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 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 38. TRICHOMONIASIS

4 TAC §§38.1 - 38.3, 38.6

The Texas Animal Health Commission (commission) adopts amendments to Chapter 38, §§38.1 - 38.3, and 38.6, concerning "Trichomoniasis". The amendments are adopted with changes to the proposed text as published in the June 7, 2019, issue of the Texas Register (44 TexReg 2807). Based on comments received the commission voted at its August 13, 2019 meeting to remove the proposed addition of subsection (g) to §38.3 and to remove the proposed amendment of §38.6(2)(A). The adopted rules will be republished.

BACKGROUND AND JUSTIFICATION:

The Bovine Trichomoniasis (Trich) Working Group (TWG) had an annual review on April 23, 2019, to evaluate the effectiveness of current program. The TWG discussed the program overview to date, the management of infected herds, and the need for possible revisions to the program.

The group recommended three changes be made in the control program. The first was to ensure that samples pooled by approved laboratories were not authorized for official test purposes from Trich positive herds, herds identified as being adjacent to Trich positive herds and change of ownership. These need to be individually submitted samples so as to improve the quality of the test sample as well as to provide quicker identification for follow up on the positive animals.

The second recommendation was to limit the use of a virgin certificate as an exemption to the test requirements. The proposed rule provides that sexually intact male cattle under 18 months of age, or verified by birth date listed on the breed registry papers, must be certified by the breeder on a virgin certificate in order for the animal to be sold without a test. Therefore, it is proposed that the use of virgin certificates be restricted to breeder animals that belong to a breed registry which maintains an official list of animals within a specific breed for which there is an association of unique identification for the cattle.

The third recommendation was that a seller must provide written disclosure for female cattle that have been exposed or potentially exposed to a Trich positive bull within the previous 6 months at the time of sale. There is not any easy diagnostic method to disclose female cattle that are positive with Trich. This provision will allow a buyer of female cattle to take this information into account for managing the newly purchased females for breeding purposes.

HOW THE SECTION WILL FUNCTION:

The adopted amendments to 38.1, relating to Definitions, add a definition of Registered Breeding Cattle, and modify the definition of Virgin Bull.

The adopted amendments to 38.2, relating General Requirements, limit the use of breeder issued virgin certificates to bulls that belong to a breed registry that maintains an official list of animals within a specific breed and their associated unique identification.

SUMMARY OF COMMENTS AND AGENCY RESPONSE:

The 30-day comment period ended July 8, 2019.

During this period, TAHC received comments regarding the rules from Livestock Marketing Association of Texas and ten individuals. A summary of comments relating to the rules and TAHC’s responses follows:

Comment: In regards to 38.6(2)(A) four commenters believe that the disallowance of the pooling of samples will create an unnecessary financial burden on producers and lead to more bulls being sold via private treaty without any veterinary or regulatory involvement.

Response: TAHC accepts this comment and has removed this amendment from the rule as previously published.

Comment: Two commenters were concerned that the age of testing bull calves is being lowered.

Response: TAHC appreciates the concerns of the commenters, however, this is not the case. The testing age remains unchanged. All Texas origin bulls sold, leased, gifted, exchanged or otherwise changing possession for breeding purposes in the State of Texas must be tested negative within 60 days before change in possession, unless accompanied by a certificate of virgin status.

Comment: In regards to 38.3(g), Livestock Marketing Association of Texas respectfully requested that TAHC consider disclosure of female cattle separate from the other proposed amendments and refer the proposal back to the TAHC Trich Working Group for further analysis and discussion.

Response: TAHC accepts this comment and has removed this amendment from the rule as previously published.

Comment: In regards to 38.3(g), one individual has asked TAHC to define potentially exposed.

Response: TAHC appreciates this comment, and because this section of the proposed rule has been removed from the amendment as previously published, we will take it under advisement for future rulemaking if necessary.
Comment: One individual commented that all bulls sold at a sale barn should be tested, not just those purchased under a hold order.

Response: While TAHC agrees that the program would be easier to administer if all bulls sold were required to be tested, the agency takes into consideration that the program is designed to control Trichomoniasis in a manner supported by the cattle industry as a whole. The input TAHC received from the Trichomoniasis Working Group in previous years was in support of allowing untested bulls to be sold for subsequent testing, or for feeding for slaughter in approved facilities.

Comment: One individual commented that the adopted changes to this chapter are needed.

Response: TAHC respectfully agrees.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.0417, entitled "Authorized Personnel for Disease Control", a person, including a veterinarian, must be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. Section 161.0417 requires the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. Section 161.0417 does not affect the requirement for a license or an exemption under Chapter 801, Occupations Code, to practice veterinary medicine.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.061, entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases.

Pursuant to §161.101, entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

No other statutes, articles or codes are affected by the proposal.

§38.3. Infected Herds.

(a) Bulls that have been determined to be infected by culture or by RT-PCR test and/or by confirmatory RT-PCR test shall be placed under hold order along with all other non-virgin bulls in the herd. Infected bulls must be isolated from all female cattle from the time of diagnosis until final disposition or as directed by the commission. Breeding bulls which have been discarded as reactors may be restested: the owners, or their agents initiate a request to the TAHC Regional Director where the bull is located; that retests are conducted within 30 days after the date of the original test; test samples for retests are submitted to the TVMDL for testing; and the positive bull is held under quarantine along with all other exposed bulls on the premise. If they are restested, they must have two negative tests by RT-PCR to be released within 30 days of the initial test.

(b) Positive bulls may be moved directly to slaughter or to a livestock market for sale directly to slaughter. In order to move, the bulls shall be individually identified by official identification device on a movement permit authorized by the commission from the ranch to the market and from the market to the slaughter facility, or from the ranch directly to the slaughter facility. Movement to slaughter shall occur within 30 days from disclosure of positive test results (or confirmatory test results) or as directed by the commission.

(c) All bulls that are part of a herd in which one or more bulls have been found to be infected shall be placed under hold order in isolation away from female cattle until they have undergone at least two additional culture tests with negative results (not less than a total of three negative culture tests or two negative RT-PCR tests) within 60 days of the initial test unless handled in accordance with subsection (d) of this section. All bulls remaining in the herd from which an infected bull(s) has been identified must be tested two more times by culture.
or one more time by RT-PCR test. Any bull positive on the second or third test shall be classified as positive. All bulls negative to all three culture tests or both RT-PCR tests shall be classified as negative and could be released for breeding.

(d) Breeding bulls that are part of a quarantined herd or a herd that is under a hold order and tests negative to the first official Trichomoniasis test may be maintained with the herd if the owner or caretaker of the bulls develops a Trichomoniasis herd control plan with a certified veterinarian. The Trichomoniasis herd control plan shall require all breeding bulls to be tested annually with an official Trichomoniasis test and include other best management practices to control, eliminate and prevent the spread of Trichomoniasis. The Trichomoniasis herd control plan, unless otherwise approved or disapproved by the commission, expires three years from the date the plan is signed by the herd owner or caretaker and the authorized veterinarian. Breeding bulls that are part of a Trichomoniasis herd control plan that expires or that is disapproved must be tested for Trichomoniasis as required by subsection (c) of this section.

(e) When Trichomoniasis is diagnosed in female cattle or fetal tissue, all breeding bulls associated with the herd will be restricted under a Hold Order for testing in accordance with this section.

(f) If male or female cattle are found to be infected with Trichomoniasis, then bulls that are located or were located on property adjacent to the infected animal within 30 days from the date the infected animal was removed from such property shall be officially tested for Trichomoniasis. Such bulls shall be tested within a timeframe as determined by the commission. The commission shall provide written notification to the owner or caretaker of the bulls specifying the timeframe in which the bulls must be tested. The commission may waive this testing requirement if it is epidemiologically determined by the commission that testing is not required.


Approved Tests. Approved tests for Trichomoniasis testing within the State of Texas shall include the culture or Real Time Polymerase Chain Reaction (RT-PCR) testing of samples collected by certified veterinarians following approved collection, handling and shipping protocols, then tested in approved laboratories.

(1) Official Culture Tests. An official test is one in which the sample, collected in an InPouch, is received in the official laboratory, in good condition, within 48 hours of collection or is incubated in an InPouch by the collecting veterinarian for 48 hours after collection, and such sample is submitted to be tested according to the "Official Protocol for Culture of Trichomoniasis." Samples in transit for more than 48 hours will not be accepted for official culture testing. During transportation, the organisms should be protected from exposure to daylight and extremes of temperature, which should remain above 15 degrees Celsius (59 degrees Fahrenheit) and below 37 degrees Celsius (98.6 degrees Fahrenheit).

(2) Official Polymerase Chain Reaction Tests. Polymerase Chain Reaction is accepted as an official test or an official confirmatory test when completed by a qualified laboratory, approved by the Executive Director, and meets the following requirements:

(A) A Trichomoniasis sample submitted in an InPouch must be received in the official laboratory, in good condition, within 48 hours of collection or incubated by the collecting veterinarian for 48 hours after collection and submitted to arrive at the laboratory within 96 hours of collection. Trichomoniasis samples pooled at the laboratory may qualify as official tests at a ratio of up to five individually collected samples pooled for one test. Veterinary practitioners may not submit pooled samples for an official test.

(B) A Trichomoniasis sample submitted in phosphate buffered saline must be received in the official laboratory, in good condition, within 96 hours of collection.

(3) Other Official Tests. Other tests for Trichomoniasis may be approved by the Commission, as official tests, after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

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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Larissa Schmidt
Chief of Staff
Texas Animal Health Commission
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Proposal publication date: June 7, 2019
For further information, please call: (512) 719-0700

CHAPTER 49. EQUINE

4 TAC §49.1

The Texas Animal Health Commission (Commission) adopts amendments to Chapter 49, entitled "Equine" The amendment is for §49.1, concerning Equine Infectious Anemia (EIA): Identification and Handling of Infected Equine, without changes to the text as published in the June 7, 2019, issue of the Texas Register (44 TexReg 2817). The rules will not be republished.

The purpose of these amendments is to incorporate forms of electronic identification as official identification for equine.

BACKGROUND AND JUSTIFICATION:
The Commission is participating with a consortium of other state animal health regulatory agencies for fulfilling the objectives and provisions for the interstate movement of equine using an Extended Equine Certificate of Veterinary Inspection (EECVI). The consortium has established a framework in each participating state to enhance the coordination and cooperation regarding the allowance and documentation of interstate movement of equine. This amendment provides that for an official equine passport the official identification includes a microchip.

HOW THE SECTION WILL FUNCTION:
The adopted amendments to §49.1, concerning Equine Infectious Anemia (EIA): Identification and Handling of Infected Equine add unique and permanent forms of identification, such as electronic identification injected into the equine and digital photographs sufficient to identify the individual equine.

SUMMARY OF COMMENTS AND AGENCY RESPONSE:
The 30-day comment period ended July 8, 2019. During this period, TAHC received comments regarding the rules from Farm and Ranch Freedom Alliance and four individuals. A summary of comments relating to the rules and TAHC's responses follows:
Comment: In regards to §49.1(c) Farm and Ranch Freedom Alliance believes the language of the proposed rule could be interpreted as a requirement for electronic identification in addition to the currently required physical description of the horse on the Coggins certificate and if it is the agency's intention to make this an alternative option, then the rule should contain an "or" rather than an "and" preceding the new language.

Response: TAHC respectfully disagrees with the commenter. The language adds electronic identification injected into the equine to the list of items to identify the equine but the language also gives the final additional option of digital photographs sufficient to identify the individual equine.

Comment: One individual commented that the electronic ID and photograph requirements are unfair both to veterinarians with small equine practices and horse owners with one or two animals and that the cost of these services is out of reach for many and certainly not necessary.

Response: TAHC understands the individual's concerns and wants to clarify that electronic identification and digital photographs are included as additional options for officially identifying equids, but the use of one or both of the two new options is not a requirement. The current use of hand drawn identification markings will still be acceptable.

Comment: One individual submitted comments that concern rescue facilities and adjacent owners acquiring equine without coggins tests and that the rule appears to be silent in regards to this.

Response: TAHC did not consider this comment as it was outside the scope of the proposed amendments.

Comment: One individual submitted comments in favor of the microchip requirements but stated there needs to be a way to update microchip information at each sale and change of ownership.

Response: An implanted microchip encoded with an official Animal Identification Number can provide unique lifetime identification of an animal. While the microchip is initially assigned to a person for traceability purposes, the microchip is associated with the horse once it is implanted. When the microchip is read and the number recorded on the EIA test document, the completed test document links the horse to the owner at the time of the test. Even if the horse is sold multiple times, this system links the horse to the owner at the time of the most recent test, and allows trace back to previous owners when deemed necessary for an epidemiological investigation.

Comment: One individual submitted a comment in opposition to tagging and microchipping equine.

Response: TAHC respectfully recognizes there are differing views on the use of tags and microchips. Tags and other unique identifiers help make it possible to trace animals to the herd of origin quickly and accurately. Time is of the essence when dealing with many disease situations. Being able to trace animals quickly is paramount to accomplishing TAHC's core mission of protecting the health and marketability of Texas livestock.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.054, and entitled "Regulation of Movement of Animals", "[t]he Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce."

Pursuant to §161.048, and entitled "Inspection of Shipment of Animals or Animal Products", "[t]he commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease."

Pursuant to §161.005, and entitled "Commission Written Instruments", "[t]he Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission."

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", "[t]he commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases."

Pursuant to §161.046, entitled "Rules", "[t]he commission may adopt rules as necessary for the administration and enforcement of this chapter."

Pursuant to §161.049, entitled "Dealer Records", "[t]he commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer."

Pursuant to §161.061, entitled "Establishment", "[i]f the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases."

Pursuant to §161.081, entitled "Importation of Animals", "[t]he commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country."

Pursuant to §161.112, entitled "Rules", "[t]he commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases."

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", "[i]f the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by
an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed or treated in another sanitary manner prescribed by rule of the commission."

Pursuant to §161.114, entitled "Inspection of Livestock", "[a]n authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market."

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 September 16, 2019.

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Larissa Schmidt
Chief of Staff
Texas Animal Health Commission
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For further information, please call: (512) 719-0700

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.13

The Texas Animal Health Commission (Commission) adopts amendments to Chapter 51, §51.13, concerning Entry Requirements. The commission published the proposal for comment in the June 7, 2019, issue of the Texas Register (44 TexReg 2821). The amendments are adopted without changes and will not be republished.

REASONED JUSTIFICATION:

The purpose of these amendments is to incorporate forms of electronic identification as official identification for equine moving on an equine passport.

BACKGROUND:

The Commission is participating with a consortium of other state animal health regulatory agencies for fulfilling the objectives and provisions for the interstate movement of equine using an Extended Equine Certificate of Veterinary Inspection (EECVI). The consortium has established a framework in each participating state to enhance the coordination and cooperation regarding the allowance and documentation of interstate movement of equine.

HOW THE SECTION WILL FUNCTION:

This amendment provides that for an official equine passport the current official identification is expanded to include a microchip or digital photographs which sufficiently identify the individual equine.

SUMMARY OF COMMENTS AND AGENCY RESPONSE:

The Commission did not receive any comments and there will be no changes to the proposal.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", "(t)he Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", "(t)he commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease."

Pursuant to §161.005, and entitled, "Commission Written Instruments", the Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", "(t)he commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases."

Pursuant to §161.046, entitled "Rules", "(t)he commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.049, entitled "Dealer Records", "(t)he commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer."

Pursuant to §161.061, entitled "Establishment", "(f) the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases.

Pursuant to §161.081, entitled "Importation of Animals", "(t)he commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §161.112, entitled "Rules" the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require
tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock" "(i)" if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", "(a)" an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

No other statutes, articles, or codes are affected by the adoption. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority. Filed with the Office of the Secretary of State on September 16, 2019.

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Larissa Schmidt
Chief of Staff
Texas Animal Health Commission
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TITLE 16. ECONOMIC REGULATION
PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES
SUBCHAPTER B. THE ORGANIZATION OF THE COMMISSION

16 TAC §22.23
The Public Utility Commission of Texas (commission) adopts new 16 TAC §22.23, relating to delegation of authority to request representation by the attorney general with changes to the proposed text as published in the April 19, 2019, issue of the Texas Register (44 TexReg 1954); therefore, the rule will be republished. The rule clarifies the commission's procedural rules by establishing a delegation mechanism to confer authority to request representation of the commission by the attorney general. This new section is adopted under Project Number 49827.

The commission did not receive comments on the proposed new section.

This new section is adopted under §§14.002 and 14.052 of the Public Utility Regulatory Act, Tex. Util. Code Ann. which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.


§22.23. Delegation of Authority to Request Representation by the Attorney General.

(a) The commission delegates to the chairman the authority to request representation by the attorney general for any purpose authorized by law.

(b) In the event the chairman is unavailable, the commission delegates the authority granted in subsection (a) of this section to any other commissioner. If no commissioner is available, the commission delegates the authority granted in subsection (a) of this section to the executive director or his authorized representative.

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 September 13, 2019.

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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7244

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS
SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.409
The Public Utility Commission of Texas (commission) adopts new rule 16 Texas Administrative Code (TAC) §26.409, relating to the review of Texas Universal Service Fund (TUSF) support received by competitive Eligible Telecommunications Providers (ETPs), with changes to the proposed text as published in the June 28, 2019, issue of the Texas Register (44 TexReg 3209). The new rule establishes the criteria and process for determining whether TUSF support should be eliminated under the provisions of Public Utility Regulatory Act (PURA) §56.023(p) and (r). This amendment is adopted under Project Number 47668. In adopting this new rule, the commission makes other minor modifications to subsections (e) and (j) for the purpose of clarifying its intent.

The commission received comments on the new rule from AMA TechTel Communications (AMA) and Virgin Mobile USA, L.P. (Virgin Mobile). No party requested a hearing.

General Comments
AMA stated that the costs associated with the rule are minimal but could be further reduced if the commission reviewed the 50% triggered exchanges only once every three years.
Commission Response

The commission understands AMA’s concern about the costs of administering the new rule. However, the commission declines to adopt AMA’s proposal to limit review of the triggered exchanges to once every three years. PURA §56.023(r) requires the commission to review the per-line support amount at least every three years, but allows the commission the latitude to do so more frequently. Commission resources will not be unduly strained by an annual review of exchanges as described in the new rule. In addition, more frequent review could benefit the state by reducing continuation of support that is not in the public interest.

Virgin Mobile acknowledged that nothing in the proposed rule states that a competitive ETP providing Lifeline service to customers located in exchanges subject to review under the proposed rule will be subject to potential elimination of Lifeline support. Nevertheless, Virgin Mobile expressed concern that unless the rule is clarified, Lifeline support could be eliminated for Lifeline-only ETPs such as itself under the new rule. Virgin Mobile recommended language to clarify that this rule does not apply to lost Lifeline support. Virgin Mobile explained that its concern is caused by commission staff’s position in a pending contested case, Docket No. 48502, Application of Virgin Mobile USA, L.P. to Amend Its Designation as an Eligible Telecommunications Carrier and its Designation as an Eligible Telecommunications Provider for the Limited Purpose of Offering Lifeline Service, that the Lifeline program is not a distinct program within the TUSF, but is a subset of the two high cost funds.

Commission Response

The commission agrees with Virgin Mobile that Lifeline support is not contemplated in PURA §56.023(p) and (r) and is not under consideration in this rule. The rule is clear on this point and additional clarification is unnecessary.

AMA had concerns about the confidentiality of the number of access lines it serves in a market. AMA argued that the number of access lines that paragraph (d)(1)(A) would require commission staff to report is only relevant for staff’s identification of exchanges to be reported under paragraph (d)(1)(B). Therefore, AMA continued that paragraph (d)(1)(A) be eliminated to address these concerns. AMA asserted that the data is subject to Texas law as a trade secret and that the commission typically treats the number of access lines a company serves as proprietary and confidential information and should report this information confidentially.

Commission Response

It is not the commission’s intent to expose the number of lines served by individual competitive ETPs. The commission has re-organized section (d)(1)(A) to address AMA’s concerns. Filings made under a claim of confidentiality and submitted in accordance with TAC 16 §22.71 will be treated in accordance with the commission’s rules and procedures for handling confidential information.

AMA recommended a response period of 30 days for a competitive ETP to respond to commission staff’s application, instead of the proposed 20 days in subsection (f)(1). Similarly, AMA recommended a response period of 20 days for a competitive ETP to respond to commission staff’s recommendation, instead of the proposed 10 days in subsection (h). AMA stated that a longer period to develop responses would reduce the likelihood of any affected carrier requesting a hearing, thus reducing administrative costs. AMA also stated that additional time is needed because commission staff’s application and recommendation would affect all competitive ETPs serving a specific exchange and that these competitors would have no knowledge of the aggregate reduction in the number of access lines until commission staff has filed its application. AMA indicated that the rule should allow sufficient time for affected carriers to execute necessary nondisclosure agreements or protective orders, evaluate data, and deliver a thoughtful and useful response.

Commission Response

The commission agrees to lengthen the response period to not more than 30 days in subsection (f)(1) and not more than 20 days in subsection (h). To maintain comparable response periods, the commission also increases the time in subsection (g) by which commission staff must file a recommendation to not more than 40 days.

This amendment is adopted under PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and PURA §56.023(r), which directs the commission to adopt rules to establish the criteria to determine whether the TUSF support for certain competitive ETPs should be eliminated.

Cross reference to statutes: PURA §§ 14.002 and 56.023.

§26.409. Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers.

(a) Purpose. This section implements PURA §56.023(p) and (r) and establishes the criteria and process for determining whether Texas Universal Service Fund (TUSF) support under 16 TAC §26.403 to a competitive Eligible Telecommunications Provider (ETP) should be eliminated.

(b) Application. This section applies to exchanges in which an incumbent local exchange company or cooperative is ineligible for support under PURA §56.021(1) and a competitive ETP receives TUSF support under 16 TAC §26.403.

(c) Commission review.

(1) The commission must review the per-line TUSF support amount for each exchange identified by subsection (d)(1)(B) of this section to determine whether support should be eliminated. The first review of an exchange must be completed not later than the end of the year following the year in which the exchange was reported under subsection (d)(1)(B) of this section.

(2) The commission must base its decision on the following criteria:

(A) The total number of access lines in the exchange served by competitive ETPs receiving TUSF support;

(B) The number of competitors providing comparable service in the exchange; and

(C) Whether continuing the TUSF support is in the public interest.

(d) Identification of exchanges for review.

(1) No later than April 30 of each year, commission staff must report:

(A) The exchanges in which the number of access lines served by competitive ETPs has decreased by at least 50% from the number of access lines that were served in that exchange by competitive ETPs on December 31, 2016; and
(B) The number of access lines served by those competitive ETPs identified in subparagraph (A) of this paragraph on December 31 of the previous year.

(2) Commission staff must file its report in central records under a control number designated for that purpose.

(e) Initiation of proceeding. For each exchange identified under subsection (d)(1)(B) of this section, commission staff will file an application to initiate a proceeding to review the per-line TUSF support amount for that exchange.

(1) The application must be supported by an affidavit and describe commission staff's determination that the number of access lines served by competitive ETPs in the exchange decreased by at least 50% compared to the number of access lines served by competitive ETPs in that exchange on December 31, 2016.

(2) Commission staff must serve a copy of the application, at the time of filing, to the competitive ETPs receiving TUSF support in the exchange by email, regular mail, and certified mail.

(f) Competitive ETP's response to commission staff's application.

(1) A competitive ETP serving access lines in an exchange identified under subsection (d)(1)(B) may respond to commission staff's application no later than 30 days after the application is filed.

(2) A competitive ETP's response must address the criteria listed in subsection (c) of this section.

(3) The response must be in writing, supported by affidavit, and filed with the commission as prescribed by 16 TAC §22.71.

(g) Commission staff's recommendation. In accordance with the schedule established by the presiding officer, but no earlier than 40 days after filing the application described in subsection (e) of this section, commission staff will file a recommendation, supported by affidavit, on whether the commission should eliminate TUSF support in the identified exchange. In its recommendation, commission staff must address the criteria listed in subsection (c) of this section.

(h) Competitive ETP's response to commission staff's recommendation. No later than 20 days after commission staff files its recommendation, a competitive ETP may file a response to commission staff's recommendation. The response must state whether the competitive ETP agrees or disagrees with commission staff's recommendation and may include a request for a hearing.

(i) Commission determination.

(1) If a competitive ETP does not request a hearing within the time prescribed by subsection (h) of this section, the commission will determine whether to eliminate TUSF support for the exchange based on the filings submitted by commission staff and the competitive ETPs.

(2) If a competitive ETP requests a hearing, the proceeding will be conducted as a contested case.

(j) Further review. If the commission does not eliminate TUSF support for an exchange after a review conducted under subsections (c) -(i) of this section, the commission must repeat the review of the TUSF per-line support amount for that exchange at least every three 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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TRD-201903231
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: June 28, 2019
For further information, please call: (512) 936-7244

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. FEES, LICENSE APPLICATIONS, AND RENEWALS

22 TAC §72.19

The Texas Board of Chiropractic Examiners (Board) adopts the rule of 22 TAC §72.19 (Fees) as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3498). The rule will not be republished.

The Board will adopt a new §72.19 in a separate rulemaking action. The purpose of the Board's rule is to remove fees related to registering radiologic technologists as the Board no longer has jurisdiction over that profession under Senate Bill (SB) 674 (85th Legislature, Regular Session) and to raise the two late renewal fees (by $15 and $30, respectively) to make them conform to Occupations Code §201.354(d) of the Texas Register.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by the repeal of this 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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

22 TAC §72.19

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.19 (Fees) with no changes to the proposed text as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3499). The rule will not be republished.
The Board will adopt the repeal of the current §72.19 in a separate rulemaking action. The purpose of the Board's repeal and replacement of the rule is to remove fees related to registering radiologic technologists as the Board no longer has jurisdiction over that profession under Senate Bill (SB) 674 (85th Legislature, Regular Session) and to raise the two late renewal fees (by $15 and $30, respectively) to make them conform to Occupations Code §201.354(d)

The Board received no comments concerning the adoption of the rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this adopted new 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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Christopher Burnett
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For further information, please call: (512) 305-6700

CHAPTER 75. BUSINESS PRACTICES

22 TAC §75.2
The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §75.2 (Out-of-Facility Practice) without changes as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3500). The rule will not be republished.

The Board is replacing this rule with new 22 TAC §75.2 (Place of Business) in a separate rulemaking action. The new rule removes references to chiropractic facilities and clarifies what information a licensee must maintain about locations where services are provided.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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Christopher Burnett
General Counsel
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For further information, please call: (512) 305-6700

22 TAC §75.6
The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §75.6 (Mandatory Notice to Public) as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3502). The rule will not be republished.

The Board is adopting a new §75.6 in a separate rulemaking action. The replacement rule updates language for clarity. It also includes a copy of the notice (as required by Occupations Code §201.203) as an attached graphic for licensees to print, thus ensuring uniformity. The replacement rule removes language about a licensee's obligation to display a chiropractic licensee; that language will be moved to new stand-alone 22 TAC §75.7 (Mandatory Display of License).
The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic. No other statutes or rules are affected by this 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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Christopher Burnett
General Counsel
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For further information, please call: (512) 305-6700

22 TAC §75.6

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §75.6 (Mandatory Notice to Public) as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3503). The rule will not be republished.

The new rule updates language for clarity. The new rule also includes a copy of the notice (as required by Occupations Code §201.203) as an attached graphic for licensees to print, thus ensuring uniformity. The new rule removes language about a licensee's obligation to display a chiropractic license; that language will be moved to new stand-alone 22 TAC §75.7 (Mandatory Display of License). The Board is repealing the current rule in a separate rulemaking action.

The Board received no comments concerning the new rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

22 TAC §75.8

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §75.8 (Unsafe and Unsanitary Conditions) with no changes to the proposed text as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3504). The rule will not be republished.

The purpose of the new rule is to establish basic sanitary and safety standards for locations where chiropractic is practiced. This rule-making is also in response to a recommendation made by the Texas Sunset Commission as part of its review of agency policies, procedures, and operations.

The Board received no comments concerning the adoption of the rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statute, article, or code is affected by this adoption.

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

Filed with the Office of the Secretary of State on September 13, 2019.
CHAPTER 79. UNPROFESSIONAL CONDUCT

22 TAC §79.3

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §79.3 (Disciplinary Records) as published in the May 31, 2019, issue of the Texas Register (44 TexReg 2694). The rule will not be republished.

The Board has determined that the rule exceeds the Board’s statutory authority to remove or expunge the records of final disciplinary actions taken by the Board.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board’s duties and to regulate the practice of chiropractic.

The adopted repeal does not affect any other statutes or 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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

CHAPTER 80. COMPLAINTS

22 TAC §80.1

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.1 (Duty to Respond to Complaint) as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3505). The rule will not be republished.

The Board is replacing this rule with new 22 TAC §80.1 in a separate rulemaking action. The new rule removes references to chiropractic facilities and makes the rule more readable.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board’s duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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22 TAC §80.3

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.3 (Disciplinary Guidelines) as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3508). The rule will not be republished.

The Board is replacing this rule with new 22 TAC §80.3 in a separate rulemaking action. The new rule is intended to make clear when the Board will not report minor administrative violations to national databases. The new rule also removes unnecessary language for clarity.
The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic. No other statutes or rules are affected by this 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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Christopher Burnett
General Counsel
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For further information, please call: (512) 305-6700

22 TAC §80.3
The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.3 (Disciplinary Guidelines) with one non-substantive change as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3509). The rule will be republished.

The adopted rule adds language to subsection (e)(2) that clarifies when a licensee under suspension may communicate with patients. The Board is repealing the current rule in a separate rulemaking action. The new rule is intended to make clear when the Board will not report minor administrative violations to national databases. The new rule also removes unnecessary language to make it more readable.

The Board received no comments concerning the new rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this adopted rule.

§80.3. Disciplinary Guidelines.
(a) The Board may take disciplinary action against a licensee or other person who violates a statute or rule under the Board's jurisdiction.
(b) The Board's disciplinary actions shall consider the seriousness of the violation, any harm to a patient, the circumstances of the licensee, and the Board's duty to protect the public.
(c) Disciplinary action may include one or more of the following:
   (1) revocation of license;
   (2) suspension of license;
   (3) suspension with probation;
   (4) written formal reprimand;
   (5) administrative penalty;
   (6) repeat taking of the jurisprudence exam; and
   (7) additional continuing education.
(d) The Board may impose additional conditions or restrictions to aid a licensee's rehabilitation and education, including:
   (1) completion of specific continuing education beyond the minimum required of all licensees;
   (2) passing a specific examination;
   (3) restrictions on the type of treatment, treatment procedures, or class of patients to be treated;
   (4) restrictions on the supervision of others; or
   (5) undergoing a psychological or medical evaluation and undergoing any recommended treatment.
(e) During a suspension, a licensee may not:
   (1) receive any remuneration from the practice of chiropractic;
   (2) communicate with any patients other than to ensure continuation of care;
   (3) provide any chiropractic services to any person; or
   (4) be present at any location where chiropractic services are provided.
(f) The Board shall memorialize all final disciplinary actions in a Board order.
(g) All Board final disciplinary actions are public record unless otherwise exempted by law.
(h) The Board shall publish final disciplinary actions.
(i) The Board shall transmit all final disciplinary actions involving criminal acts, physical or economic harm to patients, or serious violations of statute or rule to the Chiropractic Information Network-Board Action Data Bank (CIN-BAD) or other national data bank as required by law.
(j) To the extent allowed by law, the Board shall only transmit final disciplinary actions that involve criminal acts, physical or economic harm to patients, or serious violations of statute or rule.
(k) The Board shall consider reinstating a license that has been finally revoked for more than a year.
(l) The Board may deny reinstatement of a revoked license or grant reinstatement with or without conditions.

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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Christopher Burnett
General Counsel
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For further information, please call: (512) 305-6700

22 TAC §80.5
The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.5 (Expert Review Process) as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3510). The rule will not be republished.

The Board is replacing this rule with new 22 TAC §80.5 in a separate rulemaking action. The new rule requires the Board to provide an expert review report to a licensee and an opportunity to respond before the report is considered by the Board’s enforcement committee. The new rule also makes non-substantive changes for clarity.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board’s duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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For further information, please call: (512) 305-6700

22 TAC §80.5

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.5 (Expert Review Process) with non-substantive changes as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3511). The rule will be republished.

The Board has added language to clarify that the Board may select professionals in other disciplines to provide an expert review during an investigation. The new rule requires the Board to provide an expert review report to a licensee and an opportunity to respond before the report is considered by the Board's enforcement committee. The new rule also makes non-substantive changes for clarity. The Board is repealing the current rule in a separate rulemaking action.

The Board received no comments concerning the new rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this adopted rule.


(a) During the investigation of a complaint, the Board may require expert review of a licensee's standard of patient care or billing practices.

(b) To qualify as an expert, a person shall:

(1) have an active license with the Board or appropriate professional credentials;

(2) have no prior violations of Board statutes or rules;

(3) have no open complaints;

(4) have no felony convictions or no misdemeanor convictions for a crime of moral turpitude;

(5) show sufficient training or experience to offer an expert opinion;

(6) show knowledge of accepted standards of chiropractic care or other professional standard related to the alleged violation; and

(7) have an acceptable malpractice complaint history.

(c) An expert may not review a complaint if the expert has:

(1) a direct financial interest or relationship with any party or witness to the complaint that gives the appearance of a conflict of interest;

(2) a familial relationship within the third degree of affinity with any party or witness;

(3) personal knowledge of any information about any party or witness related to the complaint; or

(4) any other reason where the expert could not fairly and impartially consider the complaint.

(d) The Board shall maintain a list of experts and shall periodically audit the list to confirm the experts' qualifications.

(e) Board staff shall select an expert when an investigator identifies a standard of care or other professional standard in the complaint.

(f) Board staff shall randomly select an expert from the list and based on the expert's qualifications to review the type of complaint.

(g) The executive director shall remove an expert from the list for:

(1) failure to maintain the required qualifications;

(2) failure to timely complete reports;

(3) failure to inform the Board of potential or apparent conflicts of interest; or

(4) failure to maintain confidentiality of any matter.

(h) The Board shall provide to the expert:

(1) the complaint;

(2) the investigator's report;

(3) the Board's expert report form; and

(4) a contract for services.

(i) The expert shall review all relevant information to determine if a licensee violated the applicable standard of care or other professional standard and prepare a written report.

(j) The expert's report shall include:

(1) the expert's qualifications;

(2) the relevant facts of the complaint;

(3) the applicable standard of care or other professional standard;

(4) an application of the standard of care or professional standard to the facts;
(5) a finding of whether the standard of care or professional standard was met; and

(6) the clinical basis for the findings, including the use of any peer-reviewed journals, studies, or reports.

(k) The expert shall complete and return the review within 30 days, unless the expert requests more time due to the complaint's complexity.

(l) The Board shall give the expert's report to the licensee within 30 days of receipt.

(m) The Enforcement Committee shall review the report and the licensee's response in determining if a violation occurred.

(n) The Enforcement Committee may order additional expert reviews if necessary.

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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

22 TAC §80.7

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.7 (Cease and Desist Orders) as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3512). The rule will not be republished.

The Board is replacing this rule with new 22 TAC §80.7 in a separate rulemaking action. The new rule makes non-substantive changes to the text for clarity.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

22 TAC §80.6

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §80.6 (Undercover Investigations) as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3512). The rule will not be republished.

The Board is replacing this rule with new 22 TAC §80.6 in a separate rulemaking action. The new rule makes non-substantive changes to the text for clarity.

The Board received no comments concerning the repeal of the rule.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this 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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700
22 TAC §80.9

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.9 (Temporary License Suspension) with non-substantive changes to the proposed text as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3515). The rule will be republished.

The rule transfers existing language concerning the Board's emergency license suspension procedures (authorized by Occupations Code §201.507) from 22 TAC §80.2 (Complaint Procedures) into a new stand-alone rule. The new rule retains the basic procedures currently in §80.2 and removes superfluous language for clarity. The new rule also makes clear the only purpose of the 14-day hearing is to determine whether there are reasonable grounds for the temporary suspension to remain in effect.

The Board received no comments concerning the adoption of the rule.

The new rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statute, article, or code is affected by this adoption.

§80.9. Temporary License Suspension.

(a) The Enforcement Committee may temporarily suspend a license if the committee reasonably believes a licensee is a continuing or imminent threat to the public.

(b) The Board delegates authority to the executive director to sign temporary suspension orders on behalf of the Enforcement Committee after the committee votes to suspend a license.

(c) The Enforcement Committee may dissolve a previously-issued temporary suspension order at any time.

(d) A temporary suspension may occur without notice if a hearing on the suspension is scheduled at the State Office of Administrative Hearings (SOAH) not later than the 14th day after the date of suspension.

(e) At the 14-day hearing, the only issue is whether the temporary suspension should remain in effect.

(f) If the SOAH administrative law judge (ALJ) finds the Board has reasonable information that the licensee is a continuing or imminent threat to the public, the ALJ shall issue an order to keep the temporary suspension in effect pending the initiation of disciplinary proceedings against the licensee.

(g) A second hearing on the suspension shall be held not later than the 60th day after the date the suspension was ordered.

(h) The 60-day hearing shall determine only whether the suspension shall remain in effect pending the final determination of disciplinary proceedings against the licensee.

(i) If the 60-day hearing is not timely held, the suspension is dissolved.

(j) A temporary suspension shall automatically dissolve on the 61st day after the date the suspension was ordered if the Board has not served a notice of hearing for disciplinary action against the licensee for acts that were the basis for the suspension.

(k) The Board shall notify a licensee of a suspension by certified mail, regular mail, and email.

(l) A licensee may waive the 14-day or 60-day hearings.

(m) A licensee may not practice chiropractic during a temporary suspension.

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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER A. LICENSING

The Texas Funeral Service Commission (Commission) adopts amendments to Title 22 Texas Administrative Code Part 10, Chapter 203, Subchapter A - Licensing, specifically Rules §203.1 - Funeral Director and Embalmer License Requirements and Procedure; §203.3 - Retired/Disabled License; §203.4 - Reciprocal License; §203.5 - Provisional License; §203.8 - Continuing Education; §203.9 - Licensure of Funeral Establishments and Commercial Embalming Establishments; and §203.11 - Establishment Names and Licensing and repeals Rule §203.14 - State Agency Action as a Basis for License Suspension, Revocation or Denial. The amended rules are adopted with changes to the proposed text as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3760) and will be republished. The repeal of §203.14 is adopted without changes to the proposed text as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3760) and will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION: The adopted amendments/ repeals to Chapter 203, Subchapter A are necessary to comply with statutory changes made during the 86th Legislative Session in HB 1540, as directed by the Texas Sunset Advisory Commission, or as requested by stakeholders to clarify the rules.
The amendments to Rule §203.1, Funeral Director and Embalmer License Requirements and Procedure, clarify that a licensee can renew a license up to 60 days prior to his/her expiration date and provide that the Executive Director can waive licensing requirements for certain military applicants under Tex. Occ. Code Chapter 55.

The amendments to Rule §203.3 remove language requiring certain applicants to take continuing education to conform to Rule §203.8 and provide in rule that the fee for these licenses is one-half the amount of an active license.

The amendments to Rule §203.4, conform the rule to amendments to Tex. Occ. Code §51.259 related to how and why the agency reviews criminal histories of out-of-state applicants and conforms the review to Rule §203.8. Additionally, the changes provide that the Executive Director can waive licensing requirements for certain military reciprocal applicants under Tex. Occ. Code Chapter 55.

The amendments to Rule §203.5, Provisional License, clarify how a person who is no longer officially enrolled in school, but not yet a certified graduate can continue to hold a license. The changes clarify that a licensee who entered the provisional program on an education waiver would only get additional months added to the 24-month maximum term for those months he/she was not enrolled in classes. The changes clarify an applicant only has to take the applicable examinations required by law based on the type of license being sought, and clarify persons who submit to a criminal background check but who fail to submit an application within 6 months may be required to re-submit to a subsequent criminal background check.

The amendments to Rule §203.8: (1) allow the Commission to accept continuing education courses approved by the Academy of Professional Funeral Service Providers in lieu of agency review and approval, as the Academy has more expertise in course approval (the Academy does not offer continuing education but approves more than 3,500 hours of continuing education programs each year as part of the Certified Funeral Service Practitioner (CFSP) program); (2) provide the certificate of attendance must include whether the course was online or in person; (3) require all active licensees to take 16 hours of continuing education regardless of where they practice; (4) exempt persons in retired or disabled status from continuing education; (5) remove language stating it is the licensee’s responsibility to track continuing education hours; (6) update mandatory continuing education on the law of funeral directing to include content on Health & Safety Code Chapter 716; (7) remove content related to Health & Safety Code Chapter 715 from mandatory Vital Statistics continuing education; (8) require four of the 16 required continuing education hours to be taken in person; (9) remove the use of college courses as continuing education; (10) clarify instructors of continuing education may earn two hours of continuing education per course; (11) provide licensees who supervise provisional licensees may earn 8 hours of continuing education, up from 4; (12) remove language allowing licensees not practicing in the state to complete only the mandatory continuing education; (13) remove language requiring retired, active/disabled, active licensees to take 10 hours of continuing education; (14) eliminate the ability to carry-over continuing education hours from one renewal period to another; (15) remove authority to pay non-compliance fee instead of taking continuing education; and (16) renumber language regarding continuing education requirements for military licensees without making any substantive changes.

Rule §203.9, Licensure of Funeral Establishments and Commercial Embalming Establishments - The changes require forms submitted during the establishment application process to have a placeholder to insert license number (when issued); and authorize the agency to cancel an establishment license if the renewal is not received within 90 days after the expiration date. The amendment also requires a new funeral establishment applicant to have paid all outstanding penalties, including all payments under a payment plan, before a new license will be issued.

Rule §203.11, Establishment Names and Licensing - The changes require an establishment to include the establishment’s license number on the establishment’s website’s contact page and removes references to cemeteries from the rule as the Commission no longer has authority to regulate cemeteries.

Rule §203.14, State Agency Action as a Basis for License Suspension, Revocation or Denial - The rule is repealed as the agency has determined it cannot take action under the rule until the agency first takes action under its enforcement process.

PUBLIC COMMENTS: Pursuant to §2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide written/oral commentary concerning the proposed amendments of this rule. The public comment period began on July 26, 2019 and ended on August 26, 2019. Several comments were received regarding the proposed amendments.

SUMMARY OF COMMENTS:
Comment: Licensed funeral director and embalmer Billy C. Vallee (License #7271) expressed support for the proposed amendments.
Commission Response: Agree.

Comment: Remo Portelli, Chief Educational Officer, APEX Continuing Education Solutions sought clarification regarding the Commission’s use of the Academy of Professional Funeral Service Providers (APFSP) to review courses under Rule §203.8(c)(6) and the requirement that each course submitted include a fee payable to the Commission. He wondered if the APFSP approval meant a provider would not also have to pay the course fee to the Commission.
Commission Response: No continuing education provider is required to have a course approved by the APFSP for the course to be accepted by the Commission. A continuing education provider who chooses to submit for Commission approval a course already approved by the APFSP would still have to submit the required Commission course fee.

Comment: Remo Portelli, Chief Educational Officer, APEX Continuing Education Solutions sought clarification regarding the Commission’s use of the APFSP to review courses under Rule §203.8(c)(6) and the that requirement every course approved by the Commission be issued a course number. He questioned what information would need to be included on the course certificate.
Commission Response: As outlined in §203.8(d), every course attendance certificate issued to a Texas licensed funeral director or embalmer and used to satisfy Commission continuing education requirements must include both the Texas-issued provider number and course number. The Commission will amend the rule to specifically state the certificate must include the Commission-issued course and provider numbers.
Comment: Remo Portelli, Chief Educational Officer, APEX Continuing Education Solutions questioned the limit of two-hours per course under Rule §203.8(g) stating many courses approved by the APFSP may be longer than two-hours.

Commission Response: Agree. The Commission will remove the two-hour maximum language from the adoption language to ensure its licensees will get hour-for-hour credit for all courses approved by the Commission, no matter the length.

Comment: Remo Portelli, Chief Educational Officer, APEX Continuing Education Solutions sought clarification of the language in Rules §203.8(e)(1) and §203.8(e)(2) on which licensees are required to take continuing education.

Commission Response: While §203.8(e)(1) states all licensees who actively practice must take 16 hours of continuing education, §203.8(e)(2) and §203.8(e)(3) exempt certain licensees (retired, disabled, military) from taking continuing education. Therefore, only active licensees who are not retired, disabled, or military must take continuing education.

Comment: Remo Portelli, Chief Educational Officer, APEX Continuing Education Solutions sought clarification of when the amendments to §203.8 would take effect.

Commission Response: As the Commission's continuing education program expires annually, the changes for provider and course approval would take effect with next renewal period (January 1, 2020 - December 31, 2020). For licensees, the Commission recognizes licensees who expire within the next few months may have already completed continuing education requirements, without complying with the in-person requirements. Additionally, the Commission recognizes that providers will need time to develop in-person continuing education. As such, the Commission will amend the rule to state the requirement for four hours of in-person continuing education will apply beginning with the June 30, 2020 renewals.

Comment: Ken Whittaker, Whittaker Funeral Support Services stated he was in agreement with the suggestion to temporarily remove Vital Statistics as a required continuing education subject given the Bureau of Vital Statistics has been having difficulties with the death certificate process and it is unfair for licensees to have to get vital statistic information that is not helpful or useable.

Commission Response: Disagree. The proposed changes to §203.8(f) do not eliminate vital statistics as a required continuing education course. The Commission believes all licensees should keep up to date on Vital Statistics laws and agency operations. However, the Commission will be sure to thoroughly review any future course submitted by the Bureau of Vital Statistics prior to authorizing its use.

CHANGES TO PUBLISHED TEXT: The adopted rules contain the following changes from the rules as published in the July 26, 2019, issue of the Texas Register:

§203.8(d)(1)(c) is changed as result of a comment seeking clarification of what must be included on a continuing education certificate. The language is amended to include "Commission-issued" course or program number. The new language reads: "(1) The provider shall verify attendance at each program and provide a certificate of attendance to each attendee. The certificate of attendance shall contain: (C) the title of the course or program, including both the Commission-issued course and program number;"

§203.8(e)(1) is changed as a result of a printing error in the Texas Register. The text as adopted by the Commission reads "(1) Licensed funeral directors and embalmers who actually practice in this state are required to obtain 16 hours of continuing education every two-year renewal period. A licensee may receive credit for a course only once during a renewal period."

The Texas Register omitted the strike through of "in this state."

§203.8(g) is changed as a result of a comment questioning the two-hour maximum per course. The language is amended to read: "(g) Of the 16 hours of continuing education, four hours must be taken in-person. The remaining 12 hours may be taken through Internet/online presentation." which strikes the language "with a maximum of two-hours per course."

§203.8(g) is changed as a result of a comment questioning when the in-person requirement will take effect. The language is amended by adding the sentence: "This requirement for in-person continuing education will apply beginning with the June 30, 2020 renewals."

22 TAC §§203.1, 203.3 - 203.5, 203.8, 203.9, 203.11

STATUTORY AUTHORITY: This adoption is made pursuant to (1) Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission’s work; (2) Texas Occupations Code §651.165 which authorizes the Commission to renew licenses; (3) Texas Occupations Code §§651.255-651.256 which outline exams required to be licensed as a funeral director or embalmer; (4) Texas Occupations Code §651.259 which authorizes the Commission to reciprocate licenses from other states; (5) Texas Occupations Code §651.265 which authorizes the Commission to renew licenses in active/inactive status; (6) Texas Occupations Code §651.266 which authorizes the Commission to adopt rules related to continuing education; (7) Texas Occupations Code §651.3045 which authorizes the Commission to offer education waivers to certain applicants; and (8) Texas Occupations Code Chapter 55 which outlines requirements for occupational licensing of military members, veterans and spouses.

No other statutes, articles, or codes are affected by this adoption.

§203.1. Funeral Director and Embalmer License Requirements and Procedure.

(a) A person may not engage in funeral directing or embalming in this state without holding a license issued by the Commission, unless the person is a mortuary student acting under the supervision and direction of a licensed funeral director or embalmer.

(b) An applicant for a license shall meet the eligibility requirements of Occupations Code, §651.253.

(c) The period of a license is two years beginning on the first day of the licensee's birth month. The initial licensing period may be less than two years.

(d) The licensing fee must be paid before a license is issued. If the initial licensing period is less than two years, the licensing fee shall be prorated.

(e) A person who does not receive a full license by exiting directly from the Commission's provisional license program or reciprocate from another state may apply for full license. The person must have been a provisional license holder in Texas no more than 24 months prior to application. The applicant shall complete an application, provide required proof of eligibility, pay an application fee, re-take and
pass the State Mortuary Law Examination, and submit to a criminal background check.

(f) Renewal Procedures and Conditions.

(1) A license may be renewed beginning 60 days prior to its expiration if the licensee has paid the renewal fee and met the continuing education requirements of §203.8 of this title (relating to Continuing Education).

(2) A person whose license is expired for 90 days or less may renew the license by meeting the continuing education requirements of §203.8 of this title and paying a renewal fee that is 1 and 1/2 times the amount of the normal renewal fee.

(3) A person whose license is expired for more than 90 days but less than one year may renew the license by meeting the continuing education requirements of §203.8 of this title and paying a renewal fee that is two times the amount of the normal renewal fee.

(4) A person whose license has been expired for one year or more may reinstate the license by meeting the following requirements:

(A) retaking and passing the State Mortuary Law Examination;

(B) payment of any applicable fees, including a renewal fee that is equal to two times the normally required renewal fee; and

(C) completion of the continuing education requirements of §203.8 of this title.

(5) Notwithstanding paragraph (4) of this subsection, a person whose license has been expired for one year or more may reinstate the license without retaking the applicable examination if the person has been licensed and practicing in another state for the two years preceding the application for reinstatement. The applicant must pay a renewal fee that is equal to two times the normally required renewal fee.

(6) Notwithstanding paragraph (4) of this subsection, the Executive Director may waive any prerequisite to obtaining a license to a person whose license has been expired for no more than five years who is also a military service member, military veteran or military spouse as defined by Occupations Code, Chapter 55.

(g) A licensee serving as an active military service member as defined by Occupations Code, Chapter 55, is exempt from the payment of license fees for the duration of the holder's military service or for anytime the Commission considers advisable.

§203.3. Retired/Disabled License.

(a) At the time of license renewal, any licensed Funeral Director, Embalmer or dual licensee aged 65 or older will be placed in a Retired, Active status. Upon written application to the Commission, a licensee may be placed in a Retired, Inactive status.

(b) Upon written application to the Commission, any licensed Funeral Director, Embalmer or dual licensee with a disability of 75% or greater will be placed in a Disabled, Active or Disabled, Inactive status. Proof of disability will be required at the time of the application. If the Commission questions the validity of the certification, a certification from a second source may be required. Submission of required documentation does not imply a guarantee of acceptance of documentation or approval of the application.

(c) Any individual holding an inactive license will be subject to disciplinary action if the individual performs any act of funeral directing and/or embalming.

(d) Any individual holding an inactive license may convert at any time to either a Retired, Active or Disabled, Active license upon written notification to the Commission and payment of applicable licensing fees.

(e) The fee for Retired, Active or Disabled, Active status is one-half the amount of the license renewal fee charged for active status.

§203.4. Reciprocal License.

(a) A person who holds a funeral director's license or an embalmer's license issued by another state, country or territory may reciprocate the license with the Commission.

(b) Any applicant for a license under this section shall file a sworn application. The application must include the following information:

(1) a statement the applicant is the person who holds the license and the applicant's license is current and in good standing;

(2) an affidavit made by the governmental entity or a registration officer of the state, country or territory that issued the license that verifies the license is active and the qualifications provided by the applicant are correct;

(3) a copy of a certified transcript showing the applicant graduated from an accredited college of mortuary science; and

(4) any other requirements necessary for licensure under Occupations Code §651.253.

(c) An applicant under this section must show that the applicant has practiced for at least:

(1) one year in a state with license requirements similar to those of the Commission; or

(2) five years in a state that does not have license requirements similar to those of the Commission.

(d) All applicants under this section shall sit for the State Mortuary Law Examination administered by the Commission. A passing score of at least 75% is required.

(e) Each applicant shall submit to a criminal background check. An applicant is subject to the standards outlined by §203.16 of this title (relating to Consequences of Criminal Conviction).

(f) The Executive Director shall waive licensure requirements under Occupations Code §651.253, if the applicant meets the licensure term under subsection (c)(1) of this section. The Executive Director may waive licensure requirements under Occupations Code §651.253, if the applicant meets the licensure term under subsection (c)(2) of this section.

(g) The applicant shall pay a license fee in an amount set by the Commission.

(h) The executive director may waive any prerequisite to obtaining a license under this section for an applicant who is licensed in a state with substantially equivalent licensing requirements and who is a military service member, military veteran, or military spouse as defined by Occupations Code Chapter 55.

§203.5. Provisional License.

(a) An applicant for a provisional license must meet the eligibility requirements of Occupations Code, §651.302 and shall submit to a criminal background check. Upon written application, the Commission shall waive the requirements of Occupations Code, §651.302(a)(2) and (b)(2) for a period not to exceed 12 months to an applicant who is otherwise qualified. This education waiver may be granted only to a person who has never held a provisional license issued by the Commission.
(b) An applicant who is enrolled in an accredited mortuary college must have the college forward a letter of enrollment prior to a provisional license being issued. A provisional license holder who was granted an education waiver under Occupations Code §651.302(c) must have the college forward a letter of enrollment prior to a provisional license being renewed. An applicant or a provisional license holder who has completed coursework but is not a certified graduate may hold a provisional license if the person has the college forward a letter stating the person has filed for graduation and provide an expected graduation date within 3 months.

(c) If a school or college or mortuary science loses its accreditation, a student who is enrolled and actively attending classes related to mortuary science will be considered to have graduated from an accredited school or college of mortuary science for the purpose of complying with Occupations Code §651.253, if the student graduates within 12 months of the loss of accreditation.

(d) A provisional license holder may work only in a funeral establishment or commercial embalming establishment licensed by the Commission. All work must be performed under the direct and personal supervision of a duly licensed funeral director or embalmer, depending on the provisional license.

(e) The provisional funeral director program may not be served in a commercial embalming establishment.

(f) A provisional license holder must maintain employment with a funeral establishment or commercial embalming establishment, as applicable, throughout the provisional license period. A provisional license holder must notify the Commission where he/she is employed and if he/she changes employer. If the license holder is not employed, the Commission will cancel the provisional license.

(g) A provisional license is valid for a term of 12 consecutive months. If a provisional license holder fails to complete the license requirements in the 12-month license period, the holder's license may be renewed for an additional 12 months, for a maximum term of 24 months.

(h) Notwithstanding subsection (g) of this section, if a provisional license holder who was granted an education waiver under Occupations Code §651.302(c) fails to complete the license requirements in the maximum 24-month license period, the holder's license may be renewed for up to an additional 12 months, for a maximum term of 36 months. The license will be extended only for the number of months the provisional license holder was not enrolled in mortuary school.

(i) Fees will not be refunded to a provisional license holder who fails to complete the program.

(j) The Commission shall exit a provisional license holder from the program at any time during the license term if the license holder shows he/she has met the eligibility requirements of Occupations Code §651.253.

(k) Upon the completion of the provisional license program, the provisional license holder shall submit the Commission promulgated Exit Application and all required documentation to the Commission. The Commission shall verify the information received to ensure the provisional licensee has met all requirements. All information submitted is subject to inspection.

(l) Once the Commission confirms licensing requirements have been met, the Commission shall issue to the provisional license holder a written affidavit to be executed by the Funeral Director in Charge or the Embalmer in Charge, as applicable, which attests to the proficiency of the provisional license holder.

(m) Prior to issuing a regular license, the Commission must receive the affidavit described by subsection (1) of this section and the fees required for regular licensure.

(n) Examination Requirements

(1) An applicant for full licensure as a funeral director from the certificate program must pass the Texas State Board Examination as described in Occupations Code, §651.255.

(2) An applicant for full licensure who holds an Associate of Applied Science degree is required to pass either or both of the examinations as described in Occupations Code, §§651.255 - 651.256, depending on the license type being sought.

(3) Prior to being issued a provisional license, an applicant must pass the State Mortuary Law Examination administered by the Commission. If a person fails to submit an application for licensure within 6 months of taking the Mortuary Law Examination, the score is invalidated and the person must retake and pass the exam prior to licensure.

(4) A passing score of at least 75% is required for each examination described in paragraphs (1) - (3) of this subsection.

(o) A person who fails to submit an application within 6 months after submitting to a criminal background check may be required to submit to a subsequent background check.

§203.8. Continuing Education.

(a) Each person holding an active license and practicing as a funeral director or embalmer in this state is required to participate in continuing education as a condition of license renewal.

(b) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

1. Approved provider--Any person or organization conducting or sponsoring a specific program of instruction that has been approved by the Commission.

2. Approved program--A continuing education program activity that has been approved by the Commission. The program shall contribute to the advancement, extension, and enhancement of the professional skills and knowledge of the licensee in the practice of funeral directing and embalming by providing information relative to the funeral service industry and be open to all licensees.

3. Hour of continuing education--A 50-minute clock hour completed by a licensee in attendance at an approved continuing education program.

(c) Approval of continuing education providers.

1. A person or entity seeking approval as a continuing education provider shall file a completed application on a form provided by the Commission and include the continuing education provider fee and the fee for each course submitted. Governmental agencies are exempt from paying this fee.

2. National or state funeral industry professional organizations may apply for approval of seminars or other courses of study given during a convention.

3. An application for approval must be accompanied by a syllabus for each course to be offered which specifies the course objectives, course content and teaching methods to be used, and the number of credit hours each course is requesting to be granted, and a resume and description of the instructor's qualifications.
(4) A provider is not approved until the Commission accepts the application and issues a Provider Number for the provider and a course number for each course offered under that Provider Number. The Commission may refuse to approve a provider's application for any valid reason, as determined by the Commission.

(5) A Provider Number and course number are valid for one year, expiring on December 31st of each year, regardless of when the number was granted.

(6) The Commission may approve courses that have been approved by the Academy of Professional Funeral Service Practice, Inc. (APFSP). A provider submitting such a course would not need to submit the materials required under subsection (c)(3) of this section unless requested by the Commission.

(d) Responsibilities of approved providers.

(1) The provider shall verify attendance at each program and provide a certificate of attendance to each attendee. The certificate of attendance shall contain:

(A) the name of the provider and approval number;
(B) the name of the participant;
(C) the title of the course or program, including both the Commission-issued course and program number;
(D) the number of credit hours given;
(E) the date and place the course was held;
(F) the signature of the provider or provider's representative;
(G) the signature of the attendee; and
(H) if the course was in-person or on-line.

(2) The provider shall provide a mechanism for evaluation of the program by the participants, to be completed at the time the program concludes.

(3) The provider shall maintain the attendance records and evaluations for a minimum of two years after the course is presented. A copy of the evaluations and/or attendance roster shall be submitted to the Commission upon request.

(4) The provider shall be responsible for ensuring that no licensee receives continuing education credit for time not actually spent attending the program.

(5) The Commission may monitor any continuing education course with or without prior notice.

(e) Credit hours required.

(1) Licensed funeral directors and embalmers who actively practice are required to obtain 16 hours of continuing education every two-year renewal period. A licensee may receive credit for a course only once during a renewal period.

(2) Persons in Retired or Disabled status are exempt from continuing education.

(3) Persons in an active military status are eligible for exemption from the continuing education requirements, upon request. A copy of the active duty orders must be included in the request. Upon release from active duty and return to residency in the state, the individual shall meet the continuing education requirements before the next renewal period after the release and return.

(f) The following are mandatory continuing education hours and subjects for each renewal period:

(1) Ethics--two credit hours--this course must at least cover of right and wrong, the philosophy of morals, and standards of professional behavior.

(2) Law Updates--two credit hours--this course must at least cover the most current versions of Occupations Code Chapter 651, Health and Safety Code Chapter 716, and the Rules of the Commission.

(3) Vital Statistics Requirements and Regulations--two credit hours--this course must at least cover Health and Safety Code Chapters 193, 711, and Texas Administrative Code, Title 25, Chapter 181.

(g) Of the 16 hours of continuing education, four hours must be taken in-person. The remaining 12 hours may be taken through Internet/online presentation. This requirement for in-person continuing education will apply beginning with the June 30, 2020 renewals.

(h) The Commission will grant the following credit hours toward the continuing education requirements for license renewal. The credit hours outlined in this section are eligible to be counted toward the four hours of required in-person continuing education.

(1) A person is eligible for a maximum of eight credit hours per renewal period for provisional licensee supervision, regardless of the number of provisional licensees supervised.

(2) A presenter or instructor of approved continuing education is eligible for a maximum of two credit hours per renewal period per course for instruction, regardless of the number of times the course is presented.

(3) A person is eligible for a maximum of four credit hours per renewal period for attendance at Commission meetings, provided the licensee signs in and is present during the entirety of the meeting.

(i) Exemptions.

(1) An individual whose renewal date is 12 months or less following initial licensure is not required to obtain continuing education hours prior to renewal of the license. An individual whose renewal date is more than 12 months following first licensure is required to complete the mandatory continuing education outlined in subsection (f) of this section.

(2) The Executive Director may authorize full or partial hardship exemptions from the requirements of this section based on personal or family circumstances and may require documentation of such circumstances.

(A) The hardship request must be submitted in writing at least 30 days prior to the expiration of the license.

(B) Hardship exemptions will not be granted for consecutive licensing periods.

(j) The Commission will not renew the license of an individual who fails to obtain the required 16 hours of continuing education.

(k) Any licensee receiving or submitting for credit continuing education hours in a fraudulent manner shall be required to obtain all continuing education on site and not online for two consecutive renewal periods and shall be subject to any applicable disciplinary action.

§203.9. Licensure of Funeral Establishments and Commercial Embalming Establishments.

(a) New License Applications.

(1) Applications for licensure must be submitted on forms developed by the Commission. Applications shall be accompanied by applicable licensing fees, purchase agreement forms, all price lists, and
embalming, hearing, establishment of for currently base. Rentently form, affiliations involved may change or suspended. (d) An applicant for approval of a new or changed name may appeal the Executive Director's denial of the request to the Commissioners. The Commissioners' decision is final.

c) An establishment's licensed name may be changed by following the procedure outlined in §203.9 of this title (relating to Licensing of Funeral Establishments and Commercial Embalming Establishments) and by satisfying the requirements of subsection (b) of this section.

d) An applicant for approval of a new or changed name may appeal the Executive Director's denial of the request to the Commissioners. The Commissioners' decision is final.

e) All advertising on a website controlled by an entity licensed by the Commission must operate as follows:

(1) The licensed name of the entity, or a registered trademark or registered trade name belonging to the licensed entity and the establishment's license number must appear on the contact information page.

(2) Irrespective of the name on the website, provisions must be made on the website so that an individual who wishes to enter into a funeral-related transaction must not be able to complete such a transaction without openly and apparently dealing with the licensed entity under the licensed name as reflected in the records of the Commission.

(3) All locations advertised shall be licensed by the Commission.

(f) No funeral establishment, commercial embalming establishment, or crematory shall advertise in a manner which is false, misleading, or deceptive.

(g) A cremation society's website and any advertising shall be linked with a licensed funeral establishment or licensed crematory establishment. The licensed funeral establishment and its location shall be provided on the website or advertising.

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 September 16, 2019.

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Kyle E. Smith
Interim Executive Director
Texas Funeral Commission
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Proposal publication date: July 26, 2019
For further information, please call: (512) 936-2469

22 TAC §203.14

The repeal is adopted pursuant to Texas Occupations Code §§651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission’s work, and Texas Occupations Code §§651.165, which authorizes the Commission to renew licenses; Texas Occupations Code §§651.255 - 651.256, which outlines exams
required to be licensed as a funeral director or embalmer; Texas Occupations Code §651.259, which authorizes the Commission to reciprocate licenses from other states; Texas Occupations Code §651.265, which authorizes the Commission to renew licenses in active/inactive status; §651.266, which authorizes the Commission to adopt rules related to continuing education; Texas Occupations Code §651.3045, which authorizes the Commission to offer education waivers to certain applicants; and Texas Occupations Code Chapter 55, which outlines requirements for occupational licensing of military members, veterans and spouses. No other statutes, articles, or codes are affected by this section.

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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Interim Executive Director
Texas Funeral Service Commission
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For further information, please call: (512) 936-2469

SUBCHAPTER B. DUTIES OF A FUNERAL ESTABLISHMENT/LICENSEE

22 TAC §§203.24, 203.26, 203.27, 203.31 - 203.33, 203.35

The Texas Funeral Service Commission (Commission) adopts amendments to Title 22 Texas Administrative Code Part 10, Chapter 203, Subchapter B—Duties of a Funeral Establishment/Licensee, specifically rules §203.24--Display of License; §203.26--Presentation of Consumer Brochure; §203.27--Identification of Person Responsible for Making Arrangements; §203.31--Facilities Necessary in a Preparation Room; §203.32--Requirements Relating to Embalming; §203.33--Required Documentation for Embalming; Rule §203.35--Location of Retained Records. The amended rules are adopted with changes to the proposed text as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3767). The rules will be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION: Changes to the following rules are necessary to comply with statutory changes made during the 86th Legislative Session in HB 1540, as directed by the Texas Sunset Advisory Commission, or as requested by stakeholders to clarify the rules.

The adopted amendments to Rule §203.24, Display of License, require the licenses on display at a funeral establishment be current (not expired); clarify that the licenses of temporary employees could be copies and do not have to be displayed; and clarify copies of licenses for both regular full time and regular part time employees no longer employed must be kept at the establishment for two years after employment ends.

The adopted amendment to Rule §203.26, Presentation of Consumer Brochure, eliminate language requiring an establishment to purchase the consumer brochure from the Commission.

The adopted amendment to Rule §203.27, Identification of Person Responsible for Making Arrangements, provide that a person should acknowledge his/her right to control the disposition of the deceased in writing, if possible.

The adopted amendments to Rule §203.31, Facilities Necessary in a Preparation Room, provide the operating table must be non-porous instead of rust proof metal or porcelain and the preparation room be used only for purposes related to the care of the deceased instead of "not used for other purposes." They also clarify the preparation room should not have any public restrooms, whether unenclosed or not. They require the preparation room to have appropriate personal protection equipment related to universal precautions. They allow the Commission to require funeral establishments granted a preparation room exemption under §203.10 to have a room that conforms with some of the standards if human remains are ever present at the establishment.

The adopted amendment to Rule §203.32, Requirements Relating to Embalming, eliminates the requirement clothing/personal effects be "thoroughly disinfected" and instead just state they should be "disinfected" as the Commission believes an item is either disinfected or it is not.

The adopted amendment to Rule §203.33, Required Documentation for Embalming, eliminates citations to other statutes that concern the disposal of unclaimed bodies by county officials and the Anatomical Board's authority to receive unclaimed bodies.

The adopted amendments to Rule §203.35, Location of Retained Records, permit a funeral establishment to release records to the person responsible for making arrangements for final disposition and not just to family members. With respect to petitions requesting an exemption from the requirement for the location of retained records by licensed establishments, they require that records of different establishments not be commingled. The amendments provide an appeal process that an applicant whose petition for an exemption has been denied may follow and provide that a funeral establishment is authorized to maintain its records in a digital or electronic format, as long as it can print the records at the establishment.

PUBLIC COMMENTS: Pursuant to §2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide written/oral comments concerning the proposed amendments. The public comment period began on July 26, 2019 and ended on August 26, 2019. Seven comments were received regarding the proposed amendments or rule repeals.

SUMMARY OF COMMENTS:
Comment: Licensed funeral director and embalmer Billy C. Val-lie (License #7271) expressed support for the proposed amendments.

Commission Response: Agree.

Comment: Jim Bates, Director, Funeral Consumers Alliance of Texas, and Sandy Booth, individual, opposed the new text in §203.33(d)(2) which would allow an establishment to place its logo on the Commission's promulgated Authorization to Embalm Form. They both stated it was advertising for the licensed entity on a state-required form that must be signed by a consumer and may give the consumer the impression the licensed entity controls the form, not the Commission.

44 TexReg 5632  September 27, 2019  Texas Register
Comment: Glenn Bower, President, Commonwealth Institute, and Wayne Cavender, President, Dallas Institute of Funeral Service supported amendments to §203.32(a)(3) which removed the specific amount of dilute solution to be used per 50 pounds of body weight stating embalmers need leeway to make professional decisions during the embalming procedures.

However, Felix Gonzales, Faculty, Mortuary Science Department, San Antonio College opposed the amendments stating the current standards "establish a minimum standard of performance as well as establish a quantifiable level of compliance."

Commission Response: Agree. The Commission will remove the language from the adopted rules.

Comment: Licensed funeral director Sydney R. Waldman (License #115026) stated the Commission should be allowed to grant an exemption from the preparation room requirement for funeral homes that do not perform embalming for religious reasons.

Commission Response: Disagree. Additional exemptions were discussed at the June Commission meeting. Commissioners voted to only allow for an exemption for those funeral homes with the same ownership located within 50 miles of each other citing health and safety concerns.

The rules to be finally adopted contain the following changes from the rules as published in the July 26, 2019, issue of the Texas Register:

§203.32(a)(3) is changed as a result of a printing error in the Texas Register. The text as adopted by the Commission reads "(3) Clothing and/or personal effects of the decedent shall either be disinfected before delivery to any person or discarded in a manner consistent with the disposal of biohazardous material. The Texas Register omitted the strike through of the word "thoroughly".

§203.32--Requirements Relating to Embalming--Strike proposed changes to Section (a)(8) so language would continue to read "(8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1.0% formaldehyde, or an approved substance that acts the same as formaldehyde, and as the professional experience of the embalmer indicates, one gallon of dilute solution shall be used for each 50 pounds of body weight. Computation of solution strength is as follows: C x V = C' x V', where C = strength of concentrated fluid, V = volume of ounces of concentrated fluid, C' = strength of dilute fluid, and V' = volume of ounces of dilute fluid."*

§203.33--Required Documentation for Embalming - Strike proposed changes to Section (d)(2) so the language would continue to read "(2) The Commission's Authorization to Embalm Form may not be altered and must be used in its adopted form. A copy of this form may be obtained from the Commission and may be reproduced by a licensed funeral establishment."
(8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1.0% formaldehyde, or an approved substance that acts the same as formaldehyde, and as the professional experience of the embalmer indicates, one gallon of dilute solution shall be used for each 50 pounds of body weight. Computation of solution strength is as follows: \( C \times V = C' \times V' \), where \( C \) = strength of concentrated fluid, \( V \) = volume of ounces of concentrated fluid, \( C' \) = strength of dilute fluid, and \( V' \) = volume of ounces of dilute fluid.

(9) Abdominal and thoracic cavities shall be treated in the following manner.

(A) Liquid, semi-solid, and gaseous contents which can be withdrawn through a trocar shall be aspirated by the use of the highest vacuum pressure attainable.

(B) Concentrated, commercially prepared cavity fluid which is acidic in nature (6.5 pH or lower) and contains at least two preservative chemicals shall be injected and evenly distributed throughout the aspirated cavities. A minimum of 16 ounces of concentrated cavity fluid shall be used in any embalming case in which a minimum of two gallons of arterial solution has been injected.

(C) Should distension and/or purge occur after treatment, aspiration and injection as required shall be repeated as necessary.

(10) The embalmer shall be required to check each body thoroughly after treatment has been completed. Any area not adequately disinfected by arterial and/or cavity treatment shall be injected hypodermically with disinfectant and preservative fluid of maximum results. A disinfectant and preservative medium shall be applied topically in those cases which require further treatment.

(11) On bodies in which the arterial circulation is incomplete or impaired by advance decomposition, burns, trauma, autopsy, or any other cause, the embalmer shall be required to use the hypodermic method to inject all areas which cannot be properly treated through whatever arterial circulation remains intact (if any).

(12) In the event that the procedures in paragraphs (1) - (11) of this subsection leave a dead human body in condition to constitute a high risk of infection to anyone handling the body, the embalmer shall be required to apply to the exterior of the body an appropriate embalming medium in powder or gel form and to enclose the body in a zippered plastic or rubber pouch prior to burial or other disposal.

(13) Dead human bodies donated to the State Anatomical Board shall be embalmed as required by the State Anatomical Board and where conflicting requirements exist, those requirements of the State Anatomical Board shall prevail.

(14) All bodies should be treated in such manner and maintained in such an atmosphere as to avoid infestation by vermin, maggots, ants, and other insects; however, should these conditions occur, the body should be treated with an effective vermineed and/or insecticide to eliminate these conditions.

(15) No licensed establishment or licensed embalmer shall take into its or the embalmer's care any dead human body for embalming without exerting every professional effort, and employing every possible technique or chemical, to achieve the highest level of disinfecting.

(16) Nothing in this section shall be interpreted to prohibit the use of supplemental or additional procedures or chemicals which are known to and accepted in the funeral service profession and which are not specifically mentioned in this subsection.

(b) Minor variations in these procedures shall be permitted as long as they do not compromise the purpose of this rule as stated in subsection (a) of this section.

(c) All embalming case reports must contain, at a minimum, all the information on the case-report form promulgated by the Commission. Funeral establishments may use other forms, so long as the forms contain all the information on the promulgated form. A case report shall be completed for each embalming procedure not later than the date of disposition of the body which was embalmed. The embalmer shall ensure that all information contained in the case report is correct and legible. The completed form shall be retained for two years following the procedure date. The embalming case report must be completed and signed by the licensed embalmer who performed the embalming procedure.

(d) Nothing in this section shall be interpreted to require embalming if a family member or the person responsible for making arrangements for final disposition does not authorize embalming.

§203.33. Required Documentation for Embalming.

(a) If permission to embalm is oral, the funeral establishment must maintain for two years written documentation of the name of the person authorizing embalming, that person's relationship to the deceased, and the time permission was obtained.

(b) When oral or written permission to embalm cannot be obtained from the person authorized to make funeral arrangements, the funeral establishment must maintain for two years written documentation of the efforts taken as mandated by Occupations Code §651.457 to obtain permission to embalm.

(c) In cases where a Medical Examiner or Justice of the Peace has given permission to a funeral establishment to take custody of a body, the receiving funeral establishment may not embalm the body until the person responsible for making arrangements for final disposition has given permission. Nothing in this subsection shall be construed as allowing a funeral establishment to initiate contact with the person authorized to make funeral arrangements.

(d) Authorization to Embalm Form.

(1) If embalming is performed, the Commission promulgated Authorization to Embalm Form must be signed by a family member or the person responsible for making arrangements for final disposition when written authorization is secured.

(2) The Commission's Authorization to Embalm Form may not be altered and must be used in its adopted form. A copy of this form may be obtained from the Commission and may be reproduced by a licensed funeral establishment.

(e) If a mortuary student who is not a provisional licensee is to assist the licensed embalmer, the authorization pursuant to Occupations Code §651.407 must be in the possession of the funeral establishment and/or embalmer at the time of the embalming. A copy of the mortuary student authorization shall be retained according to Occupations Code §651.407.

(f) Nothing in this rule diminishes the requirement of the establishment to abide by the Federal Trade Commission funeral rule regarding embalming disclosures. In the event of a conflict between this rule and the Federal Trade Commission funeral rule, the Federal Trade Commission funeral rule prevails.

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

22 TAC §§203.41 - 203.45, 203.47

The Texas Funeral Service Commission (Commission) adopts amendments to Title 22 Texas Administrative Code Part 10, Chapter 203, Subchapter C - Enforcement, specifically Rules §§203.41 Investigations; 203.42 Notice and Hearings; 203.43 Administrative Penalties and Sanctions; 203.44 Procedures and Criteria for Inspections of Licensed Entities; 203.45 Unprofessional Conduct; and 203.47 Purchase Agreement (statement of funeral goods and services selected). The amended rules are adopted with changes to the proposed text as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3771); therefore, the rules will be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION. The adopted amendments to Chapter 203, Subchapter C, are necessary to comply with statutory changes made during the 86th Legislative Session in HB 1540 and HB 1731, as directed by the Texas Sunset Advisory Commission, or as requested by stakeholders to clarify the rules.

-Rule §203.41, Investigations--The changes would provide that the investigator send a summary of the complaint, instead of a copy of the complaint upon opening an investigation to ensure confidentiality of complainant during initial stages of investigation. It allows the respondent to request a redacted copy of the complaint upon request.

-Rule §203.42, Notice and Hearings--The changes would list the types of informal methods a respondent can use to settle a complaint to include negotiation with the staff attorney or an informal settlement conference with the executive director, staff attorney, and investigator. It provides that an informal settlement conference must allow the complainant an opportunity to be present. The changes also clarify how a case is closed if a settlement is reached via informal methods.

-Rule §203.43, Administrative Penalties and Sanctions--The changes would allow the agency to adopt higher penalties for a violation if the respondent has multiple violations on his/her records, even if the violations were not the same section of statute. They authorize the Commission to require a respondent to pay a refund to a consumer in lieu of or in addition to an administrative penalty.

-Rule §203.44, Procedures and Criteria for Inspections of Licensed Entities--The changes would delete references to cemeteries and would eliminate Health & Safety Code Chapters 714 and 715 from inspection reviews as the Commission no longer has authority to regulate cemeteries per HB 1540. The amendments establish reasons for the Commission to perform risk-based inspections to include previously found inspection violations, multiple enforcement violations, establishments with a change of ownership, and newly issued licenses. They allow the Commission to inspect risk-based establishments annually; and allow a risk-based establishment to be declassified as such if it has two consecutive inspections without violations and/or it has no proven violations within a two-year period. Finally, the changes renumber a provision that allows the Commission to inspect an establishment as a result of a complaint, with the limited scope of proving/disproving the complaint.

-Rule §203.45, Unprofessional Conduct--The changes would provide that it is unprofessional conduct for all licensed entities not just funeral establishments to operate in an unsanitary manner. They provide that it is unprofessional conduct to fail to make payment for services rendered on behalf of a consumer as the Commission believes the consumer ultimately could be harmed by the licensed entity’s failure to pay another entity for services rendered on behalf of the consumer.

-Rule §203.47, Purchase Agreement (Statement of Funeral Goods and Services Selected) The changes would provide update the rules as directed by HB 1731 enacted by the 86th Legislature regarding payments between funeral homes and funeral establishments. Specifically, the changes related to the removal, refrigeration, embalming (if authorized), transportation, and casket (if used) are required to be included on a purchase agreement.

PUBLIC COMMENTS: Pursuant to §2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide written/oral commentary concerning the proposed amendments to this rule. The public comment period began on July 26, 2019 and ended on August 26, 2019. Two comments were received regarding the proposed amendments.

SUMMARY OF COMMENTS:

Comment: Licensed funeral director and embalmer Billy C. Val- lie (License #7271) expressed support for the proposed amendments.

Commission Response: Agree.

Comment: Licensed funeral director Sydney R. Waldman (Lic- ense #115028) stated the amendment to §203.43(e) should be clarified to only allow the Commission to require the refund of a particular item or items in question, but not the total amount of the funeral contract unless no payments were made to outside, third parties.

Commission Response: Agree. Statute already provides that the “amount of a refund ordered under this section may not exceed the actual amount paid by the person to the license holder.” While, adding similar language to the rule is unnecessary, the Commission is not opposed to including the statutory language in the rule.

CHANGES TO PUBLISHED TEXT: The rules to be finally adopted contain the following changes from the rules as published in the July 26, 2019, issue of the Texas Register:

§203.43(d) is amended to clarify how or when the Commission may impose a higher penalty for a licensee who commits multiple violations. The text now reads: “(d) Multiple violations of Occupa- tions Code, Chapter 651; Health and Safety Code, Chapters 193, 361, 695, 711, 716; Finance Code Chapter 154; Tex. Ad- min. Code, Title 22, Part 10, may result in higher penalties. Mul- tiple violations may consist of violation of more than one section of the law, numerous violations of the same section of the law, or
a combination of both." The amended language does not change the Commission's intent of the amendment as published in the Texas Register.

§203.43(e) is amended at the suggestion of a commenter to include the following sentence: The amount of a refund ordered under this section may not exceed the actual amount paid by the person to the license holder.

§203.44(a)(1) is changed as a result of a printing error in the Texas Register. The text as adopted by the Commission reads (1) All licensed funeral establishments, commercial embalming facilities, and crematories shall be inspected at least once every two years. The Texas Register omitted the strike though of "and cemeteries."

§203.45(b)(13) is amended to clarify what is meant by failing to make a payment on behalf of a consumer so the language now reads: (13) failing to make payment to a sub-contractor for consumer-related services performed by the sub-contractor pursuant to an agreement with the licensee; or. The amended language does not change the Commission's intent as published in the Texas Register.

STATUTORY AUTHORITY: The rules are adopted pursuant to (1) Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, (2) Texas Occupations Code §651.157 which outlines inspection procedures, including risk-based inspection; (3) Texas Occupations Code §651.202 which allows for the investigation of complaints and for informal methods to settle complaints; (4) Texas Occupations Code §651.2035 which requires confidentiality of complainant information; (5) Texas Occupations Code §651.406 which provides for certain funeral homes to include certain charges from other funeral homes on a purchase agreement; (6) Texas Occupations Code §651.459 which creates a violation for unprofessional conduct; (7) Texas Occupations Code §651.507 which allows for increased penalties for multiple violations; and (8) Texas Occupations Code §651.603 which authorizes the Commission to require refunds to consumers. The changes are made pursuant to updates to statutes as enacted by the 86th Texas Legislature in HB 1540 and HB 1731.

No other statutes, articles, or codes are affected by this section.

§203.43. Administrative Penalties and Sanctions.

(a) If a person violates any provision of Occupations Code, Chapter 651; Health and Safety Code, Chapters 193, 361, 695, 711, 716; Finance Code Chapter 154; Tex. Admin. Code, Title 22, Part 10; or an order of the Executive Director or Commissioners, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Occupations Code §§651.5515 - 651.552.

(b) The Administrative Penalties and Sanctions Schedule published following this section sets penalty limits and ranges by class of offense and number of offenses.

(c) The Commission may negotiate a lower penalty than outlined in the Administrative Penalties and Sanctions Schedule based on the following factors:

(1) Attempts by the licensee to correct or stop the violation;

(2) Number of complaints previously found justified against licensee;

(3) Whether the act was unintentional; and

(4) Other mitigating factors that could warrant a lower penalty.

(d) Multiple violations of Occupations Code, Chapter 651; Health and Safety Code, Chapters 193, 361, 695, 711, 716; Finance Code Chapter 154; Tex. Admin. Code, Title 22, Part 10, may result in higher penalties. Multiple violations may consist of violation of more than one section of the law, numerous violations of the same section of the law, or a combination of both.

(e) The Commission may require a licensee to issue a refund to a consumer in lieu of or in addition to assessing an administrative penalty. The amount of a refund ordered under this section may not exceed the actual amount paid by the person to the license holder.

Figure: 22 TAC §203.43(c)

§203.44. Procedures and Criteria for Inspections of Licensed Entities.

(a) Inspection Procedures.

(1) All licensed funeral establishments, commercial embalming facilities, and crematories shall be inspected at least once every two years.

(2) All inspections shall be unannounced.

(3) The inspector shall review prior inspection reports before inspecting a licensed entity. If prior reports reveal problems, the inspector shall determine whether the licensed entity has corrected the previously identified problems or whether a pattern of violations or new violations exist.

(4) Inspectors shall use reasonable efforts to conduct inspections between the hours of 8:00 a.m. and 5:00 p.m., but a licensed entity is required to be open at all times to inspections for violations of Occupations Code, Chapter 651, and Health and Safety Code, Chapters 193, 361, 711, and 716.

(5) If a licensed entity is not open for business during regular business hours and an inspector is unable to contact any employee or owner to open the licensed entity to conduct the inspection, the inspector shall notify the licensed entity by mail of the attempted inspection. If a licensed entity is unavailable for inspection during regular business hours twice during a six-month period, the Commission may file a complaint against the licensed entity, making the licensed entity subject to an administrative penalty or other action.

(b) The Commission may classify a licensed entity as risk-based for the following reasons:

(1) Previously found violations of Occupations Code, Chapter 651, and Health and Safety Code, Chapters 193, 361, 711, and 716, following a regular inspection.

(2) Multiple violations of Occupations Code, Chapter 651, or Rules of the Commission.

(3) Change of ownership.

(4) Newly issued license.

(c) Notwithstanding subsection (a)(1) of this section, a licensed entity may be inspected annually if the Commission classifies the entity as risk-based.

(d) The Commission will declassify an establishment as risk-based if it has two consecutive inspections with no found violations and/or it has no proven violations within a two-year period.

(e) If the Commission is in the process of conducting an investigation of a licensed entity, staff may inspect the licensed entity for the limited purpose of proving or disproving the validity of the com-
plaint. The scope of inspections under this paragraph shall be limited to matters relating to the subject of the complaint.

§203.45. Unprofessional Conduct.

(a) The Commission may, in its discretion, refuse to issue or renew a license or may fine, revoke, or suspend any license granted by the Commission if the Commission finds that the applicant or licensee has engaged in unprofessional conduct as defined in this section.

(b) For the purpose of this section, unprofessional conduct shall include but not be limited to:

1. providing funeral goods and services or performing acts of embalming in violation of Occupations Code, Chapter 651, the Rules of the Commission or applicable health and vital statistics laws and rules;
2. refusing or failing to keep, maintain or furnish any record or information required by law or rule, including a failure to timely submit any documentation requested during the course of a Commission investigation;
3. operating the licensed entity in an unsanitary manner;
4. failing to practice funeral directing or embalming in a manner consistent with the public health or welfare;
5. obstructing a Commission employee in the lawful performance of such employee’s duties of enforcing Occupations Code, Chapter 651, or the Rules of the Commission;
6. copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the Commission;
7. physically abusing or threatening to physically abuse a Commission employee during the performance of his lawful duties;
8. conduct which is willful, flagrant, or shameless or which shows a moral indifference to the standards of the community;
9. in the practice of funeral directing or embalming, engaging in:
   A. fraud, which means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another;
   B. deceit, which means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another;
   C. misrepresentation, which means a manifestation by words or other conduct which is a false representation of a matter of fact;
10. communicating directly or indirectly with a Commissioner during the pendency of a complaint in connection with an issue of fact or law, except upon notice and opportunity for each party to participate;
11. attempting to influence a complainant or witness in any complaint case to change the nature of the complaint, or withdraw the complaint by means of coercion, harassment, bribery, or by force, or threat of force;
12. retaliating or threatening to retaliate against a complainant who has filed a complaint with the Commission in good faith;
13. failing to make payment to a sub-contractor for consumer-related services performed by the sub-contractor pursuant to an agreement with the licensee; or
14. violating any Texas law or administrative rules governing the transportation, storage, refrigeration, interment, cremation, or disinterment of the dead.

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 205. CEMETARIES AND CREMATORIES

22 TAC §205.1, §205.2

The Texas Funeral Service Commission (Commission) adopts the repeal of Title 22 Texas Administrative Code Part 10, Chapter 205, Cemeteries and Crematories, Rule §205.1, concerning Cemetery License Requirements and Procedure, and Rule §205.2, concerning Ingress and Egress to Cemeteries and Private Burial Grounds Which Have No Public Ingress or Egress. The repeals are adopted without changes to the proposed text as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3775), and will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION: The adopted amendments to Chapter 205, Cemeteries and Crematories, remove references to cemeteries as a direct result of HB 1540, passed by the 86th Texas Legislature which repeals the Commission's authority over cemeteries.

The repeal of Rule §205.1, concerning Cemetery License Requirements and Procedure, and Rule §205.2, concerning Ingress and Egress to Cemeteries and Private Burial Grounds Which Have No Public Ingress or Egress, are adopted as a direct result of HB 1540, passed by the 86th Texas Legislature, which repeals the Commission's authority over cemeteries.

PUBLIC COMMENT: Pursuant to §2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide written/oral comments concerning the proposed repeal of this rule. The public comment period began on July 26, 2019, and ended on August 26, 2019. No comments were received regarding the proposed amendments or rule repeals.

STATEMENT OF STATUTORY AUTHORITY: The rules are repealed pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Health & Safety Code §716.0035 which outlines when a crematory establishment may accept deceased human remains;
and HB 1540, passed by the 86th Texas Legislature, which removed the Commission's authority to regulate cemeteries.

No other statutes, articles, or codes are affected by this section.

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 206. GUARANTEED STUDENT LOANS

22 TAC §206.1

The Texas Funeral Service Commission (Commission) repeals Title 22 Texas Administrative Code Part 10, Chapter 206, Guaranteed Student Loans.

REASONED JUSTIFICATION FOR RULE ADOPTION: The 86th Legislature enacted SB 37 by Senator Judith Zaffirini. This legislation prohibits licensing authorities from enacting rules that bar license holders who are in default on student loans from renewing their licenses.

The repeal of Title 22 Texas Administrative Code Part 10, Chapter 206, Guaranteed Student Loans is adopted as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3775). The repeal is made pursuant to §2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide written/oral comments concerning the proposed repeal of this rule. The public comment period began on July 26, 2019 and ended on August 26, 2019. No comments were received regarding the proposed amendments.

STATEMENT OF AUTHORITY: This repeal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Health & Safety Code §716.0035 which outlines when a crematory establishment may accept deceased human remains; and HB 1540, passed by the 86th Texas Legislature, which removed the Commission's authority to regulate cemeteries.

No other statutes, articles, or codes are affected by this section.

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 205. CREMATORIES

22 TAC §205.5

The Texas Funeral Service Commission (Commission) adopts an amendment to Title 22 Texas Administrative Code Part 10, Chapter 205, Cemeteries and Crematories, Rule §205.5, concerning Acceptance of Remains. The amended rule is adopted without changes to the proposed text as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3775) and will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION: The adopted amendment to Chapter 205, Cemeteries and Crematories, removes references to cemeteries as a direct result of HB 1540, passed by the 86th Texas Legislature which repeals the Commission's authority over cemeteries. The adopted amendment to Rule §205.5, Acceptance of Remains, deletes language prohibiting certain crematories from accepting human remains for cremation until the cremation is authorized by a justice of the peace/medical examiner and instead mirrors statute to allow a crematory to accept human remains for refrigeration before receiving authority to cremate.

PUBLIC COMMENT: Pursuant to §2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide written/oral comments concerning the proposed amendment of this rule. The public comment period began on July 26, 2019, and ended on August 26, 2019. No comments were received regarding the proposed amendment.

STATEMENT OF STATUTORY AUTHORITY: The rules are adopted pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Health & Safety Code §716.0035 which outlines when a crematory establishment may accept deceased human remains; and HB 1540, passed by the 86th Texas Legislature, which removed the Commission's authority to regulate cemeteries.

No other statutes, articles, or codes are affected by this section.

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