

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 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS

SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

The Texas State Library and Archives Commission (commission) adopts amendments to 13 TAC §7.125, concerning Records Retention Schedules, specifically subsection (a)(10), Local Schedule EL: Records of Elections and Voter Registration. The amendments are adopted without changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4251). The rule will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS. The amendments include clarifications and formatting revisions necessary to ensure accuracy of information in the header and footer of the document.

The amendments to §7.125(a)(10) correct the reference to the current edition of the schedule (4th).

The amendments to the figure correct inaccurate information in the document header and footer and improve style consistency with other local government retention schedules. The amendments include:

Addition of the effective date of the revised 4th edition to every page, which replaces the incorrect effective date of the last edition.

Correction of page numbers on page 4, Table of Contents.

Correction of page numbers in the document footer on pages 5 - 24.

Revision of the line-spacing and font style to be consistent with the formatting of other recent editions of local government retention schedules.

SUMMARY OF COMMENTS. The Commission did not receive any comments on the proposed amendments or new rule.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.158, which requires the Commission to adopt records retention schedules by rule and requires the Commission to provide records retention schedules to local governments, and Government Code, §441.160, which allows the commission to revise the schedules.

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

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.1 and §84.2; Subchapter C, §§84.40 - 84.42, 84.45, and 84.46; Subchapter D, §84.51 and §84.52; Subchapter E, §§84.60, 84.62, and 84.64; Subchapter F, §84.70 and §84.72; Subchapter G, §§84.80 - 84.82 and 84.84; Subchapter H, §84.90; Subchapter J, §84.200; Subchapter K, §84.301; Subchapter M, §§84.500 - 84.506; and Subchapter N, §84.600; new rules at Subchapter G, §84.85; Subchapter I, §84.103; Subchapter M, §84.507; and Subchapter N, §84.601; and repeal of existing rules at Subchapter C, §84.43; and Subchapter N, §84.601, regarding the Driver Education and Safety Program, without changes to the proposed text as published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2966). These rules will not be republished.

The Commission also adopts a new rule at 16 TAC, Chapter 84, Subchapter C, §84.43; amendments to Subchapter C, §84.44; Subchapter K, §84.300, and §84.302, regarding the Driver Education and Safety Program, with changes to the proposed text as published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2966). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 84, implement Texas Education Code, Chapter 1001, relating to Driver Education and Safety (DES).

The adopted rules are necessary to implement three separate rulemaking initiatives: (1) implementation of HB 2847, Article 2, 86th Legislature, Regular Session (2019); (2) addressing the need to update course curriculum requirements to complete the second phase of the Department's reorganization and clarification of the rules following the transfer of the DES program to the Department; and (3) implementing recommendations of the DES Fees Workgroup pertaining to reducing program fees. These three categories of rule changes have been combined into one proposal to eliminate the need for separate rulemakings.

HB 2847

HB 2847 amends Education Code, Chapter 1001, primarily to: (1) simplify provisions related to the eligibility requirements for, and authorized the scope of instruction for a driver education instructor acting as a teaching assistant, as a driver education teacher or as a supervising teacher and remove the need for other related license types; and (2) redefine a driver education school so that there is no requirement for a physical location to be eligible for a driver education school license.

The adopted rules implement HB 2847 by: (1) simplifying the requirements for initial licensing for driver education instructors; (2) removing the "brick and mortar" facility requirement for licensure of driver education schools; (3) removing the need for teaching assistant-full and supervising teaching assistant-full driver instructor license types; (4) removing the "teacher of record" designation to allow driver education school owners more flexibility to administer student documentation; and (5) clarifying the roles and responsibilities of driver education instructors in administering the course materials to students.

Course Curriculum

The adopted rules amend 16 TAC, Chapter 84, Subchapters M and N, to complete the second phase of the Department's planned reorganization and clarification of the rules related to course curriculum. The Texas Legislature enacted HB 1786, 84th Legislature, Regular Session (2015), which transferred the DES program from the Texas Department of Public Safety and the Texas Education Agency to the Department. On September 1, 2015, the Department transferred the DES rules from Title 19 and Title 37, and placed the same rule content into 16 TAC, Chapter 84. The Department planned to subsequently reorganize and clarify the rules within Chapter 84 via two phases of rulemakings, the first phase pertaining to licensing and regulatory functions and the second phase pertaining to course curriculum requirements.

The proposed text of the rules for the first phase was published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8388). During the public comment period, the Department received 64 comments, 33 of which addressed rules that were planned to be considered during the second phase. The adoption of the first phase rules was published in the March 24, 2017, issue of the *Texas Register* (42 TexReg 1404).

The proposed course curriculum rules for the second phase of this rulemaking were initially presented to and discussed by the Driver Training and Traffic Safety Advisory Committee (Committee) at its meeting on November 7, 2018. The Committee was informed by Department staff that the proposed curriculum rules would be posted for public viewing and comment on the Department's website on November 13, 2018. The comment period closed on December 12, 2018. The Department received 20 comments. No changes were made to the rules as a result of those comments.

The Curriculum Rules Workgroup (Curriculum Workgroup) conducted six meetings to address the second phase of the rulemaking and consider the comments made during the first phase that pertained to course curriculum requirements and whether the proposed rules were affected by any of the comments. The Curriculum Workgroup considered and addressed the following comments made in the first phase of the 2016 rulemaking, that were reserved for consideration in the second phase, during its meetings to determine its recommendations for the proposed rules.

2016 Comments

The Curriculum Workgroup considered comments received specifically related to §84.44 regarding the requirements for a "teacher of record" and whether a Teaching Assistant-Full (TA-Full) or Supervising Teaching Assistant-Full (Supervising TA-Full) should be able to endorse a student's final classroom records. The Curriculum Workgroup, acknowledging the comments and the passage of HB 2847 which, in part, removed the Teaching Assistant-Full and Supervising Teaching Assistant-Full license types, recommended a change to the proposed rules deleting all references to "teacher of record" and the two aforementioned license types.

The Curriculum Workgroup considered a comment received requesting the Department implement by rule §1001.111, Texas Education Code, Driving Safety Course for Driver Younger than 25 Years of Age (DSY25), and recommended the addition of new §84.507 to the proposed rules to create a course of instruction for such students and establish licensing standards and eligibility requirements for instructors teaching the driving safety course. The Curriculum Workgroup also recommended changes to §84.64 of the proposed rules applicable to the DSY25 Course and its instructors.

The Curriculum Workgroup considered a comment received requesting clarification of the roles of an Instructor Development Course Driving Safety Instructor Trainer and a Driving Safety Instructor Trainer and recommended the changes in the proposed rules in amended §84.64(c)(4)(A) and (c)(5)(A) that clarify and expand the eligibility requirements for the two license types.

The Curriculum Workgroup considered a comment received related to §84.44(d)(1)(A) that proposed an entity other than an approved driver education school be allowed to offer continuing education for driver education (DE) instructors, and recommended a change at §84.44(d)(1)(B)(v) and (vi) to the proposed rules that allows DE instructors to obtain continuing education credit from successful completion of a Drug Offender Education Program or an eight hour school bus driver recertification program.

The Curriculum Workgroup considered comments received requesting amendment to the requirement in §84.81(a)(3)(B)(ix) that only a "teacher of record" could sign completed student classroom records where the course of instruction was taught by either a TA-Full or a Supervising TA-Full. The Curriculum Workgroup recommended that the proposed rules remove the references to the TA-Full and Supervising TA-Full license types and "teacher of record" in line with the comments and HB 2847. The Curriculum Workgroup also recommended that the proposed rules amend §84.81(a)(3)(B)(viii) to allow a school owner, supervising teacher or driver education teacher to sign or stamp completed student classroom records.

The Curriculum Workgroup considered a comment requesting the deletion of §84.500(b)(1)(T), which required an instructor to complete a DPS Form DL-42 upon a student's failure to complete

required classroom instruction and recommended including the requested change to the proposed rules as the form no longer is in use with the Texas Department of Public Safety.

The Curriculum Workgroup considered comments received requesting the Department adjust the minimum times in driver education course topics in §84.500(b)(2)(A)(iii), and in driving safety course topics in §84.502(a)(1)(D), to maximize flexibility to meet educational objectives. The Curriculum Workgroup recommended the proposed rules amend those sections to change the minimum course content time allowances to permit licensees to tailor delivery of educational material to address technological advances, implement legislative changes, and the respective needs of the student and business operations. The Curriculum Workgroup also recommended that the proposed rules amend the current minimum course content times for specialized driving safety courses in §84.503(a)(1)(D).

The Curriculum Workgroup considered a comment received requesting amendment of §84.500(b)(2)(B)(xii), 84.504(l), and 84.506(l) to allow for increased technical assistance and access to the instructor for online driver training courses, and the Curriculum Workgroup recommended the proposed rules be amended in those rule sections consistent with the comments.

Highlights of the curriculum changes include: (1) new definitions for Instructor Development Course and Instructor Development Programs relating to the certification of driver training instructors; (2) removing the "teacher of record" designation to allow school owners more flexibility to administer student documentation; (3) clarifying the roles and responsibilities of driver education instructors in administering the course materials to students; (4) expanding opportunities for instructors in obtaining continuing education credit; (5) easing requirements on driver education school student progress reporting, recordkeeping and provision of information to consumers on filing complaints with the Department; (6) creating new §84.85 that requires licensees to file a Statement of Assurance to confirm updates to driver training course materials to reflect amendments to applicable law; (7) creating new §84.103 which authorizes the Department to conduct audits of Alternative Method of Instruction (AMI) Driver Education Schools; (8) requiring Parent Taught Driver Education Course Providers and Online Driver Training Schools to provide course identification information to consumers on their websites; (9) establishing a DSY25 Course and Instructor requirements for the course, pursuant to Texas Education Code §1001.111; (10) easing advertising restrictions on new driver training schools, and drug and alcohol awareness schools pending licensure; (11) reducing the number of validation questions and expanding time to provide answers for courses developed by online providers; (12) modifying the minimum course content time for curriculum to allow licensees to tailor delivery of educational material to address technological advances, legislative changes, and the respective needs of the student and business operations; and (13) increasing access for students to technical assistance for online driver training courses.

Fees

Recommendations from Department staff to lower program fees (hereinafter referred to as "first draft fee changes") were reviewed and discussed by the Driver Training and Traffic Safety Advisory Committee (Committee) at its meeting on May 9, 2018. The Committee recommended that the first draft fee changes be published in the *Texas Register* for public comment, and they were published in its July 13, 2018, issue (43 TexReg 4624). The Department received 14 comments during the

30-day public comment period. The first draft fee changes and the public comments were reviewed and discussed by the Committee at its August 29, 2018, meeting, and the Committee made no changes to the first draft fee changes as a result of the comments. The Committee, however, reviewed and discussed concerns related to the first draft fee changes and voted to recommend postponement of their adoption to allow for further consideration by the Fees Workgroup. The Fees Workgroup subsequently met on October 2, 2018, and October 22, 2018, to revise the first draft fee changes. Those revisions are hereinafter referred to as the "second draft fee changes."

The second draft fee changes were reviewed and discussed at the Committee's November 7, 2018, meeting. Department staff proposed to the Committee that the second draft fee changes be published for 30 days of public comment and brought back to the Committee for discussion and recommendation. The Department filed a withdrawal of the first draft fee changes on November 9, 2018, for additional fiscal analysis and further review by the Fees Workgroup and the Committee. The withdrawal of the first draft fee changes was published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7665). The Fees Workgroup completed its fiscal analysis and made further revisions to the second draft fee changes. The second draft fee changes were considered by the Fees Workgroup on February 13, 2019, and October 24, 2019, and no further revisions were noted.

The adopted rules contain the final recommendations by the Fees Workgroup to reduce fees for driver education schools and courses; driving safety schools, course providers and courses; and Drug and Alcohol Driving Awareness schools, programs, and instructors. The adopted rules represent an average 42.6% reduction in previous fee levels for the affected license types.

The adopted rules resulted in extensive amendments to existing Subchapter C, §84.43, Driver Education Certificates, and Subchapter N, §84.601, Procedures for Student Certification and Transfers. Thus, the adopted rules repeal the existing rule sections and propose new Subchapter C, §84.43, and Subchapter N, §84.601, to provide greater clarity.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §84.1, Authority, by correcting the order of the statutory chapter citations to Chapters 29 and 1001, Texas Education Code.

The adopted rules amend §84.2, Definitions, to: (1) add definitions for "Instructor Development Course (IDC)," "Instructor Development Program (IDP)," "Driving Safety Course for Driver Younger than 25 Years of Age" (DSY25) and "Teaching Techniques;" (2) supplement and clarify the definitions for "ADE-1317" and "DE-964" driver education certificates; (3) remove the definition for "teacher of record;" and (4) renumber subsections accordingly.

The adopted rules amend §84.40, Driver Education School Licensure Requirements, by: (1) moving subsection (k) regarding advertising to §84.80, Names and Advertising; (2) adding a change of address for a driver education school to the licensee reporting requirements; (3) clarifying rule language; (4) renumbering the subsections accordingly; and (5) correcting grammatical errors.

The adopted rules amend §84.41, Driver Education School Responsibility, by: (1) changing the title of the section to Driver Education School Responsibilities; (2) clarifying rule language related to "classroom" and "in-car" instruction; and (3) requiring

a driver education school or its registered agent for service of process to be located within the state.

The adopted rules amend §84.42, Motor Vehicles, to clarify language regarding inspections required by the Texas Department of Motor Vehicles.

The adopted rules repeal existing §84.43, Driver Education Certificates, which establish the responsibilities regarding the purchase, issuance, care and control of driver education certificates and numbers by driver education schools.

The adopted rules add new §84.43, Driver Education Certificates, which (1) replace and reorganize previous subsections to clarify the procedures by which licensed driver education schools, course providers, exempt driver education schools, public schools, colleges, universities, and educational service centers (ESC) may obtain driver education certificates and numbers from the Department; (2) update responsibilities for these entities regarding the purchase, issuance, care and control requirements associated with missing, stolen, transferred, or replaced driver education certificates and numbers; (3) integrate applicable subsections from §84.601, Procedures for Student Certifications and Transfers, relating these procedures and responsibilities to apply to exempt driver education schools, public schools, colleges, universities, and ESCs; and (4) renumber the subsections accordingly.

The adopted rules amend §84.44, Driver Education Instructor License, to: (1) replace outdated terminology, including the term "teacher of record"; (2) update driver education instructor continuing education requirements; (3) reduce and simplify barriers to licensure for driver education instructors by implementing provisions of HB 2847 by no longer requiring an applicant to possess a Texas teaching certificate, and removing the Teaching Assistant-Full and Supervising Teaching Assistant-Full license types; (4) clarify driver education instructor qualifications and responsibilities; (5) delete unnecessary rule provisions; (6) correct language; and (7) renumber the subsections accordingly.

The adopted rules amend §84.45, Student Progress, to remove requirements for driver education schools to submit student progress procedures for Department approval.

The adopted rules amend §84.46, Attendance and Makeup, to: (1) update and reorganize language; and (2) remove the requirement of sending the driver education school student makeup policy to the Department.

The adopted rules amend §84.51, Parent Taught Submission of Course for Department Approval, to: (1) require a parent taught course provider to include its business name and registration number on its registration page and website; and (2) authorize a parent taught course provider to accept students redirected from another website under certain conditions.

The adopted rules amend §84.52, Cancellation of Department Approval, to correct a statutory reference to the Parent-Taught Driver Education program.

The adopted rules amend §84.60, Driving Safety School Licensure Requirements, to correct grammar.

The adopted rules amend §84.62, Course Provider License Requirements, to correct grammar.

The adopted rules amend §84.64, Driving Safety Instructor License Requirements, to: (1) reflect the DSY25 Course instructor license requirements pursuant to Texas Education Code §1001.111; and (2) renumber subsections accordingly.

The adopted rules amend §84.70, Drug and Alcohol Driving Awareness Program School Licensure Requirements, to correct grammar.

The adopted rules amend §84.72, Instructor License Requirements, to: (1) clarify and correct language; and (2) remove outdated references to the Texas Department of State Health Services.

The adopted rules amend §84.80, Names and Advertising, to: (1) clarify language; (2) add the subsection transferred from §84.40 requiring the driver education school name and number when advertising; and (3) allow a driver education school license applicant to advertise with conditions.

The adopted rules amend §84.81, Recordkeeping Requirements, to: (1) modify driver education school recordkeeping requirements; (2) clarify language; and (3) renumber subsections accordingly.

The adopted rules amend §84.82, Student Enrollment Contracts, to: (1) require a driver education school to provide a student makeup policy to each student; and (2) clarify where to file grievances against the school, if necessary, with the Department.

The adopted rules amend §84.84, Notification of Public Interest Information and Participation, to: (1) require licensees to include the Department's email address on business documentation and signage for the purpose of directing complaints to the Department regarding the DES program; (2) correct grammar; and (3) remove the requirement that Department information relating to a complaint be included on a bill for service.

The adopted rules add new §84.85, Statement of Assurance, to require driver education schools and course providers to submit a Statement of Assurance to memorialize and affirm that course materials have been updated to reflect changes in applicable law.

The adopted rules amend §84.90, Facilities and Equipment, to: (1) prohibit driver training schools from maintaining a classroom facility in a private residence; and (2) clarify language.

The adopted rules add new §84.103, AMI Driver Education School Audits, to provide for Department audits of driver education schools offering courses delivered by AMI.

The adopted rules amend §84.200, Cancellation and Refund Policy, to clarify language.

The adopted rules amend §84.300, Driver Education Fees, to: (1) reduce driver education course and school fees; (2) indicate the current fee for the parent taught driver education guide form; and (3) correct language.

The adopted rules amend §84.301, Driving Safety Fees, to reduce driving safety school, driving safety course and course provider fees.

The adopted rules amend §84.302, Drug and Alcohol Driving Awareness Fees, to, reduce drug and alcohol driving awareness school, program, and instructor fees.

The adopted rules amend §84.500, Courses of Instruction for Driver Education Schools, to enhance delivery of driver education school course material by making changes to: (1) modify minimum course content times to accommodate customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) require driver education schools to certify translation of course materials in languages other than English; (3) limit the

times in which school supervised in-car instruction can occur on a given day; (4) require a driver education instructor to be physically present for the type of instruction given and limit persons authorized to sign completed classroom instruction records for each student; (5) reduce the number of content validation questions required with the use of adult student online driver education video course material; (6) require online schools to provide specific hours of access for technical assistance to its students; (7) require an online driver education school to include its business name and registration number on its registration page and website; (8) authorize an online driver education school to accept students redirected from another website under certain conditions; (9) increase times for students to respond to personal validation questions for online driver education courses; (10) delete license types removed by HB 2847; (11) establish qualification standards for enrollment of a student in an instructor development course based upon the number and type of moving violations accumulated during a previous three year period; (12) renumber subsections accordingly; and (13) clarify language.

The adopted rules amend §84.501, Driver Education Course Alternative Method of Instruction, to enhance delivery of driver education course material using an AMI by making changes to: (1) recognize minimum course content times to accommodate customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) place limits on the number and the time to respond to personal and content validation questions posed during the AMI driver education course; (3) require an AMI driver education course to include its business name and registration number on its registration page and website; (4) authorize an AMI driver education course to accept students redirected from another website under certain conditions; (5) set Department approval for renewal of an AMI driver education course to even-numbered years; (6) require schools employing AMI to provide specific hours of access for technical assistance to its students; (7) delete license types removed by HB 2847; (8) renumber subsections accordingly; and (9) clarify language.

The adopted rules amend §84.502, Driving Safety Courses of Instruction, to enhance delivery of course material for the Driving Safety Course by making changes to: (1) modify minimum course content times to accommodate customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) require driving safety, continuing education and instructor development courses to certify translation of driving safety course materials in languages other than English; (3) set additional requirements for course providers in submission of driving safety instructor training guides with applications for review by the Department; (4) require Department approval for a renewal of course approval for a driving safety course to even-numbered years; (5) removed requirement that course providers report a schedule of instructor development course dates to the Department; (6) renumber subsections accordingly; and (7) clarify language.

The adopted rules amend §84.503, Specialized Driving Safety Courses of Instruction, to enhance delivery of course material for the Specialized Driving Safety Course by making changes to: (1) modify minimum course content times to accommodate customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) require specialized driving safety continuing education and instructor development courses to certify translation of driving safety course materials in languages other than English;

(3) removed requirement that course providers report a schedule of instructor development course dates to the Department; and (4) clarify language.

The adopted rules amend §84.504, Driving Safety Course Alternative Delivery Method, to enhance delivery of driving safety course material using an alternative delivery method (ADM) by making changes to: (1) modify minimum course content times to accommodate customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) require an ADM driving safety or specialized driving safety course provider to include its business name and registration number on its registration page and website; (3) increase response times for personal validation questions; (4) reduce the number of required questions for content validation; (5) require Department approval for a renewal of an ADM driving safety or specialized driving safety course to even-numbered years; (6) require ADM driving safety course providers to provide specific hours of access for technical assistance to its students; (7) authorize an AMD driving safety course provider to accept students redirected from another website under certain conditions; (8) modify video requirements for the delivery of ADM driving safety instructional course material; (9) renumber subsections accordingly; and (10) clarify language.

The adopted rules amend §84.505, Drug and Alcohol Driving Awareness Programs of Instruction, to enhance delivery of drug and alcohol driving awareness program (DADAP) course material by making changes to: (1) modify duration times for instructional materials to allow customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) certify translation of DADAP course content materials in languages other than English; and (3) clarify language.

The adopted rules amend §84.506, Drug and Alcohol Driving Awareness Programs Alternative Delivery Method, to enhance delivery of the drug and alcohol driving awareness program (DADAP) course material using an alternative delivery method (ADM) by making changes to: (1) recognize minimum course content times to accommodate customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) require a drug and alcohol driving awareness program ADM course to include its business name and registration number on its registration page and website; (3) ease personal validation course exclusion and response time requirements for online questions; (4) reduce the number of required questions for program content validation; (5) require Department approval for a renewal of an ADM DADAP course to even-numbered years; (6) require ADM DADAP courses to provide adequate access to technical assistance for its students; (7) authorize a drug and alcohol driving awareness school offering an ADM course to accept students redirected from another website under certain conditions; (8) renumber subsections accordingly; and (9) clarify language.

The adopted rules add new §84.507, Driving Safety Course for Driver Younger than 25 Years of Age, pursuant to Texas Education Code §1001.111.

The adopted rules amend §84.600, Program of Organized Instruction, to: (1) reduce regulatory burdens on public schools by eliminating outdated course programs of student instruction for delivery of a driver education plan; (2) ease qualifications for obtaining a learner's license; (3) renumber subsections accordingly; and (4) correct language.

The adopted rules repeal existing §84.601, Procedures for Student Certification and Transfers, which describe the responsibilities for provision and transfer of driver education certificates by public schools, ESCs, exempt driver education schools, colleges and universities.

The adopted rules add new §84.601, Procedures for Student Certification and Transfers, which (1) move applicable subsections to new §84.43, Driver Education Certificates, to organize and include the procedures and responsibilities regarding the purchase, issuance, care and control requirements associated with missing, stolen, transferred, or replaced driver education certificates and numbers to exempt driver education schools, public schools, colleges, universities, and ESCs; and (2) clarify language.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2966). The deadline for public comments was June 8, 2020. The Department received comments from seven interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment - The commenter regarding the changes to §84.84 inquired as to whether all signage and communications should be required to include contact information to allow students to file a complaint with the Department against a driver training school. The commenter maintained that the inclusion of complaint-filing information constituted micro-management and disrupted business operations and that complaints could be best handled by the school first rather than contacting the Department.

Department Response - The Department disagrees with the comment and notes that the inclusion of specific information for filing complaints with the Department is required under Texas Education Code §§1001.204 and 1001.206, and 16 TAC §§84.83 and 84.84. Provision of such information to students is necessary to the Department's ability to regulate its licensees and protect the public. The Department did not make any changes to the rules in response to this comment.

Comment - One comment inquired about the procedures for an online driver education school to become a Third-Party Testing Site (TPTS).

Department Response - The comment is outside the scope of the proposed rules. The process by which an approved driver education (DE) school can become a TPTS is administered by the Texas Department of Public Safety (DPS) under Transportation Code §521.165 and 37 TAC §15.61. The Department did not make any changes to the rules in response to this comment.

Comment - One comment included seven subparts recommending changes to the rule package, including: (1) further reduction of program fees for Department review of course submissions in Chapter 84, Subchapter K, Fees, which are a barrier to entry for new driver training licensees; (2) eliminating all program fees and raising the driver training certificate of completion fees to offset the loss in revenue; (3) removal of proposed rules §84.43(c)(1)(A) and (B) requiring parent taught course provider verification of student completion of the course from the PTDE instructor; (4) removal of proposed rule §84.103 allowing Department employee auditing of driver training courses for free, which the comment contends could be abused to allow the employee a personal benefit; (5) amending proposed

§84.500(b)(2)(A)(iii) to make the minimum course content times only a "recommended minimum" to allow for more flexibility in delivery of course material; (6) repealing existing rule text in 84.500(d)(4) limiting DE school owners from offering the same continuing education course to instructors in successive years; and (7) clarifying proposed §84.43(c)(1)(C) as to the disposition of driver education certificates between parent taught driver education course providers following a student transfer.

Department Response - Regarding subparts (1) and (2) of the comment, the Department, in consultation with the Driver Training and Traffic Safety Advisory Committee, has determined that the fee structure contained in the proposed rules is the appropriate distribution of the fees necessary to cover the costs of administering the DES program. The program fees were amended to remain consistent with Texas Occupations Code §51.202 and Texas Education Code §1001.151 to reflect the changing landscape of the DES program. The Department did not make any changes to the proposed rules in response to subparts (1) and (2) of the comment.

The Department disagrees with the recommendation in subpart (3) to remove proposed §84.43(c)(1)(A) and (B), which place responsibility on the parent-taught course provider to obtain proof of student course completion from the parent/guardian/designee instructor. The Department is required to ensure management of the driver education certificate (DE-964) in accordance with Texas Education Code §1001.055(b) and has determined that Parent-Taught Driver Education (PTDE) course providers should be held to the same standards of management and control of the DE-964 as owners of driver education schools, as related to certificate processing and issuance. Additionally, proposed §84.43(c)(1)(A) and (B) ensure that DE-964 certificate information is accurate, which enables efficient processing by DPS when issuing the appropriate license to the student. Since the PTDE course provider is more familiar than the PTDE instructor with the prerequisites related to the proper completion of the DE-964, it is more efficient to have the course provider complete and issue the DE-964 to the student for presentation to DPS. The Department made no changes to the proposed rules as a result of subpart (3) of the comment.

The Department disagrees with the recommendation in subpart (4) of the comment to remove proposed §84.103, which allows Department staff to audit AMI Driver Education Schools without a fee. The sole purpose of the audit is to ensure the licensee's compliance with applicable law and rules, and the audit will be conducted by qualified Department staff members who have no personal need for driver education, so no personal benefit will be received by a Department employee in violation of Texas Government Code §572.051. The Department made no changes to the proposed rules as a result of subpart (4) of the comment.

The Department disagrees with the recommendation in subpart (5) of the comment to change the minimum times in proposed §84.500(b)(2)(A)(iii) for delivery of course material in adult driver education classes to be only the "recommended minimum" time. Such a change would make the minimum course times unenforceable, which would hinder the Department's ability to ensure that appropriate time is spent on the delivery of required course materials. The Department made no changes to the proposed rules as a result of subpart (5) of the comment.

Regarding subpart (6) of the comment, the proposed rules do not include any changes to §84.500(d)(4), so the comment is outside the scope of the proposed rules. The Department made

no changes to the proposed rules as a result of subpart (6) of the comment.

The Department agrees with the recommendation in subpart (7) of the comment to provide clarification in proposed §84.43(c)(1)(C) regarding transfer of driver education certificates, and the Department has changed proposed §84.43(c)(1)(C) to read: "The exception to subparagraphs (A) and (B) is a request for transfer by the parent or legal guardian of the student. The parent taught driver education course provider shall complete the transfer DE-964 certificate to indicate the completion of Module One, or the entire classroom hours".

Comment - One comment inquired as to when the proposed reduction in program fees would go into effect.

Department Response - After the proposed rules are presented to and adopted by the Texas Commission of Licensing and Regulation, the effective date of the rules, pursuant to Texas Government Code §2001.036, will occur 20 days after the date on which the adopted rules are filed with the Office for the Texas Secretary of State. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One comment inquired as to the procedure by which an applicant could submit course material for approval of online instruction courses for adult driver education and driving safety.

Department Response - The comment does not address a proposed rule, so it is outside the scope of the proposed rules. The Department recommends the commenter contact the Department's Driver Education and Safety staff at www.tdlr.texas.gov/help for assistance in the submission, review and approval of online course material content and requirements related to adult driver education and driving safety. The Department did not make any changes to the proposed rules in response to this comment.

Comment - One comment consisted of five subparts including questions related to: (1) the motor vehicle insurance and registration requirements for motor vehicles used by online driver education schools; (2) method of access by students to motor vehicles for students enrolled in online driver education schools for in-car instruction and observation sessions; employment or contractor status of in-car driving instructors; the type and extent of safety inspections of motor vehicles used for in-car instruction and observation; and insurance requirements of the motor vehicles used for the in-car training; (3) the location of student records for online driver education schools; (4) care, custody and control safeguards for DE-964 certificates; and (5) whether PTDE courses will be allowed to apply to be TPTS.

Department Response - Regarding subparts (1) and (2) of the comment, the change in the definition of a "driver education school" in Texas Education Code §1001.001(7) pursuant to House Bill 2847, which eliminated the "brick and mortar" school requirement, applies to "online only" DE schools. Since "online only" DE schools conduct only the classroom portion of the course, there are no applicable registration or insurance requirements, nor are there any concerns for student access to motor vehicles. Regarding subpart (3) of the comment, online only DE schools would maintain their student records electronically, which would be subject to audit by Department employees in accordance with applicable rules. Regarding subpart (4) of the comment, the safeguarding of DE-964 certificates by online only DE schools is addressed in §84.43. Regarding subpart (5) of the comment, the process by which an approved driver education school can become a TPTS is administered by DPS

pursuant to Texas Transportation Code §521.165 and 37 TAC §15.61. The Department did not make any changes to the proposed rules as a result of the comments.

Comment - One comment requested a redefinition of "driver education school" to clarify that there is no requirement for a physical location to be licensed.

Department Response - The comment does not address a proposed rule, so it is beyond the scope of the proposed rules. The amendment of Texas Education Code §1001.001(7) in House Bill 2847 redefining "driver education school" applies to the licensing of "online only" DE schools. Those schools that offer only online DE courses are no longer required to have a "brick and mortar" presence. All other DE schools that offer a physical location or offer "behind the wheel" instruction are subject to the rule requirements that are characteristic of a traditional school. The Department did not make any changes to the proposed rules as a result of the comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Driver Training and Traffic Safety Advisory Committee met on July 22, 2020, to discuss the proposed rules and public comments received. The Committee recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §§84.43(c)(1)(C), 84.44(b)(5)(A) and (B), 84.300(e)(2) - (5), and 84.302(e)(5) in response to the public comments and the Department's recommendations as explained in the Section-by-Section Summary. At its meeting on August 4, 2020, the Commission adopted the proposed rules with changes as recommended by the Advisory Board.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §84.1, §84.2

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. 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 rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

§84.43. *Driver Education Certificates.*

(a) General provisions applicable to the handling of driver education certificates and driver education certificate numbers by relevant driver training entities.

(1) A licensed driver education school, exempt driver education school, public school, education service center (ESC), parent taught driver education course provider, college or university (collectively, as appropriate, referred to as "relevant driver training entities") may request the serially numbered driver education certificates and/or certificate numbers by submitting an order form prescribed by the department stating the number of driver education certificates and/or certificate numbers to be purchased and include payment of all appropriate fees. A mailed or faxed order form shall have the signature of an authorized representative of the aforementioned relevant driver training entities. A signature is not required for orders placed through the online system.

(2) Unassigned or blank driver education certificates and/or certificate numbers shall not be transferred between relevant driver training entities.

(3) Each relevant driver training entity shall maintain effective protective measures to ensure that driver education certificates and/or certificate numbers are secure.

(4) All unaccounted driver education certificates and/or certificate numbers shall be reported to the department within fifteen (15) working days of the discovery of the incident. In addition, each relevant driver training entity shall be responsible for conducting an investigation to determine the circumstances surrounding their unaccounted driver education certificates. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted to the department within thirty (30) calendar days of the discovery.

(5) Each relevant driver training entity shall return unissued driver education certificates and/or certificate numbers to the department within thirty (30) calendar days from the date of the discontinuance of the driver education program, unless otherwise notified.

(6) Each relevant driver training entity shall issue driver education certificates and/or certificate numbers in serial number order as purchased from the department.

(7) Each relevant driver training entity shall issue driver education certificates and/or driver education certificate numbers only to students who have successfully completed the applicable portion of the approved driver education course.

(8) If a duplicate driver education certificate or driver education certificate number is to be issued, the duplicate shall indicate the control number of the original driver education certificate or driver education certificate number.

(9) Each relevant driver training entity shall maintain reconciliation records of purchased, issued, unissued and/or unassigned driver education certificates and/or driver education certificate numbers in ascending control number order. The reconciliation records shall be readily available for review by representatives of the department. Each relevant driver training entity shall ensure security and loss prevention of the reconciliation record data.

(10) Each relevant driver training entity shall ensure that effective measures are taken to preclude lost data and that a system is in place to recreate electronic data for all driver education certificates and/or driver education certificate numbers purchased, issued and unissued.

(11) An ADE-1317 driver education certificate and/or certificate number shall not be used to replace a DE-964 driver education certificate and/or certificate number.

(12) Each unaccounted or missing original or duplicate course driver education completion certificate number or blank or unissued original or duplicate driver education certificate may be considered a separate violation. This may include lost, missing, stolen, or otherwise unaccounted original or duplicate driver education certificate numbers or blanks or unissued original or duplicate driver education certificates.

(13) The driver education certificate is a government record as defined under Texas Penal Code, §37.01(2). Any misrepresentation by the applicant or person issuing the driver education certificate may result in suspension or revocation of instructor credentials or program approval and/or criminal prosecution.

(14) The right to receive driver education certificates may be immediately suspended for a period determined by the department if:

(A) a department investigation is in progress and the department has reasonable cause to believe the certificates have been misused or abused or that adequate security was not provided; or

(B) the relevant driver training entity or its designee fails to provide information on records requested by the department within the required time.

(b) Licensed driver education school responsibilities.

(1) Only primary driver education schools shall order driver education certificates. The primary driver education school shall maintain a record reconciling all driver education certificates that are distributed by the primary driver education school to branch driver education schools and contract sites.

(2) A licensed driver education school shall issue driver education certificates only to students who have successfully completed the applicable elements of the approved driver education course.

(A) The "For Learner License Only" portion of the DE-964 certificate shall be issued to the student upon completion of Module One of the Program of Organized Instruction for Driver Education and Traffic Safety.

(B) The "For Driver License Only" portion of the DE-964 certificate shall be issued to the student upon completion of the driver education program.

(C) The exception to subparagraphs (A) and (B) is a request for transfer by the parent or legal guardian of the student. The transfer policy will be followed to comply with the parent or legal guardian request for transfer.

(3) The DPS copy of a driver education certificate must contain the original signature of the TDLR licensed instructor. The name of the driver education school owner or its designee may be written, stamped, or typed.

(c) Parent taught driver education course providers responsibilities.

(1) The parent taught driver education course provider shall issue DE-964 certificates only to students who have successfully completed the applicable elements of the approved parent taught driver education course.

(A) The parent taught driver education course provider shall receive proof the student has completed Module One of the Program of Organized Instruction for Driver Education and Traffic Safety before issuing the "For Learner License Only" portion of the DE-964 certificate.

(B) The parent taught driver education course provider shall receive proof the student has completed the approved parent taught driver education before issuing the "For Driver License Only" portion of the DE-964 certificate.

(C) The exception to subparagraphs (A) and (B) is a request for transfer by the parent or legal guardian of the student. The parent taught driver education course provider shall complete the transfer DE-964 certificate to indicate the completion of Module One, or the entire classroom hours.

(2) The name of the owner of the parent taught driver education course or its designee may be written, stamped, or typed.

(d) Public Schools, Education Service Centers, Colleges or Universities responsibilities.

(1) The driver education certificates shall be issued to the superintendent, college or university chief school official, ESC director, or their designee to be responsible for managing the certificates for the school. This does not remove the superintendent, college or university chief school official, or ESC director from obligations pursuant to this subchapter to oversee the program.

(2) The department will accept purchase requisitions from school districts.

(3) Each superintendent, college or university chief school official, ESC director, or their designee shall ensure that the policies concerning driver education certificates are followed by all individuals who have responsibility for the certificates.

(4) The superintendent, college or university chief school official, ESC director, or their designee must ensure that employees complete, issue, or validate a driver education certificate only to a person who has successfully completed the entire portion of the course for which the driver education certificate is being used.

(A) The "For Learner License Only" portion of the driver education certificate shall be issued to the student upon completion of Module One of the Program of Organized Instruction for Driver Education and Traffic Safety.

(B) The "For Driver License Only" portion of the driver education certificate shall be issued to the student upon completion of the driver education program.

(C) The exception to subparagraphs (A) and (B) is a request for transfer by the parent or legal guardian of the student. The transfer policy will be followed to comply with the parent or legal guardian request for transfer.

(5) The DPS copy of a driver education certificate must contain the original signature of the certified instructor. The name of the superintendent, college or university chief school official, ESC director, or their designee may be written, stamped, typed, or omitted.

(6) The superintendent, college or university chief school official, ESC director, or their designee shall complete the affidavit on the driver education certificate if the certified instructor has left the driver education program, seriously ill or deceased.

(7) The right to receive DE-964 certificates may be immediately suspended for a period determined by the department if:

(A) a department investigation is in progress and the department has reasonable cause to believe the certificates have been misused or abused or that adequate security was not provided; or

(B) the superintendent, college or university chief school official, ESC director, or their designee fails to provide information on records requested by the department within the allotted time.

§84.44. Driver Education Instructor License.

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

(1) have a high school diploma or equivalent;

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

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

(4) submit the instructor licensing fees;

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

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

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

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

(1) Supervising teacher qualifications:

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

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

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

(2) Supervising teacher responsibilities:

(A) may perform instruction and administration of the classroom and in-car phases of driver education;

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

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

(3) Driver education teacher qualifications:

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

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

(4) A driver education teacher may perform instruction and administration of the classroom and in-car phases of driver education.

(5) Teaching assistant qualifications:

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

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

(6) A teaching assistant may teach or provide only in-car instruction.

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

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

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

(C) must have evidence of completion of an approved driver education program for certification as a teaching assistant that is equivalent to at least six semester hours.

(8) Rehabilitative driver education in-car instructor responsibilities:

(A) may only perform in-car instruction; and

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

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

(1) annual licensing fee; and

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

(d) Continuing education requirements include the following.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) the annual licensing fee.

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

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

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16 TAC §84.43

STATUTORY AUTHORITY

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

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

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 §84.51, §84.52

STATUTORY AUTHORITY

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

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

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

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SUBCHAPTER E. DRIVING SAFETY SCHOOLS, COURSE PROVIDERS AND INSTRUCTORS

16 TAC §§84.60, 84.62, 84.64

STATUTORY AUTHORITY

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

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

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

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SUBCHAPTER F. DRUG AND ALCOHOL AWARENESS PROGRAMS AND INSTRUCTORS

16 TAC §84.70, §84.72

STATUTORY AUTHORITY

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

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

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SUBCHAPTER G. GENERAL BUSINESS PRACTICES

16 TAC §§84.80 - 84.82, 84.84, 84.85

STATUTORY AUTHORITY

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

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

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

16 TAC §84.90

STATUTORY AUTHORITY

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

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

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 §84.103

STATUTORY AUTHORITY

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

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

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

16 TAC §84.200

STATUTORY AUTHORITY

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

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

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

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

§84.300. Driver Education Fees.

(a) All fees paid to the department are nonrefundable.

(b) Driver Education School Fees:

(1) The initial application fee for a primary driver education school is \$500.

(2) The initial application fee for a branch driver education school is \$500.

(3) The renewal application fee for a primary driver education school is \$100.

(4) The renewal application fee for a branch driver education school is \$100.

(5) The fee for a change of the physical address for a driver education primary school and branch is \$150.

(6) The fee for a change of name of a driver education school or to change the name of an owner is \$50.

(7) If a driver education school changes ownership as defined under §84.2(6), the fee paid by the new owner is \$500 for a primary driver education school and \$500 for a branch driver education school.

(c) Driver Education Instructor Fees:

(1) The initial application fee for a driver education instructor license is \$50. The fee may not be collected for an applicant who is currently teaching a driver education course in a public school in this state.

(2) The annual renewal application fee for a driver education instructor license is \$25.

(3) The national criminal history check fee - The fee in the amount set by and paid to the Texas Department of Public Safety for the cost of fingerprint processing and obtaining national criminal history record information from the Texas Department of Public Safety, its contractors, and the Federal Bureau of Investigation.

(d) Driver Education Course Fees:

(1) The application fee for approval of a traditional driver education course exclusively for adults is \$200.

(2) The application fee for approval of an online driver education course exclusively for adults is \$5,850.

(3) The application fee for each additional driver education course is \$25.

(4) The application fee for approval of a 32-hour Alternative Method of Instruction (AMI) for driver education classroom is \$9,750.

(5) The application fee for approval of part of a 32-hour AMI for driver education classroom is \$200 per instructional hour.

(6) The fee for a DE-964 certificate of completion is \$1.00.

(7) The fee for a DE-964 certificate of completion number is \$1.00.

(8) The fee for an ADE-1317 certificate of completion is \$1.00.

(9) The fee for an ADE-1317 certificate of completion number is \$1.00.

(e) Other Fees:

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

(2) Late renewal fees for licenses issued under this chapter are provided under §60.83 (relating to Late Renewal Fees).

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

(4) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 (relating to Criminal History Evaluation Letters).

(5) The fee for the Parent Taught Driver Education Guide Form is \$20.

§84.302. Drug and Alcohol Driving Awareness Fees.

(a) All fees paid to the department are nonrefundable.

(b) Drug and Alcohol Driving Awareness Schools:

(1) The initial application fee for a drug and alcohol driving awareness school is \$100.

(2) The fee for a change of address of a drug and alcohol driving awareness school is \$50.

(3) The fee for a change of name of a drug and alcohol driving awareness school or name of owner is \$50.

(4) If a drug and alcohol driving awareness school changes ownership as defined under §84.2(6), the fee paid by the new owner is \$100.

(c) Drug and Alcohol Driving Awareness Programs:

(1) The fee for a drug and alcohol driving awareness program approval is \$5,850.

(2) The fee for a drug and alcohol driving awareness program alternative delivery method approval is \$5,850.

(3) The application fee for each additional program for a drug and alcohol driving awareness school is \$25.

(d) Drug and Alcohol Driving Awareness Instructors:

(1) The initial application fee (including processing and licensing fees) for a drug and alcohol driving awareness instructor license is \$50.

(2) The renewal application fee for a drug and alcohol driving awareness instructor license is \$25.

(e) Other Fees:

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

(2) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(3) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(4) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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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Brad Bowman

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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §§84.500 - 84.507

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. 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 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, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. 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 §84.601

STATUTORY AUTHORITY

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

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

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

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CHAPTER 97. MOTOR FUEL METERING AND QUALITY

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 97, Subchapter A, §§97.1 and §97.2; Subchapter B, §§97.22, 97.24 - 97.27; Subchapter C, §97.41 and §97.42, Subchapter D, §§97.50, 97.51, 97.54, 97.56, 97.57, 97.59, and 97.60; Subchapter E, §§97.70 - 97.74; and Subchapter F, §97.80, regarding the Motor Fuel Metering and Quality Program

without changes to the proposed text as published in the May 22, 2020, issue of the *Texas Register* (45 TexReg 3409). These rules will not be republished.

The Commission also adopts new rules at 16 TAC, Chapter 97, Subchapter A, §97.3; Subchapter B, §§97.20, 97.21, 97.23, 97.28; Subchapter C, §97.40 and §97.43; Subchapter D, §§97.52, 97.53, 97.55, and 97.58, regarding the Motor Fuel Metering and Quality Program, with changes to the proposed text as published in the May 22, 2020, issue of the *Texas Register* (45 TexReg 3409). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules are necessary to implement Senate Bill (SB) 2119, 86th Legislature, Regular Session (2019), which transferred the Motor Fuel Metering and Quality Program (Program) from the Texas Department of Agriculture (TDA) to the Texas Department of Licensing and Regulation (Department) and which, effective September 1, 2020, creates new Texas Occupations Code, Chapter 2310, Motor Fuel Metering and Quality. The adopted rules are necessary to enable the Department to administer and regulate the Program. The adopted rules are separate from, and are not to be confused with, the TDA rules located at 4 TAC, Chapters 5 and 12, regarding the Program, which have been filed for repeal and amendment, respectively, in the July 17, 2020 issue of the *Texas Register* (45 TexReg 4869).

SECTION-BY-SECTION SUMMARY

The adopted rules create new Subchapter A to contain general provisions applicable to the chapter.

The adopted rules create new §97.1 to identify the statutory authority under which the adopted rules are to be promulgated.

The adopted rules create new §97.2 to establish definitions used in the chapter.

The adopted rules create new §97.3 to adopt by reference certain nationally recognized minimum standards incorporated into the chapter. As a result of public comments received, section 97.3 was changed to remove references to the calendar year within subsections (1), (2) and (3) to reflect that the most "currently published edition" of each nationally recognized standard would be used. Additionally as a result of public comments, subsection (2)(A) was changed to specify the sections within the NIST Handbook that apply to the FMQ program; subsection (2)(C) was changed to correct a typographical error; subsection (2)(D) was changed to more clearly identify the types of ethanol fuel the standard applies to; subsections (2)(E), (2)(F), and (2)(G) were added to provide detail regarding standards that apply to biodiesel, diesel, and ethanol fuels; section (3)(C) was added to include necessary test methods required for fuel quality.

The adopted rules create new Subchapter B to contain provisions applicable to motor fuel metering devices.

The adopted rules create new §97.20 to establish the requirements for registration of devices. Subsection 97.20(d) was changed to clarify that the time for submitting changes is 30 calendar days. As a result of public comments received, subsection 97.20(f) was added to clarify that suppliers are not subject to registration requirements.

The adopted rules create new §97.21 to establish the renewal requirements for device registrations. Subsection 97.21 was renumbered and subsection (b) was removed as a result of a procedural change within licensing at the department.

The adopted rules create new §97.22 to establish the responsibilities of an owner or operator when there is a change to the number of registered devices.

The adopted rules create new §97.23 to establish the requirements for device performance reviews. As a result of public comments received, subsection 97.23(e) was added to clarify that suppliers are not subject to device performance review requirements.

The adopted rules create new §97.24 to establish the requirements applicable to certificates of registration.

The adopted rules create new §97.25 to establish the requirements applicable to consumer information stickers.

The adopted rules create new §97.26 to establish the requirements applicable to devices that fail to comply with technical requirements.

The adopted rules create new §97.27 to establish the requirements applicable to devices that are condemned by the department.

The adopted rules create new §97.28 to establish the requirements for maintenance of records of device performance reviews. As a result of industry input, subsection 97.28(a) has been changed to remove the requirement that device performance review records at the location it was performed.

The adopted rules create new Subchapter C to contain provisions applicable to the sale, delivery, and quality of motor fuel.

The adopted rules create new §97.40 to establish the requirements applicable to certificates of compliance for distributors, jobbers, suppliers, and wholesalers. Section 97.40 was renumbered and changed for consistency throughout the chapter by adding a requirement that contact information be updated with the department within 30 calendar days of the change.

The adopted rules create new §97.41 to establish the requirements applicable to automotive fuel rating.

The adopted rules create new §97.42 to establish the requirements applicable to stop-sale orders.

The adopted rules create new §97.43 to establish the requirements applicable to the maintenance of fuel delivery records. As a result of industry and staff input, subsection 97.43(b) was changed to clarify that, like subsection (a), those record keeping requirements also apply to all dealers, distributors, jobbers, suppliers, and wholesalers.

The adopted rules create new Subchapter D to contain the provisions applicable to service companies and service technicians.

The adopted rules create new §97.50 to establish the requirement of criminal history checks on applicants for service company licenses and service technician licenses.

The adopted rules create new §97.51 to establish device categories and types of maintenance activities that a service company or service technician may perform.

The adopted rules create new §97.52 to establish the requirements for a service company license. Section 97.52 was renumbered and changed for consistency throughout the chapter by adding a requirement that contact information be updated with the department within 30 calendar days of the change.

The adopted rules create new §97.53 to establish the insurance requirements for a service company. Subsection 97.53(c) was

added to ensure that changes in insurance carrier or coverage amounts are submitted to the department within 30 calendar days.

The adopted rules create new §97.54 to establish the renewal requirements for a service company license.

The adopted rules create new §97.55 to establish the requirements for a service technician license. Section 97.55 was renumbered and changed for consistency throughout the chapter by adding a requirement that contact information be updated with the department within 30 calendar days of the change.

The adopted rules create new §97.56 to establish the renewal requirements for a service technician license.

The adopted rules create new §97.57 to establish the examination requirements for a service technician license.

The adopted rules create new §97.58 to establish the requirements applicable to test standards. Subsection 97.58(a) was changed for clarity to provide that test standards may be certified by recognized or accredited laboratories that adhere to ISO 1705 standards.

The adopted rules create new §97.59 to establish the responsibilities of a service technician to inspect for and report the presence of a skimmer.

The adopted rules create new §97.60 to establish the records maintenance requirements for service companies.

The adopted rules create new Subchapter E to contain provisions relating to fees.

The adopted rules create new §97.70 to establish device fees.

The adopted rules create new §97.71 to establish fees for distributors, jobbers, wholesalers, and suppliers.

The adopted rules create new §97.72 to establish fees for service companies.

The adopted rules create new §97.73 to establish fees for service technicians.

The adopted rules create new §97.74 to establish policies applicable to fees.

The adopted rules create new Subchapter F to contain fees relating to enforcement.

The adopted rules create new §97.80 to establish the authority of the Commission and the Department to institute enforcement proceedings to impose administrative penalties and sanctions for violations of applicable laws and rules.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the May 22, 2020, issue of the *Texas Register* (45 TexReg 3409). The deadline for public comments was June 22, 2020. The Department received comments from four interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: The Department received a question from an individual that was non-responsive to the substance of the proposal.

Department Response: The Department notes that the individual's question is issue-specific and will not be addressed in this preamble. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received a comment from the Texas Food and Fuel Association (TFFA). TFFA did not submit any written suggestions or changes regarding the proposal.

Department Response: The Department thanks the TFFA for their support of the program and the rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received comments from Flint Hills Resources and the Texas Oil and Gas Association (TxOGA) regarding exemption of suppliers from device registration and device performance review requirements. Flint Hills indicated that their terminal meters undergo strict scrutiny in testing and records are available at any time. TxOGA reiterated that suppliers are subject to testing protocols for accuracy at the federal and state level. TxOGA also pointed out that suppliers were not subject to device registration requirements while regulated by TDA.

Department Response: The Department appreciates and agrees with the submissions by the commenters. In accordance with statutory authority under Texas Occupations Code, section 2310.053, and for clarification purposes, a change was made to provide that suppliers are exempt from device registration and device performance review requirements.

Comment: TxOGA submitted comments regarding the standards used for regulation of motor fuels. TxOGA recommended adoption of the most currently published versions of those standards, not a specific calendar year, to ensure that industry and the department are conforming with the most up-to-date standards. TxOGA also recommended adding ASTM standards to subsection 97.3(2) to provide specificity and guidance in regulation of the program.

Department Response: The Department agrees with these comments. The Department has updated section 97.3 to reference the most "currently published edition" of the national standards and has also added specificity for motor fuel standards utilized by the Department.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION RECOMMENDATIONS

The Motor Fuel Metering and Quality Workgroup (Workgroup) met on July 27, 2020, to discuss the proposed rules and the public comments received. The Workgroup recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §§97.3, 97.20, 97.21, 97.23, 97.28, 97.40, 97.43, 97.52, 97.53, 97.55, and 97.58 made in response to public comment and Department recommendations as explained in the Section-by-Section Summary. At its meeting on August 4, 2020, the Commission adopted the proposed rules with changes as recommended by the Workgroup.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§97.1 - 97.3

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 2310, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct crim-

inal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Business and Commerce Code, Chapter 607, and Texas Occupations Code, Chapters 51 and 2310. No other statutes, articles, or codes are affected by the adopted rules.

§97.3. Adoption by Reference.

In accordance with Chapter 2310 of the Code, the department adopts the currently published edition of each of the following nationally recognized minimum standards for the purpose of administering and enforcing this chapter:

(1) Legal standards for weights and measures. NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices."

(2) Motor fuel quality testing standards.

(A) NIST Handbook 130, "Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality," specifically Section 2.20. Gasoline-Oxygenate Blends, Section 2.21. Liquefied Petroleum Gas, Section 2.27. Retail Sales of Natural Gas Sold as a Vehicle Fuel, Section 2.30. Ethanol Flex Fuel, and Section 2.31. Biodiesel and Biodiesel Blends, as standard specifications for alcohol blends with the following modifications:

(i) vapor pressure tolerance not exceeding one pound per square inch for motor fuels blended with ethanol, excluding the time period from May 1 through October 1 for counties required to have low emissions fuels; and

(ii) vapor pressure seasonal specifications may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification;

(B) ASTM D4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," as the standard specifications for gasoline with the following modification:

(i) vapor pressure and vapor/liquid ratio seasonal specifications may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification; and

(ii) the vapor/liquid ratio specification shall be waived for motor fuels blended with ethanol;

(C) ASTM D975, "Standard Specification for Diesel Fuel," as the standard specifications for diesel motor fuels and renewable diesel fuels;

(D) ASTM D5798, "Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines," as the standard specifications for 51 volume percent to 83 volume percent ethanol fuel;

(E) ASTM D6751, "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels;"

(F) ASTM D7467, "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20);" and

(G) ASTM D7794, "Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible Fuel Vehicles with Automotive Spark-Ignition Engines," as the standard specification for gasoline ethanol blends containing 16 to 50 volume percent ethanol.

(3) Automotive Fuel Rating. The testing methods, standards and specifications used to determine the automotive fuel rating shall be those prescribed by the most current editions of:

(A) ASTM D2699, "Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel;"

(B) ASTM D2700, "Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel;"

(C) ASTM D2885 "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique;" and

(D) ASTM D5599, "Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection."

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. MOTOR FUEL METERING DEVICES

16 TAC §§97.20 - 97.28

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 2310, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Business and Commerce Code, Chapter 607, and Texas Occupations Code, Chapters 51 and 2310. No other statutes, articles, or codes are affected by the adopted rules.

§97.20. Registration Required--Devices.

(a) Prior to operation, a device must be registered. To register a device, an owner or operator must submit:

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

(2) documentation of a device performance review in a manner acceptable to the department; and

(3) the fee required under §97.70.

(b) Device registrations cannot be transferred. A new owner or operator must submit a completed registration application under this section.

(c) A change in the owner or operator's federal employer identification number or social security number (for sole proprietors) constitutes a change of business identity and requires a new registration application to be submitted under this section.

(d) A change in the name or contact information for an owner or operator must be submitted to the department within 30 calendar days.

(e) Device registrations are valid for two years from issuance of the certificate of registration and must be renewed every two years.

(f) A supplier is exempt from this section.

§97.21. *Registration Renewal--Devices.*

(a) To renew a device registration, an owner or operator must submit:

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

(2) documentation of a device performance review in a manner prescribed by the department; and

(3) the fee required under §97.70.

(b) An owner or operator is responsible for renewing a device registration before the expiration date. Lack of receipt of a renewal notice from the department shall not excuse failure to file for renewal or late renewal.

§97.23. *Device Performance Review Requirements.*

(a) At least once every two years a DPR must be completed on each registered device.

(b) To be valid, a service company must complete a DPR of a device on a single day. A DPR must include:

(1) performance testing;

(2) calibration, if necessary; and

(3) inspection of the device:

(A) to ensure operation within NIST Handbook 44 specifications, tolerances and other technical requirements along with specified manufacturer guidelines; and

(B) to detect the presence of skimmers.

(c) A DPR report must be submitted by a service company within 10 business days of the DPR in a manner prescribed by the department.

(d) Effective date.

(1) Beginning September 1, 2020, devices with a maximum flow rate of 20 GPM or less are subject to this section.

(2) Beginning September 1, 2021, the following devices will also be subject to this section.

(A) Devices with a maximum flow rate of greater than 20 GPM to 100 GPM;

(B) Devices with a maximum flow rate of greater than 100 GPM; and

(C) LPG meters.

(e) A supplier is exempt from this section.

§97.28. *Device Records.*

(a) A device performance review report shall be maintained for a period of two years.

(b) All records required to be maintained shall be made available upon request by the department.

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

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SUBCHAPTER C. SALE, DELIVERY, AND QUALITY OF MOTOR FUEL

16 TAC §§97.40 - 97.43

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 2310, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Business and Commerce Code, Chapter 607, and Texas Occupations Code, Chapters 51 and 2310. No other statutes, articles, or codes are affected by the adopted rules.

§97.40. *Distributor, Jobber, Supplier, Wholesaler--Certificate of Compliance.*

(a) To be eligible for a certificate of compliance, a distributor, jobber, supplier, or wholesaler must:

(1) submit complete business, facility, and contact information in a manner prescribed by the department; and

(2) pay the fee required under §97.71.

(b) A change in the name or contact information of the owner or operator must be submitted to the department within 30 calendar days.

(c) A certificate of compliance is valid for two years from the date of issuance by the department.

§97.43. *Fuel Delivery Records.*

(a) Dealers, distributors, jobbers, suppliers, and wholesalers must keep the following records for four years:

(1) all invoices, receipts, or other transmittal records of the purchase, sale, delivery, or distribution of motor fuel; and

(2) any record or other document related to the sampling and testing of motor fuel purchased, sold, delivered, or distributed.

(b) All delivery tickets and letters of certification related to automotive fuel rating must be maintained by dealers, distributors, jobbers, suppliers, and wholesalers for one year.

(c) All records required to be maintained shall be made available upon request by the department or an authorized representative of the department.

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

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SUBCHAPTER D. SERVICE COMPANIES AND SERVICE TECHNICIANS

16 TAC §§97.50 - 97.60

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 2310, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Business and Commerce Code, Chapter 607, and Texas Occupations Code, Chapters 51 and 2310. No other statutes, articles, or codes are affected by the adopted rules.

§97.52. *Service Company License Requirements--General.*

(a) To obtain a service company license, an applicant must submit:

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

(2) proof of insurance acceptable to the department, as required under §97.53;

(3) proof of calibration of test standards in a manner prescribed by the department, as required in §97.58; and

(4) the fee required under §97.72.

(b) A sole proprietor may not perform or offer to perform device maintenance activities unless the sole proprietor:

(1) is exempt from holding a license under this section pursuant to §2310.154 of the Code; or

(2) holds:

(A) a service technician license issued by the department, or a service technician license issued under Subchapter I, Chapter 13, Texas Agriculture Code; and

(B) a service company license issued by the department, or a service company license issued under Subchapter I, Chapter 13, Texas Agriculture Code.

(c) A person licensed under this section or Subchapter I, Chapter 13, Texas Agriculture Code must comply with this chapter.

(d) A change in the name or contact information for the business or a controlling person of the business must be submitted to the department within 30 calendar days.

(e) A license issued under this section is valid for two years from the date of issuance and must be renewed every two years.

§97.53. *Service Company License Requirements--Insurance.*

(a) A service company must maintain at least the following minimum general liability insurance coverages at all times:

(1) \$25,000 per occurrence; or

(2) \$50,000 aggregate.

(b) Insurance must be obtained from an admitted company or an eligible surplus lines carrier, as defined in the Texas Insurance Code, Chapter 981, or other insurance companies that are rated by A.M. Best Company as B+ or higher.

(c) A change in insurance carrier or minimum general liability insurance coverages must be submitted to the department within 30 calendar days.

§97.55. *Service Technician License Requirements--General.*

(a) To obtain a service technician license, an applicant must:

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

(2) pass a written examination for each device category with a score of at least 70%, in accordance with §97.57; and

(3) pay the fee required under §97.72.

(b) An individual may not perform or offer to perform device maintenance activities unless the individual:

(1) is exempt from holding a license under this section pursuant to §2310.154 of the Code; or

(2) holds a service technician license issued by the department, or a service technician license issued under Subchapter I, Chapter 13, Texas Agriculture Code, and:

(A) is employed by a service company; or

(B) holds a service company license issued by the department, or a service company license issued under Subchapter I, Chapter 13, Texas Agriculture Code.

(c) An individual licensed under this section or Subchapter I, Chapter 13, Texas Agriculture Code must comply with this chapter.

(d) A change in name or contact information must be submitted to the department within 30 calendar days.

(e) A license issued under this section is valid for two years from the date of issuance and must be renewed every two years.

§97.58. *Test Standards.*

(a) Test standards must be certified annually by a recognized or accredited laboratory that adheres to ISO 17025 standards. A service

company must maintain at least one test standard per licensed device category as follows:

- (1) Low flow: five-gallon or greater test measure or prover;
 - (2) High flow: prover with a capacity that exceeds the amount of liquid delivered by the device in one minute at the maximum flow rate;
 - (3) LPG: LPG prover.
- (b) A test standard that becomes damaged must be taken out of operation immediately and recalibrated prior to use. A test standard that is beyond repair must be taken out of service permanently.
- (c) A service company must maintain the minimum test standards per licensed device category at all times.

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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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: September 1, 2020
Proposal publication date: May 22, 2020
For further information, please call: (512) 463-3671

SUBCHAPTER E. FEES

16 TAC §§97.70 - 97.74

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 2310, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Business and Commerce Code, Chapter 607, and Texas Occupations Code, Chapters 51 and 2310. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER F. ENFORCEMENT

16 TAC §97.80

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 2310, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Business and Commerce Code, Chapter 607, and Texas Occupations Code, Chapters 51 and 2310. No other statutes, articles, or codes are affected by the adopted rules.

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

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CHAPTER 98. MOTORCYCLE OPERATOR TRAINING AND SAFETY

16 TAC §§98.1, 98.10, 98.20 - 98.23, 98.25 - 98.27, 98.30, 98.40, 98.50, 98.60, 98.65 - 98.70, 98.72, 98.74, 98.76, 98.80, 98.90, 98.92, 98.100, 98.102, 98.104, 98.106, 98.108, 98.110, 98.112, 98.114

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 98, §§98.1, 98.10, 98.20, 98.21, 98.23, 98.25, 98.27, 98.60, 98.65 - 98.69, 98.72, 98.74, 98.76, 98.80, 98.90, 98.92, 98.100, 98.104, 98.106, 98.110, 98.112, and 98.114, regarding the Motorcycle Operator Training and Safety Program without changes to the proposed text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3959). These adopted rules will not be republished.

The Commission also adopts new rules at 16 TAC, Chapter 98, §§98.22, 98.26, 98.30, 98.40, 98.50, 98.70, 98.102, and 98.108, regarding the Motorcycle Operator Training and Safety Program, with changes to the proposed text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3959). These adopted rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules create new 16 TAC, Chapter 98, to implement Texas Transportation Code, Chapter 662, Motorcycle Operator Training and Safety. The adopted rules also implement Senate Bill (SB) 616, Article 8, 86th Legislature, Regular Session (2019), which transfers the Motorcycle Operator Training and Safety Program (Program) from the Texas Department of Public Safety (DPS) to the Commission and the Texas Department of Licensing and Regulation (Department), effective September 1, 2020. The adopted rules are necessary to enable the Commission and the Department to administer and regulate the Program. The adopted rules are separate from, and are not to be confused with, the DPS rules located at 37 TAC, Chapter 31, regarding the Program, which are still in effect and will be repealed.

SECTION-BY-SECTION SUMMARY

The adopted rules create new §98.1 to identify the statutory authority under which the adopted rules are promulgated.

The adopted rules create new §98.10 to establish the definitions to be used in the chapter.

The adopted rules create new §98.20 to identify the requirements, including possession of an instructor license, that allow an individual to offer or provide instruction in motorcycle operation to the public for consideration.

The adopted rules create new §98.21 to establish the prerequisites for an individual to be eligible for an instructor license.

The adopted rules create new §98.22 to identify the instructor preparation course that an individual must successfully complete to be eligible for an instructor license and the prerequisites for an individual to be eligible to enroll in the instructor preparation course. A change recommended by Department staff has been made to the proposed rule as published to provide the executive director of the Department the authority to approve the training program to be used as the instructor preparation course.

The adopted rules create new §98.23 to establish the term and renewal requirements of an instructor license.

The adopted rules create new §98.25 to identify the requirements, including possession of a motorcycle school license, that allow an individual or entity to offer or conduct training in motorcycle operation for consideration.

The adopted rules create new §98.26 to establish the prerequisites for an individual or entity to be eligible for a motorcycle school license. In response to public comments, changes have been made to the proposed rule as published to remove proposed §98.26(5)(B) because it referenced the insurance requirements of proposed §98.40(b), which has also been removed in response to public comments, as explained in the summary of §98.40. The text in proposed §98.26(5)(A) was consolidated with the text in the remainder of proposed §98.26(5). The removal of §98.40(b) also required a change to §98.26(3) to remove the reference to §98.40(a) and replace it with a reference to §98.40.

The adopted rules create new §98.27 to establish the term and renewal requirements of a motorcycle school license.

The adopted rules create new §98.30 to establish exemptions for certain courses that will not be regulated by the Department. In response to a public comment, a change has been made to the proposed rule as published to remove from §98.30(2) the phrase "or to enhance a participant's riding skills on public roadways." The public comment pointed out that this phrase is problematic

because all motorcycle training enhances skills on public roadways, so making an exemption dependent on a course not being claimed to enhance those skills could prevent any course from being exempt under §98.30(2).

The adopted rules create new §98.40 to establish the required insurance coverage for a motorcycle school. In response to public comments, a change has been made to the proposed rule as published to remove §98.40(b). Public comments stated that the motor vehicle liability insurance required by proposed §98.40(b) for each motorcycle is unnecessary because the motorcycles are already covered by the insurance policy required for the school in proposed §98.40(a); is inappropriate because the training courses do not involve riding motorcycles on public roadways; and may be cost prohibitive for some motorcycle schools. With the removal of proposed §98.40(b), proposed §98.40(a) is relabeled to become simply §98.40.

The adopted rules create new §98.50 to establish the information that a motorcycle school must report to the Department and the required time and frequency of reporting the information. In response to a public comment, a change has been made to the proposed rule as published to change the time period in proposed §98.50(a) within which a motorcycle school must report an incident to the Department, from "48 hours" to "three business days." A public comment stated that 48 hours may not be sufficient time for a motorcycle school that is closed for two consecutive days in a week, so this change provides a more reasonable length of time to report an incident to the Department.

The adopted rules create new §98.60 to establish the authority of the Department to conduct unannounced audits to ensure compliance with applicable statutes and rules.

The adopted rules create new §98.65 to establish the composition of the Motorcycle Safety Advisory Board (Advisory Board).

The adopted rules create new §98.66 to establish the duties of the Advisory Board.

The adopted rules create new §98.67 to establish the terms of the members of the Advisory Board, the process for filling vacancies, and the grounds for removal.

The adopted rules create new §98.68 to establish the process for designating the presiding officer of the Advisory Board and the duties of the presiding officer.

The adopted rules create new §98.69 to establish the procedures for meetings of the Advisory Board.

The adopted rules create new §98.70 to establish the responsibilities of an instructor. In response to public comments, a change has been made to the proposed rule as published. The requirement in proposed §98.70(a)(14) for an instructor to wear, and ensure all students wear, protective gear "whenever riding on the range" has been changed to read "whenever participating in the on-cycle portion of any course." This change clarifies that the protective gear must be worn when seated on a stationary motorcycle and provides consistency with similar language in §98.72(a)(15) and §98.108(f). The removal of §98.40(b) also required a change to §98.70(a)(9) to remove the reference to §98.40(b) and replace it with a reference to §98.40.

The adopted rules create new §98.72 to establish the responsibilities of a motorcycle school.

The adopted rules create new §98.74 to establish the requirements of a motorcycle school prior to a relocation.

The adopted rules create new §98.76 to establish the requirements of a motorcycle school after a change of ownership.

The adopted rules create new §98.80 to establish the fees for the issuance and renewal of an instructor license and a motorcycle school license.

The adopted rules create new §98.90 to establish the authority of the Commission and the executive director of the Department to impose administrative penalties and sanctions against an individual or entity who violates a statute or rule applicable to the Program.

The adopted rules create new §98.92 to establish the authority of the Commission and the Department to enforce the statutes and rules applicable to the Program.

The adopted rules create new §98.100 to establish the training site requirements of a motorcycle school.

The adopted rules create new §98.102 to establish the requirements applicable to motorcycles used for training at a motorcycle school. In response to a public comment, a change has been made to the proposed rule as published. The reference in proposed §98.102(b)(2) to the motor vehicle liability insurance requirements of proposed §98.40(b) has been changed to instead reference Texas Transportation Code §601.072, to ensure that the removal of proposed §98.40(b) does not affect the requirement for student-provided motorcycles used in courses to be covered by a motor vehicle liability insurance policy.

The adopted rules create new §98.104 to establish the prerequisites for an individual to enroll in a course in motorcycle operator training.

The adopted rules create new §98.106 to establish the requirements applicable to the issuance of course completion certificates.

The adopted rules create new §98.108 to establish the requirements applicable to motorcycle operator training courses. In response to public comments, a change has been made to the proposed rule as published. The requirement in proposed §98.108(f) for all instructors to wear protective gear when participating in "the range portion of the course" has been changed to instead reference "the on-cycle portion of the course." This change provides consistency with similar language in §98.70(a)(14) and §98.72(a)(15).

The adopted rules create new §98.110 to establish the process for obtaining Department approval of a curriculum for a motorcycle operator training course.

The adopted rules create new §98.112 to establish the minimum standards for Department approval of an entry-level course in motorcycle operator training and adopts by reference the Model National Standards for Entry-Level Motorcycle Rider Training (August 2011) distributed by the U.S. Department of Transportation, National Highway Traffic Safety Administration.

The adopted rules create new §98.114 to establish the minimum standards for Department approval of a motorcycle operator training course that is not an entry-level course.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3959). The deadline for public comments was July 13, 2020. The Department received comments from six in-

terested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One comment questions the definition of "entry-level course" in §98.10(6). The comment points out that there are currently courses designed for experienced riders to meet the training requirement to obtain a Class M driver license, and the comment questions whether the definition will exclude those courses from fulfilling the training requirement to obtain a Class M driver license.

Department Response: The Department disagrees with the conclusion suggested by the comment. The definition of "entry-level course" in §98.10(6) includes any course that is designed to fulfill the training requirement to obtain a Class M driver's license. This includes courses that provide additional training beyond the minimum curriculum requirements for an entry-level course. Any course curriculum approved by the department as meeting the minimum curriculum standards for an entry-level course under §98.112 will fulfill the Class M training requirement, and such a course may also include additional curriculum elements designed for experienced riders, without affecting its categorization as an entry-level course. A course curriculum that only covers riding techniques for experienced riders and does not meet the minimum curriculum standards for an entry-level course would not meet the Class M training requirement and could only obtain curriculum approval by meeting the curriculum standards in §98.114 for a non-entry-level course. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment questions whether the definition of "incident" in §98.10(7) excludes instances where a student is injured.

Department Response: The definition of "incident" in §98.10(7) does not reference a student injury. The rule language continues the standard currently imposed by DPS Instructor Rule of Professional Conduct #9, which is incorporated into current DPS rule at 37 TAC §31.3(b)(10); and currently imposed by DPS Sponsor Rule of Professional Conduct #7, which is incorporated into current DPS rule at 37 TAC §31.2(d)(4) and §31.12(g). The Department has determined that any substantial change to this standard should be made with the assistance of the Motorcycle Safety Advisory Board, which can be established when Texas Transportation Code §662.0037 takes effect on September 1, 2020. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment states that track school instructors, where an ambulance is present during training, are not required to maintain First Aid and CPR certification, and they would need time to comply with the requirement in §98.21(7) for instructors to have such certification.

Department Response: The Department disagrees with the comment. The First Aid and CPR certification requirements in §98.21(7) continue the standard currently imposed by DPS rule at 37 TAC §31.3(b)(7), so instructors currently approved by DPS should not require additional time for compliance. Further, if the "track school instructors" referenced by the comment are only teaching courses involving off-road dirt bike training or motorcycle racing on a racetrack, they may be exempt under §98.30(2). The Department did not make any changes in response to this comment.

Comment: The Motorcycle Safety Foundation submitted a comment inquiring what criteria the commission will use to approve

an instructor training program under §98.22(a) and who will be permitted to conduct new instructor training. The comment did not indicate whether it was for or against the adoption of the rule.

Department Response: Transportation Code §662.0062, which takes effect September 1, 2020, provides criteria in subsection (a)(1) that the program must be a "training program on motorcycle operator training and safety instruction administered by the Texas A&M Engineering Extension Service." As the program administrator, the Texas A&M Engineering Extension Service will determine who will be permitted to conduct instructor training. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment concerning the exemption of licensure in §98.30(2) for courses that provide instruction only in off-road dirt bike training or motorcycle racing techniques on a racetrack points out that the requirement that such courses not be advertised or otherwise claimed to "enhance a participant's riding skills on public roadways" is problematic because all motorcycle training enhances riding skills on public roadways.

Department Response: The Department agrees with the comment and has removed the phrase "or to enhance a participant's riding skills on public roadways" from §98.30(2).

Comment: One comment requests the removal of §98.40(b), which requires each motorcycle used at a school to be covered by a motor vehicle liability insurance policy. The comment notes that the motorcycles are already covered by the insurance policy required for the school in §98.40(a). The comment also identifies affected references to §98.40 in §98.26(5)(B) and §98.72(a)(3).

Department Response: The Department agrees with the comment and has removed §98.40(b) and §98.26(5)(B). The Department did not remove the reference to §98.40 in §98.72(a)(3) because the reference is not specific to §98.40(b) and remains consistent with the remainder of §98.40.

Comment: One comment states that the requirement in proposed §98.40(b) for each motorcycle to be covered by a motor vehicle liability insurance policy that meets the minimum coverage amounts in Texas Transportation Code §601.072 is inappropriate because that insurance is required for motor vehicles used on public highways, whereas the training courses will only involve riding motorcycles on a range, such as a parking lot. The comment states that requiring this insurance on each motorcycle, in addition to the insurance required for the school in proposed §98.40(a), may be cost prohibitive for schools. The comment also identifies affected references to §98.40 in §98.72(a)(3) and §98.102(b)(2). The comment recommends that if proposed §98.40(b) is removed, then proposed §98.102(b)(2) should be revised to include a reference to Texas Transportation Code §601.072 so that the motor vehicle liability insurance requirement remains applicable to student-provided motorcycles.

Department Response: The Department agrees with the comment and has removed §98.40(b) and has revised §98.102(b)(2) to include a reference to Texas Transportation Code §601.072. The Department did not remove the reference to §98.40 in §98.72(a)(3) because the reference is not specific to §98.40(b) and remains consistent with the remainder of §98.40.

Comment: One comment states that the requirement in proposed §98.50(a) for a motorcycle school to report an incident to the department within 48 hours should be changed to 72 hours

because 48 hours may not be sufficient time if a motorcycle school is closed for two consecutive days in a week.

Department Response: The Department agrees with the comment and has changed §98.50(a) to read: "A motorcycle school must report each incident to the department within three business days of the incident, in the form and manner prescribed by the department."

Comment: One comment states that the six-year term for advisory board members in §98.67(a) is excessive and should be between two and four years.

Department Response: The Department disagrees with the comment. The six-year term for advisory board members is a statutory requirement imposed by new Texas Transportation Code §662.0037(c), so the Department does not have the authority to make the suggested change. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment states that the requirement in proposed §98.70(a)(14) for an instructor to "wear, and ensure all students wear, the protective gear required by §98.108(f) whenever riding on the range" removes the current requirement for instructors to wear "All The Gear All The Time (ATGATT) as taught in all motorcycle safety courses." The comment also points out that the language is phrased differently than in §98.72(a)(15), which states "whenever participating in the on-cycle portion of any course," which is better language because it includes sitting on a stationary motorcycle.

Department Response: The Department agrees with the comment and has changed §98.70(a)(14) to state, "whenever participating in the on-cycle portion of any course," and has changed §98.108(f) to state, "when participating in the on-cycle portion of the course." These changes provide consistency in rule language and clarify that protective gear is required when seated on a stationary motorcycle.

Comment: One comment suggests a change to proposed §98.70(a)(14), which requires an instructor to "wear, and ensure all students wear, the protective gear required by §98.108(f) whenever riding on the range." The comment suggests changing the language so that the rule clearly applies "whenever seated on a motorcycle."

Department Response: The Department agrees with the comment and has changed §98.70(a)(14) to state, "whenever participating in the on-cycle portion of any course," and has changed §98.108(f) to state, "when participating in the on-cycle portion of the course." These changes provide consistency in rule language and clarify that protective gear is required when seated on a stationary motorcycle.

Comment: One comment states that the responsibility imposed on an instructor in §98.102(a) and (b)(3) to reject a motorcycle if the motorcycle is unsafe or inappropriate relies on the discretion of the instructor and does not give any specific guidelines for making that determination. The comment questions whether an instructor may be held liable for a motorcycle that the instructor approves that is later deemed to be a factor in a student's injury. The comment also identifies references to §98.102(a) in §98.70(a)(8) and §98.72(a)(9).

Department Response: The requirement in §98.102(a) continues the standard currently imposed by DPS rule at 37 TAC §31.7(a), which grants discretion to the instructor to determine whether a motorcycle is unsafe or inappropriate. If an instructor

determines that a motorcycle is unsafe or inappropriate and the instructor fails to reject the motorcycle for use in the course, the instructor could be subject to enforcement actions by the Department for violation of the rule. The Department cannot speculate whether an instructor would be subject to any legal liability outside the regulatory authority of the Department resulting from a decision made by the instructor. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Motorcycle Safety Foundation submitted a comment regarding the requirement in §98.102(a) for an instructor to reject an unsafe or inappropriate motorcycle. The comment notes that training motorcycles are rarely used on public roadways and are not registered for street use, so components such as mirrors and turn signals are removed to reduce damage from tip overs and expense to training providers. The comment does not indicate whether it is for or against adoption of the rule.

Department Response: The requirement in §98.102(a) continues the standard currently imposed by DPS rule at 37 TAC §31.7(a). The Department has determined that any change to this standard should be made with the assistance of the Motorcycle Safety Advisory Board, which can be established when Texas Transportation Code §662.0037 takes effect on September 1, 2020. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Motorcycle Safety Foundation submitted a comment regarding §98.102(d)(2), which was not included in the proposed rules as published in the *Texas Register*. The comment explains that the Motorcycle Safety Foundation has updated its criteria for training motorcycles. The comment did not indicate whether it was for or against adoption of a proposed rule.

Department Response: The proposed rules as published in the *Texas Register* do not include §98.102(d)(2), so the comment is outside the scope of the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment concerning the student admission requirements in §98.104(a) states that these requirements do not allow someone age 25 or older to obtain only a Class M driver license without being required to take the written test for a Class C driver license, which would require a second visit to a driver license office. The comment also identifies an affected reference to §98.104 in §98.72(a)(10).

Department Response: The student admission requirements in §98.104(a) ensure that an individual has sufficient knowledge of the laws and rules applicable to operation of a motor vehicle on public roadways before an individual can become eligible to receive a Class M driver license enabling operation of a motorcycle on a public roadway. The minimum course curriculum requirements for an entry-level course in §98.112 do not include a requirement to cover the laws and rules applicable to all motor vehicles operating on public roadways, so §98.104(a) ensures that students have obtained that knowledge elsewhere. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment concerning the student admission requirements in §98.104(c) questions whether there is a requirement for a motorcycle school to obtain parental consent for an individual younger than 18 years of age to take a course. The comment also identifies an affected reference to §98.104 in §98.72(a)(10).

Department Response: Section 98.104(c) does not currently contain a specific requirement to obtain parental consent for an individual younger than 18 years of age to take a course. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment concerning course completion certificates in §98.106 inquires as to whether there will be a requirement to issue a department-approved course completion certificate to a student who has successfully completed a non-entry-level course. The comment states that insurance companies, military bases, and courts require completion certificates for non-entry-level courses.

Department Response: Section 98.106 does not require the issuance of a department-approved course completion certificate to a student who has successfully completed a non-entry-level course, nor does it prohibit a school from issuing its own course completion certificate to such a student, which may be accepted by insurance companies, military bases, and courts. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment concerning the course requirements in §98.108 states that subsection (a) alone is sufficient to define course requirements and that subsections (b) through (e) are specific to one particular curriculum and need to be removed or reworded to accommodate other courses. The comment also identifies affected references to §98.108 in §98.70(a)(12) and §98.72(a)(14).

Department Response: The course requirements in §98.108(b) through (e) continue the standards currently imposed by DPS rule at 37 TAC §31.6(c)(1), (2), and (4). The Department has determined that any change to these standards should be made with the assistance of the Motorcycle Safety Advisory Board, which can be established when Texas Transportation Code §662.0037 takes effect on September 1, 2020. The Department did not make any changes to the proposed rules in response to this comment, but the comment will be considered for possible inclusion in a future rulemaking.

Comment: One comment states that the classroom limitation of 36 students per instructor in §98.108(b) is excessive and should be reduced to 24 students per instructor.

Department Response: The student-to-instructor limitation in §98.108(b) continues the standard currently imposed by DPS rule at 37 TAC §31.6(c)(1). The Department has determined that any change to this standard should be made with the assistance of the Motorcycle Safety Advisory Board, which can be established when Texas Transportation Code §662.0037 takes effect on September 1, 2020. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment stated that the limitation of 12 students on a range in §98.108(d) is acceptable for a full-size range but is crowded and may increase safety issues on smaller ranges.

Department Response: The student-to-range limitation in §98.108(d) continues the standard currently imposed by DPS rule at 37 TAC §31.6(c)(2). The Department has determined that any change to this standard should be made with the assistance of the Motorcycle Safety Advisory Board, which can be established when Texas Transportation Code §662.0037 takes effect on September 1, 2020. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment stated that the requirement in §98.108(f) for students and instructors to wear minimum protective gear creates health issues because, when courses are conducted in heat and humidity, the protective gear is heavy and gets hot, which increases the risk of heat-related emergencies. The comment suggests making the minimum protective gear a recommendation rather than a requirement.

Department Response: The requirement to wear minimum protective gear in §98.108(f) continues the standard currently imposed by DPS rule at 37 TAC §31.6(d). The Department has determined that any change to this standard should be made with the assistance of the Motorcycle Safety Advisory Board, which can be established when Texas Transportation Code §662.0037 takes effect on September 1, 2020. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Motorcycle Safety Foundation submitted a comment seemingly against the adoption of §98.112, which adopts the model standards developed by the National Highway Traffic Safety Administration (NHTSA), as the minimum curriculum standards for entry-level courses in Texas. The comment states that the NHTSA standards are non-binding; are not regulatory; only establish baseline content that all entry-level riders should be taught; and are educational standards, not a curriculum.

Department Response: The Department agrees with the observations made by the comment but disagrees that the observations are reasons against adoption of the NHTSA standards. The Department plans to use the NHTSA standards as educational standards that establish the baseline content that all entry-level riders in Texas should be taught. The standards do not impose a curriculum; rather, they provide the minimum content a curriculum must include to be approved by the Department. Transportation Code §662.0033, effective September 1, 2020, provides in subsection (c): "In establishing the minimum curriculum standards for entry-level courses, the commission shall consider the standards for motorcycle operator training and safety courses adopted by the National Highway Traffic Safety Administration." The Department has determined that it is appropriate to adopt the NHTSA standards as the minimum curriculum standards for entry-level courses and that any modifications to the standards should be made with the assistance of the Motorcycle Safety Advisory Board, which can be established when Texas Transportation Code §662.0037 takes effect on September 1, 2020. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Motorcycle Safety Foundation submitted a separate comment with regard to §98.112 inquiring as to what process the department will use to determine entry-level course compliance with the NHTSA model standards. This comment did not indicate whether it was for or against adoption of a proposed rule.

Department Response: Department staff will review the material received under §98.110(a) and will analyze whether the material satisfies each minimum curriculum standard. If the material satisfies all the minimum curriculum standards, the course will be approved. For technical matters that require industry knowledge or expertise, the Department may seek assistance from members of the Motorcycle Safety Advisory Board, which can be established when Texas Transportation Code §662.0037 takes effect on September 1, 2020. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Motorcycle Safety Foundation submitted a comment inquiring as to what process and criteria the department will use to determine whether a non-entry-level course meets the curriculum requirements in §98.114. The comment does not indicate whether it is for or against adoption of the proposed rule.

Department Response: Department staff will review the material received under §98.110(a) and will analyze whether the material satisfies each minimum curriculum standard. If the material satisfies all the minimum curriculum standards, the course will be approved. For technical matters that require industry knowledge or expertise, the Department may seek assistance from members of the Motorcycle Safety Advisory Board, which can be established when Texas Transportation Code §662.0037 takes effect on September 1, 2020. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment states that the absence of a requirement for instructor and motorcycle school license applicants to undergo criminal history background checks creates safety concerns because students under the age of 18 years will be taking courses conducted by individuals with unknown criminal histories.

Department Response: Texas Transportation Code, Chapter 662, as effective September 1, 2020, does not include a requirement for instructor or motorcycle school applicants to undergo a criminal history background check, so the Department did not impose such a requirement. The Department did not make any changes to the proposed rules in response to this comment.

Advisory Board Recommendations AND COMMISSION ACTION

SB 616 creates new Texas Transportation Code §662.0037, effective September 1, 2020, which authorizes the establishment of the Advisory Board. Because it cannot be established until September 1, 2020, the Advisory Board was not able to provide a recommendation on the adoption of the proposed rules. At its meeting on August 4, 2020, the Commission adopted the proposed rules with changes.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Texas Transportation Code, Chapter 662, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Code of Criminal Procedure, Article 45.0511; Texas Government Code, §103.021; Texas Occupations Code, Chapter 51; and Texas Transportation Code, Chapters 521, 522, 661, and 662. No other statutes, articles, or codes are affected by the adopted rules.

§98.22. *Instructor--Preparation Course.*

(a) The instructor preparation course required by §98.21(3) must be a training program on motorcycle operator training and safety instruction approved by the executive director of the department and administered by the Texas A&M Engineering Extension Service.

(b) To be eligible to enroll in an instructor preparation course, an individual must meet the requirements of §98.21(4), (5), and (6).

§98.26. *Motorcycle School--License Eligibility.*

To be eligible for a motorcycle school license, an applicant must:

- (1) submit a completed application on a form prescribed by the department;
- (2) provide a list of all controlling persons of the applicant;
- (3) obtain an insurance policy that meets the requirements of §98.40;
- (4) provide a list of all real property that will be used to meet the training site requirements of §98.100 and proof that the applicant owns, or possesses written authorization by the owner to use, each property;
- (5) provide a list of motorcycles, if any, that will be available for use by students, including for each motorcycle the year, make, model, and Vehicle Identification Number (VIN);
- (6) provide a list of the department-approved courses the applicant intends to offer and proof of ownership of, or authority to offer, each course;
- (7) provide a list of instructors employed by, or contracted with, the applicant; and
- (8) submit the fee required by §98.80.

§98.30. Exemptions.

A course in motorcycle operation is exempt from licensing and regulation under Texas Transportation Code, Chapter 662, and this chapter if the course:

- (1) is taught by law enforcement agencies to law enforcement officers; or
- (2) is not advertised or otherwise claimed to meet the training requirement for a Class M driver's license and:
 - (A) provides instruction only in off-road dirt bike training for use on trails, tracks, or other nonpublic roadways; or
 - (B) provides instruction only in motorcycle racing techniques on a racetrack for the purpose of motorcycle racing competition.

§98.40. Motorcycle School--Insurance Requirements.

A motorcycle school must be covered by an insurance policy that provides at least \$2 million in liability coverage and \$10,000 in medical payments coverage.

§98.50 Motorcycle School--Reporting Requirements.

(a) A motorcycle school must report each incident to the department within three business days of the incident, in the form and manner prescribed by the department.

(b) By the fifth business day following the end of each course, a motorcycle school must accurately report to the department, in the form and manner prescribed by the department, information relating to each student enrolled in the course. The report must include:

- (1) each student's full legal name as shown on the student's driver's license, or other form of identification acceptable to the department;
 - (2) whether each student successfully completed the course; and
 - (3) all instructors who provided instruction for the course.
- (c) A motorcycle school must report quarterly to the department, in the form and manner prescribed by the department:
- (1) the number and types of courses provided during the quarter;
 - (2) the number of persons who took each course during the quarter;

(3) the number of instructors available to provide training under the school's program during the quarter;

(4) information collected by surveying persons taking each course as to the length of any waiting period the person experienced before being able to enroll in the course; and

(5) the number of persons on a waiting list for a course at the end of the quarter.

§98.70. Instructor--Responsibilities.

(a) An instructor must:

(1) notify the department of any change in the instructor's address, phone number, or email address within 15 days from the date of the change;

(2) maintain a valid driver's license that entitles the license holder to operate a motorcycle on a public road;

(3) maintain a driving record that meets the requirements of §98.21(5);

(4) maintain first aid and CPR certification that meets the requirements of §98.21(7);

(5) act immediately to appropriately address the medical needs of any person injured at the training site and summon emergency medical services if necessary;

(6) report each incident to the motorcycle school in a timely manner;

(7) cooperate with all department audits and investigations and provide all requested documents;

(8) before each course, inspect each motorcycle to be used on the range to ensure the motorcycle meets the requirements of §98.102;

(9) ensure that each motorcycle provided by a student meets the insurance requirements of §98.40 before the motorcycle is used on the range;

(10) provide instruction only in compliance with a curriculum approved by the department;

(11) be capable of instructing the entire course and providing technically correct riding demonstrations;

(12) comply with the student-to-instructor ratio requirements in §98.108;

(13) supervise all students and personnel on the range;

(14) wear, and ensure all students wear, the protective gear required by §98.108(f) whenever participating in the on-cycle portion of any course; and

(15) deal honestly with members of the public and the department.

(b) An instructor must not:

(1) instruct a student if either the instructor or student exhibits signs of impairment from the use of an alcoholic beverage, controlled substance, drug, or dangerous drug, as defined in Texas Penal Code §1.07; or

(2) complete, issue, or validate a certificate of course completion to a person who has not successfully completed the course.

§98.102. Motorcycle Requirements.

(a) An instructor must reject a motorcycle for use in a course if the motorcycle fails to meet the requirements of this section or if,

in the discretion of the instructor, the motorcycle is unsafe or inappropriate for the rider, an instructor, another student, or any other person permitted on the range.

(b) Student-provided motorcycles used in courses must:

(1) meet all the requirements for operation on public highways;

(2) be covered by a motor vehicle liability insurance policy that meets the requirements of Texas Transportation Code §601.072, proof of which must be available for inspection by an instructor; and

(3) pass a safety inspection conducted by the instructor.

(c) All motorcycles used in a course must meet the curriculum requirements of the course.

§98.108. Course Requirements.

(a) All courses must be conducted in accordance with a department-approved curriculum.

(b) The student-to-instructor ratio for classroom instruction of a course may not exceed 36 students per instructor.

(c) The student-to-instructor ratio for on-cycle instruction may not exceed six students per instructor until the instructor has taught seven courses. Once the instructor has taught seven courses, the instructor may teach up to eight students alone.

(d) There must not be more than 12 students on a range during any phase of range instruction.

(e) A separate motorcycle must be available for each student during range instruction.

(f) All students and instructors must wear protective gear when participating in the on-cycle portion of the course. The minimum protective gear includes:

(1) a motorcycle helmet that meets the standards of the U.S. Department of Transportation;

(2) eye protection;

(3) over-the-ankle, sturdy footwear;

(4) a long-sleeved shirt or jacket;

(5) non-flare pants that cover the entire leg and are made from a material that is at least as sturdy as denim; and

(6) full-fingered gloves.

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 August 12, 2020.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671



CHAPTER 99. OFF-HIGHWAY VEHICLE OPERATOR EDUCATION AND CERTIFICATION PROGRAM

16 TAC §§99.1, 99.10, 99.20, 99.22, 99.24, 99.26, 99.30, 99.90, 99.92, 99.100, 99.102

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 99, §§99.1, 99.10, 99.20, 99.22, 99.24, 99.26, 99.30, 99.90, 99.92, 99.100, and 99.102, regarding the Off-Highway Vehicle Operator Education and Certification Program, without changes to the proposed text as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3966). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules create new 16 TAC, Chapter 99, to implement Texas Transportation Code, Chapter 551A, Off-Highway Vehicles. The adopted rules also implement Senate Bill (SB) 616, Article 8, 86th Legislature, Regular Session (2019), which transfers the Off-Highway Vehicle Operator Education and Certification Program (Program) from the Texas Department of Public Safety (DPS) to the Commission and the Texas Department of Licensing and Regulation (Department), effective September 1, 2020. The adopted rules are necessary to enable the Commission and the Department to administer and regulate the Program. The adopted rules are separate from, and are not to be confused with, the DPS rules located at 37 TAC, Chapter 33, regarding the Program, which are still in effect and will be repealed.

SECTION-BY-SECTION SUMMARY

The adopted rules create new §99.1 to identify the statutory authority under which the adopted rules are promulgated.

The adopted rules create new §99.10 to establish the definitions to be used in the chapter.

The adopted rules create new §99.20 to establish the Department's authority to contract with an entity to serve as a program sponsor.

The adopted rules create new §99.22 to establish the requirements for approval as an instructor and to designate the approved instructor preparation course.

The adopted rules create new §99.24 to establish the requirements applicable to a safety training course and the program sponsor's authority to determine course locations and charge fees reasonably related to the cost of administering the course.

The adopted rules create new §99.26 to establish the process for certifying that an individual has successfully completed a safety training course.

The adopted rules create new §99.30 to provide an exemption to the certification requirement for individuals who reside in a county in which a safety training course is not available.

The adopted rules create new §99.90 to establish the authority of the Department and the Commission to impose administrative penalties and sanctions for violations of the applicable statutes and rules.

The adopted rules create new §99.92 to establish the enforcement authority of the Department for violations of the applicable statutes and rules.

The adopted rules create new §99.100 to establish the standards and specifications that apply to the flags required for operation of unregistered off-highway vehicles on highways when the transportation is in connection with agriculture, utility work, or emergency services.

The adopted rules create new §99.102 to provide notice of the requirement of an off-highway vehicle decal issued by the Texas Parks and Wildlife Department (TPWD) for operation of an off-highway vehicle on land designated by TPWD for off-highway vehicle use.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3966). The deadline for public comments was July 13, 2020. The Department received comments from two interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One comment suggests adding a rule providing clarification on whether or not the term "beach" as defined in Texas Transportation Code §551A.001(2) will be used for all beaches or only those beaches that are also public off-highway vehicle land. The comment suggests that there is an inconsistency between Texas Transportation Code §551A.031(b) and §551A.033 concerning the requirements for operation on a beach and that §551A.031(b) should be interpreted to apply only to beaches which are also public off-highway vehicle land.

Department Response: The comment is outside the scope of the proposed rules. The Department disagrees that there is an inconsistency between §551A.031(b) and §551A.033. The two statutes must be read together so that a person must meet the requirements of both §551A.031(b) and §551A.033 to operate an off-highway vehicle on a beach. The definition of "beach" in §551A.001(2) does not include any limitation to its applicability, so it applies everywhere the term is used in Chapter 551A. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment questions whether the safety certificate issued to a student under §99.26(a) meets the requirement of Texas Transportation Code §551A.012.

Department Response: The Department disagrees with the conclusion suggested by the comment that the safety certificate issued under §99.26(a) fails to meet any requirement imposed under Texas Transportation Code §551A.012, which provides: "The purpose of the off-highway vehicle operator education and certification program is to make available courses in basic training and safety skills relating to the operation of off-highway vehicles and to issue safety certificates to operators who successfully complete the educational program requirements or pass a test established under the program." Section 99.26(a) provides for the issuance of safety certificates to operators who successfully complete the educational program requirements, which are the safety training course. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Program does not have an advisory board because Texas Transportation Code, Chapter 551A, does not include authorization for the establishment of an advisory board. At its meeting on August 4, 2020, the Commission adopted the proposed rules as published in the *Texas Register*.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, and Texas Transportation Code, Chapter 551A,

which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51; Texas Parks and Wildlife Code, Chapter 29; and Texas Transportation Code, Chapter 551A. 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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Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671



CHAPTER 112. HEARING INSTRUMENT FITTERS AND DISPENSERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 112, Subchapter B, §112.13; Subchapter C, §§112.24 - 112.26; Subchapter D, §§112.30, 112.32, and 112.33; Subchapter E, §112.40 and §112.42; Subchapter F, §112.52 and §112.53; Subchapter G, §112.60 and §112.61; Subchapter H, §112.71; Subchapter J, §112.91 and §112.98; Subchapter L, §112.110; and Subchapter M, §112.120; new rules at Subchapter C, §112.22; and Subchapter M, §§112.121 - 112.125; and the repeal of existing rules at Subchapter C, §112.21 and §112.22; and Subchapter N, §§112.130-112.132 and 112.134, regarding the Hearing Instrument Fitters and Dispensers Program, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1128). These rules will not be republished.

The Commission also adopts new rules at 16 TAC Chapter 112, Subchapter C, §112.21, and amendments to existing rules at Subchapter C, §112.23, regarding the Hearing Instrument Fitters and Dispensers Program, with changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1128). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 112, implement Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers. The adopted rules are necessary to implement bills from the 86th Legislature, Regular Session (2019); clarify the submission of surety bonds or other financial security to the Department; address the permit extension requirements; and make terminology and other clean-up changes.

Bill Implementation Changes

The adopted rules are necessary to implement House Bill (HB) 1899, HB 2059, HB 2699, and HB 2847 (Article 7, §§7.003, 7.004, and 7.008), 86th Legislature, Regular Session (2019).

HB 1899 requires automatic license denial or revocation for a person who is convicted of or placed on deferred adjudication community supervision for certain crimes or who is required to register as a sex offender. The new statutory provisions under Texas Occupations Code, Chapter 108, Subchapter B, apply to certain health care professionals, including hearing instrument fitters and dispensers. The adopted rules add provisions providing notice of these new requirements.

HB 2059 requires certain health care practitioners to complete a human trafficking prevention training course approved by the Health and Human Services Commission as a condition for license renewal. Hearing instrument fitters and dispensers are affected by this bill. The adopted rules implement HB 2059 and the new statutory provisions under Texas Occupations Code, Chapter 116 by requiring licensed hearing instrument fitters and dispensers to take the training course for each license renewal on or after September 1, 2020.

HB 2699 revises and updates the license examination provisions under Texas Occupations Code, Chapter 402. The adopted rules make the necessary changes, which are primarily found in the Examinations subchapter.

HB 2847 is an omnibus bill that affects multiple programs. Article 7 of the bill applies to multiple programs, including the Hearing Instrument Fitters and Dispensers program. The adopted rules implement Article 7, §§7.003, 7.004, and 7.008 by providing notice to licensees regarding the new complaint-related provisions.

Surety Bond and Other Financial Security Changes

The adopted rules are necessary to clarify the requirements of submitting a surety bond or other financial security to the Department. The current rules require a sole proprietor, partnership, corporation, or other legal entity ("business entity") to submit a surety bond or other acceptable form of financial security in the prescribed amount to the Department. As required by statute, this financial security covers the business entity's actions and the actions of the license holders it employs. HB 4007, 85th Legislature, Regular Session (2017) removed the requirement for the owners, partners, or chief executive officers of these business entities to be licensed hearing instrument fitters and dispensers, but the business entities are still required to submit the financial security. The adopted rules clarify how a business entity submits the financial security for itself and the license holders it employs. The adopted rules also specify the times when the business entity is required to submit the financial security to the Department.

The adopted rules also require submission of a surety bond or other financial security at the first license renewal on or after September 1, 2020. This is a one-time requirement; however, when this program was transferred to the Department pursuant to SB 202, 84th Legislature, Regular Session (2015), the applicable business entities did not submit new financial security. The Department has updated the surety bond form, including having the surety bond payable to the Department, not to the former licensing board. This one-time requirement will ensure that the Department has updated financial security on file for all the applicable business entities and the license holders they employ.

Permit Extension Changes

The adopted rules are necessary to address the timing requirements for requesting a permit extension for apprentice permits

and temporary training permits. The adopted rules specify the timing for submitting an extension request if the person will not or does not complete the permit requirements during the term of the permit. The adopted rules also explain the ramifications of not requesting an extension within the grace period.

Terminology and Other Clean-up Changes.

The adopted rules are necessary to make terminology and other clean-up changes to the rules. These changes include: replacing existing language with gender neutral language; removing unnecessary provisions; updating terminology; inserting the standardized criminal history background check language and updating the provision regarding fingerprints; and consolidating the complaint and enforcement provisions into one subchapter.

SECTION-BY-SECTION SUMMARY

The adopted rules amend Subchapter B. Hearing Instrument Fitters and Dispensers Advisory Board.

The adopted rules amend §112.13, Officers. The adopted rules update the terminology in subsection (b) to use gender neutral language. (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter C. Examinations.

The adopted rules add new §112.21, Examination Contents and Test Administration. This new section was former §112.22, Examination Tests and Contents. The order of §112.21 and §112.22 has been switched due to the terminology changes regarding "examination" and "test" in HB 2699. The revised order of the rules improves the flow and readability of the provisions in this subchapter. The title of the section has been changed to reflect the contents of the section. The adopted rules also update the references in subsections (a) and (b) (former §112.22(a) and (b)) from "examination" to "test" to implement HB 2699. (Bill Implementation Changes)

In addition, the adopted rules amend subsection (b)(1) (former §112.22(b)(1)) to remove the reference to the specific entity administering the written test and replace it with a reference to the department's designee. The change makes the provisions in subsection (b) consistent for all three tests, and it is consistent with some of the Department's other programs where an exam is administered. The change also allows flexibility in what entity administers the written test. (Terminology and Other Clean-up Changes)

In response to the public comments, §112.21(a) has been amended to add clarifying language that the practical test includes "all portions" of that test. In addition, a technical correction has been made to §112.21(c) to remove an unnecessary comma in the sentence.

The adopted rules repeal existing §112.21, Examination Qualifications. The adopted rules repeal this section and relocate the provisions to new §112.22. (Bill Implementation Changes)

The adopted rules add new §112.22, Examination Qualification Process. This new section was former §112.21, Examination Qualifications. The order of §112.21 and §112.22 has been switched due to the terminology changes regarding "examination" and "test" in HB 2699. The revised order of the rules improves the flow and readability of the provisions in this subchapter. The title of the section has been changed to reflect the contents of the section. The adopted rules also update the references in subsections (a), (b), (c), and (d) (former §§112.21(a), (b), (c), and (d)) from "examination" to "test" to implement HB 2699. (Bill Implementation Changes)

The adopted rules under new §112.22 do not include former §112.21(d) regarding moral turpitude. This provision was repealed by HB 2699, Section 6, former Texas Occupations Code §402.203(c). (Bill Implementation Changes) The adopted rules also do not include former §112.21(f). This provision was out of place in this section, and it was not applicable to all three tests. (Terminology and Other Clean-up Changes)

The adopted rules repeal existing §112.22, Examination Tests and Contents. The adopted rules repeal this section and relocate the provisions to new §112.21. (Bill Implementation Changes)

The adopted rules amend §112.23, Examination and Test Results. The adopted rules change the references from "examination" to "test" as appropriate; remove the passing score of 70 percent or greater; and eliminate references to "scores" to implement HB 2699. The adopted rules separate subsection (b) into subsections (b) and (c) for clarity. The title of this section also has been updated. (Bill Implementation Changes)

In response to the public comments, §112.23(a) has been amended to add clarifying language that the practical test includes "all portions" of that test. This change clarifies that the applicant must pass all portions of the practical test.

The adopted rules amend §112.24, Failure of Examination or Test. The adopted rules amend §112.24 to implement HB 2699, Section 3, Texas Occupations Code §402.205(c) and (d). The adopted rules use subsections to address separate concepts. The adopted rules also update the title of this section. (Bill Implementation Changes)

The adopted rules amend §112.25, Practical Test Proctors. The adopted rules change the references from "examination" to "test" to implement HB 2699, Section 1, Texas Occupations Code §402.104(a) and (d). The adopted rules also update the title of the section. (Bill Implementation Changes) The adopted rules also make clean-up changes to subsection (b). (Terminology and Other Clean-up Changes)

The adopted rules amend §112.26, Jurisprudence Test. The adopted rules change the references from "examination" to "test" to implement HB 2699. The adopted rules also update the title of this section. (Bill Implementation Changes) The adopted rules also make terminology and clean-up changes to this section. (Terminology and Clean-up Changes)

The adopted rules amend Subchapter D, Hearing Instrument Fitter and Dispenser License.

The adopted rules amend §112.30, Hearing Instrument Fitter and Dispenser License--Application and Eligibility Requirements. The adopted rules amend subsection (d) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The adopted rules under §112.30 add new subsection (e) to clarify the requirements of submitting a surety bond or other financial security. The current financial security requirements are located under §112.60, and they require a sole proprietor, partnership, corporation, or other legal entity ("business entity") to submit a surety bond or other acceptable form of financial security to the Department. As required by statute, the financial security covers the business entity's actions and the actions of the license holders it employs.

The adopted rules under subsection (e) explain how a business entity files the surety bond or other financial security for itself and its employees who are applying for a license. The adopted

rules provide that the surety bond or financial security is provided by the business entity to the license applicant, who will file the surety bond or financial security with the license application. In the alternative, the business entity may file the surety bond or financial security directly with the Department. A new form has been created for the business entity to identify the employee/license applicant who is covered by the surety bond or financial security. (Surety Bond Clarification Changes)

The adopted rules under §112.30 add new subsection (g) to implement HB 1899, Section 8. New Texas Occupations Code §108.052 requires denial of an application from a person who is convicted of or placed on deferred adjudication community supervision for certain crimes or who is required to register as a sex offender. (Bill Implementation Changes)

The adopted rules amend §112.32, Hearing Instrument Fitter and Dispenser License--License Term; Renewals. The adopted rules amend subsection (d) to insert the standardized criminal history background check language. The adopted rules also update the provision on whether updated fingerprints will be required at renewal. The adopted rules also replace "licensee" with "license holder" for consistency purposes. (Terminology and Other Clean-up Changes)

The adopted rules under §112.32 add new subsection (e) to require submission of a surety bond or other financial security at the first license renewal on or after September 1, 2020. This is a one-time requirement; however, when this program was transferred to the Department pursuant to SB 202, 84th Legislature, Regular Session (2015), the applicable business entities did not submit new financial security. The Department has updated the surety bond form, including having the surety bond payable to the Department, not to the former licensing board. This one-time requirement will ensure that the Department has updated financial security on file for all the applicable business entities and the license holders they employ.

The adopted rules under subsection (e) explain how a business entity files the surety bond or other financial security for itself and its employees who are renewing their licenses. The adopted rules provide that the surety bond is provided by the business entity to the license holder, who will file the surety bond with the license renewal application. In the alternative, the business entity may file the surety bond or financial security directly with the Department. A new form has been created for the business entity to identify the employee/license holder who is covered by the surety bond or financial security. (Surety Bond Clarification Changes)

The adopted rules under §112.32 also add new subsection (f) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The adopted rules also consolidate former subsections (e) and (f) into one subsection and re-letter it as subsection (g). The text of former subsections (e) and (f) has been condensed and replaced with cross-references to the statutory provisions. (Terminology and Other Clean-up Changes)

The adopted rules amend §112.33, Application by License Holder from Another State. The adopted rules change the reference in subsection (d) from "examination" to "test" to implement HB 2699. (Bill Implementation Changes) The adopted rules amend subsection (e) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The adopted rules under §112.33 also add subsection (g) to implement HB 1899, Section 8. New Texas Occupations Code §108.052 requires denial of an application from a person who is convicted of or placed on deferred adjudication community supervision for certain crimes or who is required to register as a sex offender. (Bill Implementation Changes)

The adopted rules under §112.33 add new subsection (h) to clarify the requirements of submitting a surety bond or other financial security. The current financial security requirements are located under §112.60, and they require a sole proprietor, partnership, corporation, or other legal entity ("business entity") to submit a surety bond or other acceptable form of financial security to the Department. As required by statute, the financial security covers the business entity's actions and the actions of the license holders it employs.

The adopted rules under subsection (h) explain how a business entity files the surety bond or other financial security for itself and its employees who are applying for a license. The adopted rules provide that the surety bond or financial security is provided by the business entity to the license applicant, who will file the surety bond or financial security with the license application. In the alternative, the business entity may file the surety bond or financial security directly with the Department. A new form has been created for the business entity to identify the employee/license applicant who is covered by the surety bond or financial security. (Surety Bond Clarification Changes)

The adopted rules under §112.33 also amend subsections (i) and (j) (former subsections (g) and (h)) to implement HB 2699, Section 5, Texas Occupations Code §§402.209(e) and (f). (Bill Implementation Changes)

The adopted rules amend Subchapter E. Apprentice Permit.

The adopted rules amend §112.40, Apprentice Permit--Application and Eligibility Requirements. The adopted rules change the references in subsection (c) from "examination" to "test" to implement HB 2699. (Bill Implementation Changes) The adopted rules also amend subsection (d) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The adopted rules amend §112.42, Apprentice Permit--Permit Term; Extension. The adopted rules amend subsection (b) to specify the timing of when a person must submit the apprentice permit extension request. The adopted rules also add a new subsection (e) to explain the ramifications of not requesting an extension within the 90-day grace period. (Permit Extension Changes) The adopted rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter F. Temporary Training Permit.

The adopted rules amend §112.52, Temporary Training Permit--Permit Term; Extension. The adopted rules amend subsection (b) to specify the timing of when a person must submit the temporary training permit extension request. The adopted rules also add a new subsection (e) to explain the ramifications of not requesting an extension within the 90-day grace period. (Permit Extension Changes)

The adopted rules amend §112.53, Temporary Training Permit--Supervision and Temporary Training Requirements. The adopted rules update the terminology in subsection (c) to use

gender neutral language. (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter G. Financial Security Requirements.

The adopted rules amend §112.60, Filing Surety Bond or Other Form of Financial Security. The adopted rules clarify the requirements of submitting a surety bond or other financial security to the Department. The current rules require a sole proprietor, partnership, corporation, or other legal entity ("business entity") to submit a surety bond or other acceptable form of financial security in the prescribed amount to the Department. As required by statute, this financial security covers the business entity's actions and the actions of the license holders it employs. HB 4007, 85th Legislature, Regular Session (2017) removed the requirement for the owners, partners, or chief executive officers of these business entities to be licensed hearing instrument fitters and dispensers, but the business entities are still required to submit the financial security. The adopted rules clarify how a business entity submits the financial security for itself and the license holders it employs. (Surety Bond Clarification Changes)

The adopted rules under §112.60 add a new subsection (b) to clearly state in the rules that the financial security covers the actions, conduct, or liability of the business entity and the license holders it employs as required by statute. The adopted rules add a new subsection (d) that identifies the three times when a business entity needs to file the financial security with the Department and includes cross-references to the applicable sections. The adopted rules amend re-lettered subsection (e) (former subsection (c)) to clarify that the referenced "license" is the employee's license. The adopted rules also make clean-up changes to the financial security references in re-lettered subsections (e) and (f) (former subsections (c) and (d)) for consistency purposes in this section. (Surety Bond Clarification Changes)

The adopted rules amend §112.61, Recovery on Surety Bond or Other Form of Financial Security. The adopted rules remove the statutory cross-reference and include the text from Texas Occupations Code §402.405 in order to clarify in the rules that the financial security covers the actions of the business entity and the license holders employed by the business entity. (Surety Bond Clarification Changes)

The adopted rules amend Subchapter H. Continuing Education Requirements.

The adopted rules amend §112.71, Continuing Education--Records and Audits. The adopted rules update the terminology in subsections (a) and (c) to use gender neutral language. (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter J. Responsibilities of the Licensee.

The adopted rules amend §112.91, Change of Name, Address, or Other Information. The adopted rules change the reference under subsection (a) from "licensee," which is defined to include license holders and permit holders, to "license holder or permit holder." This terminology change is necessary for clarity purposes due to the addition of subsection (b), which only applies to license holders. (Terminology and Other Clean-up Changes)

The adopted rules add a new requirement under subsection (b) for a license holder who changes employers to submit a copy of the surety bond or other form of financial security from the license holder's new employer. In the alternative, the new employer may

submit the financial security directly to the department. A new form has been developed to implement this requirement. (Surety Bond Clarification Changes)

The adopted rules amend §112.98, Code of Ethics. The adopted rules update the terminology in subsections (c) and (d) to use gender neutral language. The adopted rules also make a clean-up change to subsection (d). (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter L. Fees.

The adopted rules amend §112.110, Fees. The adopted rules change the references from "examination" to "test" in subsection (e) to implement HB 2699. (Bill Implementation Changes)

The adopted rules amend Subchapter M. Complaints.

The adopted rules amend the title of Subchapter M to read "Complaints and Enforcement Provisions." The adopted rules combine Subchapters M and N into one subchapter. The enforcement sections under Subchapter N have been relocated to Subchapter M. (Terminology and Other Clean-up Changes)

The adopted rules amend §112.120, Complaints. The adopted rules update the title of §112.120 to reflect the expanded scope of the section. The adopted rules add new subsection (b) as a notice to licensees and to the public regarding qualified persons, including licensees and advisory board members, assisting the department in reviewing and investigating complaints and being immune from liability related to those activities. (HB 2847, §7.003)

The adopted rules under §112.120 also add new subsection (c) as a notice to licensees and to the public regarding the confidentiality of complaint and disciplinary information. Former Texas Occupations Code §402.154 addressed these issues for hearing instrument fitters and dispensers. HB 2847, Article 7, §7.008, repealed §402.154 and similar confidentiality provisions in other health professions statutes. HB 2847, Article 7, §7.004, added a new standardized confidentiality provision in Texas Occupations Code, Chapter 51 that is applicable to certain specified health professions, including hearing instrument fitters and dispensers. (HB 2847, §7.004). (Bill Implementation Changes)

The adopted rules add new §112.121, Administrative Penalties and Sanctions. This new section was former §112.130. There are no adopted changes to the text. (Terminology and Other Clean-up Changes)

The adopted rules add new §112.122, Enforcement Authority. This new section was former §112.131. There are no adopted changes to the text. (Terminology and Other Clean-up Changes)

The adopted rules add new §112.123, Refund for Hearing Instrument. This new section was former §112.132. There are no adopted changes to the text. (Terminology and Other Clean-up Changes)

The adopted rules add new §112.124, Surrender of a License or Permit. This new section was former §112.134. The adopted rules also update the terminology in subsection (a) and (b) (former §112.134(a) and (b)) to use gender neutral language. (Terminology and Other Clean-up Changes) The adopted rules also add a new subsection (d) to clarify that §112.124 (former §112.134) does not apply to licenses and permits that are subject to the new §112.125, which implements HB 1899. (Bill Implementation Changes)

The adopted rules add new §112.125, Automatic Denials and Revocations. The adopted rules add a new §112.125 to implement HB 1899, Section 8, and specifically new Texas Occupations Code §108.052 and §108.053. These provisions apply to licenses and permits. (Bill Implementation Changes)

The adopted rules repeal Subchapter N. Enforcement Provisions.

Subchapter N has been eliminated, and the complaints and enforcement provisions have been combined under Subchapter M. (Terminology and Other Clean-up Changes)

The adopted rules repeal §112.130, Administrative Penalties and Sanctions. This section has been relocated to new §112.121. (Terminology and Other Clean-up Changes)

The adopted rules repeal §112.131, Enforcement Authority. This section has been relocated to new §112.122. (Terminology and Other Clean-up Changes)

The adopted rules repeal §112.132, Refund for Hearing Instrument. This section has been relocated to new §112.123. (Terminology and Other Clean-up Changes)

The adopted rules repeal §112.134, Surrender of a License or Permit. This section has been relocated to new §112.124. (Terminology and Other Clean-up Changes)

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 21, 2020, issue of the *Texas Register* (45 TexReg 1128). The deadline for public comments was March 23, 2020. The Department received comments from two interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: The Department received one comment from the Texas Hearing Aid Association (THAA), which supported the proposed rules but requested a clarification change to §112.23(a). THAA requested "retaining language in current rule §112.23(a) that clarifies "all parts of" the practical examination must be passed." THAA cited Occupations Code §402.205(d), communications with Department staff, and the examination Candidate Information Bulletin as support for restating that all parts of the practical examination must be passed. THAA proposed specific clarifying language to §112.23(a). THAA stated that this change "makes the proposed rule consistent with the statute and Department policy concerning administration of the practical examination and removes any doubt about the requirements of such exam for temporary permit holders."

Department Response: The Department appreciates the public comment in support of the proposed rules and agrees with the suggested clarification, but not with the specific language proposed. HB 2699 removed the statutory language regarding "parts" of the examination, and the proposed rules make the same change. In addition, Occupations Code §402.205(d), rule 16 TAC §112.24(b), and the examination Candidate Information Bulletin reference "portions" of the practical test.

In response to the public comment, the Department revised the proposed rules to add clarifying language that the practical test includes "all portions" of that test. The Department added this clarification under §112.21(a), regarding examination contents and test administration, and under §112.23(a), regarding examination and test results.

Comment: The Department received one comment opposing the new required human trafficking prevention training. The commenter questioned how this training was relevant to orthotists or prosthetists, athletic trainers, or hearing and speech personnel. The commenter stated that this activity would not be seen in these practices and that the training is an additional, unnecessary requirement.

Department Response: The Department disagrees with this comment. The new human trafficking prevention training is required by statute, Texas Occupations Code, Chapter 116. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Hearing Instrument Fitters and Dispensers Advisory Board (Advisory Board) met on January 22, 2020, to discuss the proposed rules. There was less than a quorum of members present for the discussion, so the Advisory Board was not able to make a recommendation regarding the proposed rules. The Department published the proposed rules as presented without the Advisory Board's recommendation.

The Advisory Board met on July 8, 2020, via videoconference, to discuss the proposed rules and the public comments received. The Department presented clarification language regarding "all portions" of the practical test based on the public comments received. The members of the Advisory Board discussed the clarification language and where it should be added to the proposed rules. There was less than a quorum of members present for the discussion, so the Advisory Board was not able to make a recommendation regarding the proposed rules or the changes made as a result of the public comments.

The Department considered the feedback from the individual members of the Advisory Board and revised the proposed rules to add the clarification regarding "all portions" of the practical test under §112.21(a), regarding examination contents and test administration, and under §112.23(a), regarding examination and test results. In addition, subsequent to the Advisory Board meeting, the Department made a technical correction to §112.21(c) to remove an unnecessary comma in the sentence.

The Department recommended adopting the proposed rules with changes to §112.21 and §112.23, as a result of the public comments, along with a technical correction to §112.21. At its meeting on August 4, 2020, the Commission adopted the proposed rules with changes as recommended by the Department.

SUBCHAPTER B. HEARING INSTRUMENT FITTERS AND DISPENSERS ADVISORY BOARD

16 TAC §112.13

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an

applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. 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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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



SUBCHAPTER C. EXAMINATIONS

16 TAC §112.21, §112.22

STATUTORY AUTHORITY

The repeals are adopted under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The repeals are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. 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 §§112.21 - 112.26

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

§112.21. *Examination Contents and Test Administration.*

(a) The examination required under the Act shall consist of a written test, a practical test (all portions), and a jurisprudence test.

(b) The department shall administer or arrange for the administration of the examination.

(1) The written test is the International Licensing Examination for Hearing Instrument Dispenser, administered by the department's designee.

(2) The practical test is developed by the department and administered by the department's designee.

(3) The jurisprudence test is developed by the department and administered by the department's designee.

(c) The examination under subsection (a) will test the following areas as they relate to the fitting and dispensing of hearing instruments:

- (1) basic physics of sound;
- (2) structure and function of hearing instruments;
- (3) fitting of hearing instruments;
- (4) pure tone audiometry, including air conduction testing and bone conduction testing;
- (5) live voice and recorded voice speech audiometry;
- (6) masking when indicated for air conduction, bone conduction, and speech;
- (7) recording and evaluation of audiograms and speech audiometry to determine the candidacy for a hearing instrument;
- (8) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;
- (9) taking of earmold impressions;
- (10) verification of hearing instrument fitting and functional gain measurements using a calibrated system;
- (11) anatomy and physiology of the ear;
- (12) counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;
- (13) use of an otoscope for the visual observation of the entire ear canal; and

(14) laws, rules, and regulations of this state and the United States.

(d) The examination may not test knowledge of the diagnosis or treatment of any disease of or injury to the human body.

§112.23. *Examination and Test Results.*

(a) The applicant must pass the required examination consisting of the written, practical (all portions), and jurisprudence tests.

(b) The department or the department's designee will notify the applicant in writing regarding the applicant's test results for the written and practical tests.

(c) The department's designee will provide a certificate of completion to the applicant upon passage of the jurisprudence test.

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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Brad Bowman

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SUBCHAPTER D. HEARING INSTRUMENT FITTER AND DISPENSER LICENSE

16 TAC §§112.30, 112.32, 112.33

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER E. APPRENTICE PERMIT

16 TAC §112.40, §112.42

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER F. TEMPORARY TRAINING PERMIT

16 TAC §112.52, §112.53

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. 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 G. FINANCIAL SECURITY REQUIREMENTS

16 TAC §112.60, §112.61

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER H. CONTINUING EDUCATION REQUIREMENTS

16 TAC §112.71

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. 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 J. RESPONSIBILITIES OF THE LICENSEE

16 TAC §112.91, §112.98

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER L. FEES

16 TAC §112.110

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. 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 M. COMPLAINTS AND ENFORCEMENT PROVISIONS

16 TAC §§112.120 - 112.125

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. 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 N. ENFORCEMENT PROVISIONS

16 TAC §§112.130 - 112.134

STATUTORY AUTHORITY

The repeals are adopted under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The repeals are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 116, and 402, and Texas Government Code, Chapter 411, Subchapter F. 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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Brad Bowman

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Texas Department of Licensing and Regulation

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

19 TAC §61.1026

The Texas Education Agency adopts new §61.1026, concerning statutorily required reporting through the Public Education Information Management System (PEIMS). The new section is adopted without changes to the proposed text as published in the February 14, 2020 issue of the *Texas Register* (45 TexReg 986) and will not be republished. The adopted new rule implements legislation that requires school districts to report information on the availability of school counselors and expanded learning opportunities through the Texas Student Data System (TSDS) PEIMS.

REASONED JUSTIFICATION: Senate Bill (SB) 490, 85th Texas Legislature, Regular Session, 2017, and SB 1404, 85th Texas Legislature, Regular Session, 2017, added two versions of Texas Education Code (TEC), §42.006 (a-2), that require additional PEIMS reporting. SB 490 requires the reporting of the availability of school counselors at each campus, and SB 1404 requires reporting of the availability of expanded learning opportunities and the number of students participating in each category at each campus. HB 3, 86th Texas Legislature, 2019, transferred language from TEC, §42.006, to new §48.009. HB 3 amended the requirement regarding reporting of expanded learning opportunities to remove the requirement that districts report the number of students participating in each of the categories of expanded learning opportunities listed in TEC, §33.252(b).

Adopted new 19 TAC §61.1026 requires school districts and open-enrollment charter schools to annually report the availability of school counselors at each campus. The adopted rule also requires school districts and open-enrollment charter schools to annually report the availability of expanded learning opportunities. The adopted rule defines each category of expanded learning opportunity to assist districts in accurately and consistently reporting this information.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began February 14, 2020, and ended March 16, 2020. Following is a summary of public comments received and corresponding agency responses.

Comment: A school district trustee commented that the distinction between academic skill-building and tutoring and small group instruction is not clear and suggested that "learning activities designed to accomplish X, Y, Z" would be easier to understand.

Agency Response: The agency disagrees and maintains language as proposed. Subsection (b)(2)(C) defines tutoring as one-on-one or small group instruction, led by a certified teacher, that provides supplemental content instruction or homework help to support student mastery of academic material and that does not include academic skill-building activities. Subsection (b)(2)(E) defines academic skill-building as compensatory education, test-taking skills, and related academic skill-building, and that does not include tutoring and homework help.

Comment: An assistant superintendent commented that reporting availability of school counselors is a good idea, especially with the current focus on school safety, mental health, and so-

cial and emotional learning. The commenter requested that the agency consider ways to make sure counselors are reported and coded as a positive and not a negative to the campus and district in terms of being counted as administrative or non-administrative.

Agency Response: The agency agrees that reporting of counselors is appropriate. The agency offers the following clarification. Reporting of counselors as administrative or non-administrative positions is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §33.252, which outlines the types of expanded learning opportunities that may be provided by school districts and open-enrollment charter schools and the manner in which expanded learning opportunities may be offered; and TEC, §48.009, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to by rule require each school district and open-enrollment charter school to report through PEIMS information regarding the availability of school counselors at each campus and the availability of expanded learning opportunities as described by TEC, §33.252.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §33.252 and §48.009, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1003

The Texas Education Agency (TEA) adopts an amendment to §97.1003, concerning local accountability systems. The amendment is adopted without changes to the proposed text as published in the June 12, 2020 issue of the *Texas Register* (45 TexReg 3969) and will not be republished. The adopted amendment addresses the enforceable aspects of the local accountability system and removes the local accountability system manual from rule.

REASONED JUSTIFICATION: Texas Education Code, §39.0544, establishes the local accountability system to allow school districts and open-enrollment charter schools to develop local accountability plans for their campuses. Similar to the ratings from the state accountability rating system, a school district's local accountability plan provides stakeholders with

detailed information about school performance and progress over time. Local accountability plans may vary by school type (such as elementary school, middle school, high school, or Kindergarten-Grade 12) and by school group but must apply equally to all campuses as applicable by school type and group. Through the creation and publication of a local accountability plan based on campus needs and goals, a school district communicates priorities and demonstrates a commitment to achieving the components in the plan. The dissemination of local accountability plan ratings by TEA and the school district signifies the importance of the local goals and documents progress at the campus level.

Currently, §97.1003 contains guidance to school districts through the local accountability system manual adopted in rule as a figure. The adopted amendment removes the figure from rule and instead provides specific information for each statutory requirement to address elements that will be enforced.

Subsection (a) is amended to remove language referencing the local accountability system manual and establish that the system may be used by school districts and open-enrollment charter schools.

New subsection (b)(1) clarifies statutory language that describes locally developed domains or sets of accountability measures. In addition, the new paragraph establishes that components within a local accountability plan must be assigned to domains and weighted.

Under new subsection (b), paragraphs (2) and (3) describe determination of campus eligibility to receive local accountability ratings and when local and state ratings may be combined. Subsection (b)(3) specifies eligibility to combine state and local accountability ratings for campuses that do not receive a state rating other than as a paired campus.

New subsection (b)(4) establishes that school districts must create local accountability plans based on school type and group.

New subsection (c) clarifies the range of weighting that may be applied to individual components in a local accountability plan.

New subsection (d) specifies that school districts must create a campus rating scale that provides differentiation based on current achievement levels. The new language provides additional guidance for school districts on how to select components for inclusion in a local accountability plan that allow room for growth. New subsection (d)(2) specifies that a plan may include up to one component where current baseline levels are not used to set the campus rating scale. This change from the current system addresses input from school districts.

New subsection (e) defines reliability and validity in terms of components included in a local accountability plan. The new language was added in response to school district input and requests for clarification.

New subsection (f) requires that calculations for each plan component and overall performance ratings must be capable of being audited by a third party. The new subsection provides guidance on the standard scale to be used and how to convert categorical, or noncontinuous, data to a scale score. The new subsection also establishes the submission date for local accountability plan component, domain, and overall scaled scores and ratings to TEA; addresses the audit process and requirements for school districts to maintain documentation of local accountability plans; establishes responsibility for the accuracy and quality of

data used to determine local accountability ratings; and provides information relating to appeals.

New subsection (g) requires school districts to post certain information about their local accountability ratings on their websites.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 12, 2020, and ended on July 27, 2020. Following is a summary of public comments received and corresponding agency responses.

Comment: Disability Rights Texas (DRTx) commented that the proposed five domains should be revised to include an additional domain for a total of six allowable domains. The proposed domain would be for special populations.

Response: The agency disagrees with the inclusion of an additional domain. The domains were selected with input from stakeholders. The existing domains are flexible in nature, which allows for the inclusion of components related to special populations within the existing domains.

Comment: DRTx commented that local accountability plans developed by school districts should be required to address how students with disabilities are included.

Response: The agency disagrees with adding a provision to mandate inclusion of students with disabilities in local accountability plans. The statutory requirements do not specifically address students with disabilities. School districts develop local accountability plans based on local priorities and initiatives. The rule does not prohibit, nor mandate, school district choice regarding students with disabilities.

Comment: DRTx commented that within the five existing domains (academics, culture and climate, extra- and co-curricular, future-ready learning, and locally determined), school districts should be required to include data on students with disabilities.

Response: The agency disagrees. The local accountability system allows for school district choice and does not mandate inclusion of individual groups of students.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.0544, which requires the commissioner to adopt rules regarding the assignment of campus performance ratings by school districts and open-enrollment charter schools through a local accountability system.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.0544.

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 August 17, 2020.

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19 TAC §97.1005

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1005(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 28, 2020, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1005, concerning results driven accountability. The amendment is adopted with changes to the proposed text as published in the May 22, 2020 issue of the *Texas Register* (45 TexReg 3418) and will be republished. The adopted amendment reflects changes to the 2020 Results Driven Accountability (RDA) Manual.

REASONED JUSTIFICATION: House Bill (HB) 3459, 78th Texas Legislature, 2003, added Texas Education Code (TEC), §7.027, limiting and redirecting monitoring done by the TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Public Education Information Management System (PEIMS) and accountability under TEC, Chapter 39. Legislation passed in 2005 renumbered TEC, §7.027, to TEC, §7.028. To meet this monitoring requirement, TEA developed the Performance Based Monitoring Analysis System (PBMAS), later renamed as Results Driven Accountability in 2019, which is used in conjunction with other evaluation systems to monitor performance of certain populations of students and the program effectiveness of special programs in school districts and charter schools.

TEA has adopted its PBMAS manual in rule since 2005 and the RDA manual in rule since 2019. The RDA manual outlines a dynamic system that evolves over time, so the specific criteria and calculations for monitoring student performance and program effectiveness may differ from year to year. The intent is to update 19 TAC §97.1005 annually to refer to the most recently published RDA manual.

The adopted amendment to §97.1005 updates the rule by repealing the 2019 RDA Manual currently included as Figure: 19 TAC §97.1005(b) and replacing it with the 2020 RDA Manual as Figure: 19 TAC §97.1005(b). Sections I-III describe the specific criteria and calculations that are used to assign 2020 RDA performance levels.

The 2020 RDA Manual includes several key changes from the 2019 framework. Revisions to the RDA framework include the following.

Overall, the format of the RDA manual has changed. Indicator grouping under three identified domains has created a shift in some indicators to be reordered and numbered. Domain I captures indicators of Academic Achievement; Domain II captures indicators of Post-Secondary Readiness; and Domain III captures indicators of Disproportionate Analysis.

TEA has consolidated and expanded its monitoring capacity for the special education program and the bilingual education, English as a second language, and English learner (BE/ESL/EL) program. Due to changes in monitoring structures and requirements for certain federal and state programs, and to eliminate duplication of monitoring selection processes, some program areas have been removed from the RDA report. These include career and technical education (CTE), Title I - Part A, and Title I - Part C (Education of Migratory Students). These programs continue to be monitored by other offices at TEA and through Every Stu-

dent Succeeds Act (ESSA) reporting and requirements. The indicators that are removed from the manual were no longer used in making monitoring decisions. The remaining program areas for certain student populations captured under the former ESSA section of the 2019 RDA Manual remain but are captured in the manual as other special populations (OSP) and contain indicators inclusive of students in foster care, students experiencing homelessness, and military-connected students.

Bilingual Education, English as a Second Language, and English Learners (BE/ESL/ELs)

In 2019, certain BE/ESL indicators were provided as "Report Only" due to various changes in the data sources and processing requirements and were not assigned indicator performance levels (PLs). For 2020, new cut points have been assigned that will allow for PLs to be assigned for the following indicators: BE/ESL/EL Indicator #1(i-v): BE STAAR 3-8 Passing Rate; BE/ESL/EL Indicator #2(i-v): ESL STAAR 3-8 Passing Rate; BE/ESL/EL Indicator #6(i-iv): EL STAAR EOC Passing Rate; BE/ESL/EL Indicator #7: TELPAS Reading Beginning Proficiency Level Rate; and BE/ESL/EL Indicator #8: TELPAS Composite Rating Levels for Students in U.S. Schools Multiple Years.

Additionally for 2020, two new indicators are included as "Report Only" in the following: BE/ESL/EL Indicator #4: EL Dyslexia STAAR 3-8 Reading Passing Rate; and BE/ESL/EL Indicator #11: EL Dyslexia Representation (Ages 6-21).

Other Special Populations (OSP)

In 2019, certain student populations were reported under the ESSA section of the RDA manual. Title 1 - Part A and migrant have been removed while students in foster care, students experiencing homelessness, and military-connected students remain and are combined as OSP for reporting purposes and PL assignments. The decision to combine these three student populations for reporting and analysis is based on a high LEA exclusion rate due to small size, which is an inability to meet minimum size requirements (MSR) within each of the student groups for PL assignments. Although PL assignments are made at the combined OSP level, each of the three included separate student populations are reported for disaggregated reporting but are not assigned individual PLs.

LEAs that receive a PL 3 or PL 4 for any indicator in the 2020 RDA OSP report that would have otherwise not received a PL assignment in all three of the included student population groups for OSP will receive a Hold Harmless (HH) rating for the following indicators: OSP Indicator #1(i-v): OSP STAAR 3-8 Passing Rate; OSP Indicator #3(i-v): OSP STAAR EOC Passing Rate; OSP Indicator #4: OSP Graduation Rate; and OSP Indicator #5: OSP Annual Dropout Rate (Grades 7-12).

Additionally for 2020, two new indicators are included as "Report Only" in the following: OSP Indicator #2: OSP Dyslexia STAAR 3-8 Reading Passing Rate and OSP Indicator #6: OSP Dyslexia Representation (Ages 6-21).

Special Education (SPED)

To align with state and federal accountability calculation requirements in reporting the rate of students participating in the STAAR Alternate 2, SPED Indicator #5: SPED STAAR Alternate 2 Participation Rate has changed and now includes calculations for three reported subject areas: mathematics, science, and reading/ELA. This indicator remains as a "Report Only" indicator.

Additionally for 2020, two new indicators are included as "Report Only" in the following: SPED Indicator #2: SPED Dyslexia STAAR 3-8 Reading Passing Rate and SPED Indicator #8: SPED Dyslexia Representation (Ages 6-21).

On March 16, 2020, Governor Greg Abbott waived the State of Texas Assessment of Academic Readiness (STAAR®) testing requirements for the 2019-2020 school year due to extensive school closures relating to the COVID-19 nationwide pandemic event. Indicators specific to STAAR® testing proficiency, participation, or other reliance on non-existing 2019-2020 STAAR® data will not receive 2020 RDA performance levels for those indicators. Texas's commitment to provide educators and parents with reliable information on student outcomes for mastery of grade-level content as measured on the STAAR® in future years will continue. However, for the 2019-2020 school year, no data will be available for these indicators: BE/ESL/EL Indicators #1, #2, #3, #4, #5, #6, and #8; OSP Indicators #1, #2, and #3; and SPED Indicators #1, #2, #3, #4, and #5. When there is insufficient data to make monitoring decisions, TEA will carry over its monitoring activities from the prior year.

The 2020 RDA Manual includes minor technical edits at adoption for clarity. The technical edits impacted the following sections: the description of PLs on pages 9 and 10; the *RDA PL Assignment and SA Determination Process* graphic on page 12 in the "Apply Standard Analysis" box; Data Note 11 on page 25; the denominator for the calculation of Indicator #6: EL STAAR EOC Passing Rate on page 31; the numerator and denominator for the calculation of Indicator #7: TELPAS Reading Beginning Proficiency Level Rate on page 32; the numerator for the calculation of Indicator #8: TELPAS Composite Rating Levels for Students in U.S. Schools Multiple Years on page 33; the data source for Indicator #11: EL Dyslexia Representation (Ages 6-21) on page 36; the description of Indicator #4: OSP Graduation Rate on page 42; the numerator for the calculation of Indicator #5: OSP Annual Dropout Rate (Grades 7-12) on page 43; Data Note 14 on page 46; and the data source for Indicator #8: SPED Dyslexia Representation (Ages 6-21) on page 55.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 22, 2020, and ended June 22, 2020, and included public hearings on June 9 and 10, 2020. Following is a summary of public comments received, including testimony given during the public hearings, and corresponding agency responses.

Comment: Disability Rights Texas (DRTx) expressed concerns regarding Bilingual Education Indicator #11, Other Special Populations Indicator #6, and Special Education Indicator #8. DRTx expressed support for collection of data on students with dyslexia but expressed concern with transparency for future unintended consequences for students with dyslexia if arbitrary performance levels are set for these indicators. DRTx proposed to not include these indicators in the RDA 2020 Manual and reporting or, if TEA continues to include these indicators, that they remain "report only" in the future.

Response: TEA agrees with DRTx in its support for data collection on students with dyslexia and its desire to avoid unintended consequences for students with dyslexia via arbitrary performance levels in an RDA system or framework. However, TEA disagrees with not including these indicators in the 2020 RDA Manual and report. Following a January 11, 2018 letter of noncompliance from the Office of Special Education Programs (OSEP) and multiple stakeholder roundtable meetings where stakeholders expressed concerns regarding required Child

Find activities under the Individuals with Disabilities Education Act (IDEA) in the state specific to students with dyslexia, TEA agreed to multiple steps and actions to communicate Child Find requirements, including for students suspected to have dyslexia as a qualifying condition of a specific learning disability and in need of special education and related services. Additionally, during the 86th Texas legislature, SB 2075 amended TEC, §28.006, requiring auditing and monitoring actions by TEA regarding certain dyslexia screening and parent notification requirements. Inclusion of "report only" indicators in RDA provides local educational agencies (LEAs) with an opportunity review current performance and plan ahead and supports TEA's efforts in carrying out its monitoring requirements described in 34 Code of Federal Regulations (CFR) §300.600. TEA has included these indicators as "report only" for the 2020 RDA report, as described in the 2020 RDA Manual, consistent with all year one "new" designated indicators in order to publicly report and engage with stakeholders. TEA will continue implementing the *Guiding Principles of the RDA* found on page 3 of the 2020 RDA Manual before making decisions on these indicators of "report only" or potential performance level assignments in future RDA manuals and subsequent reports.

Comment: Texans for Special Education Reform (TxSER) expressed concern with the number of LEAs excluded in assignment of PLs within the RDA reporting system based on the minimum size requirements (MSR). TxSER requested the MSR be changed from 30 to 25 to align with the accountability rating system under 19 TAC §97.1001.

Response: TEA disagrees with making the commenter's suggested change to the 2020 RDA Manual and report based on the number of LEA exclusions. In implementing *Guiding Principles of the RDA: Principle 3: Protects Children and Families*, maximum inclusion is realized by using appropriate alternatives to analyze the performance of LEAs with small numbers of students. The MSR can be met either in the current year or through the aggregation of numerators and denominators over the most recent two years, if applicable. Furthermore, as outlined on pages 10-13 of the 2020 RDA Manual, application of a special analysis for group sizes of 15-29 occurs to ensure maximum inclusion for performance level assignments. TEA recognizes TxSER's concern for MSR alignment with the accountability rating system under 19 TAC §97.1001 and plans to engage stakeholders relevant to alignment of systems where possible in the 2020-2021 school year.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.021(b)(1), which authorizes the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, as amended by House Bill (HB) 3, and Senate Bill (SB) 2075, 86th Texas Legislature, 2019, authorizes the TEA to monitor as necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity and data integrity. Section 7.028(a) also authorizes the TEA to monitor special education programs for compliance with state and federal laws. Section 7.028 also authorizes the agency to monitor school district and charter schools through its investigative process; TEC, §12.056, as amended by HB 3, 86th Texas Legislature, 2019, which requires that a campus or program for which a charter is granted under the TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with the TEC,

Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under the TEC, §28.025; special education programs under the TEC, Chapter 29, Subchapter A; bilingual education under the TEC, Chapter 29, Subchapter B; and public school accountability under the TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, as amended by SB 11, SB 213, SB 372, HB 3, HB 1597, and HB 4170, 86th Texas Legislature, 2019, which states that a charter granted under the TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by the TEC, Title 2, or a rule adopted under the TEC, Title 2, relating to the PEIMS to the extent necessary to monitor compliance with the TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under the TEC, §28.025; special education programs under the TEC, Chapter 29, Subchapter A; bilingual education under the TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under the TEC, §37.0021; public school accountability under the TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under the TEC, §28.0213; TEC, §29.001, as amended by HB 3, 86th Texas Legislature, 2019, which authorizes the TEA to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes the TEA to meet the requirements under (1) 20 U.S.C. Section 1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the: (A) Identification of children as children with disabilities, including the identification of children as children with particular impairments; (B) Placement of children with disabilities in particular educational settings; and (C) Incidence, duration, and type of disciplinary actions taken against children with disabilities including suspensions or expulsions; or (2) 20 U.S.C. Section 1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes the TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes the TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning students with limited English proficiency; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of students identified as students of limited English proficiency who do not receive specialized instruction; TEC, §29.182, which authorizes the State Plan for Career and Technology Education to ensure the state complies with requirements for supplemental federal career and technology funding;

TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, as amended by HB 330, HB 1051, and HB 4170, 86th Texas Legislature, 2019, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.054(b-1), which authorizes the TEA to consider the effectiveness of district programs for special populations, including career and technical education programs, when determining accreditation statuses; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under the TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §§39.056, 39.057, and 39.058, which authorize the commissioner to adopt procedures relating to monitoring reviews and special accreditation investigations; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by the TEC, Chapter 39A, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under the TEC, §39.053 or §39.054, or based upon a special accreditation investigation; TEC, §39A.002, as amended by HB 4170, 86th Texas Legislature, 2019, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under the TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under the TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under the TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to the TEC, §39A.001, and, for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under the TEC, §39.054(e), or has failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under the TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under the TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with the TEC, Chapter 39A.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.021, 7.028, 12.056, 12.104, 29.001, 29.0011(b), 29.010(a), 29.062, 29.066, 29.182, 39.051, 39.052, 39.053, 39.054(b-1), 39.0541, 39.056, 39.057, 39.058, 39A.001, 39A.002, 39A.004, 39A.005, 39A.007, 39A.051, and 39A.063.

§97.1005. *Results Driven Accountability.*

(a) In accordance with Texas Education Code, §7.028(a), the purpose of the Results Driven Accountability (RDA) framework is to evaluate and report annually on the performance of school districts and charter schools for certain populations of students included in selected program areas. The performance of a school district or charter school is included on the RDA report through indicators of student performance

and program effectiveness and corresponding performance levels established by the commissioner of education.

(b) The assignment of performance levels for school districts and charter schools in the 2020 RDA report is based on specific criteria and calculations, which are described in the 2020 RDA Manual provided in this subsection.

Figure: 19 TAC §97.1005(b)

(c) The specific criteria and calculations used in the RDA framework will be established annually by the commissioner of education and communicated to all school districts and charter schools.

(d) The specific criteria and calculations used in the annual RDA manual adopted for prior school years will remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.

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

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CHAPTER 103. HEALTH AND SAFETY SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS

19 TAC §103.1209

The Texas Education Agency (TEA) adopts new §103.1209, concerning mandatory school drills. The new section is adopted with changes to the proposed text as published in the May 29, 2020 issue of the *Texas Register* (45 TexReg 3562) and will be republished. The adopted new section implements Senate Bill (SB) 11, 86th Texas Legislature, 2019, which mandated the adoption of procedures for evacuating school property and designation of the number and type of school drills.

REASONED JUSTIFICATION: Texas Education Code (TEC), Chapter 37, Subchapter D, addresses the protection of school buildings and grounds. To this subchapter, SB 11, 86th Texas Legislature, 2019, added TEC, §37.114, which mandates emergency evacuations and school drills. Adopted new §103.1209 implements the new statute by establishing requirements and definitions and by designating the frequency of mandatory school drills.

New subsection (a) requires school districts and open-enrollment charter schools to conduct emergency safety drills. This requirement helps school districts and open-enrollment charter schools practice critical drills to keep students, staff, and visitors safe during an actual emergency.

Adopted new subsection (b) defines the drills that school districts and open-enrollment charter schools are required to conduct every school year. Due to nuanced differences between the drills,

it is important to define the different types of drills and the situations that trigger the drills.

In response to public comment, subsection (b) was modified at adoption. The definitions for "secure (lockout)" and "lockdown" were clarified to specify that secure (lockout) is intended to secure the perimeter of school buildings and grounds to deny entry, and lockdown is intended to secure interior portions of school buildings and grounds.

Also in response to public comment, references to the "hold" drill requirement were removed from subsections (b) and (c) at adoption.

Adopted new subsection (c) identifies the minimum frequency with which each drill must be conducted during the academic school year. This provides school districts and open-enrollment charter schools with the guidance needed on the number of drills to be conducted in one school year.

In response to public comment, subsection (c) was modified at adoption to refer to the maximum number of drills specified in TEC, §37.114(2).

Also in response to public comment, subsection (c)(6) was modified at adoption to increase the frequency of fire evacuation drills to four per school year or two per semester, and additional language was added to specify that school districts and open-enrollment charter schools should consult their local fire marshal and comply with any requirements and recommendations.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 29, 2020, and ended July 13, 2020. Following is a summary of public comments received and corresponding agency responses.

Comment: A school district employee questioned how the rule has no data or reporting impact and asked if the required drills would need to be reported in the state safety and security audits required under TEC, §37.108.

Response: The agency provides the following clarification. Section 103.1209 does not require any reporting or data collection. However, TEC, §37.108, requires multiple emergency management items to be reported to the Texas School Safety Center (TxSSC) as part of the school safety audit process, including the number of drills conducted.

Comment: A school district employee expressed concerns with how the terms "lockout" and "lockdown" are defined. The commenter stated that both definitions reference securing the "grounds," but that, in practice and for reasons of safety, these actions should not indicate that the grounds need to be secured.

Response: The agency disagrees with removing reference to school grounds because any students and staff out of doors on school grounds would also need to be secured, depending on the context and location of the threat. However, language has been added at adoption to the definitions of "secure (lockout)" and "lockdown" to differentiate between perimeter security and interior security.

Comment: A school district employee commented that the rule should not list a bomb threat as an example of when an evacuation should always be used.

Response: The agency disagrees with removing bomb threat as an example of when an evacuation may need to occur. Any threat, including a bomb threat, would need to be evaluated prior to making a decision to evacuate the school facility.

Comment: Two local fire marshals, the State of Texas Fire Marshal, and two school district employees commented that limiting the maximum number of total drills per year to eight and only having one fire drill per year is too infrequent. The State of Texas Fire Marshal additionally commented that the number of fire drills should be two per semester for a total of four per year.

Response: The agency agrees. Subsection (c) was modified at adoption to specify that the number of general drills listed in the rule is a minimum requirement rather than a maximum. In addition, the number of fire drills was increased at adoption to two per semester for a total of four fire drills per school year.

Comment: One school district emergency manager stated that the reduction of fire drills to one time per year will eliminate drill fatigue and encourage drill participation in other remaining emergency drills.

Response: The agency agrees that a reduction of fire drills could relieve drill fatigue. However, in response to other comments, the number of fire drills was increased at adoption to two per semester for a total of four fire drills per school year.

Comment: Texas State Teachers Association commented that the recommended frequency and type of mandatory school drills exceeds the legislative intent and makes recommendations that are unnecessary and not in the best interest of students.

Response: The agency agrees in part and disagrees in part. TEC, §37.114, states that the number of drills the agency lists in its rule cannot exceed eight per semester, which amounts to sixteen per school year. The new rule has been modified at adoption to remove the "hold" drill requirement, but the remaining drills listed in the rule fall within the parameters set forth in TEC, §37.114.

Comment: The Texas-American Federation of Teachers commented that the rule needs to take into consideration the psychological toll on students during and after the drills, particularly the lockdown and lockout drills, and recommended related best practices and supports. Additionally, the commenter stated that several charter schools, with appointed boards, do not have these mandatory safety plans and recommended that TEA staff audit or require charters to submit their actual plans to TEA.

Response: The agency disagrees. TEC, §37.114, does not authorize the agency to require schools to provide additional education for staff, students, and parents prior to and after the drills. In addition, the statute does not authorize the agency to mandate that schools provide counselors during drills, nor does the statute authorize the agency to audit schools' safety plans or require schools to submit their plans to TEA. However, TEC, §37.108, does require schools to conduct audits and submit their emergency operations plans to the TxSSC. Finally, although the best practices and supports referenced by the commenter fall outside the scope of this rule, the agency may issue guidance on this topic in the future.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code, §37.114, as added by Senate Bill 11, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules regarding emergency evacuations and drills, in consultation with the state fire marshal and Texas School Safety Center.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §37.114, as added by Senate Bill 11, 86th Texas Legislature, 2019.

§103.1209. *Mandatory School Drills.*

(a) Requirement. Each school district and open-enrollment charter school shall conduct emergency safety drills in accordance with Texas Education Code (TEC), §37.114.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Drill--A set of procedures that test a single, specific operation or function. Drill examples include evacuating for a fire or locking down from an internal threat.

(2) Secure (Lockout)--A response action schools take to secure the perimeter of school buildings and grounds during incidents that pose a threat or hazard outside of the school building. Secure (Lockout) uses the security of the physical facility to act as protection to deny entry.

(3) Lockdown--A response action schools take to secure interior portions of school buildings and grounds during incidents that pose an immediate threat of violence inside the school. The primary objective is to quickly ensure all school students, staff, and visitors are secured away from immediate danger.

(4) Evacuate--A response action schools take to quickly move students and staff from one place to another. The primary objective of an evacuation is to ensure that all staff, students, and visitors can quickly move away from the threat. Evacuation examples include a bomb threat or internal gas leak.

(5) Shelter-in-place for hazmat--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. Affected individuals may be required to move to rooms without windows or to rooms that can be sealed. Shelter-in-place for hazmat examples include train derailment with chemical release or smoke from a nearby fire.

(6) Shelter for severe weather--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. For severe weather, depending on the type and/or threat level (watch versus warning), affected individuals may be required to move to rooms without windows on the lowest floor possible or to a weather shelter.

(7) Fire evacuation drill--A method of practicing how a building would be vacated in the event of a fire. The purpose of fire drills in buildings is to ensure that everyone knows how to exit safely as quickly as possible.

(c) Frequency. TEC, §37.114(2), requires the commissioner of education to designate the number of mandatory school drills to be conducted each semester of the school year, not to exceed eight drills each semester and sixteen drills for the entire school year. Neither this rule, nor the law, precludes a school district or an open-enrollment charter school from conducting more drills as deemed necessary and appropriate by the district or charter school. Following is the required minimum frequency of drills by type.

- (1) Secure (Lockout)--One per school year.
- (2) Lockdown--Two per school year or once per semester.
- (3) Evacuate--One per school year.
- (4) Shelter-in-place for hazmat--One per school year.
- (5) Shelter for severe weather--One per school year.

(6) Fire evacuation drill-- Four per school year or two per semester. In addition, school districts and open-enrollment charter schools should consult with their local fire marshal and comply with their local fire marshal's requirements and recommendations.

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 August 17, 2020.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

19 TAC §109.1001

The Texas Education Agency (TEA) adopts an amendment to §109.1001, concerning financial accountability. The amendment is adopted without changes to the proposed text as published in the April 24, 2020 issue of the *Texas Register* (45 TexReg 2633) and will not be republished. The adopted amendment updates financial accountability rating information and rating worksheets for school districts and open-enrollment charter schools.

REASONED JUSTIFICATION: Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that TEA will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district or an open-enrollment charter school is to report to parents and taxpayers in the district.

The adopted amendment clarifies the financial accountability rating indicators terminology used to determine each school district's rating for the 2019-2020 rating year and subsequent years by revising the ratings worksheet calculations in §109.1001(e)(4), (e)(5), (f)(4), and (f)(5). The adopted worksheets, dated April 2020, differ from the worksheets dated June 2019 as follows.

Figure: 19 TAC §109.1001(e)(4)

Indicator 4 was revised to correct misspelled terminology used in the calculation worksheets.

Indicators 5 and 8 were revised to clarify terminology that aligns with the calculation used to score the indicator when student membership increases.

The determination of school district rating chart in the worksheet was revised to update reference to Texas Education Code (TEC),

Chapter 49, instead of Chapter 41, as that chapter was transferred and redesignated by House Bill (HB) 3, 86th Texas Legislature, 2019.

Figure: 19 TAC §109.1001(e)(5)

Indicator 4 was revised to correct misspelled terminology used in the calculation worksheets.

Indicators 5 and 11 was revised to clarify terminology that aligns with the calculation used to score the indicator when student membership increases.

Indicator 6 was revised to correct misspelled terminology used in the calculation worksheets.

Indicators 15 and 19 were revised to correct misspelled terminology used in the worksheets and calculation graphics.

The determination of points chart in the worksheet was revised to correct misspelled terminology for indicator 15.

The determination of school district rating chart in the worksheet was revised to update reference to TEC, Chapter 49, instead of Chapter 41, as that chapter was transferred and redesignated by HB 3, 86th Texas Legislature, 2019.

Figure: 19 TAC §109.1001(f)(4)

Indicator 4 was revised to correct misspelled terminology used in the calculation worksheets.

Indicators 5 and 8 were revised to clarify terminology that aligns with the calculation used to score the indicator when student membership increases.

Figure: 19 TAC §109.1001(f)(5)

Indicator 4 was revised to correct misspelled terminology used in the calculation worksheets.

Indicators 5 and 11 were revised to clarify terminology that aligns with the calculation used to score the indicator when student membership increases.

Indicator 20 was revised to correct misspelled terminology used in the calculation worksheets.

The adopted amendment updates statutory references in subsections (i) and (k).

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 24, 2020 and ended June 8, 2020. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.104, which subjects open-enrollment charter schools to the prohibitions, restrictions, or requirements relating to public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and TEC, Chapter 39A; TEC, §39.082, which requires the commissioner to develop and implement a financial accountability rating system for public schools and establishes certain minimum requirements for the system, including an appeals process; TEC, §39.083, which requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report; TEC, §39.085, which requires the commissioner to adopt rules to implement TEC, Chapter 39, Subchapter D, which addresses financial accountability for public schools; and TEC, §39.151, which requires the commissioner to provide a process by which a district or charter school can challenge an agency decision related to academic

or financial accountability under TEC, Chapter 39. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules, which implement each requirement of statute applicable to districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.104, 39.082, 39.083, 39.085, and 39.151.

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

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Texas Education Agency

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



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.65

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.65, Responsibilities and Operations of Providers of Qualifying Courses, in Chapter 535, General Provisions, with non-substantive changes made to the text to correspond with *Texas Register* style, as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3989) and will be republished.

The amendments to §535.65 correct a reference within the rule to include the appropriate subsection.

The amendments were recommended by the Education Standards Advisory Committee.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

§535.65. *Responsibilities and Operations of Providers of Qualifying Courses.*

(a) Responsibility of Providers.

(1) A provider is responsible for:

(A) the administration of each course, including, but not limited to, compliance with any prescribed period of time for any required course topics required by the Act, Chapter 1102, and Commission rules;

(B) maintaining student attendance records and pre-enrollment agreements;

(C) verifying instructor qualification, performance and attendance;

(D) proper examination administration;

(E) validation of student identity acceptable to the Commission;

(F) maintaining student course completion records;

(G) ensuring all advertising complies with subsection (c) of this section;

(H) ensuring that instructors or other persons do not recruit or solicit prospective sales agents, brokers or inspectors during course presentation; and

(I) ensuring staff is reasonably available for public inquiry and assistance.

(2) A provider may not promote the sale of goods or services during the presentation of a course.

(3) A provider may remove a student and not award credit if a student does not participate in class, or disrupts the orderly conduct of a class, after being warned by the provider or the instructor.

(4) If a provider approved by the Commission does not maintain a fixed office in Texas for the duration of the provider's approval to offer courses, the provider shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas that the provider is required to maintain by this section. A power-of-attorney designating the resident must be filed with the Commission in a form acceptable to the Commission.

(b) Use of Qualified Instructor.

(1) Except as provided by this subsection, a provider must use an instructor that is currently qualified under §535.63 of this subchapter (relating to Qualifications for Instructors of Qualifying Courses) to teach the specified course.

(2) Each instructor shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor.

(3) A provider shall require specialized training or work experience for instructors teaching specialized subjects such as law, appraisal, investments, taxation or home inspection.

(4) An instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval.

(5) A provider may use the services of a guest instructor who does not meet the instructor qualifications under §535.63 of this subchapter for qualifying real estate or inspector courses provided that person instructs for no more than 10% of the total course time.

(c) Advertising.

(1) The following practices are prohibited:

(A) using any advertising which does not clearly and conspicuously contain the provider's name on the first page or screen of the advertising;

(B) representing that the provider's program is the only vehicle by which a person may satisfy educational requirements;

(C) conveying a false impression of the provider's size, superiority, importance, location, equipment or facilities, except that a provider may use objective information published by the Commission regarding pass rates if the provider also displays next to the passage rate in a readily noticeable fashion:

(i) A hyperlink to the Commission website's Education Provider Exam Passage Rate page labeled "TREC Provider Exam Pass Rates" for digital media; or

(ii) A URL to the Commission website's Education Provider Exam Passage Rate page labeled "TREC Provider Exam Pass Rates" for non-digital media;

(D) promoting the provider directly or indirectly as a job placement agency, unless the provider is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program;

(E) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression;

(F) advertising a course under a course name other than the course name approved by the Commission; or

(G) advertising using a name that implies the course provider is the Texas Real Estate Commission, including use of the acronym "TREC", in all or part of the course provider's name.

(2) Any written advertisement by a provider that includes a fee that the provider charges for a course must display any additional fees that the provider charges for the course in the same place in the advertisement and with the same degree of prominence.

(3) The provider shall advertise a course for the full clock hours of time for which credit is awarded.

(4) The provider is responsible for and subject to sanctions for any violation of this subsection by any affiliate or other third party marketer or web hosting site associated with or used by the provider.

(d) Pre-enrollment agreements for approved providers.

(1) Prior to a student enrolling in a course, a provider approved by the Commission shall provide the student with a pre-enrollment agreement that includes all of the following information:

(A) the tuition for the course;

(B) an itemized list of any fees charged by the provider for supplies, materials, or books needed in course work;

(C) the provider's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily;

(D) the attendance requirements;

(E) the acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions;

(F) the procedure and fees, if applicable, associated with exam proctoring;

(G) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits; and

(H) the notices regarding potential ineligibility for a license based on criminal history required by Section 53.152, Texas Occupations Code.

(2) A pre-enrollment agreement must be signed by a representative of the provider and the student.

(e) Refund of fees by approved provider.

(1) A provider shall establish written policies governing refunds and contingency plans in the event of course cancellation.

(2) If a provider approved by the Commission cancels a course, the provider shall:

(A) fully refund all fees collected from students within a reasonable time; or

(B) at the student's option, credit the student for another course.

(3) The provider shall inform the Commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(4) If a provider fails to give the notice required by subsection (d)(1)(H) of this section, and an individual's application for a license is denied by the Commission because the individual has been convicted of a criminal offense, the provider shall reimburse the individual the amounts required by Section 53.153, Texas Occupations Code.

(f) Course materials.

(1) Before the course starts, a provider shall give each student copies of or, if a student has online access, provide online access to any materials to be used for the course.

(2) A provider shall update course materials to ensure that current and accurate information is provided to students as provided for under §535.62 of this subchapter (relating to Approval of Qualifying Courses).

(g) Presentation of courses.

(1) Classroom Delivery:

(A) The location for the course must be:

(i) conducive to instruction, such as a classroom, training room, conference room, or assembly hall that is separate and apart from work areas;

(ii) adequate for the class size;

(iii) pose no threat to the health or safety of students; and

(iv) allow the instructor to see and hear each student and the students to see and hear the instructor, including when offered through the use of technology.

(B) The provider must:

(i) check the photo identification of each student at class sign up and when signing in for each subsequent meeting of the class;

(ii) ensure the student is present for the course for the hours of time for which credit is awarded;

(iii) provide a 10 minute break per hour at least every two hours; and

(iv) not have daily course segments that exceed 12 hours.

(C) If the course is a qualifying or non-elective continuing education course delivered through the use of technology and there are more than 20 students registered for the course, the provider will also use:

(i) a monitor at the broadcast origination site to verify identification of each student, monitor active participation of each student and facilitate questions for the instructor; and

(ii) a proctor at each remote site with more than 20 students to verify identification of each student, monitor active participation of each student and proctor any on-site examination.

(D) Makeup Session for Classroom Courses.

(i) A provider may permit a student who attends at least two-thirds of an originally scheduled qualifying course to complete a makeup session to satisfy attendance requirements.

(ii) A member of the provider's staff must approve the makeup procedure to be followed. Acceptable makeup procedures are:

(I) attendance in corresponding class sessions in a subsequent offering of the same course; or

(II) the supervised presentation by audio or video recording of the class sessions actually missed.

(iii) A student shall complete all class makeup sessions no later than the 90th day after the date of the completion of the original course.

(iv) A student who attends less than two-thirds of the originally scheduled qualifying course is not eligible to complete a makeup session. The student shall automatically be dropped from the course with no credit.

(2) Distance Education Delivery. The provider must ensure that:

(A) the student taking all topics of the course and completing all quizzes and exercises is the student receiving credit for the course through a student identity verification process acceptable to the Commission;

(B) a qualified instructor is available to answer students' questions or provide assistance as necessary in a timely manner;

(C) a student has completed all instructional modules and attended any hours of live instruction required for a given course; and

(D) a qualified instructor is responsible for providing answers and rationale for the grading of the written course work.

(3) A provider is not required to present topics in the order outlined for a course on the corresponding course approval form.

(4) The periods of time prescribed to each unit of a topic for a qualifying course as outlined on the corresponding course approval form are recommendations and may be altered to allow instructors flexibility to meet the particular needs of their students.

(h) Course examinations.

(1) The final examination given at the end of each course must be given in the manner submitted to and approved by the Commission. All final examinations must be closed book.

(2) Final examination questions must be kept confidential and be significantly different from any quiz questions and exercises used in the course.

(3) A provider shall not permit a student to view or take a final examination before the completion of regular course work and any makeup sessions required by this section.

(4) A provider must rotate all versions of the examination required by §535.62(b)(7) of this subchapter throughout the approval period for a course in a manner acceptable to the Commission and examinations must:

(A) require an unweighted passing score of 70%; and

(B) be proctored by a member of the provider faculty or staff, or third party proctor acceptable to the Commission, who:

(i) is present at the test site or able to monitor the student through the use of technology acceptable to the Commission; and

(ii) has positively identified that the student taking the examination is the student registered for and who took the course.

(5) The following are examples of acceptable third party proctors:

(A) employees at official testing or learning/tutoring centers;

(B) librarians at a school, university, or public library;

(C) college or university administrators, faculty, or academic advisors;

(D) clergy who are affiliated with a specific temple, synagogue, mosque, or church; and

(E) educational officers of a military installation or correctional facility.

(6) A provider may not give credit to a student who fails a final examination and a subsequent final examination as provided for in subsection (i) of this section.

(i) Subsequent final course examination.

(1) If a student fails a final course examination, a provider may permit the student to take a subsequent final examination only after the student has completed any additional course work prescribed by the provider.

(2) A student shall complete the subsequent final examination no later than the 90th day after the date the original class concludes. The subsequent final examination must be a different version of the original final examination given to the student and must comply with §535.62(b)(1)(G) of this subchapter and subsection (h) of this section.

(3) If a student fails to timely complete the subsequent final examination as required by this subsection, the student shall be automatically dropped from the course with no credit.

(4) A student who fails the final course examination a second time is required to retake the course and the final course examination.

(j) Course completion certificate.

(1) Upon successful completion of a qualifying course, a provider shall issue a course completion certificate that a student can submit to the Commission. The course completion certificate shall show:

(A) the provider's name and approval number;

(B) the instructor's name;

(C) the course title;

(D) course numbers;

(E) the number of classroom credit hours;

(F) the course delivery method;

(G) the dates the student began and completed the course; and

(H) printed name and signature of an official of the provider on record with the Commission.

(2) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(3) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(k) Instructor and course evaluations.

(1) A provider shall provide each student enrolled in a course with an instructor and course evaluation form and provide a link to an online version of the form that a student can complete and submit any time after course completion.

(2) An instructor may not be present when a student is completing the evaluation form and may not be involved in any manner with the evaluation process.

(3) When evaluating an instructor or course, a provider shall use all of the questions from the evaluation form approved by the Commission, in the same order as listed on that form. A provider may add additional questions to the end of the Commission evaluation questions or request the students to also complete the provider's evaluation form.

(4) A provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(5) At the Commission's request, a provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(l) Maintenance of records for a provider of qualifying courses.

(1) A provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) A provider shall maintain financial records sufficient to reflect at any time the financial condition of the school.

(3) A school's financial statement and balance sheets must be available for audit by Commission staff, and the Commission may require presentation of financial statements or other financial records.

(4) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(m) Changes in Ownership or Operation of an approved provider of qualifying courses.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operations of the provider by submitting the Qualifying Education

Provider Supplement Application, including but not limited to changes in:

(A) Operations or records management; and

(B) the location of main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide all of the following information or documents to the Commission:

(A) an Education Provider Application reflecting all required information for each owner and the required fee;

(B) a Principal Information Form for each proposed new owner who holds at least 10% interest in the school;

(C) financial documents to satisfy standards imposed by §535.61 of this subchapter (relating to Approval of Providers of Qualifying Courses), including a \$20,000 surety bond for the proposed new owner; and

(D) business documentation reflecting the change.

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 August 11, 2020.

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.208, 535.209, 535.212 - 535.214

The Texas Real Estate Commission (TREC) adopts amendments to §535.208, Application for a License; §535.209, Examinations; §535.212, Education and Experience Requirements for a License; §535.213, Qualifying Real Estate Inspector and Courses; and new §535.214, Education and Experience Requirements for a License, in Subchapter R of Chapter 535, General Provisions, with the below-described changes to the proposed text, as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3990). The rules will be republished.

The amendments to §535.208 eliminate an obsolete requirement for an applicant for an apprentice inspector license to provide a photo to the Commission prior to issuance of a license. The amendments also eliminate certain requirements and waivers for Military Service Members, Veterans, or Military Spouses that are now addressed under §535.58.

The amendments to §535.209 move the one-year period for exam results to remain valid to a new subsection and create certain eligibility and course requirements for candidates in order to be able to take the state portion of the real estate inspector exam. Replaces specific hourly course requirements for someone who fails the exam three times with specific inspector modules addressed in the amendments to §535.213.

The amendments also allow for an out of state inspector who has already passed the national portion of the licensing exam to simply take the state portion of the exam after completion of certain Texas specific coursework.

The amendments to §535.212 specifies the timeframe for education submitted under this rule is valid.

The amendments to §535.213 provide a transition period for which education completed under the current requirements will be accepted. The amendments lay out in detail the topics that must be covered in the new module courses, and the in-person Texas Practicum. The amendments detail the required qualifications for an individual to supervise the Texas Practicum. The amendments also establish a Commission audit processes related to the Texas Practicum credit request form.

New §535.214 establishes the education and experience requirements for a real estate inspector license after March 1, 2021. The new rule maintains the education and number of inspections currently required under the sponsorship pathway to licensure. The rule also details the substitute experience required for education in obtaining an inspector license based on the modules and practicum in §535.213.

The amendments and new rule were recommended by the Texas Real Estate Inspector Committee.

Two comments were received regarding §535.208 and §535.209 and one comment was received regarding §§535.212 - 535.214. One commenter requested some formatting changes to §535.208 and §535.209, which the Texas Real Estate Inspector Committee incorporated at its July 2020 meeting. The other commenter requested the rules be amended because he believed inspectors' ability to take coursework would be limited, inspectors would be penalized and require double coursework, and that there was unnecessary duplication in hours required and conflict with the agency's Sunset Review. The Texas Real Estate Inspector Committee declined to make additional changes in response to the second commenter after it reviewed these comments. Contrary to the commenter's assessment of the rules limiting opportunity for inspectors, the Committee believes the reduction in the overall education hours is to the benefit to the inspector industry and the consistency gained with transitioning to the proposed modules system is to the benefit to both inspectors and the consumers of Texas. The Committee believes that the proposed language is in compliance with the directives of the with the agency's recent Sunset Review.

The amendments and new rule were submitted to the Governor's Office of Regulatory Compliance in accordance with Chapter 57 of the Texas Occupations Code. The Governor's Office of Regulatory Compliance requested clarification of certain language in the revised rules. These clarifications were brought to the Texas Real Estate Inspector Committee who subsequently made modifications to the rules. Changes included renaming required courses and correcting subsection references under §535.209, adding back in language previously struck during the initial review of § 535.213 relating to 200 hours of experience credit, and adding experience requirement language to §535.214. The Regulatory Compliance Division issued its final determination letter on August 6, 2020, providing final approval for the Commission to move forward with adoption of these rules.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics

for its license holders to fulfill the purposes of Chapters 1101 and 1102.

§535.208. *Application for a License.*

(a) Application.

(1) A person who intends to be licensed by the Commission must file an application for the license:

(A) through the online process approved by the Commission; or

(B) on a form approved by the Commission for that purpose; and

(C) submit the required fee under §535.210 of this title (relating to Fees).

(2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) General Requirements for Licensure.

(1) To be eligible for any inspector license, an applicant must:

(A) meet the following requirements at the time of the application:

(i) be 18 years of age;

(ii) be a citizen of the United States or a lawfully admitted alien;

(B) comply with the fingerprinting, education, experience and examination requirements of the Act, Chapter 1102, or the rules of the Commission;

(C) meet the honesty, trustworthiness, and integrity requirements under the Act; and

(D) provide proof of financial responsibility as required by Chapter 1102.

(2) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.

(c) License for military service members, veterans, or military spouses. Unless otherwise excepted under §535.58 of this title (relating to License for Military Service Members, Veterans, or Military Spouses), an applicant who is a military service member, veteran, or the spouse of a person who is on full-time military service in the armed forces of the United States or serving on active duty as a member of the armed forces of the United States must meet all requirements of this section.

(d) Terminated application. An application will be terminated and subject to no further evaluation or processing if the applicant fails to satisfy the requirements of subsection (b)(1) of this section within one year from the date the application is filed.

(e) Denial of application.

(1) An application for a license may be denied if the Commission determines that the applicant has failed to satisfy the Commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines). Notice of the denial and any hearing on the denial shall be as provided in Texas Occupations Code,

§1101.364, and §535.34 of this title (relating to Salesperson Employed by an Owner of Land and Structures Erected by the Owner).

(2) Procuring or attempting to procure a license by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application is grounds to deny the application or suspend or revoke the license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the Commission in an application for a license for an apprentice or a real estate inspector.

§535.209. *Examinations.*

(a) Examinations for licensure.

(1) The examination for a real estate inspector license and for a professional inspector license consists of a national part and a state part.

(2) The Commission adopts the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors for the national portion of the examination. For the state portion of the examination, questions shall be used which measure competency in the subject areas required for a license by Chapter 1102, and which demonstrate an awareness of its provisions relating to inspectors.

(3) Each real estate inspector applicant must achieve a score of at least 70% on the state portion of the examination. Each professional inspector applicant must achieve a score of at least 75% on the state portion of the examination. Examination results are valid for a period of one year from the date the examination is passed.

(b) Administration of examination. Except as otherwise required by Chapter 1102 or this section, examinations shall be conducted as provided by §535.57 of this title (relating to Examinations). An applicant is eligible to take a qualifying examination for a license after the Commission has received evidence of completion of all education and experience required by this subchapter.

(c) Waiver of national portion of examination requirement. The Commission may waive the national portion of the examination of an applicant for a real estate or professional inspector license if the applicant:

(1) currently holds an active real estate inspector license in another state or actively practices as a home inspector in compliance with the laws of another state; and

(2) has passed the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors.

(d) If the applicant has not satisfied all requirements within one year from the time the commission accepted an application for filing, including passing both parts of the examination, the application is terminated and a new application is required.

(e) An examination is considered passed when an applicant has received a passing grade on both parts of the examination.

(f) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the commission that the applicant has completed additional core education as follows, after the date the applicant failed the examination for the third time:

(1) for an applicant who failed the national part of the examination, 32 hours;

(2) for an applicant who failed the state part of the examination, 8 hours; and

(3) for an applicant who failed both parts of the examination, 40 hours.

(g) Subsections (c) through (f) of this section expire on February 28, 2021.

(h) Exam Eligibility Effective March 1, 2021. The following eligibility requirements apply to applicant who takes the examination for licensure on or after March 1, 2021:

(1) Before the applicant is eligible to take the national portion of the examination the applicant must submit evidence of completion of the following courses to the Commission:

- (A) Property and Building Inspection Module I;
- (B) Property and Building Inspection Module II;
- (C) Business Operations and Professional Responsibilities Module; and

(D) Analysis of Findings and Reporting Module, if required for licensure under §535.214 of this title (relating to Education and Experience Requirements for Licensure).

(2) Before the applicant is eligible to take the state portion of the examination, the applicant must submit evidence of completion of the following coursework to the Commission, if required for licensure under §535.214 of this title:

- (A) Texas Law Module;
- (B) Texas Standards of Practice Module; and
- (C) Texas Practicum.

(3) If the applicant has previously passed the national portion of the examination, before the applicant is eligible to take the state portion of the examination, the applicant:

(A) must submit evidence of completion of the required coursework as provided under this subsection (h)(2) of this section; and

(B) is not required to complete coursework outlined under subsection (h)(1) of this section.

(4) If the applicant fails the examination three consecutive times, the applicant may not apply for reexamination or submit a new license application unless the applicant submits evidence to the Commission that the applicant has successfully completed additional qualifying education after the date of the third failed examination, as follows:

(A) for an applicant who failed the national part of the examination, Property and Building Inspection Module I or Property and Building Inspection Module II; or

(B) for an applicant who failed the state part of the examination, Texas Law Module, or Texas Standards of Practice Module.

(5) If if the applicant chooses to take the national portion and state portion of the exam separately, the national portion must be taken before the state portion of the exam.

§535.212. *Education and Experience Requirements for a License.*

(a) Educational Requirements for a Real Estate Inspector License. To become licensed as a real estate inspector a person must satisfy the 90-hour education requirement for licensure by completing the following coursework:

- (1) 10 hours in foundations;
- (2) 8 hours in framing;
- (3) 10 hours in building enclosure;

(4) 10 hours in roof systems;

(5) 8 hours in plumbing systems;

(6) 10 hours in electrical systems;

(7) 10 hours in heating, ventilation, and air conditioning systems;

(8) 8 hours in appliances;

(9) 4 hours in Texas Standards of Practice;

(10) 4 hours in Texas Standard Report Form/Report Writing; and

(11) 8 hours in Texas Legal/Ethics.

(b) Educational Requirements for a Professional Inspector License. To become licensed as a professional inspector, a person must satisfy the 130-hour education requirement for licensure by completing the courses required for licensure as a real estate inspector in subsection (a) of this section; and

(1) 8 additional hours in Texas Standard Report Form/Report Writing;

(2) 8 additional hours in non-elective coursework in legal, ethics, SOPs, and report writing as defined in §535.218 of this title (relating to Continuing Education Required for Renewal); and

(3) 8 additional hours in Texas Standard Report Form/Report Writing;

(c) Experience Requirements. To meet the experience requirements for licensure or to sponsor apprentice inspectors or real estate inspectors, the Commission considers an improvement to real property to be any unit capable of being separately rented, leased or sold, subject to the following restrictions:

(1) An inspection of an improvement to real property that includes the structural and equipment/systems of the unit constitutes a single inspection.

(2) The Commission may not give experience credit to the same applicant or professional inspector for more than three inspections per day. No more than three applicants may receive credit for the inspection of the same unit within a 30 day period, and no more than three apprentice inspectors may receive credit for an inspection of the same unit on the same day.

(3) An applicant for a real estate inspector license must have:

(A) been licensed as an apprentice inspector on active status for a total of at least three months within the 12 month period before the filing of the application; and

(B) completed 25 inspections.

(4) An applicant for a professional inspector license must have:

(A) been licensed as a real estate inspector on active status for a total of at least 12 months within the 24 month period before the filing of the application; and

(B) completed 175 inspections.

(d) Substitute Experience Requirements for a Real Estate Inspector License.

(1) A person may satisfy the substitute experience requirements for licensure as a real estate inspector as follows:

(A) complete a total of 32 additional hours of qualifying inspection coursework, which must include the following:

(i) 8 hours in Texas Standard Report Form/Report Writing;

(ii) 8 hours in non-elective coursework in legal, ethics, SOPs, and report writing as defined in §535.218 of this title;

(iii) 16 hours in any qualifying inspection subject(s); and

(B) complete:

(i) 20 hours of field work through ride-along inspection course sessions as defined in §535.213(g) of this title (relating to Qualifying Real Estate Inspector Instructors and Courses); and

(ii) 12 hours of an approved interactive experience training module.

(2) Exceptions. The Commission may award substitute experience credit to an applicant who has not met the additional qualifying course requirements under this subsection if:

(A) the applicant:

(i) has three years of experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property; and

(ii) provides to the Commission two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience; or

(B) The applicant:

(i) has at least two years of experience as an active practicing licensed or registered architect, professional engineer, or engineer-in-training and has completed 16 additional hours of qualifying inspection coursework, which must include the following:

(I) 8 hours in Texas Standard Report Form/Report Writing; and

(II) 8 hours in non-elective coursework in legal, ethics, SOPs, and report writing as defined in §535.218 of this title; and

(ii) submits a license history from the regulatory agency that issued the license or registration documenting the period of practice as a licensed or registered architect, professional engineer, or engineer-in-training.

(e) Substitute Experience Requirements for a Professional Inspector License.

(1) A person may satisfy the substitute experience requirements for licensure as a professional inspector as follows:

(A) complete a total of 200 additional hours of qualifying inspection coursework, which must include the following:

(i) 30 hours in foundations;

(ii) 30 hours in framing;

(iii) 24 hours in building enclosure;

(iv) 24 hours in roof systems;

(v) 16 hours in plumbing systems;

(vi) 24 hours in electrical systems;

(vii) 24 hours in heating, ventilation, and air conditioning systems;

(viii) 6 hours in appliances;

(ix) 8 hours in non-elective coursework in legal, ethics, SOPs, and report writing as defined in §535.218 of this title;

(x) 8 hours in Standard Report Form/Report writing; and

(xi) 6 hours in any core inspection subject(s); and

(B) complete:

(i) 40 hours of field work through ride-along inspection course sessions as defined in §535.213(g) of this title; and

(ii) 24 hours of an approved interactive experience training module.

(2) Exceptions. The Commission may award substitute experience credit to an applicant who has not met the additional qualifying course requirements under this subsection if:

(A) the applicant:

(i) has five years of experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property; and

(ii) provides to the Commission two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience; or

(B) The applicant has:

(i) at least three years of experience as an active practicing licensed or registered architect, professional engineer, or engineer-in-training, who has completed a total of 16 additional hours of qualifying inspection coursework, which must include the following:

(I) 8 hours in Texas Standard Report Form/Report Writing; and

(II) 8 hours in non-elective coursework in legal, ethics, SOPs, and report writing as defined in §535.218 of this title; and

(ii) submits a license history from the regulatory agency that issued the license or registration documenting the period of practice as a licensed or registered architect, professional engineer, or engineer-in-training.

(f) For purposes of this section:

(1) "qualifying inspection coursework" means course work on the subject matters listed in §535.213(e) of this title; and

(2) "interactive experience training module" means education that provides regular and substantive interaction between the students and the instructor, either synchronously or asynchronously, and is delivered:

(A) in-person to students in the classroom; or

(B) through the use of one or more of the following technologies:

(i) the internet;

(ii) one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite or wireless communications devices;

(iii) audio conferencing; or

(iv) video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in clauses (i) through (iii) of this subparagraph.

(g) Education submitted under this section will only be accepted to satisfy the requirements for licensure if started before March 1, 2021 and completed and submitted in conjunction with an application filed by June 30, 2021.

§535.213. *Qualifying Real Estate Inspector Instructors and Courses.*

(a) Subsections (a) - (f) of this section shall expire on February 28, 2021, and only apply to satisfy the education requirements for a license under §535.212 of this title (relating to Education and Experience Requirements for a License).

(b) Approval of Inspector Qualifying Courses. Inspector qualifying courses are approved and regulated as required by §535.62 of this title (relating to Approval of Qualifying Courses).

(c) A classroom course may include up to 50% of total course time for appropriate field trips relevant to the course topic. Field trips may not be included as part of distance education delivery courses.

(d) A course approved to satisfy a specific subject matter requirement under §535.212 of this title must address each part of the subject as described by this section.

(e) Approved Qualifying Courses of Study. The subjects approved for credit for qualifying inspector courses are those courses prescribed by §1102.001(5), Texas Occupations Code and the following:

(1) Foundations, which shall include the following topics:

- (A) site analysis/location;
- (B) grading;
- (C) foundations;
- (D) flat work;
- (E) material;
- (F) foundation walls;
- (G) foundation drainage;
- (H) foundation waterproofing and damp proofing;
- (I) columns; and
- (J) under floor space.

(2) Framing, which shall include the following topics:

- (A) flashing;
- (B) wood frame - stick/balloon;
- (C) roof structure - rafters/trusses;
- (D) floor structure;
- (E) porches/decks/steps/landings/balconies;
- (F) doors;
- (G) ceilings;
- (H) interior walls;
- (I) stairways;
- (J) guardrails/handrails/balusters;
- (K) fireplace/chimney;
- (L) sills/columns/beams/joist/sub-flooring;

- (M) wall systems/structure - headers;
- (N) rammed earth;
- (O) straw bale;
- (P) ICF;
- (Q) panelized;
- (R) masonry;
- (S) wood I joist;
- (T) roof sheathing;
- (U) wood wall;
- (V) steel wall;
- (W) wood structural panel; and
- (X) conventional concrete.

(3) Building Enclosure, which shall include the following topics:

- (A) review of foundation and roofing relation;
- (B) review of flashing;
- (C) cladding;
- (D) windows/glazing;
- (E) weather barriers;
- (F) vapor barriers;
- (G) insulation;
- (H) energy codes; and
- (I) ingress/egress.

(4) Roof Systems, which shall include the following topics:

- (A) review - rafters, roof joist, ceiling joist, collar ties, knee walls, purling, trusses, wood I joist, roof sheathing, steel framing;
- (B) roof water control;
- (C) skylights;
- (D) flashing;
- (E) ventilation/non-ventilation;
- (F) attic access;
- (G) re-roofing;
- (H) slopes - step roof/low slope/near flat;
- (I) materials - asphalt, fiberglass, wood shake, wood shingle, slate, clay tile, concrete tile, fiber cement (asbestos cement, mineral cement), metal, roll, build up, modified bitumen, synthetic rubber (EPDM), plastic (PVC); and
- (J) valleys.

(5) Plumbing Systems, which shall include the following topics:

- (A) water supply systems;
- (B) fixtures;
- (C) drains;
- (D) vents;
- (E) water heaters (gas and electric);

- (F) gas lines; and
 - (G) hydro-therapy equipment.
- (6) Electrical Systems, which shall include the following topics:
- (A) general requirements, equipment location and clearances;
 - (B) electrical definitions;
 - (C) services;
 - (D) branch circuit and feeder requirements;
 - (E) wiring methods;
 - (F) power and lights distribution;
 - (G) devices and light fixtures; and
 - (H) swimming pool.
- (7) HVAC Systems, which shall include the following topics:
- (A) heating;
 - (B) ventilation;
 - (C) air conditioning; and
 - (D) evaporative coolers.
- (8) Appliances, which shall include the following topics:
- (A) dishwasher;
 - (B) food waste disposer;
 - (C) kitchen exhaust hood;
 - (D) range, cooktop, and ovens (electric and gas);
 - (E) microwave cooking equipment;
 - (F) trash compactor;
 - (G) bathroom exhaust fan and heater;
 - (H) whole house vacuum systems;
 - (I) garage door operator;
 - (J) doorbell and chimes; and
 - (K) dryer vents.
- (9) Texas Standards of Practice, which shall include the following topics:
- (A) review of general principles and specific Texas practice standards;
 - (B) inspection guidelines for structural systems;
 - (C) inspection guidelines for electrical systems;
 - (D) inspection guidelines for heating, ventilation, and air conditioning systems;
 - (E) inspection guidelines for plumbing systems;
 - (F) inspection guidelines for appliances; and
 - (G) inspection guidelines for optional systems.
- (10) Legal/Ethics, which shall include the following topics:
- (A) Chapter 1102;
 - (B) rules of the Commission related to inspectors;
 - (C) agency enforcement action relating to inspectors;
 - (D) related case law.
- and
- (11) Texas Standard Report Form/Report Writing, which shall include the following topics:
- (A) use of the required inspection report form;
 - (B) allowed reproductions;
 - (C) allowed changes;
 - (D) exceptions from use of the form;
 - (E) review of typical comments for each heading in the report; and
 - (F) review of generally accepted technical writing techniques.
- (12) Other approved courses as they relate to real estate inspections, which shall include one or more of the following topics:
- (A) Environmental Protection Agency;
 - (B) Consumer Product Safety Commission; and
 - (C) general business practices.
- (f) Ride-along inspection course for qualifying education.
- (1) A ride-along inspection course must:
 - (A) at a minimum consist of one full residential property inspection per 8 hours of course credit;
 - (B) review applicable standards of practice and departure provisions contained in §§535.227 - 535.233 of this title (relating to Standards of Practice); and
 - (C) consist of no more than four students per instructor.
 - (2) The instructor of a ride-along inspection course may:
 - (A) review report writing;
 - (B) deliver a notice regarding the ride-along session on a form approved by the Commission to the prospective buyer or seller of the home being inspected.
- (g) Subsections (h) - (i) of this section are effective March 1, 2021 and apply to the education requirements for a license under §535.214 of this title (relating to Education and Experience Requirements for a License).
- (h) Approval of Inspector Qualifying Courses. Inspector qualifying courses are approved and regulated as required by §535.62 of this title.
- (i) Approved Qualifying Courses of Study. The subjects approved for credit for qualifying inspector courses consist of the following modules:
- (1) Property and Building Inspection Module I (40 hours), which shall contain the following topics, the units of which are outlined in the Property and Building Inspection I Qualifying Inspector Course Approval Form:
 - (A) Site conditions; assessing defects and issues that may affect people or the performance of the building - 300 minutes;
 - (B) Exterior components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(C) Roof components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(D) Structural components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(E) Interior components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(F) Permanently installed kitchen appliances; assessing for proper condition and operations - 300 minutes; and

(G) Fireplaces, fuel-burning appliances, and their chimney and vent systems; assessing defects and issues that may affect people or the performance of the building - 200 minutes.

(2) Property and Building Inspection Module II (40 hours), which shall contain the following topics, the units of which are outlined in the Property and Building Inspection II Qualifying Real Estate Inspector Course Approval Form:

(A) Electrical systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(B) Cooling Systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(C) Heating systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(D) Insulation, moisture management systems, and ventilation systems in conditioned and unconditioned spaces; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(E) Plumbing systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(F) Mechanical exhaust systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes; and

(G) Optional Systems - 200 minutes.

(3) Analysis of Findings and Reporting Module (20 hours), which shall contain the following topics, the units of which are outlined in the Analysis of Findings and Reporting Module Qualifying Real Estate Inspector Course Approval Form:

(A) Informing the client what was inspected and describing building systems and components by their distinguishing characteristics - 200 minutes;

(B) Describing inspection methods and limitations in the inspection report to inform the client what was not inspected and why - 200 minutes;

(C) Describing systems and components inspected that are not functioning properly or are defective - 200 minutes;

(D) Describing systems and components in need of further evaluation or action - 200 minutes; and

(E) Describing the implication of defects so that the client understands what could occur if the defects are not corrected - 200 minutes.

(4) Business Operations and Professional Responsibilities Module (10 hours), which shall contain the following topics, the units of which are outlined in the Business Operations and Professional Responsibilities Qualifying Real Estate Inspector Course Approval Form:

(A) Elements of the written inspection contract and the rights and responsibilities of the inspector and the client - 250 minutes; and

(B) Inspector's responsibility to maintain the quality, integrity, and objectivity of the inspection process - 250 minutes.

(5) Texas Law Module (20 hours), which shall contain the following topics, the units of which are outlined in the Texas Law Module, Qualifying Real Estate Inspector Course Approval Form:

(A) Licensing Law; Chapter 1102 Texas Occupations Code - 200 minutes;

(B) General Provisions; TREC Rules, Chapter 535 Subchapter R - 400 minutes; and

(C) Inspector Legal & Ethics - 400 minutes.

(6) Texas Standards of Practice Module (24 hours), which shall contain the following topics, the units of which are outlined in the Texas Standards of Practice Module Qualifying Real Estate Inspector Course Approval Form:

(A) Structural systems; Texas SOP exclusions and unique reporting requirements - 400 minutes;

(B) Electrical systems; Texas SOP exclusions and unique reporting requirements - 400 minutes; and

(C) Mechanical systems; Texas SOP exclusions and unique reporting requirements - 400 minutes.

(7) Texas Practicum (40 hours); which shall consist of a minimum of five complete and in-person inspections.

(A) The Texas Practicum must:

(i) be supervised by a currently licensed inspector who has:

(I) been actively licensed as a Professional Inspector for at least five years; and

(II) at least three years of supervisory or training experience with inspectors; or

(III) performed a minimum of 200 real estate inspections as a Texas professional inspector; and

(ii) consist of no more than four students per inspector supervising the Texas Practicum.

(B) The inspector supervising the Texas Practicum must evaluate that upon completion by the student, each report is:

(i) considered satisfactory for release to an average consumer; and

(ii) demonstrates an understanding of:

(I) report writing;

(II) client interaction;

(III) personal property protection; and

(IV) concepts critical for the positive outcome of the inspection process.

(C) An applicant may request credit for completing the Texas Practicum (40 hours) by submitting the credit request form approved by the Commission.

(D) Audits.

(i) The Commission staff may conduct an audit of any information provided on a Texas Practicum credit request form, including verifying that the inspector supervising the Texas Practicum meets the qualifications required to supervise the practicum.

(ii) The following acts committed by a supervisory inspector conducting the Texas Practicum are grounds for disciplinary action:

(I) making material misrepresentation of fact;

(II) making a false representation to the Commission, either intentionally or negligently, that a student completed the Texas Practicum in its entirety, satisfying all requirements for credit to be awarded.

§535.214. *Education and Experience Requirements for a License.*

(a) Sponsored Experience and Education Requirements for a Real Estate Inspector License. To become licensed as a real estate inspector a person must:

(1) satisfy the 90-hour education requirement for licensure by completing the following coursework:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours; and

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(2) have been licensed as an apprentice inspector on active status for a total of at least three months within the 12 month period before the filing of the application;

(3) complete 25 inspections; and

(4) pass the licensure examinations set out in §535.209 of this title (relating to Examinations).

(b) Sponsored Experience and Education Requirements for a Professional Inspector License. To become licensed as a professional inspector, a person must:

(1) satisfy the 134-hour education requirement for licensure by completing the following coursework:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Texas Law Module, total 20 hours; and

(E) Texas Standards of Practice Module, total 24 hours;

(2) have been licensed as a real estate inspector on active status for a total of at least 12 months within the 24 month period before the filing of the application;

(3) complete 175 inspections; and

(4) pass the licensure examinations set out in §535.209 of this title.

(c) Sponsored Experience Criteria. To meet the experience requirements for licensure under subsections (a) or (b) of this section, or to sponsor apprentice inspectors or real estate inspectors:

(1) the Commission considers an improvement to real property to be any unit capable of being separately rented, leased or sold; and

(2) an inspection of an improvement to real property that includes the structural and equipment/systems of the unit constitutes a single inspection.

(d) Substitute Experience and Education Requirements for a Real Estate Inspector License. As an alternative to §535.214(a) of this title, to become a licensed real estate inspector, a person must:

(1) complete a total of 154 hours of qualifying inspection coursework, which must include the following:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Texas Standards of Practice Module, total 24 hours; and

(E) Texas Practicum, total 40 hours; and

(2) pass the licensure examinations set out in §535.209 of this title.

(3) be sponsored by a professional inspector.

(e) Substitute Experience and Education Requirements for a Professional Inspector License. As an alternative to §535.214(b) of this title, to become a licensed professional inspector, a person must:

(1) complete a total of 194 hours of qualifying inspection coursework, which must include the following:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Analysis of Findings and Reporting Module, total 20 hours;

(E) Texas Law Module, total 20 hours;

(F) Texas Standards of Practice Module, total 24 hours; and

(G) Texas Practicum, total 40 hours; and

(2) pass the licensure examinations set out in §535.209 of this title.

(f) Courses completed for a real estate inspector license under this section shall count towards the identical qualifying inspection coursework for licensure as a professional inspector.

(g) Experience Credit. The Commission may award credit for education required under subsection (d) and (e) to an applicant who:

(1) has three years of experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property; and

(2) provides to the Commission two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience.

(h) This rule is effective March 1, 2021.

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

Filed with the Office of the Secretary of State on August 11, 2020.

TRD-202003311

Vanessa Burgess

General Counsel

Texas Real Estate Commission

Effective date: August 31, 2020

Proposal publication date: June 12, 2020

For further information, please call: (512) 936-3284



SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §535.400

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.400, Registration of Easement or Right-of-Way Agents, in Chapter 535, General Provisions, without changes, as published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3995), and will not be republished.

The amendments to §535.400 eliminate the requirement for an applicant for an easement or right-of-way agent to provide a photograph to the Commission. This change lessens a burden on an applicant and is consistent with changes made to eliminate this same requirement for real estate brokers and sales agents.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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 August 11, 2020.

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Vanessa Burgess

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER A. LICENSING REQUIREMENTS

37 TAC §15.6

The Texas Department of Public Safety (the department) adopts amendments to §15.6, concerning Motorcycle License. This rule is adopted without changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4295). The rule will not be republished.

These amendments are necessitated by the 86th Texas Legislature enactment of SB616, which moves administration of the motorcycle operator training and safety program from the department to the Texas Department of Licensing and Regulation (TDLR). This rule amendment changes references accordingly.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

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 August 14, 2020.

TRD-202003374

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: September 3, 2020

Proposal publication date: June 26, 2020

For further information, please call: (512) 424-5848



SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.29

The Texas Department of Public Safety (the department) adopts the repeal of §15.29, concerning Driver Education Forms. This repeal is adopted without changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4296). The rule will not be republished.

The repeal is necessary because the rule is outdated, and the relevant information is incorporated into §§15.6, 18.1, and 18.2 of this title.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

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 August 14, 2020.

TRD-202003375

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: September 3, 2020

Proposal publication date: June 26, 2020

For further information, please call: (512) 424-5848



SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.55

The Texas Department of Public Safety (the department) adopts amendments to §15.55, concerning Waiver of Knowledge and/or Skills Tests. This rule is adopted without changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4297) and will not be republished.

These amendments are necessitated by the 86th Texas Legislature enactment of SB616, which moves administration of the

motorcycle operator training and safety program from the department to the Texas Department of Licensing and Regulation (TDLR). This rule amendment changes references accordingly.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

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 August 14, 2020.

TRD-202003376

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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