

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER G. STAR+PLUS

1 TAC §353.610

The Texas Health and Human Services Commission (HHSC) adopts new §353.610, concerning Minimum Performance Standards for Nursing Facilities that Participate in the STAR+PLUS Program.

The new section is adopted without changes to the proposed text as published in the February 17, 2023, issue of the *Texas Register* (48 TexReg 783). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted rule implements Texas Government Code §533.00251(h), added by House Bill 2658, 87th Legislature, Regular Session, 2021. Texas Government Code §533.00251 requires HHSC to establish minimum performance standards for nursing facility providers seeking to participate in the STAR+PLUS Medicaid managed care program. Subsection (h) directs HHSC to adopt rules establishing standards for nursing facility providers that participate in the STAR+PLUS program; monitor provider performance in accordance with the standards and requiring corrective action, as HHSC determines necessary, from providers that do not meet the standards; and share data regarding the requirements with STAR+PLUS Medicaid managed care organizations, as appropriate.

COMMENTS

The 31-day comment period ended March 20, 2023.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and by Texas Government Code §533.00251(h).

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

Filed with the Office of the Secretary of State on May 12, 2023.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 826-4599



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 2. ENFORCEMENT

SUBCHAPTER B. ENFORCEMENT FOR NONCOMPLIANCE WITH PROGRAM REQUIREMENTS OF CHAPTERS 6 AND 7

10 TAC §2.203

The Texas Department of Housing and Community Affairs (the Department) adopts an amendment to §2.203, Termination and Reduction of Funding for CSBG Eligible Entities without changes to the proposed text as published in the March 24, 2023 issue of the *Texas Register* (48 TexReg 1607). The rule will not be republished. The rule amendment clarifies that the process described in §2.203 does not apply to contracts awarded under CSBG Discretionary funding.

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

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Wilkinson also has determined that, for the first five years the adopted amendment would be in effect:

1. The adopted amendment to the rule will not create or eliminate a government program;
2. The adopted amendment to the rule will not require a change in the number of employees of the Department;
3. The adopted amendment to the rule will not require additional future legislative appropriations;
4. The adopted amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The adopted amendment to the rule will not create a new regulation;

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

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

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

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the adopted amendment to the rule is in effect, the public benefit anticipated as a result of the action will be to further clarify which programs are applicable to the rule. There will not be any economic cost to any individuals required to comply with the adopted amendment.

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

SUMMARY OF PUBLIC COMMENT. Public comment was accepted from March 24, 2023, through April 24, 2023. No comment was received.

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

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

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

Filed with the Office of the Secretary of State on May 12, 2023.

TRD-202301736

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: June 1, 2023

Proposal publication date: March 24, 2023

For further information, please call: (512) 475-3959



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter A, §60.10; Subchapter F, §60.82; Subchapter G, §60.101; Subchapter I, §§60.300, 60.304, 60.305, 60.307, 60.308, and 60.310; and Subchapter J, §§60.400 - 60.406, 60.408, and 60.409; adopts new rules at Subchapter H, §§60.200 - 60.204; and Subchapter I, §§60.301, 60.302, 60.309, 60.311, and 60.312; and adopts the repeal of existing rules at Subchapter H, §60.200; and Subchapter I, §60.306 and §60.311, regarding the Procedural Rules of the Commission and the Department, without changes

to the proposed text as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1201). These rules will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC Chapter 60, Subchapter H, regarding the Procedural Rules of the Commission and the Department, with changes to the title of Subchapter H as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1201). The title of Subchapter H will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department), and other laws applicable to the Commission and the Department.

The Chapter 60 rules are the procedural rules of the Commission and the Department. These rules apply to all of the agency's programs and to all license applicants and licensees, except where there is a conflict with the statutes and rules of a specific program.

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

Staff and Strategic Planning Changes

The adopted rules include changes suggested by the General Counsel's Office and suggested during past strategic planning sessions. The changes include updates to the rules regarding definitions and complaints; reorganization of existing rules; clean up changes in terminology; and editorial changes to "Commission," "Department," and "Executive Director" to use lower case terminology to be consistent with the statutes and consistent across the Chapter 60 rule subchapters.

Four-Year Rule Review Changes

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

In response to the Notice of Intent to Review that was published, the Department received public comments from six interested parties regarding Chapter 60, with one of these interested parties commenting on the complaint rule under Subchapter H. The interested party commented that the rules do not include timeframes for resolving complaints and that the complaint process takes too long. The Department did not propose any changes to the rules based on this public comment. Texas Occupations Code §51.252 states that the Department "shall maintain a system to promptly and efficiently act on complaints," and §51.2521 states that the Department "shall assign priorities and investigate complaints based on risk to the public of the conduct alleged in the complaint." There are internal processes and timeframes, priority of violations, case specific issues, and performance measures that affect the timing for complaint resolution. The Depart-

ment did not include any timeframes for complaint resolution in the rules.

The adopted rules include changes identified by Department staff during the rule review process. The changes are reflected throughout the adopted rules and include updates to the rules regarding definitions, fees, complaints, contested cases, and mediation for contested cases. The changes also include clarifying the rules, using plain talk language, and making the same editorial changes to use lower case terminology.

Sunset Bill Statutory Changes

The adopted rules incorporate and reflect the changes made to Texas Occupations Code, Chapter 51, as a result of House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Department's Sunset legislation. HB 1560, Article 1, Sections 1.06, 1.07, and 1.08, amended and added provisions in Chapter 51 regarding complaints, specifically under §§51.251, 51.252, and 51.2521. The adopted rules under Subchapter H incorporate and reflect the amended and new statutory provisions regarding complaints.

The adopted rules are necessary to: update the terminology and definitions; align the dishonored payment processing fee with statutory requirements; add a statutory reference regarding negotiated rulemaking; add additional rules regarding complaints; update and reflect the current processes and procedures for contested cases; clarify the existing rules regarding mediation for contested cases; and reorganize and clean up existing rules where necessary. The Department expects to propose additional changes to Chapter 60 in the future in separate rulemakings.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

The adopted rules amend §60.10. Definitions. The adopted rules amend the terms and definitions to align with applicable statutes; to provide additional information and clarity; to designate the General Counsel or the General Counsel's designee as the "ADR Administrator"; to relocate certain provisions elsewhere in the rule chapter; to make various clean-up changes; and to make editorial changes to use lower case terminology. The adopted rules also remove unnecessary or unused terms and renumber the remaining terms as necessary.

Subchapter F. Fees.

The adopted rules amend §60.82. Dishonored Payment Device. The adopted rules change the title of the section to "Dishonored Payment Fee." The adopted rules lower the dishonored payment processing fee from \$50 to \$30 to align with Business and Commerce Code §3.506, Processing Fee by Holder of Payment Device, and with the Texas Comptroller Manual of Accounts regarding revenues and returned check fees. The adopted rules replace the definition of "payment device" under §60.10, which is being repealed, with an explanation of authorized forms or methods of payment and dishonored payments. The adopted rules restructure the existing rule; use plain talk language to improve readability and understanding; and make editorial changes to use lower case terminology.

Subchapter G. Rulemaking.

The adopted rules amend §60.101. Negotiated Rulemaking. The existing rule implements Texas Occupations Code §51.208, Negotiated Rulemaking and Alternative Dispute Resolution Procedures, as it relates to negotiated rulemaking. The adopted

rules add the statutory reference for context and clarification that the statutory requirement has been implemented through this rule.

Subchapter H. Complaints; Inspections.

Subchapter H is amended to add additional rules regarding complaints. The adopted rules change the title of Subchapter H to "Complaints; Inspections" to reflect the scope of the subchapter. The adopted rules include a change to the title of Subchapter H as published in the proposed rules. The adopted rules reflect the correct title of Subchapter H.

The adopted rules repeal existing §60.200. Complaints. The repealed provisions are relocated to and replaced with new §60.200 and new §60.201.

The adopted rules add new §60.200. Notice to the Public Regarding Complaints. The new rule includes provisions that replace those found in existing §60.200, which is being repealed. The new rule requires a license holder to notify consumers and service recipients of the Department's name, address, phone number, and website address for purposes of filing complaints; specifies how and where this notification must be provided, unless stated otherwise in the program statutes or rules; and provides that information will be made available on the Department's website describing the procedures for filing complaints and for complaint investigation and resolution.

The adopted rules add new §60.201. Filing a Complaint. The new rule includes provisions that replace those found in existing §60.200, which is being repealed. The new rule explains the process and timing for filing a complaint against a person who is engaged in an activity or business regulated by the Department and the Department's handling of anonymous complaints.

The adopted rules add new §60.202. Investigation and Priority of Complaints. The new rule explains the Department's responsibilities regarding promptly and efficiently acting on complaints; assigning priorities and investigating complaints based on risk to the public; and dismissing complaints that are inappropriate or without merit.

The adopted rules add new §60.203. Cooperation with Investigation of Complaints. The new rule requires a person to cooperate in a Department investigation of a complaint and to make available all records, notices, and other documents requested by the Department. The new rule also lists prohibited actions in connection with a Department investigation.

The adopted rules add new §60.204. Status and Confidentiality of Complaints. The new rule addresses when the Department will provide the status of a complaint and the requirements on the Department to maintain confidentiality of certain complaints.

Subchapter I. Contested Cases.

Subchapter I is amended to reflect the current processes and procedures for contested cases. New rules are added, and existing rules are amended and reorganized, so that the rules set out the procedural steps in the contested case process. These rules are necessary to comply with Texas Government Code, Chapter 2001, and Texas Occupations Code, Chapter 51, Subchapters F and G.

The adopted rules amend existing §60.300. Purpose and Scope. The adopted rules make technical clean-up changes to the statutory references.

The adopted rules add new §60.301. Notice of Alleged Violation; Notice of Continued License Restrictions. The new rule is relocated in part from existing §60.306, which is being repealed. The new rule reflects the current processes and procedures with updates and clarifications for the notice of alleged violation and the notice of continued license restrictions, and it includes information on requesting a hearing.

The adopted rules add new §60.302. Notice of Proposed Denial. The new rule is relocated in part from existing §60.306, which is being repealed. The new rule reflects the current processes and procedures with updates and clarifications for the notice of proposed denial, and includes information on requesting a hearing.

The adopted rules amend existing §60.304. Disposition by Agreement. The adopted rules update the terminology for consistency purposes.

The adopted rules amend existing §60.305. Place and Nature of Hearings. The adopted rules change the title of the rule to "Contested Case Hearings at SOAH" to reflect the scope of the rule. The adopted rules provide references to SOAH's procedures and information about the Department's contested case hearings at SOAH.

The adopted rules repeal existing §60.306. Request for Hearing and Defaults. The provisions from this repealed rule have been separated into two new rules, §60.301 and §60.302, and relocated in the subchapter so they are in procedural order in the contested case process.

The adopted rules amend existing rule §60.307. Hearing Costs. The adopted rules change the title of the section to "Costs Associated with a Contested Case" to reflect the scope of the rule. The adopted rules clarify the existing provision under subsection (a), regarding costs associated with making the SOAH hearing record, and align the provision with SOAH rule 1 TAC §155.423. The adopted rules amend the existing provision under subsection (b), regarding costs associated with contested case transcripts, and align the provision with Texas Government Code §2001.059. The adopted rules add a new provision under new subsection (c) to address other possible costs associated with the contested case.

The adopted rules amend §60.308. Proposals for Decision. The adopted rules add new subsection (b) that reflects the current procedures for proposals for decision that are considered by the Commission during a Commission meeting. The adopted rules state that a party may only present the sworn testimony and the information provided during the SOAH hearing or admitted into the SOAH record.

The adopted rules add new §60.309. Motion for Rehearing. The new rule reflects the current processes and procedures for filing and handling a motion for rehearing, and it provides the requirements for the contents of the motion for rehearing.

The adopted rules amend existing §60.310. Final Orders. The adopted rules add a provision to address when a contested case decision or order is final under the Administrative Procedure Act (APA). The adopted rules also remove the provision regarding appeals and costs and relocate that provision to new §60.311.

The adopted rules add new §60.311. Appeal of Final Order. The new rule reflects the current processes and procedures for appealing a final decision or order in a contested case. The new rule provides that the appeal shall be filed and handled in accordance with the APA. The new rule also adds the provision regarding appeals and costs that is relocated from existing §60.310.

The adopted rules repeal existing §60.311. Corrected Orders. The repealed provision has been relocated to new §60.312.

The adopted rules add new §60.312. Corrected Orders. The new rule includes the provision from existing §60.311, which is being repealed.

Subchapter J. Mediation for Contested Cases.

Subchapter J is amended to clarify and make clean-up changes to the existing rules regarding mediation for contested cases. The existing rules in this subchapter implement Texas Occupations Code §51.208, Negotiated Rulemaking and Alternative Dispute Resolution Procedures, as it relates to alternative dispute resolution procedures for contested cases, and Texas Government Code Chapter 2009, Alternative Dispute Resolution for Use by Governmental Bodies.

The adopted rules amend existing §60.400. Alternative Dispute Resolution--Mediation. The adopted rules change the title of the section to "Alternative Dispute Resolution Procedures--Mediation" for clarification. The adopted rules add statutory references for context and clarification that the statutory requirements and provisions have been implemented through the rules in this subchapter. The adopted rules also add an explanation about alternative dispute resolution procedures and the use of mediation; separate the existing section into separate subsections to improve readability; update a cross-reference to Subchapter I; make clarifications and clean-up changes; and make an editorial change to use lower case terminology.

The adopted rules amend existing §60.401. Referral of Contested Matter for Mediation. The adopted rules make editorial changes to use lower case terminology.

The adopted rules amend existing §60.402. Appointment of Mediator. The adopted rules change the title of the section to "Appointment of Mediator; Mediator Costs" to reflect the scope of the rule. The adopted rules make clarifications and clean-up changes regarding the appointment of a mediator.

The adopted rules amend existing §60.403. Qualifications of Mediators. The adopted rules change the title of the section to "Qualifications, Standards, and Role of the Mediator" to reflect the scope of the rule. The adopted rules make clean-up changes; add a specific statutory reference regarding the mediation training; include information regarding the role of the mediator that has been relocated from the definition of mediator in §60.10; and add additional information regarding the role of the mediator that reflects the provisions in Texas Civil Practices and Remedies Code §154.053 and the SOAH guidelines on mediation.

The adopted rules amend existing §60.404. Disqualifications of Mediators. The adopted rules change the title of the section to "Disqualification of the Mediator." The adopted rules make an editorial change to use lower case terminology and make a clarification to the existing provisions.

The adopted rules amend existing §60.405. Qualified Immunity of the Mediator. The adopted rules make a technical correction to a statutory reference.

The adopted rules amend existing §60.406. Commencement of Mediation. The adopted rules make editorial changes to use lower case terminology; make clean-up changes to terminology; and include updated references to the notices discussed under Subchapter I.

The adopted rules amend existing §60.408. Agreements. The adopted rules make editorial changes to use lower case terminology.

The adopted rules amend existing §60.409. Confidentiality. The adopted rules make clarification changes to the existing provisions regarding the confidentiality of the mediation communications and documents.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1201). The public comment period closed on April 3, 2023. The Department received a comment from one interested party on the proposed rules.

The Department received a comment from the Texas Food & Fuel Association (TFFA) on the proposed rules regarding complaints, specifically new rules §60.200, §60.201, and §60.203. Each rule is addressed separately.

Comment: Regarding §60.200, TFFA raised concerns that a license holder is required to notify every consumer and service recipient of the Department's contact information, rather than only upon request; that the words "consumers" and "service recipients" are undefined and create ambiguity on when a license holder must comply; and that retailers, including convenience store and transportation fuel sales, should not be subject to §60.200(b)(1) or (3). TFFA suggested specific changes to the proposed rules, including adding definitions, creating separate notice requirements, exempting certain retailers from specific notice requirements, and using the same language that is used for posting certificates of registration.

Department Response: The Department disagrees with the comment and the suggested changes. New §60.200 includes provisions that have been relocated from current §60.200, Complaints, which is being repealed as part of this proposal. The current rule and the new rule are very similar in substance, and they both prescribe the notice requirements that are generally applicable to all Department programs.

First, the current rule and the new rule require that the Department's contact information be provided to consumers and service recipients for purposes of filing complaints. The only change in the new rule is the addition of the Department's website address in the contact information. This contact information must be provided to every consumer and service recipient for purposes of filing a complaint. The information is not provided only upon request. If a consumer or service recipient is not aware that a license holder is regulated, the person would not even know to ask for the Department's contact information.

Second, the current rule and the new rule do not define "consumer" or "service recipient." Both terms are used in Texas Occupations Code, Chapter 51, and neither term is defined in that statute or in the Chapter 60 rules. Definitions of "consumer" and "service recipient" are not needed as the terms are commonly used, are generally understood, and are not terms of art for purposes of these rules.

Any new definition would need to be generally applicable to all Department programs, unless specific program statutes or rules define the term otherwise. The suggested definitions for "consumer" and "service recipient" are too narrow and would not be applicable to all programs. The term "retail purchaser" is not

used in Texas Occupations Code, Chapter 51 and is not necessarily applicable to all programs.

Third, the current rule and the new rule require the same three locations for the notification. The only change in the new rule is the clarification that the written contract or bill for services may be provided in paper or electronic form. The current rule and the new rule state that the notice requirements apply to all programs, unless stated otherwise in the program statutes or rules. The current rule and the new rule prescribe the default notice requirements. They apply unless a specific program's statute or rules address providing the Department's contact information to consumers for purposes of filing complaints. The current rule and the new rule also apply to the extent that a license holder provides written contracts for services, has a place of business where consumers and service recipients may visit to obtain services and products, and provides bills for services.

It is important to note that the requirement for posting the Department's contact information for complaint purposes is a separate requirement from a license holder posting its license or certificate of registration. The requirements for posting licenses or certificates of registration vary across programs, and they are not applicable to, or included in, these proposed rules.

The changes suggested by TFAA to new §60.200 are program-specific changes that are not appropriate to be included in the Chapter 60 rules that are generally applicable to all programs regulated by the Department. Program-specific notice provisions may be addressed in the individual program statutes or rules. The Department did not make any changes to new §60.200 as a result of the public comment.

Comment: Regarding §60.201, TFFA raised concerns that a complaint will be considered valid and may be investigated by the Department, regardless of how much time has passed. TFFA stated that it would be difficult for a license holder to effectively respond to a dated investigation and that there should be a defined timeline for filing complaints. TFFA commented that a two-year deadline for a retail complaint is too long and suggested a six-month deadline for filing a retail complaint.

Department Response: The Department disagrees with the comment and the suggested change. New §60.201 includes provisions that have been relocated from current §60.200, Complaints, which is being repealed as part of this proposal. The current rule and the new rule establish a two-year deadline for filing a complaint and provide discretion for investigating complaints that are filed after the two-year deadline. The new rule shifts the discretion from the Executive Director to the Director of Enforcement to investigate a complaint filed beyond the two-year deadline.

The current rule and the new rule allow the Department flexibility to consider the facts and the circumstances giving rise to a complaint being filed. While generally complaints older than two years are not opened, the new rule allows the Director of Enforcement to determine on a case-by-case basis that a complaint over two years old should be opened. Regarding the concern about a license holder having difficulty in responding to a dated investigation, that has not been the Department's experience. Records are often maintained for business reasons or as required by federal, state, or local laws and rules. The Department did not make any changes to new §60.201 as a result of the public comment.

Comment: Regarding §60.203, TFFA suggested a change to the requirement that a license holder provide all documents and

records requested by the Department or its representative as part of the investigation of a complaint. TFFA suggested adding the word "pertinent" after the word "all" to clarify that the request for documents and records must be related to the complaint.

Department Response: The Department disagrees with the comment and the suggested change. Under new §60.203, a license holder is required to cooperate in an investigation of a complaint, which includes producing records and documents requested by the Department. All records that are required to be maintained are required to be made available upon request by the Department or its representative. During an investigation the Department will determine which records are pertinent to the complaint investigation based upon the records which are required to be maintained. The Department did not make any changes to new §60.203 as a result of the public comment.

COMMISSION ACTION

At its meeting on May 1, 2023, the Commission adopted the proposed rules, with changes to the title of Subchapter H, as published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §60.10

STATUTORY AUTHORITY

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

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

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

Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on May 12, 2023.

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Della Lindquist

Interim General Counsel

Texas Department of Licensing and Regulation

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



SUBCHAPTER F. FEES

16 TAC §60.82

STATUTORY AUTHORITY

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

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing

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

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER G. RULEMAKING

16 TAC §60.101

STATUTORY AUTHORITY

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

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional

Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER H. COMPLAINT HANDLING

16 TAC §60.200

STATUTORY AUTHORITY

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

In addition, the adopted repeal is adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

The statutory provisions affected by the adopted repeal is those set forth in Texas Occupations Code, Chapter 51, and the

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

In addition, the statutory provisions affected by the adopted repeal is those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted repeals.

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SUBCHAPTER H. COMPLAINTS; INSPECTIONS

16 TAC §§60.200 - 60.204

STATUTORY AUTHORITY

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

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

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

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER I. CONTESTED CASES

16 TAC §§60.300 - 60.302, 60.304, 60.305, 60.307 - 60.312

STATUTORY AUTHORITY

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

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

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

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted rules.

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16 TAC §60.306, §60.311

STATUTORY AUTHORITY

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

In addition, the adopted repeals are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

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

In addition, the statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted repeals.

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SUBCHAPTER J. MEDIATION FOR CONTESTED CASES

16 TAC §§60.400 - 60.406, 60.408, 60.409

STATUTORY AUTHORITY

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

In addition, the adopted rules are adopted under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 53, 55 and 108 (Subchapter B); Texas Government Code, Chapters 411, 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232.

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

In addition, the statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the adopted rules.

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CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §§84.1 and §84.3; Subchapter B, §§84.31 - 84.33; Subchapter C, §84.47 and §84.48; Subchapter D, §84.50 and §84.52; Subchapter G, §§84.80, 84.84, and 84.85; Subchapter I, §§84.100, 84.101, 84.103; Subchapter L, §84.400; Subchapter M, §§84.500 - 84.502, and 84.504; Subchapter N, §84.600 and §84.601; new rules at Subchapter B, §84.30; Subchapter C, §§84.40 - 84.46; Subchapter E, §§84.60, 84.61, and 84.63; Subchapter G, §§84.81 - 84.83; Subchapter H, §84.90; Subchapter J, §84.200; Subchapter K, §84.300 and §84.301; and the repeal of existing rules at Subchapter A, §84.2; Subchapter B, §84.30; Subchapter C, §§84.40 - 84.46; Subchapter E, §§84.60 - 84.64; Subchapter F, §§84.70 - 84.72; Subchapter G, §§84.81 - 84.83; Subchapter H, §84.90; Subchapter J, §84.200; Subchapter K, §§84.300 - 84.302; Subchapter M, §§84.503, 84.505 - 84.507, regarding the Driver Education and Safety (DES) program, without changes to the proposed text as published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 565). These rules will not be republished.

The Commission also adopts a new rule at 16 TAC Chapter 84, Subchapter A, §84.2, and amendments to an existing rule at 16 TAC Chapter 84, Subchapter D, §84.51, regarding the Driver Education and Safety program, with changes to the proposed text as published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 565). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

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

The adopted rules, pursuant to HB 1560, include: (1) clarification of DES license types, licensing prerequisites, means of course instruction delivery, and program fees; and (2) implementing the recommendations of the DES Providers/Instructors Workgroup

(Workgroup), consistent with HB 1560, relating to the qualifications, responsibilities, and functions of those licensees.

The adopted rules in this rulemaking represent the first phase of bill implementation associated with HB 1560. A second phase is being considered to address rule amendments relating to driver training curriculum and enforcement issues within the DES program.

House Bill 1560, Article 5, Driver Education

House Bill 1560, Article 5, Regular Session (2021) represented significant reorganization and modification in the Driver Education and Safety program in Chapter 1001, Education Code by: (1) repealing and replacing certain license types and endorsements associated with driver education, driving safety, specialized driving safety, and the drug and alcohol driving awareness program courses; (2) repealing selected administrative functions to promote greater simplicity and transparency for the Department and licensees; (3) amending and adding program fees and requirements related to the revised license types; and (4) authorizing the Commission to change minimum hours for driver education course instruction.

The Workgroup conducted four meetings to address the proposed changes to the DES program brought about by HB 1560, Article 5. The Workgroup review was limited to 16 TAC Chapter 84, Subchapters A through J and the adopted rules reflect their input.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

The adopted rules amend §84.1, Authority, by clarifying rule language.

The adopted rules add new §84.2, Definitions, which establishes the meaning of the words and terms employed throughout the rule chapter. The new rule replaces existing §84.2 to: (1) add definitions for "Branch Location", "Education Service Center", "Endorsement", "Instructional Hour", "Primary Driver Education Provider", and "Relevant Driver Training Entity"; (2) delete definitions rendered unnecessary due to the provisions of HB 1560, Article 5 for "Alternative Method of Instruction", "Certificate of Program Completion", "Change of Ownership of a School or Course Provider", "Clock Hour", "Criminal History Record Information", "DSY25", "Educational Objectives", "Inactive Course", "Instructor Development Course", "Instructor Development Program", "Instructor Trainer", "National Criminal History Record Information", "New Course", "Post Program Exam", "Pre Program Exam", "Primary School", "Specialized Driving Safety Course", and "Teaching Techniques"; (3) amend definition terminology provisions consistent with HB 1560, Article 5; (4) renumber provisions as needed; and (5) clarify rule language.

The adopted rules repeal existing §84.2, Definitions.

The adopted rules amend §84.3, Materials Adopted by Reference, by deleting references in subsections (d) and (e) to minimum requirements for course curriculum related to Specialized Driving Safety and the Drug and Alcohol Driving Awareness programs which are repealed by HB 1560, Article 5.

Subchapter B. Driver Training and Traffic Safety Advisory Committee

The adopted rules add new §84.30, Membership, which introduces changes in the number and composition of the DES advisory committee, consistent with HB 1560, Article 5. The new

rule replaces existing §84.30 to: (1) reduce the number of members from eleven to nine; (2) remove member representation for the repealed drug and alcohol driving awareness program; and (3) reduce committee membership to one public member.

The adopted rules repeal existing §84.30, Membership.

The adopted rules amend §84.31, Duties, to clarify rule language.

The adopted rules amend §84.32, Terms; Vacancies, to clarify rule language.

The adopted rules amend §84.33, Officers, to clarify rule language.

Subchapter C. Driver Education Providers and Instructors.

The adopted rules amend the title of Subchapter C, "Driver Education Schools and Instructors" to read "Driver Education Providers and Instructors" to reflect the HB 1560, Article 5 change in terminology for "driver education providers" as indicated in Texas Education Code, §1001.001(6-b).

The adopted rules add new §84.40, Driver Education Provider Licensure Requirements, which introduces minimum prerequisites, consistent with the implementation of HB 1560, Article 5, for an applicant to obtain a DE provider license. The new rule replaces existing §84.40 to: (1) remove the tender of letters of credit and cash deposits as accepted alternate forms of security by DE providers in lieu of a corporate surety bond for initial licensure and renewals; (2) update rule terminology consistent with HB 1560, Article 5; (3) accept transfer of change of DE provider ownership requirements from existing §84.2(6), Definitions; (4) allow for refunds for those students unable to complete a course with a DE provider that has changed location; (5) eliminate the requirement for Department pre-approval on contract sites DE providers employ to conduct instruction at another location where a written agreement exists between the provider and authorized contract site representatives; (6) clarify ownership verification requirements in new subsection (c) for primary and branch provider location relating to new applications and change of ownership situations; (7) require licensed branch driver education locations to have a different physical address from the licensed primary provider location; (8) allow the Department to declare closure of a DE provider where the provider provides written notice of its intent to no longer deliver driver education training or education and returns all unissued DE certificates or numbers; and (9) clarify rule language.

The adopted rules repeal existing §84.40, Driver Education School Licensure Requirements.

The adopted rules add new §84.41, Driver Education Provider Responsibilities, which enumerates the duties and functions of licensed DE providers. The new rule replaces existing §84.41 to: (1) clarify the business responsibilities for online and in-person DE providers, consistent with HB 1560, Article 5; (2) transfer the duties in existing rule subsection (c) related to the care, security and issuance of driver education certificates of completion, and corporate security requirements for student data to new §84.43, Driver Education Certificates; (3) update rule terminology consistent with HB 1560, Article 5; (4) mandate DE provider compliance with §84.43 in the issuance of driver education certificates of completion; (5) require that each DE provider either be located in or maintain a registered agent within the state; and (6) clarify rule language.

The adopted rules repeal existing §84.41, Driver Education School Responsibilities.

The adopted rules add new §84.42, Motor Vehicles, which identifies the requirements for motor vehicles used by DE providers to conduct in-car instruction of students. The new rule replaces existing §84.42 to: (1) allow providers to use any motor vehicle equipped with special vehicle controls to conduct in-car instruction of a disabled student; (2) describe minimum equipment and insurance requirements for provider-owned motor vehicles used for demonstration or practice driving lessons; (3) update rule terminology consistent with HB 1560, Article 5; and (4) clarify rule language.

The adopted rules repeal existing §84.42, Motor Vehicles.

The adopted rules add new §84.43, Driver Education Certificates, which describes how relevant driver training entities care, control and issue driver education certificates of completion or certificate numbers. The new rule replaces existing §84.43 to: (1) clarify and separate the specific responsibilities for DE providers, and public and private schools, regarding the handling of driver education certificates of completion or certificate numbers; (2) combine certain DE provider responsibilities previously found in existing §84.41(c) relating to care, security and issuance of driver education certificates of completion, and corporate security requirements for student data for clarity and better organization within the rule chapter; (3) update rule terminology consistent with HB 1560, Article 5; and (4) clarify rule language.

The adopted rules repeal existing §84.43, Driver Education Certificates.

The adopted rules add new §84.44, Driver Education Instructor License, which identifies the requirements for an applicant to obtain a driver education instructor license. The new rule replaces existing §84.44 to: (1) eliminate the requirement for a high school diploma or equivalent for licensure in existing subsection (a)(1); (2) remove previous instructor endorsements with their qualifications and responsibilities; (3) require submission of a valid driver license record for the preceding three year period for instructor renewal; (4) reduce continuing education (CE) hour requirements for license renewal from four hours to two hours of instruction related to driving education, driving safety, and instructional techniques; (5) require applicant criminal history background checks for initial and renewal license applications; and (6) establish an auditing process to verify reporting of continuing education hours submitted by renewing licensees.

The adopted rules repeal existing §84.44, Driver Education Instructor License.

The adopted rules add new §84.45, Student Progress, which sets the requirements to assess student comprehension during driver education courses. The new rule replaces existing §84.45 to: (1) remove limitations on methods available to DE instructors and providers to assess successful completion and mastery of driver education course materials; (2) update rule terminology consistent with HB 1560, Article 5; and (3) clarify rule language.

The adopted rules repeal existing §84.45, Student Progress.

The adopted rules add new §84.46, Attendance and Makeup, which establishes minimum standards for DE provider recording of student attendance. The new rule replaces existing §84.46 to: (1) increase the maximum daily limit of driver education training offered by providers to six hours per day; (2) increase the allocation of in-car instruction from three hours to four

hours per day; (3) increase behind-the-wheel instruction from one hour to two hours per day out of a daily in-car instruction session; (4) repeal the requirement that DE providers develop a makeup policy for inclusion in enrollment contracts; (5) update rule terminology consistent with HB 1560, Article 5; and (6) clarify rule language.

The adopted rules repeal existing §84.46, Attendance and Makeup.

The adopted rules amend §84.47, Student Conduct Policy, to clarify rule language.

The adopted rules amend §84.48, Accommodations for Deaf or Hard of Hearing Students, to update rule terminology consistent with HB 1560, Article 5.

Subchapter D. Parent-Taught Driver Education.

The adopted rules amend §84.50, Parent-Taught Driver Education Program Requirements, by: (1) removing unnecessary language in existing subsection (b) already contained in Texas Education Code, §§1001.112(b)(2)-(4); (2) limiting parent taught driver education instruction to students to six hours a day, including not more than two hours of behind-the-wheel supervised practice; (3) updating rule terminology consistent with HB 1560, Article 5; and (4) clarifying rule language.

The adopted rules amend §84.51, Submission of Parent-Taught Course of Department Approval, to: (1) clarify the applicability of rules relevant to PTDE providers; and (2) update the section title.

The adopted rules amend §84.52, Cancellation of Department Approval, to update the name of the Department's instructor designation form in the rule.

Subchapter E. Driving Safety Providers.

The adopted rules amend the title of Subchapter E, "Driving Safety Schools, Course Providers and Instructors" to read "Driving Safety Providers" to reflect the HB 1560, Article 5 change in terminology for "driving safety provider" as indicated in Texas Education Code, §1001.001(13).

The adopted rules add new §84.60, Driving Safety Provider License Requirements, which details the prerequisites for an applicant to obtain a driving safety provider license. The new rule, consistent with HB 1560, Article 5, replaces existing §§84.60 and 84.62 to reflect the introduction of the new driving safety provider license type, and the repeal of the driving safety school license, respectively. The new rule replaces existing §84.60 to: (1) combine the functions of the previously separate course provider and driving safety school license types into one new license type (driving safety provider) to offer a driving safety course; (2) add bond amount requirements to original and renewal applications for a driving safety provider license; (3) add ownership verification, license renewal, provider relocation, provider closure, and existing provider acquisition requirements for the driving safety provider license type, and repeal such requirements for driving safety schools; (4) update rule terminology consistent with HB 1560, Article 5; and (5) clarify rule language.

The adopted rules repeal existing §84.60, Driving Safety School Licensure Requirements.

The adopted rules add new §84.61, Driving Safety Provider Responsibilities, which illustrates the required obligations for a licensed driving safety provider. The new rule replaces existing §84.61 by: (1) eliminating Department preapproval of locations

for driving safety instruction courses, and the requirements associated with the driving safety instructor license type, due to its repeal by HB 1560, Article 5; (2) transferring the provider responsibilities, except those dealing with the now repealed driving safety school and instructor license types, to §84.63, Uniform Certificate of Course Completion for Driving Safety Course; (3) imposing an obligation upon driving safety providers to make all records available upon request to Department staff; (4) requiring providers to be located or maintain a registered agent within the state; (5) updating rule terminology consistent with HB 1560, Article 5; and (6) clarifying rule language.

The adopted rules repeal existing §84.61, Driving Safety School and Course Provider Responsibilities.

The adopted rules repeal existing §84.62, Course Provider License Requirements, which includes requirements that will instead be addressed in new §84.60, Driving Safety Provider License Requirements.

The adopted rules add new §84.63, Uniform Certificate of Course Completion for Driving Safety Course, which describes the responsibilities for driving safety providers regarding management of driving safety uniform certificates of course completion and certificate numbers. This new rule replaces existing §84.63 by: (1) eliminating driving safety course provider, school owner, and instructor responsibilities for uniform certificates for course completion for specific driving safety courses repealed by HB 1560, Article 5; (2) identifying requirements for driving safety providers relating to care, control, security and issuance of original and duplicate uniform certificates of course completion and certificate numbers; (3) updating rule terminology consistent with HB 1560, Article 5; and (4) clarifying rule language.

The adopted rules repeal existing §84.63, Uniform Certificate of Course Completion for Driving Safety or Specialized Driving Safety Course.

The adopted rules repeal existing §84.64, Driving Safety Instructor License Requirements, because the driving safety instructor license was repealed by HB 1560, Article 5.

Subchapter F. Drug and Alcohol Awareness Programs and Instructors.

The adopted rules repeal the Subchapter F title, "Drug and Alcohol Driving Awareness Programs and Instructors".

The adopted rules repeal existing §84.70, Drug and Alcohol Driving Awareness Program School Licensure Requirements, because the Drug and Alcohol Driving Awareness Program was repealed by HB 1560, Article 5.

The adopted rules repeal existing §84.71, School and Course Provider Responsibilities, because the Drug and Alcohol Driving Awareness Program was repealed by HB 1560, Article 5.

The adopted rules repeal existing §84.72, Instructor License Requirements, because the Drug and Alcohol Driving Awareness Program was repealed by HB 1560, Article 5.

Subchapter G. General Business Practices.

The adopted rules amend existing §84.80, Names and Advertising, by: (1) removing the Department pre-approval requirement for business advertising by new license applicants pending licensure; (2) updating rule terminology consistent with HB 1560, Article 5; and (3) clarifying rule language.

The adopted rules add new §84.81, Recordkeeping Requirements, which identifies student record management requirements for driver training providers. The new rule replaces existing §84.81 to: (1) allow licensees to maintain student records of the most recent 12 months of instruction at the provider's licensed location rather than the class instruction site; (2) clarify the type of required entries for driver education providers regarding classroom and in-car instruction student records, including retention, audit and inspection standards; (3) require driver training providers to electronically upload specific student enrollment, course completion, withdrawal and termination data to the Department within specified time periods; (4) identify the circumstances under which student records may be released by driver training providers; (5) eliminate recordkeeping requirements for driving safety schools, and drug and alcohol awareness schools, repealed by HB 1560, Article 5; (6) require DE providers to upload student certificate data to the Department as directed within 15 calendar days after issuance; (7) update rule terminology consistent with HB 1560, Article 5; and (8) clarify rule language.

The adopted rules repeal existing §84.81, Recordkeeping Requirements.

The adopted rules add new §84.82, Driver Training Provider Student Enrollment Contracts, which identifies the elements to be included on student enrollment contracts prior to the submission of payment to a provider. The new rule replaces existing §84.82 to: (1) identify the required enrollment provisions for student contracts with driver training providers; (2) eliminate the contract requirements for repealed drug and alcohol awareness and driving safety schools; (3) authorize group enrollment contracts for students enrolled in driving safety and adult driver education courses; (4) update rule terminology consistent with HB 1560, Article 5; and (5) clarify rule language.

The adopted rules repeal existing §84.82, Student Enrollment Contracts.

The adopted rules add new §84.83, Student Complaints, which identifies the Department policy regarding dispute resolution obligations for driver training providers. The new rule replaces existing §84.83 to: (1) remove repetitive grievance procedures already contained in §84.82; and (2) clarify policy relating to disputes between students and providers.

The adopted rules repeal existing §84.83, Student Complaints.

The adopted rules amend existing §84.84, Notification of Public Interest Information and Participation, by: (1) limiting the required notice of Department complaint filing information to student enrollment contracts, provider business locations, and websites; and (2) clarifying rule language.

The adopted rules amend existing §84.85, Statement of Assurance, by: (1) updating rule terminology consistent with HB 1560, Article 5; and (2) clarifying rule language.

Subchapter H. Facilities and Equipment for Driver Training Providers.

The adopted rules amend the title of Subchapter H, "Facilities and Equipment for Driver Education Schools, Driving Safety Schools and Drug and Alcohol Awareness Schools", to read "Facilities and Equipment for Driver Training Providers" to reflect the HB 1560, Article 5, changes in terminology for "driver education provider" as indicated in Texas Education Code, §1001.001(6-b) and the repeal of the license types for "driving safety schools" and "drug and alcohol awareness schools".

The adopted rules add new §84.90, Facilities and Equipment, which describes the necessary elements required for an in-person driver training provider location. The new rule replaces existing §84.90 by: (1) clarifying that such facilities must comply with local ordinances and state laws related to health and safety for students and instructors; (2) requiring that an appropriate amount of seating and writing facilities for the class size be available to students where applicable; (3) removing the requirements for driver training courses deregulated by HB 1560, Article 5; (4) updating rule terminology consistent with HB 1560, Article 5; and (5) clarifying rule language.

The adopted rules repeal existing §84.90, Facilities and Equipment.

Subchapter I. Inspections.

The adopted rules amend existing §84.100, Inspections - General, by clarifying rule language.

The adopted rules amend existing §84.101, Inspection of Driver Education Providers Before Operation, by clarifying rule language.

The adopted rules amend existing §84.103, by: (1) amending the rule title to read, "Driver Training Provider Audits"; and (2) updating rule terminology consistent with HB 1560, Article 5.

Subchapter J. Driver Training Provider Cancellation and Refund.

The adopted rules amend the title of Subchapter J, "Driver Education and Driving Safety School Cancellation and Refund", to read "Driver Training Provider Cancellation and Refund" to reflect the HB 1560, Article 5 changes in license type terminology and the deregulation of "driving safety schools".

The adopted rules add new §84.200, Cancellation and Refund Policy, which illustrates the student cancellation and refund policies applicable to driver training providers that cease operations, terminate course instruction, or have a student withdrawal from the course. The new rule replaces existing §84.200 by: (1) reducing the interest rate on unpaid refunds to 10% to provide consistency with the provisions relating to usury in Article 16, Section 11 of the Texas Constitution; (2) clarifying that an attempted student refund evidenced in the student file represents a good faith attempt to tender a refund rather than proof of certified mail to the student or student's parent; (3) removing driving safety schools from the cancellation and refund policy requirements due to the license type repeal by HB 1560; (4) updating rule terminology consistent with HB 1560, Article 5; and (5) clarifying rule language.

The adopted rules repeal existing §84.200, Cancellation and Refund Policy.

Subchapter K. Fees

The adopted rules add new §84.300, Driver Education Fees, which set the nonrefundable driver education provider fees for the DES program for the new license types established by HB 1560, Article 5 by: (1) establishing the initial license application fees for primary and branch driver education providers, where applicable, at \$500 and license renewal at \$300, with initial driver education provider license endorsements at \$300 each with no cost for license renewal; (2) setting driver education initial instructor license fees at \$50, with license renewal at \$25; (3) keeping driver education completion certificate fees at \$1; (4) updating rule terminology consistent with HB 1560, Article 5; (5) removing Department driver education course pre-approval fees; and (6) clarifying rule language.

The adopted rules repeal existing 84.300, Driver Education Fees.

The adopted rules add new §84.301, Driving Safety Fees, which set the nonrefundable driving safety provider fees for the new license type, Driving Safety Provider, established by HB 1560, Article 5 by: (1) establishing the initial license application fee for a driving safety provider at \$500, and license renewal at \$100; (2) keeping driving safety course completion certificate fees at \$1; (3) removing driving safety course Department pre-approval fees; (4) updating rule terminology consistent with HB 1560, Article 5; and (5) clarifying rule language.

The adopted rules repeal existing 84.301, Driver Safety Fees.

The adopted rules repeal existing 84.302, Drug and Alcohol Driving Awareness Fees consistent with its repeal pursuant to HB 1560, Article 5.

Subchapter L. Complaints and Enforcement Provisions.

The adopted rules amend existing §84.400, Administrative Penalties and Sanctions, by removing a violation of an executive order issued by the Governor as a basis for the institution of proceedings by the Department to seek to impose administrative penalties and/or sanctions against a licensee. This change provides consistency with the statutory authority of the Department to administer and enforce the laws and rules of the DES program.

Subchapter M. Curriculum and Alternative Methods of Instruction.

The adopted rules amend existing §84.500 by: (1) amending the rule title to read, "Courses of Instruction for Driver Education Providers"; (2) updating rule terminology consistent with HB 1560, Article 5; (3) removing requirements for driver education instructor development courses and continuing education course approval, which were deregulated by HB 1560, Article 5; and (4) clarifying rule language.

The adopted rules amend existing §84.501, Driver Education Course Alternative Method of Instruction, by: (1) updating rule terminology consistent with HB 1560, Article 5; and (2) clarifying rule language.

The adopted rules amend existing §84.502, Driving Safety Courses of Instruction, by: (1) removing rule language relating to requirements for driving safety instructors and course providers, continuing education course creation, and instructor development and training, due to the repeal of the license type by HB 1560, Article 5; (2) updating rule terminology consistent with HB 1560, Article 5; and (3) clarifying rule language.

The adopted rules repeal existing §84.503, Specialized Driving Safety Courses of Instruction, which addresses courses that were repealed by HB 1560, Article 5.

The adopted rules amend existing §84.504, Driving Safety Course Alternative Delivery Method, by: (1) updating rule terminology consistent with HB 1560, Article 5; and (2) clarifying rule language.

The adopted rules repeal existing §84.505, Drug and Alcohol Driving Awareness Programs of Instruction, which addresses programs that were repealed by HB 1560, Article 5.

The adopted rules repeal existing §84.506, Drug and Alcohol Driving Awareness Programs Alternative Delivery Method, which addresses programs that were repealed by HB 1560, Article 5.

The adopted rules repeal existing §84.507, Driving Safety Course for Drivers Younger than 25 Years of Age, which addresses courses that were repealed by HB 1560, Article 5.

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

The adopted rules amend existing §84.600, Program of Organized Instruction, by clarifying rule language.

The adopted rules amend existing §84.601, Additional Procedures for Student Certification and Transfers, by clarifying rule language.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 565). The deadline for public comments was March 13, 2023. The Department received comments (some in multi-part form) from 15 interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment - Five commenters, three of whom also provided comment at the March 6, 2023, Commission Meeting and the April 6, 2023, Driver Training and Traffic Safety Advisory Committee Meeting, opposed the elimination of the Driver Training Course approval fees in current 16 TAC §§84.300(d)(1)-(d)(5) and 84.301(e)(1), as noted in the proposed rules. The main concerns included that such repeal of fees would result in a significant increase in the number of duplicate online driver education and traffic safety courses, also known as "clone courses", onto the Texas marketplace, thereby creating an unfair competitive advantage for some companies by flooding the market with such courses, sacrificing educational quality and motorist safety.

Commission Response - The Department disagrees with the commenters' concerns and notes that the repeal of certain Driver Education and Traffic Safety course fees in proposed 16 TAC §§84.300 and 84.301 were mandated by the provisions of House Bill (HB) 1560 adopted by the 87th Regular Legislature in 2021 and codified in Texas Education Code §1001.151(b). That law expressly mandates the universe of driver training fees that the Department may establish by rule. There is no legislative authorization to maintain a course approval fee for ADM and AMI Driver Training courses. The Department did not make any changes to the proposed rules in response to this comment.

Comment - Three commenters inquired as to the term "endorsement" found in proposed 16 TAC §84.300(b) in the form of multi-part questions as it related to the acquisition of a driver education provider (DEP) license including: (1) the origin and definition of the term, "endorsement"; (2) the Department's determination of its \$300 fee; (3) the absence of a renewal fee for the endorsement; and (4) the reason for the limit to the number of endorsements per DEP license number.

Commission Response - In response to question (1), the "endorsement" model, as noted in proposed 16 TAC §84.300(b), was determined by the Department to best implement the requirements of Texas Education Code §1001.201(b), adopted from HB 1560.

The Department agrees with the commenters regarding a need for further clarification of the term "endorsement" and, therefore,

proposes a definition added to 16 TAC §84.2 as follows: Endorsement - The delivery method by which a driver education course is delivered to the student, whether in-person, online or parent-taught.

In response to question (2), the Commission has broad authority to set reasonable and necessary fees sufficient to cover administrative costs, pursuant to Texas Occupations Code §51.202 and Texas Education Code §1001.151. After Department Staff financial analysis, the fee of \$300 for the initial application fee for a driver education endorsement in proposed 16 TAC §84.300(b) was determined to be reasonable and necessary to cover the administrative costs for this program.

In response to question (3), there is no separate renewal fee for endorsements as financial analysis indicated no additional administrative costs that justified such a charge.

Noting question (4), the DEP license endorsement, as described in proposed 16 TAC §84.300(b), is a representation of the available methods of driver education course delivery pursuant to Texas Education Code §1001.201. There are three types of delivery authorized by statute: in-person, online or parent-taught driver education. Therefore, a DEP license applicant can obtain no more than three endorsements attached to a driver education provider license.

The changes made in the proposed rules are required due to the provisions of HB 1560. The Department, outside of the change made in response to question (1), did not make any changes to the proposed rules in response to the comments.

Comment - One commenter opposed the lowering of the driver education instructor eligibility requirements in proposed 16 TAC §84.44, characterizing it as unsafe for Texas motorists, resulting in increased costs due to more damage to roadways, and will adversely impact DPS employee workload.

Commission Response - The Department disagrees with the commenter's concerns and notes that the proposed changes in proposed 16 TAC §84.44 related to the eligibility requirements for driver education instructors (DEI) is a result of the amendment to the eligibility requirements mandated by Texas Education Code §1001.2531 brought about by HB 1560. The Department is obligated to follow the directives of the Legislature. The Department notes that existing laws and rules as well as provisions within the proposed rules impose duties and requirements upon DEPs and DEIs to encourage adequate training and continuing education for instructors in necessary subject areas and instructional techniques to foster learning of the course material for instructors to present to prospective students, promoting safety on Texas roads. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One commenter requested that the definition for "contract site" found in proposed 16 TAC §84.2(5) include postsecondary schools for site locations.

Commission Response - The Department agrees with the commenter's concerns and amends 16 TAC §84.2(5) to read as follows: "Contract site--An accredited public or private secondary, or postsecondary school approved as a location for a driver education course of a licensed driver education provider."

Comment - Four commenters filed similar comments that included questioning the accuracy of the definitions for "DE-964" and "relevant driver training entity" in proposed 16 TAC §84.2; and the opposition for the Department's authority for amend-

ing recordkeeping requirements for DE providers in proposed 16 TAC §84.81(g).

Commission Response - The Department disagrees with the comments on the definitions for "DE-964" and "relevant driver training entity". Both definitions have been used in the industry for several years without incident and no substantive change was made to the previous form of these definitions.

The Department disagrees with the commenters and amends 16 TAC 84.81(g) to require DE providers to upload certificate data in a manner prescribed by the Department within 15 days after certificate issuance. The change is authorized pursuant to Texas Education Code §1001.055(a-2). The same process is currently being employed by driving safety providers within a five day period. It should be noted that Department Staff will provide further information and instruction at the upcoming informational summits regarding the data upload requirement in proposed 16 TAC §84.81(g). This requirement will not be mandatory for DE providers until 2024. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One commenter opposed the concept of informational summits to discuss the implementation of HB 1560 after the proposed rules are adopted.

Commission Response - The Department disagrees with the comment and notes that the rulemaking process is codified in Texas Government Code, Chapter 2001 and the Department has complied with the procedure. Interested parties, as part of the rulemaking process, are afforded ample opportunity to participate in rule drafting through the comment process, both oral and written, prior to adoption. The optional informational summits are a unique feature employed across programs in which the Department interacts with licensees to offer additional instruction and assistance during significant transition periods due to changes brought by bill implementation. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One commenter opposed inclusion of a reference to the "Texas Drivers Handbook" in proposed 16 TAC §84.600(i)(4).

Commission Response - The Department disagrees with this comment and notes that the Texas Department of Public Safety still publishes the "Texas Drivers Handbook". It is available online and is accessible to the public. The current rule anticipates the DE provider will afford access to the publication and simply direct the student to the DPS website and nothing more would be required. It is possible that the Department will consider an amendment in a subsequent rulemaking, if further clarification is necessary. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One commenter opposed the driver education instructor fee in proposed 16 TAC §84.300(c)(1) and the fee for the PTDE instructor designation service application in proposed 16 TAC §84.300(e)(5) as confusing and discriminatory against those persons who choose a PTDE course of instruction.

Commission Response - The Department disagrees with this comment and notes that the driver education instructor fee is based upon Texas Education Code §1001.151(c). The public school DE instructor fee exception in the proposed rule is rooted in statute. The proposed fee for the PTDE Instructor Designation Service Application (formerly, Parent Taught Driver Education Guide Form) is unchanged. This proposed rule amendment represented a name change to better reflect the services pro-

vided. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One commenter offered multiple comments including that: (1) the language in proposed 16 TAC §§84.40(e) and 84.60(e) should be identical; (2) a rule covering the transfer of ownership of a PTDE provider should be included in 16 TAC Chapter 84, Subchapter D; (3) the rule language in 16 TAC §84.600(i)(1) should be included in 16 TAC §84.500(b); and (4) a 14 year old non-hardship student should not be presented with the "For Learner License Only" portion of the DE-964 until age 15 since they could not take in-car instruction until reaching 15.

Commission Response - The Department notes that proposed 16 TAC §§84.40(e) and 84.60(e), while not identical in rule language, have the same requirements and does not think a change as suggested is necessary at this time. The Department agrees that it would be helpful to have proposed rule language governing the transfer of ownership of an existing PTDE provider and can address that issue in a future rulemaking. The Department disagrees with the suggestion that the rule language contained in 16 TAC §84.600(i)(1) be included in 16 TAC §84.500(b). There is no current confusion as to the applicability of these provisions and there was no change to either section in this rulemaking. The last comment regarding the provision of a DE-964 to a non-hardship 14 year old student was not contemplated in this rulemaking and, therefore, beyond the scope of this project at this time. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One commenter offered multiple comments regarding PTDE providers that included a central concern that the statutory definitions for "driver education provider", "driver training provider", "online driver education provider", and "parent-taught driver education provider" may impose inapplicable obligations on a PTDE provider where those terms are used in the proposed rules. The commenter included, in example, several proposed rule sections in 16 TAC Chapter 84, Subchapters C, D, G and M where it alleged that some confusion could occur in applicability to PTDE providers.

Commission Response - The Department acknowledges the commenter's concerns but determines that no change to the proposed rules is needed at this time. The Department notes that the provisions in 16 TAC Chapter 84, Subchapter D are applicable solely to parent-taught driver education providers, however, it is not an exclusive list of requirements for such providers. Moreover, Texas Occupations Code §1001.2043 provides the regulatory boundaries applicable to the commenter's concerns and the Department continues to adhere to that and other applicable laws and rules relating to parent-taught education. It should be noted that the Department, in recognition of the commenter's concerns did make a change to 16 TAC §84.51(a) to clarify that PTDE providers are expected to adhere to applicable statutory provisions. This provision now reads in part: "If the curriculum and all materials meet or exceed the applicable minimum standards set forth in [§1001.112 of] the Code"... The Department may explore possible changes relating to PTDE providers in a future rulemaking.

Comment - One commenter inquired if proposed 16 TAC §84.63 eliminated the driving safety course provider and its responsibilities.

Commission Response - The Department disagrees with the comment and notes that HB 1560 repealed the driver safety school license type and combined the duties and responsibili-

ties of the course provider and driving safety school entities into a single license type, driving safety provider. The provisions of 16 TAC §84.63 and all other applicable driving safety provisions are now assumed by the driving safety provider. Driving safety schools are no longer regulated by the Department. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Driver Training and Traffic Safety Advisory Committee met on April 6, 2023 to discuss the proposed rules and the public comments received. The Driver Training and Traffic Safety Advisory Committee recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §84.2 and §84.51 made in response to public comments and/or Department recommendations.

At its meeting on May 1, 2023, the Commission adopted the proposed rules with changes to §84.2 and §84.51 as recommended by the Advisory Board as explained in the Section-by-Section Summary.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§84.1 - 84.3

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

§84.2. Definitions.

Words and terms defined in the Code have the same meaning when used in this chapter. The following words and terms have the following meanings when used in this chapter, unless the context clearly indicates otherwise.

(1) ADE-1317--The driver education certificate of completion confirming student completion of a department-approved driver education course exclusively for adults.

(2) Advertising--Any affirmative act, whether written or oral, designed to call public attention to a driver training provider or course in order to evoke a desire to patronize that driver training provider or course. This includes meta tags and search engines.

(3) Branch location--A licensed in-person driver education provider that has the same ownership and name as a licensed primary in-person driver education provider but has a different physical address from the primary provider.

(4) Code--Refers to Texas Education Code, Chapter 1001.

(5) Contract site--An accredited public or private secondary, or postsecondary school approved as a location for a driver education course of a licensed driver education provider.

(6) DE-964--The driver education certificate of completion confirming completion of an approved minor and adult driver education course.

(7) Education Service Center (ESC)--A public school district service organization of the Texas Education Agency governed by Texas Education Code, Chapter Eight.

(8) Endorsement - The method by which a driver education course is delivered to the student, whether in-person, online or parent-taught.

(9) Instructional Hour (also known as "Clock Hour"):

(A) Driver Education Provider Instructional Hour--55 minutes of instruction time in a 60-minute period for a driver education course. This includes classroom and in-car instruction time.

(B) Driving Safety Provider Instructional Hour--50 minutes of instruction in a 60-minute period for a driving safety course.

(10) Personal validation question--A question designed to establish the identity of the student by requiring an answer related to personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(11) Primary driver education provider--The main business location for a licensed in-person driver education provider.

(12) Public or private school--A public or private secondary school accredited by the Texas Education Agency.

(13) Relevant driver training entity--Refers to a licensed driver education provider, exempt driver education school, public or private school, education service center, college or university.

(14) Uniform certificate of course completion--A document with a serial number purchased from the department that is printed, administered and supplied by driving safety providers for issuance to students confirming completion of an approved driving safety course, and that meets the requirements of Texas Transportation Code, Chapter 543, and Texas Code of Criminal Procedure, Article 45.051 or 45.0511. This term encompasses all parts of an original or duplicate uniform certificate of course completion.

(15) Validation question--A question designed to establish the student's participation in a course or program and comprehension of the materials by requiring the student to answer a question regarding a fact or concept taught in the course or program.

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

Filed with the Office of the Secretary of State on May 12, 2023.

TRD-202301740

Della Lindquist

Interim General Counsel

Texas Department of Licensing and Regulation

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16 TAC §84.2

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as

necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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

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SUBCHAPTER B. DRIVER TRAINING AND TRAFFIC SAFETY ADVISORY COMMITTEE

16 TAC §84.30

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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

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16 TAC §§84.30 - 84.33

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary

to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER C. DRIVER EDUCATION SCHOOLS AND INSTRUCTORS

16 TAC §§84.40 - 84.46

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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

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16 TAC §§84.40 - 84.48

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary

to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER D. PARENT-TAUGHT DRIVER EDUCATION

16 TAC §§84.50 - 84.52

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

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

(a) If the curriculum and all materials meet or exceed the applicable minimum standards set forth in the Code, the department will approve the course. No more than 640 minutes of the required hours of classroom instruction delivered via multimedia may be counted.

(b) Notification of approval or denial will be sent to the requesting entity. Deficiencies will be noted in cases of denial. Any substantive change in course curriculum or materials will require submission for approval according to subsection (a).

(c) A written request is required within thirty (30) days if there is any change relating to an approved course, including contact information, company name, and course titles. Updated information will be included as soon as practical.

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

(e) The department has authority to require course re-approval due to changes in parent-taught driver education curriculum requirements, state law, or administrative rules. The department will notify the parent-taught driver education course provider when re-approval is required. The course provider will have ninety (90) days from the

date of notification to submit the requested information. Failure to adequately respond within the required time will result in cancellation of the course approval. The department will review the course material and make a determination as to adoption in a timely manner.

(f) A parent-taught driver education course submitted for department review may be denied upon finding:

(1) that the course does not meet the standards required under §1001.112 of the Code; or

(2) the materials used were not approved by the department.

(g) A notice of denial will be sent to requesting entity. The requesting entity will have ninety (90) days to correct the noted deficiencies. If the requesting entity fails to meet approval criteria, the course will be denied. If a course is denied by the department, the requesting entity must wait thirty (30) days before submitting a new parent-taught driver education course for approval by the department.

(h) Course identification. All parent-taught courses must display the parent-taught provider name and registration 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.

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

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

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SUBCHAPTER E. DRIVING SAFETY SCHOOLS, COURSE PROVIDERS AND INSTRUCTORS

16 TAC §§84.60 - 84.64

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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SUBCHAPTER E. PROVIDERS

16 TAC §§84.60, 84.61, 84.63

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER F. DRUG AND ALCOHOL AWARENESS PROGRAMS AND INSTRUCTORS

16 TAC §§84.70 - 84.72

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transporta-

tion Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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SUBCHAPTER G. GENERAL BUSINESS PRACTICES

16 TAC §§84.80 - 84.85

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

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16 TAC §§84.81 - 84.83

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transporta-

tion Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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SUBCHAPTER H. FACILITIES AND EQUIPMENT FOR DRIVER EDUCATION SCHOOLS, DRIVING SAFETY SCHOOLS AND DRUG AND ALCOHOL AWARENESS SCHOOLS

16 TAC §84.90

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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SUBCHAPTER H. FACILITIES AND EQUIPMENT FOR DRIVER TRAINING PROVIDERS

16 TAC §84.90

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER I. INSPECTIONS

16 TAC §§84.100, 84.101, 84.103

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 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.

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SUBCHAPTER J. DRIVER EDUCATION AND DRIVING SAFETY SCHOOL CANCELLATION AND REFUND

16 TAC §84.200

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 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.

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**SUBCHAPTER J. DRIVER TRAINING
PROVIDER CANCELLATION AND REFUND**

16 TAC §84.200

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER K. FEES

16 TAC §§84.300 - 84.302

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 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.

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16 TAC §84.300, §84.301

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The adopted rules are adopted under Texas Occupations Code, Chapters 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.

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SUBCHAPTER L. COMPLAINTS AND ENFORCEMENT PROVISIONS

16 TAC §84.400

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 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.

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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §§84.500 - 84.502, 84.504

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

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

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16 TAC §§84.503, 84.505 - 84.507

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

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted repeals.

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

16 TAC §§84.600, §84.601

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001, and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the adopted rules.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1031

The Texas Education Agency (TEA) adopts new §61.1031, concerning school safety requirements. The new section is adopted with changes to the proposed text as published in the November 11, 2022 issue of the *Texas Register* (47 TexReg 7519) and will be republished. The adopted new section implements requirements for school safety to ensure a safe and secure environment in Texas public schools.

REASONED JUSTIFICATION: In light of recent events and ongoing public concern, the commissioner, as authorized by Texas Education Code (TEC), §7.061 and §37.115(b), is adopting new §61.1031 to address the safety of students and staff alike in our public schools by ensuring minimum school safety standards.

The adopted new rule requires that all public school system instructional facilities have access points that are secured by design, maintained to operate as intended, and appropriately monitored.

Adopted new subsection (a) establishes definitions for the rule.

In response to public comment, subsection (a)(7) was added at adoption to define a "secure vestibule."

Adopted new subsection (b) requires that standards outlined in the rule apply to all public school instructional facilities, whether owned, operated, or leased.

Adopted new subsection (c) outlines the safety and security standards compliance requirements that apply to public school instructional facilities. The adopted new rule requires specific standards for exterior doors and primary entrances. Other safety and security standards apply depending on whether instructional facilities are within an exterior secured area or are actively monitored. The adopted new subsection also establishes the components for a communication infrastructure required across all public school instructional facilities.

In response to public comment, subsection (c)(2) was modified at adoption, adjusting exterior door requirements for primary entrances when a secure vestibule is present.

In response to public comment, subsection (c)(3)(D) was modified at adoption to expand current and future capabilities of electronic devices utilized to gain entry to a door that is keyed for re-entry.

In response to public comment, subsection (c)(9)(A) was modified at adoption to clarify the use of one or more distinctive, exterior secure master key boxes designed to permit emergency access to both law enforcement agencies and emergency responder agencies from the exterior of a building.

In response to public comment, subsection (c)(9)(B) was added at adoption to afford flexibility in how local law enforcement is provided electronic or physical master key(s) to access district buildings.

In response to public comment, subsection (c)(10)(B) was modified at adoption to include "software" and "or online applications" as clarifying terms related to panic alert technology.

In response to public comment, subsection (c)(10)(B)(i) was modified at adoption to provide flexibility related to local determination and to provide additional clarity.

In response to public comment, subsection (c)(10)(B)(ii) was modified at adoption to clarify that an alert must be triggered automatically if a district employee makes a 9-1-1 call using integrated telecommunications devices.

In response to public comment, subsection (c)(10)(B)(iv) was modified at adoption to specify that notice to a 9-1-1 center must include the location of where the alert originated.

In response to public comment, subsection (c)(10)(B)(v) was modified at adoption to remove the requirement that an alert system must automatically notify relevant campus staff of any exterior door where the electronic lock cannot engage.

In response to public comment, subsection (c)(11) was added at adoption to ensure compliance with state and federal Kari's Laws and RAY BAUM's Act and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems.

Adopted new subsection (d) requires public school systems to implement certain operating requirements related to access control, exterior door numbering, and maintenance.

In response to public comment, subsection (d)(2) was modified at adoption to clarify the requirements for interior door numbering on site plans provided for emergency response personnel.

In response to public comment, subsection (d)(2)(D) was added at adoption to require school maps be oriented to true north.

In response to public comment, subsection (d)(3)(A)(v) was reworded at adoption to provide clarity.

Adopted new subsection (e) requires public school systems to comply with 19 TAC §61.1040(j), School Facilities Standards for Construction on or after November 1, 2021.

Adopted new subsection (f) establishes that the provisions of the adopted rule control in the event of any conflict between the provisions of the adopted rule and 19 TAC §61.1040.

In response to public comment, new subsection (g) was added at adoption to require compliance with Texas Government Code, §469.052.

In response to public comment, new subsection (h) was added at adoption to require school systems to adopt a 3-year records control schedule that complies with the minimum requirements established by the Texas State Library and Archives Commission schedule, record series item number 5.4.017.

Adopted new subsection (i) requires implementation of the requirements in subsections (c) and (d) beginning in school year

2022-2023. The adopted new subsection requires a school system to certify compliance of these requirements as part of the ongoing security audits under TEC, §37.108(b); maintain the certification locally; and report as required by the Texas School Safety Center. The adopted new subsection also establishes that any and all non-compliance must be reported to the school system's safety and security committee, school system board, and Texas School Safety Center.

In addition, adopted new subsection (i) allows for provisional compliance if the school system has taken the necessary steps to initiate upgrades of facilities components and, during the 2023-2024 school year, if the contractor or supplier has been procured and has provided a time frame for completion.

In response to public comment, subsection (i)(3) was added at adoption to address the agency's ability to modify rule requirements to meet individual site requirements.

Adopted new subsection (j) addresses the future expiration of certain provisions of subsection (i) of the rule.

In response to public comment, 911 was changed to 9-1-1 throughout the rule.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 11, 2022, and ended December 12, 2022. A public hearing on the proposal took place on December 5, 2022. Following is a summary of public comments received and corresponding agency responses.

Comment: The Texas State Teachers Association recommended that the frequency of security system inspections be at least monthly versus weekly and/or at a frequency to be determined by the board of trustees.

Response: The agency disagrees. The unpredictability of security hardware defects or failures makes monthly inspections less desirable when considering the safety of students across Texas.

Comment: Three school administrators recommended clarifying the use of primary entrances and secured vestibules. More specifically, the commenters recommended that initial doors should not be required to be locked as they are not the doors that allow entry into the instructional facility. The doors inside of the security vestibule allow access to the instructional facility and should be required to be locked and latched.

Response: The agency agrees and has added new subsection (a)(7) at adoption to define "secure vestibule." In addition, subsection (c)(2) was modified at adoption to reference secure vestibules.

Comment: Texas Commission on State Emergency Communications recommended replacing 911 with 9-1-1 throughout the proposed rule to ensure universal standardization. Additionally, the commenter recommended that new subsection (c)(11) be added to reflect state and federal compliance with Kari's Laws and the federal RAY BAUM's Act and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems, including a multi-line telephone system.

Response: The agency agrees. At adoption, 911 has been changed to 9-1-1 throughout the rule and new subsection (c)(11) has been added to address compliance with state and federal laws and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems.

Comment: Texas Commission on State Emergency Communications and two 9-1-1 entities recommended additions to subsection (d)(2) to clarify requirements for interior door numbering on site plans provided for emergency response personnel.

Response: The agency agrees and has modified subsection (d)(2)(A)-(C) at adoption to reflect the recommendations.

Comment: A school administrator recommended that overhead doors at an instructional facility be allowed to be opened for ventilation purposes and shop work.

Response: The agency provides the following clarification. In accordance with subsection (c)(3)(A)(ii) of the rule, for the purposes of ventilation, a school system may designate in writing as part of its multi-hazard emergency operations plan under TEC, §37.108, specific exterior doors that are allowed to remain open for specified periods of time if explicitly authorized by the school safety and security committee established by TEC, §37.109, when a quorum of members are present, and only if it is actively monitored or within an exterior secured area. Actively monitored is defined as supervised by an adult who can visibly review visitors prior to entrance, who can take immediate action to close and/or lock the door, and whose duties allow for sufficient attention to monitoring. Exterior secured area has the definition outlined in subsection (a)(2).

Comment: A school board trustee expressed opposition to the requirement that fencing surround school facilities.

Response: The agency provides the following clarification. Fencing is not a requirement in the proposed rule; it is listed as an option for creating an exterior secured area in subsection (a)(2).

Comment: Five school administrators relayed concerns regarding the implementation timeline for the rule, citing, for example, the timeline being difficult to achieve in the current construction environment.

Response: The agency agrees and has added new subsection (i)(3) at adoption to address the commenters' concern. The new language specifies that TEA may modify rule requirements or grant provisional certification for individual site needs.

Comment: The Equity Center, nine school administrators, and three individuals relayed concerns regarding funding related to implementation of the rule, citing, for example, funding being insufficient or assumed costs being unbearable.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: Four school administrators relayed concerns regarding funding related to implementation of the proposed rule, citing, for example, funds being better targeted by hiring law enforcement personnel and/or bolstering access control.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: A school administrator inquired whether the rule is inclusive of all state organizations and schools, such as higher education, or just Kindergarten-Grade 12.

Response: The agency provides the following clarification. The commissioner of education has no rulemaking authority over other state organizations.

Comment: State Representative Ken King recommended that school safety proposals include a requirement for school maps to be oriented to true north.

Response: The agency agrees and has added new subsection (d)(2)(D) at adoption to specify that the site layout and exterior and interior door designation document should be oriented in a manner that depicts true north.

Comment: Texas Parent to Parent, Disability Rights Texas, Texas Council of Administrators of Special Education (TCASE), and an individual suggested the rule be more inclusive of individuals with disabilities.

Response: The agency provides the following clarification. A school system's response during a crisis is outlined in its multi-phase, multi-hazard emergency operations plan to include provisions to better ensure the safety of students and staff members with disabilities.

Comment: A school administrator recommended there be a detailed audit of existing systems per school campus/per local education agency to determine what needs may exist to reach compliance and/or what existing infrastructure may require updating.

Response: The agency provides the following clarification. Several audit tools have been previously provided to school systems to accomplish this recommendation. The agency has determined that the rule as adopted is sufficient. Additionally, new subsection (h) was added at adoption to ensure school systems have a related records control schedule that complies with minimum requirements established by the Texas State Library and Archives Commission schedule.

Comment: Three school administrators recommended additional clarification be added related to fencing around an entire campus to create an exterior secured area under subsection (a)(2); what qualifies as visibly reviewing a visitor under subsection (a)(1); playground fencing requirements, as related to subsection (a)(2); guidance outlining student transitions during passing periods; clarity surrounding certain operating requirements in subsection (d); and added clarity related to the certification procedure outlined in subsection (g).

Response: The agency disagrees and has determined that the rule as adopted is sufficient to address concerns within the scope of the proposed rulemaking.

Comment: Early Independent School District (ISD) requested a vendor list related to silent panic alert technology as outlined in the proposed rule. Leander ISD relayed that the district is unable to determine what systems are available to identify when a lock cannot engage. Additionally, Albany ISD commented that it would be difficult for different existing systems to properly communicate with each other to meet the requirements outlined in the proposed rule.

Response: The agency provides the following clarification. The agency is unable to recommend or otherwise endorse a vendor for providing services. These determinations are made at the local level.

Comment: The Arc of Texas commented that protocols related to school safety and security should be widely understood by all staff and students in Texas schools. The commenter stated that it is essential for any new school safety requirements to incorporate the needs of staff and students with disabilities. The commenter further stated that Section 504 plans may outline ac-

commodations these students would need during emergency situations.

Response: The agency provides the following clarification. School systems are required to train staff, including substitutes, on standard response protocols annually. In addition, TEC, §37.114, outlines a maximum number of mandatory school drills to be conducted each semester of the school year. A school system's response during a crisis is outlined in its multiphase, multi-hazard emergency operations plan to include provisions to better ensure the safety of students and staff members with disabilities. The remaining portions of this comment are beyond the scope of the proposed rulemaking.

Comment: Three school administrators questioned requirements surrounding emergency key access as outlined in the proposed rule. The administrators' questions and comments included a preference to provide a designated number of master keys to all local law enforcement agencies that might respond to a crisis, a query related to law enforcement accessing existing "Knox box" devices under the control of local fire agencies, and a recommendation that consideration be given that a key requires fine motor skills to operate when under stress.

Response: The agency agrees. Recognizing that the agency does not have authority to mandate a local fire marshal and/or other local authority having jurisdiction to provide "Knox box" access to law enforcement, subsection (c)(9)(B) has been added at adoption to allow additional local control in providing first responders ease in access to facilities during a critical event. Additionally, subsection (c)(9)(A) has been modified at adoption to provide additional clarity.

Comment: Enseo LLC recommended a wearable button for non-stationary workers as a research-based best practice. The commenter recommended that in subsection (c)(10)(B)(ii), the order be reversed and conditional, indicating that the primary purpose of a panic alarm is to call for help when use of a phone may be impossible or otherwise unsafe. The commenter proposed changing subsection (c)(10)(B)(i) to read, "an alert must be capable of being triggered by all or most campus staff, including temporary or substitute staff, from an integrated or enabled device."

Response: The agency agrees in part and has modified subsection (c)(10)(B)(i) at adoption to allow for added flexibility in local determination. Regarding the recommendation for a wearable button, the agency disagrees. Mandating a wearable button is too specific to allow flexibility at the local level.

Comment: Raptor Technologies recommended the addition of the word "software" in subsection (c)(10)(B) to provide additional clarification regarding panic alert technology.

Response: The agency agrees and has modified subsection (c)(10)(B) at adoption to include the word "software."

Comment: Harlingen Consolidated ISD recommended that subsection (c)(10)(B) read, "include a panic alert button, duress, or equivalent alarm system, via standalone hardware or integrated into other telecommunications devices or online applications, that includes the following functionality: (i) An alert must be capable of being triggered manually by campus staff in person or remotely;" and that subsection (c)(10)(B)(v) read, "For any exterior doors that feature electronic locking mechanisms that allow for remote locking or one touch lockdown, the alert system will trigger those doors to automatically lock and to automatically

notify relevant campus staff of any door where the lock cannot engage."

Response: The agency disagrees. The standards proposed are too specific to allow for flexibility at the local level. However, subsection (c)(10)(B) was modified at adoption to provide additional clarity.

Comment: Eastman, National Safety Security Protection Association, and the National Glass Association recommended that, unless they are inside a secure area, doors and windows or glazing be certified as complying to a minimum Level 1 of ASTM F3561 or for retrofit have a glazing which meets ANSI Z97.1 standards.

Response: The agency disagrees. The standards proposed are too specific to allow for flexibility at the local level.

Comment: National Safety Security Protection Association recommended the proposed rule provide clear guidelines and require locking all interior and exterior doors with a penalty imposed for noncompliance. The commenter stated that proper facility hardening should be mandated.

Response: The agency disagrees. The rule requirements as adopted are clear and enforceable.

Comment: MutuaLink commented that adding exterior door numbers to the inside of the door seems to serve no purpose as the door number is a reference for emergency responders to "rally" at an entry control point for incidents.

Response: The agency disagrees. The rule is aligned with standards in the International Fire Code and International Business Code.

Comment: The Texas Society of Architects recommended clear recognition in the rule of existing standards related to communications capacity between educators and emergency personnel to provide more measurable compliance standards and performance objectives.

Response: The agency agrees. At adoption, subsection (c)(10) was modified and new subsection (c)(11) was added. Subsection (c)(11) references state and federal Kari's Laws and federal RAY BAUM's Act and corresponding rules and regulations.

Comment: Alvin ISD recommended allowing for storing site plans electronically versus having a physical copy on hand at a facility. Specifically, the commenter stated that keeping a copy in the front office will be burdensome and requested that an electronic copy that can be made available when needed be allowed. The commenter stated that most school districts have Google Drive and keep documentation electronically stored.

Response: The agency disagrees. Accessing an electronic copy during a crisis may require district personnel be on site and/or delay timely response capabilities at the site of an emergency.

Comment: Cypress-Fairbanks ISD recommended that, to ensure equity for districts that have made investments in their security infrastructure, the proposed rule pre-award date be changed to no later than June 1, 2019.

Response: The agency disagrees. Dates for pre-award cannot be altered; they exist as part of a grant formula.

Comment: Texas Association of School Administrators commented that the fencing options listed in the rule are wholly inappropriate and may cause substantial issues for student learning and safety. The commenter stated that research

demonstrates that the institutionalization of schools has a negative impact on learning.

Response: The agency provides the following clarification. Fencing is not a requirement in the proposed rule; it is listed as an option for creating an exterior secured area in subsection (a)(2).

Comment: TCASE recommended adding definitions in subsection (a) for non-district employees and district employees.

Response: The agency disagrees. Within the proposed rule, the term employee is referenced once, thereby not requiring a differentiation in definitions.

Comment: Frisco ISD recommended that the rule be amended to include more details regarding requirements for glass and to ensure that wherever the rule is intended to set a specific standard, that standard is clearly defined.

Response: The agency disagrees. Mandated glass standards would be too specific to allow for flexibility at the local level, and the rule requirements as adopted are clear and enforceable.

Comment: Alief ISD commented that fencing and window film on potentially fire-egress windows cannot ensure protection from intruders and simultaneously allow for egress without regard to fire safety plans.

Response: The agency provides the following clarification. Fencing is not a requirement in the proposed rule; it is listed as an option for creating an exterior secured area in subsection (a)(2). Additionally, it is not standard for windows to be designed for fire egress.

Comment: Fayetteville ISD commented that International Fire Code (IFC), §505, is intended for address identification and that placing large 4-inch-tall alpha-numerical characters will create an eye sore across campuses. The commenter stated that a minimum standard of 2 inches is more appropriate as it can be maintained across the campus both on interior and exterior doors.

Response: The agency disagrees. According to IFC, §505, all exterior identification labels, numbers, and letters must be Arabic numbers and/or alphabetical letters, visible from the closest road / driveway, contrasting in color to its background, reflective material that is visible in dark or smoky conditions, larger than 4 inches and 1/2 inch wide, and regularly maintained. These IFC guidelines apply to exterior door labeling and for building address identification. Labeling that is IFC compliant improves emergency response and can expedite an evacuation process.

Comment: Eastman recommended revising subsection (a)(2)(A) to read, "if enclosed by a fence or wall, utilizes a fence or wall at least 6 feet high with design features that prevent it from being easily scalable, such as stone, glass, wrought iron, chain link with slats or wind screen, or chain link topped with an anti-scaling device, or utilizes a fence or wall at least 8 feet high."

Response: The agency disagrees. The words "such as" are not all inclusive and would indicate that examples provided are not essential to the related subsection.

Comment: State Representative Shawn Thierry commented that, as related to silent panic alert technology, not all schools are the same and we need to make sure we are funding them appropriately for implementation.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: Garretts recommended additional language be added to the proposed rule that would provide standards for reducing the number of entry points or better securing primary entrances while simultaneously mandating the use of metal detection equipment.

Response: The agency disagrees. The suggested change is too specific to provide needed flexibility at the district level.

Comment: Texas Star Alliance recommended clarifying what qualifies as a "panic alert button, duress, or equivalent alarm system" in subsection (c)(10)(B) by adding the agency's definition under subsection (a) of the proposed rule.

Response: The agency disagrees. Requirements that would trigger an alert are outlined in a multiphase, multi-hazard emergency operations plan as required by TEC, §37.108. The language of the rule includes the commenter's suggested components.

Comment: Texas American Federation of Teachers (AFT) stated that it does not support defining "school system" in subsection (a)(6) and recommended referring to "the independent school district or open-enrollment charter school" as applicable throughout the proposed rule.

Response: The agency disagrees and considers the use of the term appropriate in the context of this rule.

Comment: Texas AFT stated the rule creates what may be unreachable facilities standards with no assurance of funds to support compliance. The commenter stated that the rule should allow flexibility to address facilities safety locally based on individual campus needs and that there should be some transparency measures added.

Response: The agency disagrees regarding the need for additional local flexibility. The remainder of this comment is outside the scope of the proposed rulemaking.

Comment: Harlingen Consolidated ISD recommended updating subsection (c)(3)(C)-(D) and (c)(4) to read, "(i) a mechanism that fully closes and engages locking hardware automatically or electronically after entry or egress without manual intervention, regardless of air pressure within or outside of the facility; and (ii) a mechanism that allows the door to be opened electronically or from the inside when locked to allow for emergency egress while remaining locked; and (D) if keyed for re-entry, be capable of being unlocked with a single (or a small set of) master key(s), whether physical key, punch code, or key-fob or similar electronic key device operated by an online application. (4) Except when inside an exterior secured area, classrooms with exterior entry doors shall include a means to allow an individual located in the classroom to visually identify an individual seeking to enter the classroom when the door is closed and locked, including, but not limited to, windows, camera systems, public address systems and/or intercoms."

Response: The agency disagrees that the suggested language is necessary. However, language in subsection (c)(3)(D) was changed at adoption to read, "if keyed for re-entry, be capable of being unlocked with a single (or a small set of) master key(s), whether physical key, punch code, or key-fob or similar electronic device."

Comment: WRA Architects recommended that language require some sort of a minimum standard that defines when glass is past the threshold of being easily broken.

Response: The agency disagrees. Mandates at this level would be too specific to allow for flexibility at the local level.

Comment: Yellowstone College Prep commented that the proposed safety and security measures that require all first-floor windows be "covered" would eliminate all of the funding the school is expected to receive as part of the security grant. The commenter stated that the money could be spent on other vital components such as a security guard, firming up gates and entries, etc. The commenter stated that the first-floor window requirement should be a suggested use of funds, not a requirement.

Response: The agency provides the following clarification. In accordance with subsection (c)(4) and (5), all first-floor windows are not required to be covered. As related to funding, the comment is beyond the scope of this proposed rulemaking.

Comment: Rave Mobile Safety stated that the collaboration between 9-1-1 and schools is essential for ensuring the safety of students and staff and that by working together, schools and 9-1-1 can respond quickly and effectively to any emergency from everyday medical emergencies to mass casualty incidents. The commenter encouraged TEA to continue working closely with the Commission on State Emergency Communication, the Department of Public Safety, and the Department of Emergency Management to develop rules and policies to uniformly enhance the health and safety of students across Texas.

Response: The agency agrees that collaboration between state agencies is important for the safety and security of students across Texas.

Comment: Texas Society of Architects stated that the proposed rule could pose implementation challenges and that a link is needed between current and existing standards. The commenter stated that funding should be a consideration with flexibility based on individual district needs.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: Texas Public Charter Schools Association (TPCSA) recommended that the agency allow for appropriate and comparable adjustments in some requirements if a public charter school is leasing a building, has a safety vestibule, or has another unique circumstance. TPCSA also stated that TEA should ensure "communication infrastructure" and other rule requirements are clearly defined, technologically available, and within the control of public schools. TPCSA asked for clarity regarding individuals considered to be law enforcement or emergency personnel. Finally, TPCSA stated that the agency should immediately and fully fund the rule's safety requirements.

Response: The agency provides the following clarification. A communication infrastructure is outlined in subsection (c)(10)(A) and (B) and (11). Law enforcement personnel are referenced throughout existing statute, including Texas Code of Criminal Procedure, §2.13, and TEC, §37.081. As related to funding, this comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §7.061, which requires the commissioner of education to adopt and amend rules to ensure a safe and secure environment for public schools, which includes best practices for design and construction of new facilities and improving, renovating, and retrofitting existing facilities. The section requires the commissioner to review all rules by September 1st of each even-numbered year and take action as necessary to

ensure school facilities for school districts and open-enrollment charter schools continue to provide a safe and secure environment; and TEC, §37.115(b), which allows the agency, in coordination with the Texas School Safety Center, to adopt rules to establish a safe and supportive school program, including providing for physical and psychological safety.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §7.061 and §37.115(b).

§61.1031. School Safety Requirements.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings.

(1) Actively monitored--supervised by an adult who can visibly review visitors prior to entrance, who can take immediate action to close and/or lock the door, and whose duties allow for sufficient attention to monitoring.

(2) Exterior secured area--an area fully enclosed by a fence and/or wall that:

(A) if enclosed by a fence or wall, utilizes a fence or wall at least 6 feet high with design features that prevent it from being easily scalable, such as stone, wrought iron, chain link with slats or wind screen, or chain link topped with an anti-scaling device, or utilizes a fence or wall at least 8 feet high;

(B) is well maintained; and

(C) if gated, features locked gates with emergency egress hardware and has features to prevent opening from the exterior without a key or combination mechanism.

(3) Instructional facility--this term has the meaning assigned in Texas Education Code (TEC), §46.001, and includes any real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching curriculum under TEC, §28.002. For purposes of this section, an instructional facility does not include real property, improvements to real property, or necessary fixtures of an improvement to real property that are part of a federal, state, or private correctional facility or facility of an institution of higher education, medical provider, or other provider of professional or social services over which a school system has no control.

(4) Modular, portable building--

(A) an industrialized building as defined by Texas Occupations Code (TOC), §1202.002 and §1202.003;

(B) any relocatable educational facility as defined by TOC, §1202.004, regardless of the location of construction of the facility; or

(C) any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

(5) Primary entrance--

(A) the main entrance to an instructional facility that is closest to or directly connected to the reception area; or

(B) any exterior door the school system intends to allow visitors to use to enter the facility during school hours either through policy or practice.

(6) School system--a public independent school district or public open-enrollment charter school.

(7) Secure vestibule--a secured space with two or more sets of doors and an office sign-in area where all but the exterior doors shall:

(A) remain closed, latched, and locked;

(B) comply with subsection (c)(3)(B) of this section;

and

(C) only open once the visitor has been visually verified.

(b) The provisions of this section apply to all school instructional facilities owned, operated, or leased by a school system, regardless of the date of construction or date of lease. The provisions of this section ensure that all school system instructional facilities have access points that are:

(1) secured by design;

(2) maintained to operate as intended; and

(3) appropriately monitored.

(c) A school system shall implement the following safety and security standards compliance requirements to all school instructional facilities owned, operated, or leased by the school system.

(1) All instructional facilities campus-wide, including modular, portable buildings, must include the addition of graphically represented alpha-numerical characters on both the interior and exterior of each exterior door location. The characters may be installed on the door, or on at least one door at locations where more than one door leads from the exterior to the same room inside the facility, or on the wall immediately adjacent to or above the door location. Characters shall comply with the International Fire Code, §505. The primary entrance of an instructional facility shall always be the first in the entire sequence and is the only door location that does not require numbering. The numbering sequence shall be clockwise and may be sequenced for the entire campus or for each facility individually. The door-numbering process must comply with any and all accessibility requirements related to signage.

(2) Unless a secure vestibule is present, a primary entrance shall:

(A) meet all standards for exterior doors;

(B) include a means to allow an individual located within the building to visually identify an individual seeking to enter the primary entrance when the entrance is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms;

(C) feature a physical barrier that prevents unassisted access to the facility by a visitor; and

(D) feature a location for a visitor check-in and check-out process.

(3) All exterior doors shall:

(A) be, by default, set to a closed, latched, and locked status, except that:

(i) a door may be unlocked if it is actively monitored or within an exterior secured area; and

(ii) for the purposes of ventilation, a school system may designate in writing as part of its multi-hazard emergency operations plan under TEC, §37.108, specific exterior doors that are allowed to remain open for specified periods of time if explicitly authorized by the school safety and security committee established by TEC, §37.109, when a quorum of members are present, and only if it is actively monitored or within an exterior secured area;

(B) be constructed, both for the door and door frame and their components, of materials and in a manner that make them

resistant to entry by intruders. Unless inside an exterior secured area, doors constructed of glass or containing glass shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to open or otherwise enter through the door (for example, using forced entry-resistant film);

(C) include:

(i) a mechanism that fully closes and engages locking hardware automatically after entry or egress without manual intervention, regardless of air pressure within or outside of the facility; and

(ii) a mechanism that allows the door to be opened from the inside when locked to allow for emergency egress while remaining locked; and

(D) if keyed for re-entry, be capable of being unlocked with a single (or a small set of) master key(s), whether physical key, punch code, or key-fob or similar electronic device.

(4) Except when inside an exterior secured area, classrooms with exterior entry doors shall include a means to allow an individual located in the classroom to visually identify an individual seeking to enter the classroom when the door is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms.

(5) Except when inside an exterior secured area, all windows that are adjacent to an exterior door and that are of a size and position that, if broken, would easily permit an individual to reach in and open the door from the inside shall be constructed or modified such that the glass cannot be easily broken.

(6) Except when inside an exterior secured area, all ground-level windows near exterior doors that are of a size and position that permits entry from the exterior if broken shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to enter through the window frame (for example, using forced entry-resistant film).

(7) If designed to be opened, all ground-level windows shall have functional locking mechanisms that allow for the windows to be locked from the inside and, if large enough for an individual to enter when opened or if adjacent to a door, be closed and locked when staff are not present.

(8) Roof access doors should default to a locked, latched, and closed position when not actively in use and be lockable from the interior.

(9) All facilities must:

(A) include one or more distinctive, exterior secure master key box(es) designed to permit emergency access to both law enforcement agencies and emergency responder agencies from the exterior (for example, a Knox box) at a location designated by the local authorities with applicable jurisdiction; or

(B) provide all local law enforcement electronic or physical master key access to the building(s).

(10) A communications infrastructure shall be implemented that must:

(A) ensure equipment is in place such that law enforcement and emergency responder two-way radios can function within most portions of the building(s); and

(B) include a panic alert button, duress, or equivalent alarm system, via standalone hardware, software, or integrated into other telecommunications devices or online applications, that includes the following functionality.

(i) An alert must be capable of being triggered by campus staff, including temporary or substitute staff, from an integrated or enabled device.

(ii) An alert must be triggered automatically in the event a district employee makes a 9-1-1 call using the hardware or integrated telecommunications devices described in this subparagraph from any location within the school system.

(iii) With any alert generated, the location of where the alert originated shall be included.

(iv) The alert must notify a set of designated school administrators as needed to provide confirmation of response, and, if confirmed, notice must be issued to the 9-1-1 center of an emergency situation requiring a law enforcement and/or emergency response and must include the location of where the alert originated. A notice can simultaneously be issued to all school staff of the need to follow appropriate emergency procedures.

(v) For any exterior doors that feature electronic locking mechanisms that allow for remote locking, the alert system will trigger those doors to automatically lock.

(11) In implementing the requirements of this section, school systems shall comply with state and federal Kari's Laws and federal RAY BAUM's Act and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems, including a multi-line telephone system.

(d) Certain operating requirements. A school system shall implement the following.

(1) Access control. The board of trustees or the governing board shall adopt a policy requiring the following continued auditing of building access:

(A) conduct at least weekly inspections during school hours of all exterior doors of all instructional facilities to certify that all doors are, by default, set to a closed, latched, and locked status and cannot be opened from the outside without a key as required in subsection (c)(3)(A) of this section;

(B) report the findings of weekly inspections required by subparagraph (A) of this paragraph to the school system's safety and security committee as required by TEC, §37.109, and ensure the results are kept for review as part of the safety and security audit as required by TEC, §37.108;

(C) report the findings of weekly inspections required by subparagraph (A) of this paragraph to the principal or leader of the instructional facility to ensure awareness of any deficiencies identified and who must take action to reduce the likelihood of similar deficiencies in the future; and

(D) include a provision in the school system's applicable policy stating that nothing in a school system's access control procedures will be interpreted as discouraging parents, once properly verified as authorized campus visitors, from visiting campuses they are authorized to visit.

(2) Exterior and interior door numbering site plan.

(A) A school system must develop and maintain an accurate site layout and exterior and interior door designation document for each instructional facility school system-wide that identifies all exterior and interior doors in the instructional facility and depicts all exterior doors on a floor plan with an alpha-numeric designation, in accordance with the door numbering specifications established in subsection (c)(1) of this section.

(B) Copies of exterior and interior door numbering site plans shall be readily available in each campus main office.

(C) Electronic copies of exterior and interior door numbering site plans shall be supplied to the local 9-1-1 administrative entity so that the site plans can be made available to emergency responders by 9-1-1 dispatchers.

(D) The site layout and exterior and interior door designation document should be oriented in a manner that depicts true north.

(3) Maintenance.

(A) A school system shall perform at least twice-yearly maintenance checks to ensure the facility components required in subsection (c) of this section function as required. At a minimum, maintenance checks shall ensure the following:

(i) instructional facility exterior doors function properly, including meeting the requirements in subsection (c)(3)(A) and (C) of this section;

(ii) the locking mechanism for any ground-level windows that can be opened function properly;

(iii) any perimeter barriers and related gates function properly;

(iv) all panic alert or similar emergency notification systems in classrooms and campus central offices function properly, which includes at least verification from multiple campus staff and classroom locations that a notification can be issued and received by the appropriately designated personnel, that the alert is successfully broadcast to all campus staff and to appropriate law enforcement and emergency responders, and that a potential threat observed on video triggers an alert from video surveillance monitoring systems;

(v) all school telephone systems and communications infrastructure provide accurate location information when a 9-1-1 call is made in accordance with state and federal laws and rules and when an alert is triggered in accordance with this section;

(vi) all exterior master key boxes function properly and the keys they contain function properly;

(vii) law enforcement and emergency responder two-way radios operate effectively within each instructional facility; and

(viii) two-way radios used by school system peace officers, school resource officers, or school marshals properly communicate with local law enforcement and emergency response services.

(B) A school system shall ensure procedures are in place to require that staff who become aware of a facility component functionality deficiency that would be identified during the twice-yearly maintenance review described by subparagraph (A) of this paragraph immediately report the deficiency to the school system's administration, regardless of the status of the twice-yearly maintenance review.

(C) A school system shall promptly remedy any deficiencies discovered as a consequence of maintenance checks required by subparagraph (A) of this paragraph or reports made under subparagraph (B) of this paragraph.

(e) In implementing the requirements of this section, school systems shall comply with the provisions of §61.1040(j) of this title (relating to School Facilities Standards for Construction on or after November 1, 2021).

(f) To the extent that any provisions of this section conflict with rules adopted in Chapter 61, Subchapter CC, of this title (relating to Commissioner's Rules Concerning School Facilities), including terms defined by this section or standards established by this section, the provisions of this section prevail.

(g) In implementing the requirements of this section, school systems shall comply with the standards adopted under Texas Government Code, §469.052.

(h) In implementing the requirements of this section, school systems must adopt a 3-year records control schedule that complies with the minimum requirements established by the Texas State Library and Archives Commission schedule, record series item number 5.4.017, as referenced in Texas Government Code, §441.169, and Texas Local Government Code, §203.041.

(i) Certification.

(1) All requirements in subsections (c) and (d) of this section shall be implemented during the 2022-2023 school year and thereafter. Annually, a school system shall certify compliance with those requirements as part of ongoing security audits under TEC, §37.108(b); maintain the certification locally; and report as required by the Texas School Safety Center. Any and all non-compliance shall be reported to the school system's safety and security committee, the school system's board, and the Texas School Safety Center, as required by TEC, §37.108(c).

(2) A school system may provisionally certify compliance of a facility component described in subsection (c) of this section that is not in compliance with the requirements of paragraph (1) of this subsection if:

(A) the school system has taken the necessary steps to initiate an upgrade of the facility component to ensure compliance; and

(B) for the 2023-2024 school year, the contractor or supplier has been procured and has provided a time frame when the upgrade will be completed.

(3) TEA may modify rule requirements or grant provisional certification for individual site needs as determined by the agency.

(j) Subsection (i)(2) of this section and this subsection expire August 31, 2024.

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

Filed with the Office of the Secretary of State on May 11, 2023.

TRD-202301721

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

The commissioner of insurance adopts the repeal of 28 TAC §§5.5001, 5.5002, and 5.5005, concerning Inland Marine Insurance and Multi-peril Insurance. The commissioner also adopts new Division 1, containing 28 TAC §§5.5001 - 5.5008, and new Division 2, containing §5.5101, concerning Inland Marine Insurance and Multi-peril Insurance. New §5.5008 is adopted with nonsubstantive changes to the proposed text published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 620) and will be republished. Repealed §§5.5001, 5.5002, and 5.5005, and new §§5.5001 - 5.5007 and §5.5101 are adopted without changes to the proposed text and will not be republished.

REASONED JUSTIFICATION. New 28 TAC §§5.5001 - 5.5008 are necessary to implement Senate Bill 1367, 87th Legislature, 2021, which exempts commercial inland marine insurance from rate and form filing requirements. The new rules also implement House Bill 2587, 86th Legislature, 2019, which requires travel insurance rates and forms to be filed as inland marine, subject to an exception allowing travel insurance with sickness, accident, disability, or death coverage to be filed as accident and health insurance.

The new sections are described in the following paragraphs.

New §5.5001 uses the designation "non-filed" for non-filed classes rather than "non-regulated," as was used in repealed §5.5001, to emphasize the non-filed status and reduce potential misunderstanding that the classes are not subject to regulation of any kind. The adopted section also does not reference "uniform standards of application" in the definition of "non-filed" because the Texas Department of Insurance (TDI) does not adopt standard and uniform policies anymore. Adopted §5.5001 does not include language regarding the exclusion of fire and extended coverage in relation to inland marine insurance coverage. Fire and extended coverage requirements exist for only the particular classes of inland marine insurance described in new §§5.5004(2)(C); 5.5005(1) and (3); and 5.5008(5), (8), and (28), as specified in those provisions.

New §5.5002 contains similar substantive language as was in repealed §5.5002(1). The new section addresses insurance for imports, describing how imports on consignment and imports not on consignment may be covered.

New §5.5003 contains similar substantive language as was in repealed §5.5002(2). The new section addresses insurance for exports, describing how exports may be covered.

New §5.5004 contains similar substantive language as was in repealed §5.5002(3). The new section addresses insurance for domestic shipments, describing how domestic shipments may be covered.

New §5.5005 contains similar substantive language as was in repealed §5.5002(4). The new section addresses insurance for bridges, tunnels, and other instrumentalities of transportation and communication, describing how they may be covered.

New §5.5006 contains the same substantive language as was in repealed §5.5002(5)(Q)(i). The new section addresses insurance for consumer credit property, describing how it may be covered.

New §5.5007 contains similar language as was in repealed §5.5002(5)(Q)(ii). The new section addresses insurance for commercial credit property, describing how it may be covered.

New §5.5008 contains similar substantive language as was in most of repealed §5.5002(a)(5), other than repealed §5.5002(a)(5)(Q)(i) and §5.5002(a)(5)(Q)(ii), which is reflected in proposed §5.5006 and §5.5007, respectively. The new section addresses insurance for all other classes of inland marine insurance, describing how they may be covered. The new section also classifies travel insurance as inland marine insurance.

Nonsubstantive changes were made to the proposed text in new §5.5008. Specifically, in new §5.5008(20), two words that had been incorrectly capitalized in the proposal have been changed to lowercase. In new §5.5008(33)(D), an inadvertently repeated word in the proposed text has been removed.

New §5.5101 contains similar substantive language as was in repealed §5.5005. The new section provides a procedure for regulating rates for commercial multi-peril policies.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed new sections.

SUBCHAPTER F. INLAND MARINE INSURANCE AND MULTI-PERIL INSURANCE

28 TAC §§5.5001, 5.5002, 5.5005

STATUTORY AUTHORITY. The commissioner adopts the repeal of §§5.5001, 5.5002, and 5.5005 under Insurance Code § 2251.0031, 2251.004, 2301.0031, 2301.005, 3504.0007, 36.001, and 36.002.

Insurance Code §2251.0031 exempts commercial inland marine insurance from rate filing requirements. Section 2251.0031 also provides that the commissioner may adopt reasonable and necessary rules to implement §2251.0031.

Insurance Code §2251.004 requires that the commissioner adopt rules governing the manner in which rates for the various classifications of risks insured under inland marine insurance are regulated.

Insurance Code §2301.0031 exempts commercial inland marine insurance from form filing requirements. Section 2301.0031 also provides that the commissioner may adopt reasonable and necessary rules to implement §2301.0031.

Insurance Code §2301.005 requires that the commissioner adopt rules governing the manner in which forms for the various classifications of risks insured under inland marine insurance are regulated.

Insurance Code §3504.0007 provides that the commissioner may adopt rules necessary to implement Insurance Code Chapter 3504.

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.

Insurance Code §36.002 provides that the commissioner may adopt reasonable rules that are necessary to effect the purposes of Insurance Code Chapter 2251 and Chapter 2301, Subchapter A.

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

Filed with the Office of the Secretary of State on May 15, 2023.

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Jessica Barta

General Counsel

Texas Department of Insurance

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Proposal publication date: February 10, 2023

For further information, please call: (512) 676-6587



DIVISION 1. INLAND MARINE INSURANCE

28 TAC §§5.5001 - 5.5008

STATUTORY AUTHORITY. The commissioner adopts new §§5.5001 - 5.5008 under Insurance Code §§2251.0031, 2251.004, 2301.0031, 2301.005, 3504.0007, 36.001, and 36.002.

Insurance Code §2251.0031 exempts commercial inland marine insurance from rate filing requirements. Section 2251.0031 also provides that the commissioner may adopt reasonable and necessary rules to implement §2251.0031.

Insurance Code §2251.004 requires that the commissioner adopt rules governing the manner in which rates for the various classifications of risks insured under inland marine insurance are regulated.

Insurance Code §2301.0031 exempts commercial inland marine insurance from form filing requirements. Section 2301.0031 also provides that the commissioner may adopt reasonable and necessary rules to implement §2301.0031.

Insurance Code §2301.005 provides that the commissioner must adopt rules governing the manner in which forms for the various classifications of risks insured under inland marine insurance are regulated.

Insurance Code §3504.0007 provides that the commissioner may adopt rules necessary to implement Insurance Code Chapter 3504.

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.

Insurance Code §36.002 provides that the commissioner may adopt reasonable rules that are necessary to effect the purposes of Insurance Code Chapter 2251 and Chapter 2301, Subchapter A.

§5.5008. *Inland Marine Insurance -- Other Inland Marine Risks.*

Other inland marine risk definitions and classifications follow.

(1) Accounts receivable (non-filed).

(2) Agricultural machinery and equipment. These risks include:

(A) personal risks (filed); and

(B) dealers and other commercial risks (non-filed).

(3) Bailee customers policies (non-filed). These policies cover property in the custody of bleacheries, throwsters, fumigatories, dyers, cleaners, laundries, needle workers, and other bailees for the purpose of storage or performing work on the property. The policies may include coverage while in transit but may not cover the bailee's property at the bailee's premises.

(4) Block policies. These risks include:

(A) camera dealers (non-filed);

(B) equipment dealers (non-filed);

(C) furrier's block (non-filed);

(D) jeweler's block (non-filed); and

(E) musical instrument dealers (non-filed).

(5) Builders' risks or installation risks (non-filed). These policies cover loss to the owner, seller, or contractor due to physical damage to machinery, equipment, building materials, or building supplies being used with and during the course of installation, testing, building, renovating, or repairing of dwelling, commercial, or industrial construction.

(A) Policies may cover property designated for and awaiting specific installation, building, renovating, or repairing while the property is at points or places where work is being performed, in transit, or in temporary storage or deposit.

(B) Policies may not cover property while it is part of merchandise held by dealers for public sale.

(C) Coverage must be limited to builders' risks or installation risks if a policy insures perils in addition to fire and extended coverage.

(D) If a policy is written for an owner, coverage must end when the work is completed and accepted.

(E) If a policy is written for a seller or contractor, coverage must end when the interest of the seller or contractor ends.

(6) Cold storage locker plant policies (non-filed). These policies cover merchandise of customers such as meats, game, fish, poultry, fruit, vegetables, and similar property.

(7) Cotton buyers transit policies (non-filed).

(8) Domestic bulk liquids policies (non-filed). These policies cover domestic bulk liquids stored in tanks, but do not include fire and extended coverage.

(9) Electronic Equipment Protection Policy (filed for personal risks; non-filed for commercial risks).

(A) These policies can cover:

(i) electronic equipment, including data processing equipment and components, connections, extensions, and systems;

(ii) electronic media, including converted data; and

(iii) extra expense incurred to continue normal operations that are interrupted as a result of an insured loss.

(B) A policy must cover the property while in transit.

(C) Insurance for "portable electronic devices," as described in Insurance Code §4055.251, concerning Definitions, is also subject to the provisions of Insurance Code Chapter 551, Subchapter E, concerning Portable Electronics Insurance, and Chapter 4055, Subchapter F, concerning Portable Electronic Vendor License.

(10) Exhibition policies covering property while on exhibition and in transit to or from an exhibition (non-filed).

(11) Film floaters, including builders' risk during the production and coverage of completed negatives and positives and sound records:

- (A) personal risks (filed); and
- (B) commercial risks (non-filed).

(12) Fine arts policies covering objects of art such as pictures, bronzes, antiques, rare manuscripts and books, and articles of vertu:

- (A) private collections (filed); and
- (B) dealers and other commercial risks (non-filed).

(13) Floor plan policies (non-filed). These policies cover property for sale while in possession of dealers under a floor plan or any similar plan under which the dealer borrows money from a lending institution to pay the manufacturer.

(A) The merchandise must be specifically identifiable as encumbered to the lending institution.

(B) The dealer's right to sell or otherwise dispose of the merchandise must be conditioned upon the lending institution releasing the merchandise from encumbrance.

(C) These policies must cover the merchandise in transit and not extend beyond termination of the dealer's interest.

(D) These policies may not cover merchandise for which the collateral is the dealer's stock or inventory, as distinguished from merchandise specifically identifiable as encumbered to the lending institution.

(14) Furriers' customers policies (non-filed). These policies cover specified articles of customers' property for which furriers or fur storsers issue certificates or receipts.

(15) Garment contractors floaters (non-filed).

(16) Government service floaters (non-filed).

(17) Home freezers and freezer contents (non-filed). These policies cover against loss resulting from power failure or mechanical breakdown.

(18) Live animal floaters. These risks include:

(A) cattle kept for feeding, dairy, breeding, or show purposes; sheep; swine; and horses and mules (except horses and mules used exclusively for racing, show, or breeding for racing or show):

- (i) personal risks (filed); and
- (ii) commercial risks (non-filed);

(B) range cattle and range sheep while on ranges (non-filed);

(C) horses or mules used exclusively for racing, show, or breeding for racing or show (non-filed);

(D) livestock while being transported to or from stockyards or while at stockyards (non-filed);

(E) policies issued to insureds conducting sales or auctions, covering others' livestock for public sale (non-filed);

(F) livestock insured under mortality policies that cover, among other perils, death or destruction due to natural causes (non-filed);

(G) livestock of circus, carnival, or theatrical enterprises (non-filed); and

(H) policies issued to veterinarians and humane societies to cover others' livestock in their custody or control for professional purposes (non-filed).

(19) Mobile equipment and miscellaneous movable property (non-filed).

(A) These policies cover contractors' equipment, industrial and other special equipment not primarily designed for highway use, mechanical sales devices, storage batteries, stevedores' equipment, divers' equipment, undertakers' equipment, outboard boats and motors, parachutes, balloons, scientific and surveyors' instruments, articles for sport and recreation, musical scores and orchestrations, or all other similar movable and identified property.

(B) These policies do not cover any equipment or property:

(i) on sale or consignment; or

(ii) that, in the course of manufacture, has come into the custody or control of parties who intend to use the equipment or property for the purpose for which it was manufactured or created.

(C) These policies may not cover storage at the insured's premises, except where storage is incidental to the regular use of the equipment or property away from the premises.

(20) Musical instrument floaters. For purposes of this section, "musical instrument" does not include music-playing equipment like radios, televisions, CD or record players, MP3 players, and streaming devices:

(A) personal risks (filed); and

(B) commercial risks (non-filed).

(21) Nuclear insurance (non-filed). These policies cover loss resulting from physical damage (including risks in the course of construction) to:

(A) designated nuclear facilities, including property associated with the facilities and subject to radiation damage from them;

(B) other property directly related to the nuclear facilities; and

(C) other facilities involving substantial quantities of radiation.

(22) Oil and gas lease property (non-filed).

(23) Pattern and die floaters, excluding coverage on the owner's premises (non-filed).

(24) Personal property floaters (filed). These policies include floaters for personal effects, personal fur, personal jewelry, and other personal property.

(25) Pet insurance (non-filed). Individual or group insurance policies covering veterinary expenses for pet illness or injury.

(26) Physicians' and surgeons' equipment floaters (non-filed).

(27) Radium floaters (non-filed).

(28) Rolling stock used on a railway system (non-filed). Coverage may be provided on an all-risk basis or named peril basis. Coverage must include fire, collision, derailment, overturn, strikes, and riots.

(29) Salespersons' samples floaters (non-filed).

(30) Sign and street clock policies (non-filed). These policies cover neon signs, automatic or mechanical signs, and street clocks, while in use.

(31) Silverware floaters:

- (A) personal risks (filed); and
- (B) commercial risks (non-filed).

(32) Stamp and coin floaters:

- (A) private collections (filed); and
- (B) commercial risks (non-filed).

(33) Self-service storage customer floaters (filed for policy forms and endorsements; non-filed for rates). These policies may be issued to a tenant of a self-service storage facility to cover property stored at the facility.

(A) For purposes of this paragraph, the terms "self-service storage facility" and "tenant" have the meanings prescribed by Property Code §59.001, concerning Definitions.

(B) Coverage is limited to property in storage for the perils listed in the policies, which must include coverage for property while in transit.

(C) Coverage may not be provided for any motor vehicles subject to motor vehicle registration and inspection.

(D) Policies may not cover property stored in:

(i) any facility where the lessor issues a warehouse receipt, bill of lading, or other document of title relating to the stored property; or

(ii) facilities other than storage facilities that have multiple storage units.

(34) Theatrical floaters (non-filed). These policies may not include coverage for buildings, improvements, betterments, and furniture and fixtures that do not travel with theatrical troupes.

(35) Travel insurance (filed), as described in Insurance Code Chapter 3504, concerning Travel Insurance.

(36) Valuable papers and records. These risks include:

- (A) personal risks (filed); and
- (B) commercial risks (non-filed).

(37) Wedding present floaters (non-filed).

(38) Wool growers and wool buyers floaters (non-filed). These policies cover property usual to the insured's business while in transit and all other situations customary and incidental to transit.

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

Filed with the Office of the Secretary of State on May 15, 2023.

TRD-202301783

Jessica Barta

General Counsel

Texas Department of Insurance

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Proposal publication date: February 10, 2023

For further information, please call: (512) 676-6587

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DIVISION 2. MULTI-PERIL INSURANCE

28 TAC §5.5101

STATUTORY AUTHORITY. The commissioner adopts §5.5101 under Insurance Code §36.001 and §36.002.

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.

Insurance Code §36.002 provides that the commissioner may adopt reasonable rules that are necessary to effect the purposes of Insurance Code Chapter 2251.

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

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6587

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 461. INCIDENT COMMANDER

37 TAC §§461.1, 461.3, 461.5

The Texas Commission on Fire Protection (Commission) adopts 37 Texas Administrative Code Chapter 461, Incident Commander, §461.1, Incident Commander Certification, §461.3, Minimum Standards for Incident Commander Certification and §461.5, Examination Requirements. The purpose of Chapter 461 is to outline the requirement for certification and the minimum standards for Incident Commander certification. Chapter 461, Incident Commander, is adopted without changes to the text as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1271). These rules will not be republished.

No comments were received from the public regarding the adoption of the rules.

The rules are adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the commission.

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

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TRD-202301710

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

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Proposal publication date: March 3, 2023

For further information, please call: (512) 936-3841

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (commission) adopts amendments to §452.2 of Title 40, Part 15, Chapter 452 of the Texas Administrative Code concerning Advisory Committees with changes to the proposed text as published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1023) and will be republished

The amended rule is adopted to change existing language to more closely align the method of selecting the committee chair with selection of the commission chair and to update the rule with language that reflects the current method of video conference for remote participation by committee members.

No comments were received regarding the proposed rule amendments.

The amended rule is adopted under Texas Government Code §434.010, which authorizes the commission to establish rules it considers necessary for its administration, and Texas Government Code §434.0101, granting the commission authority to establish rules governing the agency's advisory committees.

§452.2. Advisory Committees.

(a) The commission may establish advisory committees in accordance with Texas Government Code, Chapter 2110. The following shall apply to each advisory committee:

(1) Agency role. The executive director may direct one or more staff members of the agency to assist each advisory committee. These positions shall be non-voting.

(2) Committee size and appointment of members. Each advisory committee shall be composed of nine members appointed by the commission. Members of each committee serve at the pleasure of the commission and may be removed from a committee by a majority vote of the commission.

(3) Committee chair and vice chair.

(A) The committee chair will be selected by the commission. The committee chair shall serve a term as determined by

the commission. The committee chair determines the agenda for each meeting.

(B) The vice chair of each advisory committee is selected by the committee's voting members. Committee vice chair term lengths are one or two-year terms as determined by the committee's voting members and are limited to two years of service as the vice chair during their appointment to the committee. The vice chair shall perform the chair duties when the chair is unavailable or unable to perform.

(4) Conditions of membership.

(A) Terms of service. The term of office for each member will be determined by the commission in order to achieve staggered terms. In the event that a member cannot complete his or her term, or is removed by the commission, the commission shall appoint a qualified replacement to serve the remainder of the term.

(B) Participation. Participation on an advisory committee is voluntary.

(C) Compensation. Advisory committee members appointed by the commission shall serve without compensation.

(D) Reimbursement. The commission may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary expenses up to four times per calendar year. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

(5) Training. Each committee member shall receive initial training to ensure compliance with the Open Meetings Act. Training should also include an overview of the agency's mission and organizational structure, the overall purpose or goals of the committee, as well as other information that will assist members to accomplish committee goals.

(6) Responsibilities. Each advisory committee will review issues and provide advice to the commission, as charged by the commission.

(7) Meetings. Each advisory committee shall meet as needed by the commission. Advisory committee meetings may be conducted by video conference. Each advisory committee shall be subject to meeting at the call of the committee chair or designee. A quorum shall consist of a majority of the committee membership. The committees shall comply with Open Meetings Act requirements as provided in Texas Government Code, Chapter 551.

(8) Reports. The committee chair or designee of each advisory committee shall regularly report to the commission regarding its activities and recommendations, and, when requested by the commission, shall file with the commission a report containing:

(A) the minutes of meetings;

(B) a memo summarizing the meetings; and

(C) a list of the committee's recommendations, if any.

(9) Evaluation and duration. Each advisory committee shall remain in existence as long as deemed necessary by the commission based on a regular evaluation of the continuing need for each advisory committee. The executive director or staff may assist with this evaluation at the direction of the commission.

(10) Formation of subcommittees. Each advisory committee shall notify the commission of any adopted subcommittees and their purpose in its quarterly report.

(b) Veteran Services Advisory Committee.

(1) Purpose. The purpose of the Veteran Services Advisory Committee (VSAC) is to develop recommendations to improve overall services to veterans, their families, and survivors by the TVC. TVC leadership will provide veteran service topics to the committee for analysis and feedback.

(2) Committee member qualifications. The Committee shall be comprised of veterans and/or non-veterans that are interested in significantly improving the quality of life for all Texas veterans, their families, and survivors.

(c) Fund for Veterans' Assistance Advisory Committee.

(1) Purpose. The purpose of the Fund for Veterans' Assistance Advisory Committee is to evaluate grant applications and make recommendations to the commission.

(2) Committee member qualifications.

(A) Committee members may include representatives from veterans' organizations, non-profit or philanthropic organizations, veterans or family members of veterans, and other individuals with the experience and knowledge to assist the committee with achievement of its purpose.

(B) Committee members may not include officers, directors or employees of organization or entities that have an open Fund for Veterans' Assistance grant during the member's tenure or that intend to submit an application for a Fund for Veterans' Assistant grant.

(C) Committee members will be required to sign non-disclosure and conflict of interest agreements before reviewing grant applications. Committee members found in violation of the non-disclosure agreement will be prohibited from evaluating grant applications and making recommendations to the commission. Committee members found in violation of any agreement may also be removed from the committee by the commission.

(3) Meetings. The Fund for Veterans' Assistance Advisory Committee shall meet as needed to make grant recommendations to the commission.

(d) Veterans County Service Officer Advisory Committee.

(1) Purpose. The purpose of the Veterans County Service Officer Advisory Committee is to develop recommendations to improve the support and training of Veterans County Service Officers and to increase coordination between Veterans County Service Officers and the Texas Veterans Commission related to the statewide network of services being provided to veterans.

(2) Committee member qualifications. The members shall be current Veterans County Service Officers with the experience and knowledge to assist the committee with achievement of its purpose.

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

Filed with the Office of the Secretary of State on May 12, 2023.

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Cory Scanlon

General Counsel

Texas Veterans Commission

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Proposal publication date: February 24, 2023

For further information, please call: (737) 320-4167

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CHAPTER 457. PROTESTS OF AGENCY
PURCHASES

40 TAC §457.1

The Texas Veterans Commission (commission) adopts amendments to §457.1 of Title 40, Part 15, Chapter 457 of the Texas Administrative Code concerning Protests of Agency Purchases with changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7860) and will be republished.

The amended rule is adopted to eliminate language that is no longer applicable.

No comments were received regarding the proposed rule amendments.

The rule amendment is adopted under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration. No other statutes, articles, or codes are affected by this adoption.

§457.1. Protests.

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

(1) Agency--The Texas Veterans Commission.

(2) Commissioners--Commissioners of the Texas Veterans Commission.

(3) Interested parties--All vendors who have submitted bids or proposals for the provision of goods or services pursuant to a contract with the agency.

(b) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Chief Financial Officer. Such protests must be in writing and received in the Chief Financial Officer's office within 10 working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this subsection and subsection (c) of this section, and shall be resolved in accordance with the procedure set forth in subsections (d) and (e) of this section. Copies of the protest must be mailed or delivered by the protesting party to the agency and other interested parties.

(c) In the event of a timely protest or appeal under this section, the agency shall not proceed further with the solicitation or with the award of the contract unless the Executive Director, after consultation with the Chief Financial Officer, makes a written determination that the award of contract without delay is necessary to protect the best interests of the state.

(d) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the protesting party alleges has been violated;

(2) a specific description of each action by the agency that the protesting party alleges to be a violation of the statutory or regulatory provision(s) that the protesting party has identified pursuant to paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) a statement of any issues of law or fact that the protesting party contends must be resolved;

(5) a statement of the argument and authorities that the protesting party offers in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the agency and all other identifiable interested parties.

(e) The Chief Financial Officer shall have the authority, prior to appeal to the Executive Director of the commission, to settle and resolve the dispute concerning the solicitation or award of a contract. The Chief Financial Officer may solicit written responses to the protest from other interested parties.

(f) If the protest is not resolved by mutual agreement, the Chief Financial Officer will issue a written determination on the protest.

(1) If the Chief Financial Officer determines that no violation of rules or statutes has occurred, he/she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination.

(2) If the Chief Financial Officer determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he/she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the Chief Financial Officer determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he/she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract void.

(g) The Chief Financial Officer's determination on a protest may be appealed by the protesting party to the Executive Director of the agency. An appeal of the Chief Financial Officer's determination must be in writing and must be received in the Executive Director's office no later than 10 working days after the date of the Chief Financial Officer's determination. Copies of the appeal must be mailed or delivered by the protesting party and other interested parties. The appeal must include a certified statement that such copies have been provided. The appeal shall be limited to review of the Chief Financial Officer's determination.

(h) The Executive Director may confer with the General Counsel in his/her review of the matter appealed. The Executive Director may, in his/her discretion, refer the matter to the Commissioners for their consideration at a regularly scheduled open meeting or issue a written decision on the protest.

(i) When a protest has been appealed to the Executive Director under subsection (f) of this section and has been referred to the Commissioners by the Executive Director under subsection (g) of this section, the following requirements shall apply:

(1) Copies of the appeal and responses of interested parties, if any, shall be mailed to the Commissioners.

(2) All interested parties who wish to make an oral presentation at the open meeting are requested to notify the Commission's General Counsel at least 48 hours in advance of the open meeting.

(3) The Commissioners may consider oral presentations and written documents presented by staff and interested parties. The Chairman shall set the order and amount of time allowed for presentations.

(4) The Commissioners' determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting, and shall be final.

(j) A protest or appeal that is not filed timely will not be considered, unless good cause for delay is shown or the commission determines that a protest or appeal raises issues significant to procurement practices or procedures.

(k) A decision issued either by the Commissioners in open meeting, or in writing by the Executive Director, shall be the final administrative action of the agency.

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

Filed with the Office of the Secretary of State on May 12, 2023.

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Cory Scanlon

General Counsel

Texas Veterans Commission

Effective date: June 1, 2023

Proposal publication date: November 25, 2022

For further information, please call: (737) 320-4167



CHAPTER 459. TRANSPORTATION SUPPORT SERVICES

40 TAC §§459.1 - 459.6

The Texas Veterans Commission (commission) adopts the repeal to 40 TAC, Part 15, Chapter 459, §§459.1 - 459.6, relating to Transportation Support Services, without changes to the proposed text as published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1024) and will not be republished.

The repeal is made to eliminate a rule that is no longer applicable.

No comments were received regarding proposal of the rule repeal.

The repeal is adopted under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration. No other statutes, articles, or codes are affected by this adoption.

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

Filed with the Office of the Secretary of State on May 12, 2023.

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Cory Scanlon

General Counsel

Texas Veterans Commission

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