits, electronic images of the affidavits, or certified copies of the affidavits that will be subject to inspection and/or copy.

2.  [(H)] If the proposed date or time is not convenient, then the lessor may propose an alternate reasonable date or time by notifying the chief appraiser in writing.

3.  [(G)] The lessor shall provide the chief appraiser with reasonable accommodations to inspect and/or copy any of the lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits or shall permit the chief appraiser to take the affidavits, electronic images of the affidavits, or certified copies of the affidavits off premises for a period of no less than 48 hours to inspect and/or copy.

4.  [(D)] The lessor may provide electronic images of the lessees' affidavits, unless the chief appraiser does not have equipment to receive or read electronic images. If the image is not sufficiently clear to distinguish the characteristics of a lessor's handwriting and to see the notarized signature and any other relevant details, the chief appraiser may request to inspect an original lessor's affidavit.

5.  [(E)] If the lessor is located more than 150 miles from the appraisal district's office, then the chief appraiser shall make a written request that the lessor deliver [either copy and mail] the identified lessees' affidavits, electronic images of the affidavits, or certified copies of the affidavits [or send the original affidavits] to the chief appraiser for at least 14 days for inspection and copying. The chief appraiser and the lessor may determine who should bear the costs of delivery and copying if any [and mailing].

6.  A chief appraiser should first attempt to obtain information from the lessor. If the lessor does not provide the requested information within the specified time period, then the chief appraiser may contact the lessor directly.

7.  A properly executed Lessee's Affidavit of Primarily Non Income Producing Vehicle Use (Form 50-285) is prima facie evidence that the motor vehicle is not held for the production of income and is used primarily for non-income producing activities. A chief appraiser shall also consider the following evidence of primarily non-income producing use:

1.  an affidavit by the lessee's spouse or other credible person who has information about the use of the leased motor vehicle and mileage records; and

2.  a statement by the lessee's employer that the motor vehicle was not used or required to be used in the lessee's employment.

8.  If a chief appraiser has reason to question, in whole or in part, the validity of the lessor's application for exemption, then the chief appraiser may investigate and shall notify the lessee of the chief appraiser's intent to investigate. The notice that is required by this rule shall:

1.  identify the motor vehicle that the chief appraiser questions as qualifying for the exemption;

2.  state separately the reason for questioning the claimed exemption or lessee's affidavit;

3.  specify the additional information that the chief appraiser seeks; and

4.  state the due date upon which the requested information must be delivered.

9.  If a chief appraiser determines that some of the motor vehicles that the lessor claims in the application for exemption do not qualify for exemption, then the chief appraiser may modify the exemption by disallowing the amount of value that the non-exempt leased motor vehicles represent, but shall grant the exemption on the remaining value of the leased motor vehicles. Any notice of modification or denial of the claimed exemption shall be made in accordance with the notice requirements of Tex Code, §§11.13 and 11.45.

10. The comptroller-prescribed exemption [model] application form (Lessor's Exemption Application Motor Vehicles Leased for Use Other Than Production of Income (Form 50-286) [For Personal Use Lease Automobile Exemptions]) is not adopted by reference herein and may be revised at the discretion of the comptroller. Current forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

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 April 12, 2021.

TRD-202101509
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: May 23, 2021
For further information, please call: (512) 475-2220

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 63. BOARD OF TRUSTEES

34 TAC §63.4

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 63, concerning Board of Trustees, by amending §63.4 (Election of Trustees (Ballot)).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Tex. Admin. Code, §§61.1 et seq.

Section 63.4, concerning Election of Trustees (Ballot), is proposed to be amended to allow the ERS board or the board's designee to certify a candidate without conducting an election in certain circumstances. If only one candidate is eligible to be presented on the ballot, the board or the board's designee may then certify the candidate without an election.
ERS has determined that during the first five-year period the amended rule will be in effect:

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

Mr. Keith Yawn, Director of Strategic Initiatives, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enacting or administering the rules; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendment to the rule reflects changes to the ERS trustee election process necessary to clarify procedures in the event of a single candidate. The proposed rule amendments do not constitute a taking. Mr. Yawn has also determined that, to his knowledge, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed, and the proposed rule amendments do not impose a cost on regulated persons.

Mr. Yawn also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of adopting and complying with the rules would be the clarification of the administration of ERS trustee election processes and a reduction of the total cost of elections to the trust in certain specific scenarios (when a single candidate is certified).

Comments on the proposed rule amendments may be submitted to Cynthia C. Hamilton, Acting General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at Cynthia.Hamilton@ers.texas.gov. The deadline for receiving comments is May 23, 2021 at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code § 815.102, , which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

No other statutes are affected by the proposed amendments.

§63.4 Election of Trustees (Ballot)

(a) The order of names on the ballot will be set by drawing. All nominated candidates or their representatives are entitled to be present at the drawing. The time and location of the drawing will be set by the system.

(b) All candidates must submit within the time frame established by the system any information requested by the system for presentation on the ballot. Such information may include, but is not limited to:

(1) name as it is to appear on the ballot;
(2) current classification/exempt title and position as a state employee;
(3) name of current employing state agency; and
(4) other information the system determines may be helpful to persons qualified to vote in the election.

(c) In addition to the information required in subsection (b) of this section, the candidate shall provide, within the time frame provided by the system, his or her state agency mailing address, a statement of qualifications and position on system issues consisting of 250 words or less, and such additional information as the system may request. This information, in addition to that which will appear on an election ballot, will be made available to the electorate through a special system newsletter devoted to the trustee election process. This special edition of the newsletter will be made available to the electorate at the beginning of each election and will describe restrictions on the use of state funds to influence the outcome of any election.

(d) The system may contract with an election administrator to implement and monitor the election process. Balloting may be conducted electronically or in combination with a printed ballot.

(e) The system/election administrator will, at least 25 days in advance of the close of each election established by the election calendar, make ballots available to eligible voters. Upon request of the candidate, the system/election administrator will provide 500 ballots without preprinted names to each candidate.

(f) The system/election administrator will provide a 24-hour toll-free telephone line which eligible voters may use to request a printed ballot.

(g) Electronic ballots must be completed and submitted to the system/election administrator in accordance with the instructions contained in the electronic voting format.

(h) Each candidate may designate one (1) person to observe the ballot counting process. No observer will be permitted to see complete ballots which indicate the identity of a voter and voter's candidate selection. No observer will be permitted to challenge the validity of ballots or disrupt the counting process in any way.

(i) The system/election administrator will disqualify ballots which do not meet the requirements and instructions specified in the electronic format or printed on the ballot.

(j) The board [Board], or the board's [its] designee, shall certify [the result of the] election results. If only one candidate is eligible to be presented on the ballot, the board or the board's designee may certify the candidate without an election.

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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Employees Retirement System of Texas
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For further information, please call: (877) 275-4377