

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 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

The Texas Department of Agriculture (Department) adopts amendments to Texas Administrative Code (TAC), Title 4, Part 1, Chapter 3, Boll Weevil Eradication Program, Subchapter A (Election Procedures), §§3.1, 3.2, 3.4 - 3.7, 3.10, and 3.11; Subchapter B (Establishment of Rules, Procedures, and Methods of Treatment), §§3.22 - 3.24; Subchapter C (Prohibition of Planting of Cotton), §§3.51 and 3.52; Subchapter D (Requirements for Participation in the Eradication Program and Administrative Penalty Enforcement), §§3.71, 3.72, 3.74 - 3.76, and 3.78; Subchapter E (Creation of Eradication Zones), §§3.100, 3.102, and 3.103; Subchapter F (General Procedures), §§3.201 - 3.203 and 3.205; Subchapter H (Use of Bio-Intensive Controls in Active Boll Weevil Eradication Zones), §§3.400 - 3.403; and Subchapter J (Organic Cotton Rules), §§3.601, 3.602, and 3.604 - 3.609 without changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8818). These rules will not be republished.

The Department adopts amendments to Subchapter A, §3.3; Subchapter C, §3.54; and Subchapter D, §3.73 with changes to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8818). These rules will be republished. The changes retain existing requirements for notice of eradication zone elections and certain Texas Boll Weevil Eradication Foundation (Foundation) actions to be published in newspapers. The changes to §§3.3, 3.54, and 3.73 are made to comply with the statutory requirements for publication in newspapers found in §§74.106, 74.117, and 74.118 of the Texas Agriculture Code (Code).

The amendments to §3.1 update a reference to the United States Department of Agriculture (USDA) Farm Service Agency (FSA) and add "Texas Boll Weevil Eradication Foundation" to clarify the reference to the Foundation Board of Directors (Board).

The amendments to §3.2 add a subsection allowing an unopposed Board candidate to assume a Board position without holding an election to expedite the election process and increase efficiency.

The amendments to §3.3 add "Texas Boll Weevil Eradication Foundation" to clarify the reference to its Board and update references to Chapter 74 of the Code and Texas A&M's AgriLife Extension Service.

The amendment to §3.4 updates the content requirements of ballots for Board elections to comport with the current Foundation practices.

The amendment to §3.5 clarifies the reference to the geographic area by which tabulation and recording of votes will occur.

The amendments to §3.6 supplement references to "zones" to "eradication zones" for greater clarity and to conform with usage throughout Chapter 74 of the Code and update a reference to the FSA and statutory references to Chapter 74 of the Code.

The amendments to §3.7 clarify references to "zones" to mean "eradication zones" for greater clarity and to conform with usage in Chapter 74 of the Code.

The amendments to §3.10 update references to the FSA and statutory references to Chapter 74 of the Code and revise language to require either the signature of a grower or a person with the authority to sign for a grower on a petition for changing areas in an eradication zone.

The amendments to §3.11 change references to the Department to conform with usage throughout Title 4, Part 1; modify language to require either the signature of a grower or a person with the authority to sign for a grower on a petition for recalling a referendum in an eradication zone; and update a reference to the FSA, as well as statutory references to Chapter 74 of the Code.

The amendments to §3.22 remove unnecessary definitions for terms already defined in TAC, Title 4, Part 1, §1.1, which apply to the entire part; remove definitions no longer used in this chapter; remove a definition for "zone" because it is defined in Section 74.002 of the Code and update the definition for the Foundation.

The amendments to §3.23 remove an outdated reference to the now nonexistent National Boll Weevil Cooperative Control Program, update references to pesticide rules in Chapter 7 of TAC, Title 4, Part 1 and to Texas A&M AgriLife Extension Service county agents.

The amendments to §3.24 update a reference to the Texas Natural Resources Conservation Commission, now known as the Texas Commission on Environmental Quality.

The amendments to §3.51 remove an unnecessary definition for a term already defined in TAC, Title 4, Part 1, §1.1, which applies to the entire part.

The amendments to §3.52 clarify internal references to the Department's administrative rules and a reference to the Foundation's Board.

The amendments to §3.54 update a cross reference to §3.52.

The amendment to §3.71 clarifies internal references to the Department's administrative rules.

The amendments to §3.72 update a reference to the FSA and correct a grammatical error.

The amendment to §3.73 makes a minor editorial change.

The amendments to §3.74 correct a grammatical error to the rule's heading and update an internal reference within this chapter.

The amendments to §3.75 revise an internal reference within this chapter; update how a person can protest the issuance of a notice of violation and assessment of a penalty payment involving the failure to pay an eradication zone assessment; add language allowing the issuance of an order for such a penalty payment in the event someone does not respond to a notice; remove language requiring a hearing be held in the event someone does not respond to a notice; update a reference to the State Office of Administrative Hearings' rules of procedure; and incorporate language from the Code, Section 12.020, the Department's general statute on administrative penalties and related hearings, which establishes a 20-day period during which a hearing on a notice may be requested.

The amendments to §3.76 revise a reference to Section 74.115 of the Code; update how assessment penalty exemption forms can be obtained from the Department; limit assessment penalty exemptions to the particular crop year for which they are sought; and clarify that such future exemptions would apply to a new crop.

The amendments to §3.100 replace references to the "commissioner of agriculture" with "commissioner" to conform with usage in Chapter 74 of the Code and in this chapter.

The amendments to §3.102 change its heading to "Eradication Zone Activation; Grower Approval" and "zone" to "eradication zone" to conform with usage in Chapter 74 of the Code and in this chapter, and make minor editorial changes.

The amendments to §3.103 modify a cross reference to §3.102 to account for its new heading.

The amendments to §3.201 clarifies a reference to the Foundation's Board; increase the threshold amount for certain purchases or lease agreements, including bid announcements and formal solicitations, for which the Foundation must receive Department approval; and update a reference to Chapter 74, Subchapter D of the Code. This increased delegation of authority to the Foundation reflects current market prices for goods and services necessary to facilitate the Foundation's eradication efforts.

The amendments to §3.202 replace an initial reference to the foundation to "Texas Boll Weevil Eradication Foundation" and add "foundation" to the Board for greater clarity.

The amendments to §3.203 replace an initial reference to the Foundation to "Texas Boll Weevil Eradication Foundation" for greater clarity and remove an unnecessary reference to Section 74.1011 of the Code.

The amendments to §3.205 update references to the Department to conform with usage throughout Title 4, Part 1; revise statutory references to Section 74.1095 of the Code and Chapter 2001 of the Texas Government Code; remove a reference to a repealed statute; and modify references to the Commissioner for consistency with Chapter 74 of the Code and this chapter.

The amendments to §3.400 remove an unnecessary definition for a term already defined in TAC, Title 4, Part 1, §1.1, which

applies to the entire part, and update the Foundation's official title.

The amendments to §§3.401 - 3.403 change references to the Department and Foundation for consistency with usage throughout TAC, Title 4, Part 1.

The amendments to §3.601 remove an unnecessary definition for a term already defined in TAC, Title 4, Part 1, §1.1, which applies to the entire part; update the Foundation's official title; update a definition for "certified organic crop" by removing a portion that refers to a repealed rule within this title allowing for emergency pest or disease treatments for organic or transitional crop; and update a definition for "transitional crop" by replacing an internal reference to a repealed rule within this title outlining the requirements for transitional crop to the current Department rule located at TAC, Title 4, Part 1, §18.300.

The amendments to §3.602 delete surplus language and clarify an internal reference to this chapter.

The amendments to §3.604 remove a reference to a repealed rule allowing for emergency pest or disease treatments for organic or transitional crop.

The amendments to §3.605 update an internal reference within this chapter and delete a reference to a repealed rule allowing for organic or transitional crop to be treated under former Department rule located at TAC, Title 4, Part 1, §18.10.

The amendments to §3.606 revise an internal reference within this chapter and remove a reference to a repealed rule providing for conventional treatment of organic or transitional crop under former Department rule located at TAC, Title 4, Part 1, §18.10.

The amendments to §3.607 modify references to the Commissioner for consistency with Chapter 74 of the Code and this chapter.

The amendments to §3.608 update references to the FDA and the USDA Risk Management Agency; update an internal reference within this chapter; remove a reference to a repealed rule allowing for compensation for destroyed organic or transitional cotton; and remove a related section providing compensation to such cotton that is treated, rather than destroyed, under §3.606.

The amendments to §3.609 correct an internal reference within the Department's administrative rules.

PUBLIC COMMENTS

Comment: The Department received a comment from the Texas Press Association (TPA) on §3.3 and §3.73. The comment opposed the proposed amendments to notice requirements from publication in newspapers to publication on the Foundation's website. TPA contends that publication on the Foundation's website would decrease the likelihood cotton producers would be aware of Board elections and referenda, thereby curbing participation from these producers affected by the outcome of these votes. TPA further contended that the means by which public notice would be given would be left to the discretion of the Foundation, resulting in a lack of consistency in terms of how notices would be received, which would undermine reliance on them. TPA added that the changes are contrary to public policy given the role of newspapers in providing independent oversight for the issuance of public notices given by government entities.

Response: The Department has reconsidered its proposed amendments to §3.3 and §3.73 and decided to adopt these

rules with changes to the proposed text but retained existing requirements for notice to be published in newspapers.

Comment: The Department received a comment from the Foundation on §§3.6, 3.7, 3.23, and 3.75. The comment recommended the elimination of provisions in §3.6 and §3.7 addressing retention referenda conducted under Section 74.114 of the Code since the statute provides for one retention referenda per eradication zone after 2005, and each zone has conducted since conducted a referendum. The Foundation recommended adding language to §3.23(d) limiting pesticide application notification requirements for the Foundation to bee keepers who provide the locations of their hives to the Foundation that are adjacent to fields intended for spraying. The Foundation also recommended changing the proposed amendment to §3.75(d), setting a 20-day deadline for a request for hearing on a notice of violation from the date of receipt of the notice to a 20-day deadline from the date the notice was mailed to avoid any fact questions regarding the receipt of the notice.

Response: After further consideration, the Department views the proposed changes to §§3.6, 3.7, and 3.23 as outside the scope of the proposed amendments, and declines to include them at this time. The Department cannot follow the recommendation for §3.75 because the proposed amendment's provision beginning the 20-day time period in which to request a hearing on the date a notice of violation is received adheres to the statutory provision in the Department's general authority to assess administrative penalties. i.e., §12.020 of the Code.

SUBCHAPTER A. ELECTION PROCEDURES

4 TAC §§3.1 - 3.7, 3.10, 3.11

The amendments are adopted pursuant to Section 74.114 of the Code, which requires the Department to adopt rules for voting in Board elections and referenda to establish or continue eradication zones and Section 74.120 of the Code, which allows the Department to adopt rules necessary to administer the purposes of Chapter 74.

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§3.3. *Conduct of Elections; Notice.*

(a) The election of Texas Boll Weevil Eradication Foundation (foundation) board members from each proposed eradication zone shall be held concurrently with the eradication zone referendum or referenda.

(b) The department may conduct an assessment referendum or referenda either in conjunction with a board election and eradication zone referendum or referenda or at a time subsequent to the initial board election and referendum or referenda.

(c) A board election and referendum or referenda conducted under the Texas Agriculture Code, Chapter 74, Subchapter D and this chapter must be preceded by at least 45 days' notice published in one or more newspapers published and distributed throughout the proposed or established eradication zone or zones, or area proposed to be added or transferred. The notice shall be published not less than once a week for three consecutive weeks. In addition, direct written notice of the election shall be given to each county extension agent of the Texas A&M AgriLife Extension Service (Extension Service) in the eradication zone or zones or area proposed to be added or transferred at least 45 days before the date of the election, referendum, or referenda.

(d) Notice provided in accordance with subsection (c) of this section shall include:

- (1) the date of the election;
- (2) the manner in which the election is to be conducted (i.e., by mail balloting);
- (3) the purpose of the election and/or referendum;
- (4) if appropriate, information regarding the election of board members, including how to get on the ballot;
- (5) if an assessment referendum is being conducted, the maximum assessment to be paid by cotton growers having production in the eradication zone and the time for which the assessment will be collected;
- (6) who to contact for more information; and
- (7) if a referendum includes a proposition for approval of a third party contractor to carry out an eradication program, in accordance with the Code, §74.124, the name of the proposed contracting party.

(e) A referendum and/or board election conducted under the Code, Chapter 74, Subchapter D, and this chapter shall be conducted by mail ballot, with ballots returned by mail to the headquarters of the department.

(f) No ballot will be valid if postmarked after midnight on the last day for voting in the board election, referendum, or referenda.

(g) An eligible voter who has not received a ballot from the department, foundation or another source may request a ballot by mail by calling the department headquarters or by contacting the Extension Service office in a county within the eradication zone or proposed eradication zone, or other governmental office designated by the department.

(h) Instructions for county extension agents and voters will be available in each election from the department.

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

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SUBCHAPTER B. ESTABLISHMENT OF RULES, PROCEDURES, AND METHODS OF TREATMENT

4 TAC §§3.22 - 3.24

The amendments are adopted pursuant to Section 74.120 of the Code, which allows the Department to adopt rules necessary to administer the purposes of Chapter 74.

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SUBCHAPTER C. PROHIBITION OF PLANTING OF COTTON

4 TAC §§3.51, 3.52, 3.54

The amendments are adopted pursuant to Section 74.118 of the Code, which allows the Department to adopt rules regarding the areas where cotton may not be planted in eradication zones, and Section 74.120 of the Code, which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74.

§3.54. *Failure To Comply with Prohibition.*

(a) Upon notice by the foundation that a grower has failed to comply with a notice of prohibition provided in accordance with §3.53 of this chapter (relating to Notice of Prohibition), or has failed to obtain a permit for planting of noncommercial cotton in an eradication zone as required by §3.52 of this chapter (relating to Prohibition of Planting of Commercial and Noncommercial Cotton) the department shall take the following actions:

(1) Immediately upon identification of a field that is out of compliance, the department shall give written notice to the farm owner, to the grower, and, if known, to any lender having an interest in the field or the cotton, that the field and any cotton growing in the field are in violation of these rules.

(2) The notice shall further instruct the owner and grower to destroy any cotton located in the field within seven days after the date the written notice is received. Destruction shall be performed in a manner to prohibit the presence of live cotton plants.

(3) If the owner or grower cannot be located after reasonably diligent effort has been made by the department to locate such persons, the department shall publish the notice in a newspaper of general circulation in the county in which the land is located and post for a period of three consecutive days a copy of the notice on or in the immediate vicinity of the field in violation.

(4) If no response is received by the department from either the owner or grower within four days after the date of posting of the notice at the field, or if the department considers the response inadequate, the department shall have the cotton destroyed.

(b) The department may take any other action necessary to complete destruction of cotton in order to prevent the spread of boll weevils from the infested area.

(c) All costs incurred by the department in the destruction of cotton in accordance with subsection (a) of this section shall be reimbursed by the grower.

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SUBCHAPTER D. REQUIREMENTS FOR PARTICIPATION IN THE ERADICATION PROGRAM AND ADMINISTRATIVE PENALTY ENFORCEMENT

4 TAC §§3.71 - 3.76, 3.78

The amendments are adopted under Section 74.115 of the Texas Agriculture Code (Code), which allows the Department to assess administrative penalties for failure to pay eradication zone assessments when due; Section 74.116 of the Code, which requires the Department to adopt rules setting criteria for exemptions from payment of assessment penalties; Section 74.118 of the Code, which allows the Department to adopt rules requiring participation in eradication programs in established eradication zones and to assess penalties for failure to comply with Department rules on participation in cost sharing and acreage reporting; and Section 74.120 of the Code, which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74.

§3.73. *Notice of Requirement for Participation.*

(a) After passage of a referendum establishing an eradication program and maximum assessment and/or upon adoption of any new requirements by the department and/or the foundation, a notice of the requirements to participate in the eradication program shall be published by the foundation in a newspaper having general circulation within the affected zone or zones for one day each week for three successive weeks.

(b) The notice required by subsection (a) of this section shall include any requirements for timely reporting of acreage to the foundation, compliance with rules of the department, and payment of the assessment established and approved for that zone.

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

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SUBCHAPTER E. CREATION OF ERADICATION ZONES

4 TAC §§3.100 - 3.103

The amendments are adopted pursuant to Section 74.120 of the Code, which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74.

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SUBCHAPTER F. GENERAL PROCEDURES

4 TAC §§3.201 - 3.203, 3.205

The amendments are adopted pursuant to Section 74.120 of the Code, which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74; Section 74.152 of the Code, which requires the Department to adopt rules to implement a cost-sharing program as part of the eradication program, and Section 74.1095 of the Code, which requires the Department to establish by rule procedures for the informal review and resolution of claims arising out of certain acts of the Foundation.

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SUBCHAPTER H. USE OF BIO-INTENSIVE CONTROLS IN ACTIVE BOLL WEEVIL ERADICATION ZONES

4 TAC §§3.400 - 3.403

The amendments are adopted pursuant to Section 74.130 of the Code, which requires the Department to develop and adopt rules to allow cotton growers in eradication programs to use biological, botanical, or other non-synthetic pest control methods, and Section 74.120 of the Code, which allows the Department to adopt rules necessary to administer the purposes of Chapter 74.

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SUBCHAPTER J. ORGANIC COTTON RULES

4 TAC §§3.601, 3.602, 3.604 - 3.609

The amendments are adopted pursuant to Section 74.120 of the Code, which allows the Department to adopt rules necessary to administer the purposes of Chapter 74, and Section 74.125 of the Code, which requires the Department to adopt rules and procedures to protect the eligibility of Department-certified organic cotton growers, to ensure that organic and transitional certification meets national certification standards, to maintain the effectiveness of the eradication program, and to provide indemnity for organic cotton growers for reasonable losses resulting from production prohibitions or required destruction.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

The commissioner of insurance adopts amendments to 28 TAC §§21.113, 21.2505, 21.4902, 21.5001, 21.5002, 21.5010, 21.5011, 21.5020, 21.5021, and 21.5040, concerning trade practices, and the repeal of Chapter 21, Subchapter QQ. The commissioner adopts §21.5011 and §21.5021 with changes to the proposed text published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 628). These sections will be republished. Changes to §21.5011 and §21.5021 are nonsubstantive and revised for consistency with agency drafting style.

The commissioner adopts §§21.113, 21.2505, 21.4902, 21.5001, 21.5002, 21.5010, 21.5020, and 21.5040 and the repeal of Chapter 21, Subchapter QQ, without changes to the proposed text as published in both the February 10, 2023, issue of the *Texas Register*, and the correction of error published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1184). These sections will not be republished.

REASONED JUSTIFICATION.

The amendments to §§21.4902, 21.5001, 21.5002, and 21.5040 are necessary to implement House Bill 3924, 87th Legislature, 2021, and Insurance Code Chapter 1275. HB 3924 permits a nonprofit agricultural organization under Insurance Code Chapter 1682 to offer a health benefit plan. These health benefit plans are subject to the requirements of Chapter 1275, which create similar requirements for out-of-network billing that already exist for HMOs and Preferred Provider Benefit Plans, as well as for health benefit plans administered by the Employees Retirement Systems of Texas and Teacher Retirement System of Texas plans under Insurance Code Chapters 1551, 1575, and 1579. The amendments clarify the applicability of Subchapters OO and PP to health benefit plans offered by nonprofit agricultural organizations.

The amendments to §§21.5010, 21.5011, 21.5020, and 21.5021 are necessary to implement Senate Bill 1264, 86th Legislature, 2019, and Insurance Code Chapter 1467. SB 1264 prohibits balance billing for certain health benefit claims under certain health benefit plans, provides exceptions to balance billing prohibitions, and authorizes an independent dispute resolution process for claim disputes between certain out-of-network providers and health benefit plan issuers and administrators. The amendments clarify the independent dispute resolution requirements to ensure efficient processing of mediation and arbitration of claims.

The amendments to §21.113 and §21.2505 remove outdated Texas Department of Insurance (TDI) mailing addresses. The amendments also make nonsubstantive changes throughout to reflect current agency drafting style and plain language preferences.

The repeal of Subchapter QQ is necessary because the information technology waiver previously granted under Insurance Code Chapter 1661 to certain health benefit plan issuers expired in 2012. Before January 1, 2012, a health benefit plan issuer could apply for a waiver from the information technology requirements under Chapter 1661. All waivers previously approved by the commissioner under §21.5103 expired September 1, 2013. Subchapter QQ implemented Insurance Code §1661.008, which expired.

The amendments to specific sections and the repeal are described in the following paragraphs, organized by subchapter.

Subchapter B. Advertising, Certain Trade Practices, and Solicitation.

Section 21.113. The adopted amendments to §21.113 replace inaccurate references to "Figure: 28 TAC §21.113(1)(5)" with "Figure: 28 TAC §21.113(l)(5)" for accuracy and consistency. The amendments also remove reference to TDI's mailing address in §21.113(l)(2) because the address is no longer accurate and TDI no longer keeps physical copies of the referenced form in hard copy format. The referenced form is available in Figure: 28 TAC §21.113(l)(5) for ease of access.

Amendments update references to the titles of 28 TAC Chapter 3, Subchapters S and Y, and add references to the titles of Insurance Code Chapter 1214; Chapter 541, Subchapter B; and Chapter 541 to ensure consistency and accuracy in Administrative Code and Insurance Code references. An amendment to Figure: 28 TAC §21.113(l)(5) restructures it so that Item (6) is shown before Item (7).

Amendments also include changes to conform with current agency drafting style and plain language preferences. The

amendments include correcting punctuation and revising capitalization of policy types listed in §21.113(d)(19). These amendments do not change the policy types listed.

Other amendments include corrections to punctuation and capitalization and, where appropriate, replacing "prior to" and "prior to such" with "before," "which" with "that" or "the," "conjunction therewith of" with "proximity to," "or" with "of," "division" with "title," "pre-existing" with "preexisting," "utilizes" with "uses," "low cost" with "low-cost," "consummate" with "complete," "such" with "the" or "these," "in order to" with "to," "who" with "that," "acknowledgement" with "acknowledgment," "shall" and "shall be" with alternative words as appropriate in the context of the provision; inserting the word "the"; and deleting "that," "as such," "such time as," "and," and "which is."

Subchapter Q. Complaint Records to Be Maintained.

Section 21.2505. The adopted amendments to §21.2505 remove reference to TDI's former mailing address where insurers were able to request the recommended complaint record maintenance form. TDI no longer provides physical copies of the referenced form. The amendments provide TDI's website where insurers may access the form.

Subchapter OO. Disclosures by Out-of-Network Providers.

Section 21.4902. The adopted amendments to §21.4902 add the defined terms "administrator" and "health benefit plan" to the section. The addition of these defined terms clarifies the applicability of Insurance Code Chapter 1682 and ensures consistency of the language used in Chapter 21, Subchapters OO and PP.

Subchapter PP. Out-of-Network Claim Dispute Resolution.

Section 21.5001. The adopted amendments to §21.5001 expressly incorporate a reference to Insurance Code §1275.003 into the purpose statement of §21.5001 to clarify that administrators operating under Insurance Code Chapter 1275 must comply with the requirements in the subchapter. The amendments also remove unnecessary punctuation.

Section 21.5002. The adopted amendment to §21.5002 clarifies that the subchapter applies to a claim filed for certain care or services by the administrator of a health benefit plan under Insurance Code Chapter 1682.

Section 21.5010. The adopted amendments to §21.5010 clarify that an out-of-network health benefit claim for an out-of-network laboratory or out-of-network diagnostic imaging service must be in connection with a health care or medical service or supply provided by a participating provider.

Section 21.5011. The adopted amendments to §21.5011 clarify that TDI may remove a mediator from the list of qualified mediators in certain circumstances, including failure to comply with any requirement under Insurance Code Chapter 1467 or rules adopted under Insurance Code §1467.003. The amendments also make nonsubstantive grammatical changes to §21.5011(e)(1) by adding "the" and "the date" for clarity.

The text of §21.5011(f)(3) as proposed has been changed to add "Insurance Code" to two citations for consistency with agency drafting style.

Section 21.5020. The adopted amendments to §21.5020 clarify that an out-of-network health benefit claim for an out-of-network laboratory or out-of-network diagnostic imaging service must be in connection with a health care or medical service or supply provided by a participating provider.

Section 21.5021. The adopted amendments to §21.5021 clarify that TDI may remove an arbitrator from the list of qualified arbitrators in certain circumstances, including failure to comply with any requirement under Insurance Code Chapter 1467 or rules adopted under Insurance Code §1467.003.

The amendments also specify that an arbitrator must evaluate only the factors found in §1467.083. Finally, the amendments remove unnecessary punctuation and add "the" and "the date" to §21.5021(e)(1) for clarity.

The text of §21.5021(f)(3) as proposed has been changed to add "Insurance Code" to two citations for consistency with agency drafting style.

Section 21.5040. The adopted amendments to §21.5040 expressly incorporate a reference to Insurance Code §1275.003 into the list of cited Insurance Code provisions under which health benefit plan issuers or administrators must provide the explanation of benefits according to the section. The amendments also clarify that the written notice required under the section must specify that the itemization of copayments, coinsurance, deductibles, and other amounts required under §21.5040(1)(B) is at an in-network cost-sharing level.

Amendments add the word "and" to the end of subparagraph (B) to clarify that a health benefit plan issuer or administrator subject to §21.5040 must provide the physician or provider with a written notice in an explanation of benefits that includes the requirements in paragraphs (1) and (2). The amendments also correct capitalization and delete unnecessary punctuation in the section.

Subchapter QQ. Health Information Technology.

Sections 21.5101 - 21.5103. These sections make up the entirety of Subchapter QQ and are repealed. Subchapter QQ is no longer necessary because the statutory provision it implemented expired.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from three commenters. Commenters in support of the proposal were Superior Health Plan of Texas and Texas Association of Health Plans. A commenter in support of the proposal with changes was Family Hospital Systems.

General comments

Comment. A commenter expresses concern regarding the functionality of certain provisions in Insurance Code Chapter 1467. The commenter requests that arbitration replace mediation and that mediation fees be removed. The commenter notes that arbitration is already used for professional fee disputes. The commenter also requests lawmakers define "good faith negotiations" to require the payor to disclose contract terms with clients to further resolution of disputes of overpayments or allowed minimums. The commenter suggests requiring health plans to state requirements for participation as in-network providers and suggests compelling participation as an in-network provider if certain requirements are met.

Agency Response. TDI declines to make the suggested changes. The requested amendments are outside the scope of TDI's statutory rulemaking authority.

Comment on §21.5010

Comment. A commenter expresses support for the addition of language to clarify that a qualified mediation claim must be for

an out-of-network laboratory service or out-of-network diagnostic imaging service provided in connection with a health care or medical service or supply provided by a participating provider.

Agency Response. TDI appreciates the support.

Comment on §21.5011

Comment. A commenter asks whether a health plan may request the removal of a mediator because of ongoing issues or concerns the plan experiences with the mediator.

Agency Response. TDI may remove mediators for failing to comply with the requirements in Insurance Code Chapter 1467 or the rules adopted under that chapter. Health plans may provide feedback, make complaints, or express concerns through the consumer complaint portal on TDI's website. TDI will review complaints under Insurance Code §1467.101 and §1467.151, and rules under 28 TAC §§21.5011, 21.5021, and 21.5030.

Comment on §21.5020

Comment. A commenter asks whether claim information from an out-of-network laboratory or out-of-network diagnostic imaging service will be included on the IDR portal and whether failure to include the claim information would render the claim in dispute ineligible for mediation. The commenter states that failing to include the claim information would make it difficult to find the corresponding claim on file with the plan. The commenter expresses concern about identifying eligible claims.

Agency Response. TDI declines to make changes to the rule text to require new or additional information be entered into the IDR portal. The proposed changes to §21.5020 do not amend applicability or requirements under Insurance Code Chapter 1467. The amendments align the rule text language with statutory requirements under Insurance Code §§1271.158, 1275.053, 1301.165, 1575.173, and 1579.111. TDI encourages health plans to contact providers with contact information entered into the IDR portal during the dispute resolution process, including if the plan has reason to believe a claim is ineligible.

SUBCHAPTER B. ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION

DIVISION 1. INSURANCE ADVERTISING

28 TAC §21.113

STATUTORY AUTHORITY.

The commissioner adopts amendments to §21.113 under Insurance Code §§541.401(a), 1201.101, and 36.001.

Insurance Code §541.401(a) authorizes the commissioner to adopt and enforce reasonable rules necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §1201.101 provides that the commissioner adopt reasonable rules under the section establishing specific standards, including standards that address the nonduplication of coverage.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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SUBCHAPTER Q. COMPLAINT RECORDS TO BE MAINTAINED

28 TAC §21.2505

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.2505 under Insurance Code §§541.401(a), 542.014, and 36.001.

Insurance Code §541.401(a) authorizes the commissioner to adopt and enforce reasonable rules necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §542.014 provides that the commissioner adopt reasonable rules as necessary to implement and augment the purposes and provisions of Insurance Code Chapter 542, Subchapter A.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §21.4902

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.4902 under Insurance Code §§1275.004, 1467.003, and 36.001.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Chapter 1275 applies is an administrator for purposes of Chapter 1467.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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SUBCHAPTER PP. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

DIVISION 1. GENERAL PROVISIONS

28 TAC §21.5001, §21.5002

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5001 and §21.5002 under Insurance Code §§1275.004, 1301.007, 1467.003, and 36.001.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Chapter 1275 applies is an administrator for purposes of Chapter 1467.

Insurance Code §1301.007 provides that the commissioner adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of this state.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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DIVISION 2. MEDIATION PROCESS

28 TAC §21.5010, §21.5011

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5010 and §21.5011 under Insurance Code §§1467.003, 1467.0505, and 36.001.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §1467.0505 provides that the commissioner adopt rules, forms, and procedures necessary for the implementation and administration of the mediation program.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.5011. *Mediation Request Procedure.*

(a) Mediation request and notice.

(1) An out-of-network provider that is a facility or a health benefit plan issuer or administrator may request mediation. To be eligible for mediation, the party requesting mediation must complete the mediation request information required on the department's website at www.tdi.texas.gov, as specified in subsection (b) of this section.

(2) The party who requests the mediation must provide written notice to each other party on the date the mediation is requested. The notification must contain the information as specified on the department's website, including the necessary claim information and contact information of the parties. A health benefit plan issuer or administrator requesting mediation must send the mediation notification to the mailing address or email address specified in the claim submitted by the provider. If a provider does not specify an address to receive notice requesting mediation in the claim, a health benefit plan issuer or administrator may provide notice to the provider at the provider's last known address the issuer or administrator has on file for the provider. A provider requesting mediation must send the mediation notification to the email address specified in the explanation of benefits by the health benefit plan issuer or administrator.

(b) Submission of request. The requesting party must submit information necessary to complete the initial mediation request, including:

(1) facility details, including identifying the facility type, facility contact information, and facility representative information;

(2) claim information, including the claim number, type of service or supply provided, date of service, billed amount, amount paid, and balance; and

(3) relevant information from the enrollee's health benefit plan identification card or other similar document, including plan number and group number.

(c) Notice of teleconference outcome. Parties must submit additional information on the department's website at the completion of the informal settlement teleconference period, including the date the teleconference request was received and the date of the teleconference.

(d) Mediator selection.

(1) The parties must notify the department through the department's website on or before 30 days from the date the mediation is requested if:

(A) the parties agree to a settlement;

(B) the parties agree to the selection of a mediator; or

(C) the parties agree to extend the deadline to have the department select a mediator and notify the department of new deadlines.

(2) If the department is not given notification under paragraph (1) of this subsection, the department will assign a mediator after the 30th day from the date the mediation is requested. The parties must pay the nonrefundable mediator's fee to the mediator when the mediator is assigned. Failure to pay the mediator when the mediator is assigned constitutes bad faith participation.

(e) Submission of information. Parties must submit information, as specified on the department's website, to the department at the completion of the mediation or informal settlement, including:

(1) the name of the mediator, the date when the mediator was selected, the date when the mediation was held, the date of the agreement, the date of the mediator report, and when payment was made; and

(2) the agreement, including the original billed amount, payment amount, and the total agreed amount.

(f) Mediator approval and removal.

(1) Mediators may apply to the department using a method as determined by the Commissioner, including through an application on the department's website or through the department's procurement process. An individual or entities that employ mediators may apply for approval.

(2) A list of qualified mediators will be maintained on the department's website. A mediator must notify the department immediately if the mediator wants to voluntarily withdraw from the list.

(3) At the discretion of the department, a mediator may be removed from the list of qualified mediators in certain circumstances, including failure to comply with any requirement under Insurance Code Chapter 1467, concerning Out-of-Network Claim Dispute Resolution, or rules adopted under Insurance Code §1467.003, concerning Rules.

(g) Mediation process.

(1) A party may request mediation after 20 days from the date an out-of-network provider receives the initial payment for a health benefit claim, during which time the out-of-network provider may attempt to resolve a claim payment dispute through the health benefit plan issuer's or administrator's internal appeal process.

(2) The parties may submit written information to a mediator concerning the amount charged by the out-of-network provider for the health care or medical service or supply and the amount paid by the health benefit plan issuer or administrator.

(3) The parties must evaluate the factors specified in Insurance Code §1467.056, concerning Matters Considered in Mediation; Agreed Resolution.

(4) Each party is responsible for reviewing the list of mediators and notifying the department within 10 days of the request for mediation whether there is a conflict of interest with any of the mediators on the list to avoid the department assigning a mediator with a conflict of interest.

(5) The parties may agree to aggregate claims between the same facility and same health benefit plan issuer or administrator for mediation.

(h) Assistance. Assistance with submitting a request for mediation is available on the department's website at www.tdi.texas.gov.

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

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DIVISION 3. ARBITRATION PROCESS

28 TAC §21.5020, §21.5021

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5020 and §21.5021 under Insurance Code §§1467.003, 1467.082, and 36.001.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §1467.082 requires the commissioner to adopt rules, forms, and procedures necessary for the implementation and administration of the arbitration program.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.5021. *Arbitration Request Procedure.*

(a) Arbitration request and notice.

(1) An out-of-network provider or a health benefit plan issuer or administrator may request arbitration. To be eligible for arbitration, the party requesting arbitration must complete the arbitration request information required on the department's website at www.tdi.texas.gov, as specified in subsection (b) of this section.

(2) The party who requests the arbitration must provide written notice to each other party on the date the arbitration is requested. The notification must contain the information as specified on the department's website, including the necessary claim information and contact information of the parties. A health benefit plan issuer or administrator requesting arbitration must send the arbitration notification to the mailing address or email address specified in the claim submitted by the provider. If a provider does not specify an address to receive notice requesting arbitration in the claim, the health benefit plan issuer or administrator may provide notice to the provider at the provider's last known address the issuer or administrator has on file for the provider. A provider requesting arbitration must send the arbitration notification to the email address specified in the explanation of benefits by the health benefit plan issuer or administrator.

(b) Submission of request. The requesting party must submit information necessary to complete the initial arbitration request, including:

(1) provider details, including identifying the provider type, provider contact information, and provider representative information;

(2) claim information, including the claim number, type of service or supply provided, date of service, billed amount, amount paid, and balance; and

(3) relevant information from the enrollee's health benefit plan identification card or a similar document, including plan number and group number.

(c) Notice of teleconference outcome. Parties must submit additional information on the department's website at the completion of the informal settlement teleconference period, including the date the teleconference request was received, the date of the teleconference, and settlement offer amounts.

(d) Arbitrator selection.

(1) The parties must notify the department, through the department's website, on or before 30 days from the date arbitration was requested if:

(A) the parties agree to a settlement;

(B) the parties agree to the selection of an arbitrator; or

(C) the parties agree to extend the deadline to have the department select an arbitrator and notify the department of new deadlines.

(2) If the department is not given notification under paragraph (1) of this subsection, the department will assign an arbitrator after the 30th day from the date the arbitration is requested. The parties must pay the nonrefundable arbitrator's fee to the arbitrator when the arbitrator is assigned. Failure to pay the arbitrator when the arbitrator is assigned constitutes bad faith participation, and the arbitrator may award the binding amount to the other party.

(e) Submission of information.

(1) The arbitrator must submit information, as specified on the department's website, to the department at the completion of the arbitration, including:

(A) the name of the arbitrator, the date when the arbitrator was selected, the date of the decision, the date of the arbitrator report, and when payment was made; and

(B) the written decision, including any final offers made during the health benefit plan issuer's or administrator's internal appeal process or informal settlement, reasonable amount for the services or supplies, and the binding award amount.

(2) If the parties settle the dispute before the arbitrator's decision, the parties must submit information, as specified on the department's website, to the department, including:

(A) the date of the settlement; and

(B) the amount of the settlement.

(f) Arbitrator approval and removal.

(1) Arbitrators may apply to the department using a method as determined by the Commissioner, including through an application on the department's website or the department's procurement process. An individual or entities that employ arbitrators may apply for approval.

(2) A list of qualified arbitrators will be maintained on the department's website. An arbitrator must notify the department immediately if the arbitrator wants to voluntarily withdraw from the list.

(3) At the discretion of the department, an arbitrator may be removed from the list of qualified arbitrators in certain circumstances, including failure to comply with any requirement under Insurance Code

Chapter 1467, concerning Out-of-Network Claim Dispute Resolution, or rules adopted under Insurance Code §1467.003, concerning Rules.

(g) Arbitration process.

(1) A party may request arbitration after 20 days from the date an out-of-network provider receives the initial payment for a health benefit claim, during which time the out-of-network provider may attempt to resolve a claim payment dispute through the health benefit plan issuer's or administrator's internal appeal process.

(2) The parties must submit written information to an arbitrator concerning the amount charged by the out-of-network provider for the health care or medical service or supply, and the amount paid by the health benefit plan issuer or administrator.

(3) The arbitrator must evaluate only the factors specified in Insurance Code §1467.083, concerning Issue to Be Addressed; Basis for Determination.

(4) The arbitrator must provide the parties an opportunity to review the written information submitted by the other party, submit additional written information, and respond in writing to the arbitrator on the time line set by the arbitrator.

(5) Each party is responsible for reviewing the list of arbitrators and notifying the department within 10 days of the request for arbitration if there is a conflict of interest with any of the arbitrators on the list to avoid the department assigning an arbitrator with a conflict of interest.

(6) If a party does not respond to the arbitrator's request for information, the dispute will be decided based on the available information received by the arbitrator without an opportunity for reconsideration.

(7) The submission of multiple claims to arbitration in one proceeding must be for the same provider and the same health benefit plan issuer or administrator and the total amount in controversy may not exceed \$5,000.

(h) Assistance. Assistance with submitting a request for arbitration is available on the department's website at www.tdi.texas.gov.

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

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DIVISION 5. EXPLANATION OF BENEFITS

28 TAC §21.5040

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5040 under Insurance Code §§1275.003, 1275.004, 1301.007, 1467.003, and 36.001.

Insurance Code §1275.003 requires an explanation of benefits to contain information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Insurance Code Chapter 1467.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Chapter 1275 applies is an administrator for purposes of Chapter 1467.

Insurance Code §1301.007 provides that the commissioner adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of this state.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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SUBCHAPTER QQ. HEALTH INFORMATION TECHNOLOGY

28 TAC §§21.5101 - 21.5103

STATUTORY AUTHORITY. The commissioner adopts the repeal of §§21.5101 - 21.5103 under Insurance Code §1661.009(a) and §36.001.

Insurance Code §1661.009(a) provides that the commissioner adopt rules as necessary to implement Insurance Code Chapter 1661.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.49

The Texas Department of Public Safety (the department) adopts amendments to §15.49, concerning Proof of Domicile. This rule is adopted without changes to the proposed text as published in the May 5, 2023 issue of the *Texas Register* (48 TexReg 2331) and will not be republished.

The proposed rule amendment increases the number of acceptable proof of domicile documents and changes the validity period from within ninety 90 days of the date of application to within one hundred eighty (180) days of the date of application.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; and §521.1426.

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

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SUBCHAPTER K. INTERAGENCY AGREEMENTS

37 TAC §15.174

The Texas Department of Public Safety (the department) adopts new §15.174, concerning Interagency Application Fees. This

rule is adopted without changes to the proposed text as published in the May 5, 2023 issue of the *Texas Register* (48 TexReg 2333) and will not be republished.

This new rule outlines the fees related to interagency application for driver licenses and personal identification certificates to qualified inmates preparing for release by Texas agencies who have entered into a memorandum of understanding with the department under §15.171 of this title and is authorized by §521.421, Transportation Code.

No comments were received regarding the adoption of this rule.

STATUTORY AUTHORITY

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; and §521.421.

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CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.7

The Texas Department of Public Safety (the department) adopts amendments to §16.7, concerning Proof of Domicile. This rule is adopted without changes to the proposed text as published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2334) and will not be republished.

The proposed rule amendment increases the number of acceptable proof of domicile documents and changes the validity period from within ninety 90 days of the date of application to within one hundred eighty (180) of the date of application.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code; and §522.0225.

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