TITLE 4. AGRICULTURE
PART 1. TEXAS DEPARTMENT OF AGRICULTURE
CHAPTER 24. HEMP PROGRAM


The adopted rules are for TDA's administration of hemp production to comply with the Agricultural Improvement Act of 2018 (2018 Farm Bill) enacted by the 115th United States Congress, and House Bill 1325 (HB 1325) enacted by the 86th Texas Legislature. The adopted rules will regulate and license the growth and distribution of hemp and nonconsumable hemp products in Texas.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

The public comment period on the proposal began January 11, 2020, and ended February 10, 2020. The Department held a public hearing on January 22, 2020. Following is a summary of all public comments received from individuals, law firms, laboratories, and farm groups, and the corresponding agency responses.

COMMENT 1: Commenters submitted comments expressing general support for the new regulations.

AGENCY RESPONSE: TDA agrees and has maintained most of the language subject to the changes discussed below.

COMMENT 2: Commenters submitted comments regarding the prohibition on the manufacture of smokable consumable hemp products in Texas. A commenter states there should be smokable hemp and one should be able to grow hemp if you're an individual in your backyard. A commenter requests that the wording and terms regarding smokable flower be clarified since hemp is a smokable flower.

AGENCY RESPONSE: The Texas Agriculture Code §122.301(b) does not allow a state agency, including TDA to authorize a person to manufacture a product containing hemp for smoking. Additionally, the Texas Department of State Health Services is the agency with jurisdiction over consumable hemp products.

COMMENT 3: A commenter objects to the prohibition on the sale of smokable consumable hemp products in Texas.

AGENCY RESPONSE: This matter is not within the scope of the proposal and not within TDA's regulatory jurisdiction.

COMMENT 4: A commenter recommends TDA consider developing and maintaining an electronic reporting system that covers cultivation consistent with other agriculture practices, enables tracking of hemp transfer, import or export within Texas or between Texas and other states, provides a more granular capture of data for CBD derived from hemp that is intended for use in consumer products, and incorporated secure, traceable stamps or labels on products using CBD derived from hemp for compliance and consumer safety.

AGENCY RESPONSE: TDA appreciates the recommendation but declines to address this comment at this time as this matter is not within the scope of the proposal.

COMMENT 5: One commenter recommends that TDA's rules provide for "automatic adjustment to be immediately implemented," in order for TDA's rules to immediately be adjusted in response to possible revisions to the United States Department of Agriculture's ("USDA") Interim Final Rule implementing the 2018 Farm Bill, published October 31, 2019, at 84 FR 58522-58564 (the "IFR").

AGENCY RESPONSE: TDA appreciates the comment and notes that the USDA IFR may indeed be revised prior to adoption of a final rule by USDA. However, TDA declines to revise its rules based on this comment. TDA intends to closely monitor USDA rules and guidelines regarding hemp, as well as the
development of the hemp industry, and will make changes to its rules pertaining to hemp in accordance with the law.

COMMENT 6: A commenter requests TDA to add a rule for farmers who would like to grow hemp for seed production.

AGENCY RESPONSE: The agency declines to add a rule specifically for farmers who would like to grow for seed production as this activity is already captured in the general rules applicable to producers.

COMMENT 7: Multiple commenters request the rules provide for a nominal amount of hemp to be grown at home for personal use never to be introduced to market.

AGENCY RESPONSE: Federal and state statutes and the IFR evidence an intent to develop commercial opportunities in the hemp industry. With the limited time and resources available to the agency a state plan and state rules capable of encouraging and regulating a personal use market are not feasible at this time.

COMMENT 8: A commenter strongly urges TDA to further examine the possibility for Texas to create an international hemp production export program under its own rules for markets outside of the United States that do not need to be constrained by the 2018 Farm Bill or the IFR.

AGENCY RESPONSE: TDA’s Trade and Business division are dedicated to expanding international opportunities for Texas products. At this time TDA has not been statutorily authorized, or funded, to expand the hemp program past the issuance of a transport manifest allowing the product to be transported locally, in interstate trade, and potentially into world markets.

COMMENT 9: A commenter suggests additional consideration be given for TDA to authorize a pilot program under the 2014 Farm Bill, which is still operational until November 1, 2020, and provides for the establishment of a hemp production program to research potential markets within the state without having to comply with the IFR rules which have drawn significant ire and concern. Some states have chosen to continue operations under their 2014 programs for this same reason. The commenter suggests TDA explore this option as a way to build on the excitement of opening up the hemp market in Texas, but doing so in a manner that will not be as risky considering the constraints of the 2018 Farm Bill and the IFR.

AGENCY RESPONSE: TDA was directed by statute to submit a state hemp plan to USDA. TDA has not been authorized by the Texas Legislature to establish a pilot program under the 2014 Farm Bill. Additionally, resources for the establishment of additional hemp programs are not available to TDA at this time. TDA must operate within the fiscal appropriations available to TDA as directed by the Texas Legislature.

COMMENT 10: One commenter requests that "all words in any defined terms be capitalized, and that all defined terms used throughout the Rules also be capitalized."

AGENCY RESPONSE: TDA declines to revise its rules based on this comment as the format utilized for its rules is appropriate.

COMMENT 11: One commenter expresses concern that the use and/or definition of certain terms "applicant," "person," and "business entity," are confusing and requests they be revised.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. The definitions of "applicant," "person," and "business entity," and the terms included in those definitions, are consistent with their definitions and usage in the Texas Agriculture Code and other Texas statutes as well as the regulatory intent provided by the IFR. TDA notes that the definition of "applicant" suggested by the commenter does not appear to materially change the definition already included in TDA’s rules.

COMMENT 12: One commenter requests clarification of when licensees should notify TDA pursuant to rule §24.13(j) notification of theft of cannabis requirements.

AGENCY RESPONSE: The agency agrees that additional clarification is necessary. TDA revised rule §24.13(j) to reflect that licensees should promptly notify TDA, as well as local law enforcement officials, upon discovery of the theft of cannabis within 48 hours after discovery of the theft of cannabis. Licensees should provide name, license number, permit number, and date of discovery of the theft when contacting TDA to notify of cannabis theft.

COMMENT 13: One commenter requests clarification of rule §24.23(c), which prohibits commingling of cannabis among lots or with other materials prior to processing without prior permission from TDA. The commenter requests that this rule be revised to provide that permission to commingle would be automatically received upon receipt of passing test results from an approved laboratory stating such cannabis is within the "acceptable THC Level."

AGENCY RESPONSE: TDA appreciates the comment but declines to revise its rules in response this comment at this time. As previously noted, hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. It is therefore necessary for state and federal regulators to be able to trace cannabis throughout the production and distribution process.

COMMENT 14: A public commenter advises against growing hemp in Texas because it would allow at least four different agents on one’s property and into one’s home and finances. The commenter states that an individual should be able to grow hemp in their back yard for personal reasons.

AGENCY RESPONSE: TDA appreciates the comment and notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public.

COMMENT 15: A public commenter requests that seed be given to farmers when they register for their permits.

AGENCY RESPONSE: Persons interested in cultivating hemp will be responsible for the lawful purchase of hemp seeds.

COMMENT 16: A commenter asks how TDA will work with banks to make sure that banks will be giving out loans to small farms for the cultivation of hemp. A commenter suggests that something should be written in the bill to give people an opportunity to give a loan.

AGENCY RESPONSE: This matter is not within the scope of the proposal and not within TDA’s regulatory jurisdiction.

COMMENT 17: Commenters request for TDA to add, delete, modify or redefine the following terms in rule §24.1:

1. **"Acceptable THC level"**: Multiple commenters request for TDA to revise the definition of "acceptable THC level" in rule §24.1(2) to explicitly exclude tetrahydrocannabinol-acid (THCA), and to increase the acceptable THC level to over .3%.
2. "Certified or Approved Hemp Seed". This term is used only once in the body of the proposed rules as a header, and the commenters suggest the language in the proposed definition instead be moved to the text of Subchapter I (Hemp Seed) and the defined term removed.

3. "Commissioner". A commenter states this term is not used anywhere in the text of the proposed rules and recommends it be removed.

4. "Criminal History Report". As this term is not used in the body of the proposed rules, a commenter suggests the defined term either be removed or otherwise incorporated.

5. "Dry Weight basis". A commenter requests the term be redefined.

6. "Governing Person" and "Key Participant". A commenter requests the phrase "governing person of a business entity that holds a license" in rule §24.9(c) be removed. The commenter also requests rule §24.9(c) be revised as follows: "A person who is or has been convicted of a felony relating to a controlled substance under federal law or the law of any state may not, before the 10th anniversary of the date of the conviction, hold a license to be a Key Principal of a License Holder governing person of a business entity that holds a license unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018."

7. "Handle". A commenter requests for TDA to redefine this term.

8. "Harvest". Multiple commenters request this definition be revised.

9. "Information Sharing System". A commenter states this term is not used anywhere in the text of the rules and recommends it be removed.

10. "License". A commenter requests this definition be revised accordingly to include a sampler/collector license.

11. "Marijuana or Marihuana". The last sentence of this definition - "Marihuana" means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent." should be deleted.

12. "Nonconsumable Hemp Product". A commenter recommends the rules reiterate the concepts surrounding this term as stated in HB 1325 and perhaps flesh them out further.

13. "Organic Hemp". A commenter requests for TDA to define "organic hemp".

14. "Permit or Lot Permit". A commenter requests the initial use of the word "Permit" should be deleted as only the term "Lot Permit" is used within the body of the proposed rules.

15. "Phytocannabinoid". A commenter states this term is not used anywhere in the text of the proposed rules and recommends it be removed.

16. "Processing". A commenter requests for this term to be expressly differentiated between its meaning within the TDA program and its meaning under the Department of State Health Services program.

17. "Producer". A commenter points out the term "Producer" is defined in the rules quite differently than in the IFR, which defers to 7 C.F.R. §718.2, and suggests the term "Producer" be the definition set forth in the IFR.

18. "Sample Collection Date". A commenter states the definition of the term "Sample Collection Date" includes a concept about the determination of such date possibly taking into account force majeure or other unusual circumstances, which is stated to be critical to the success of this program and applauds TDA for incorporating such a concept.

19. "Seed Source". As this term is not used anywhere in the text of the rules, a commenter recommends it be removed.

20. "Signing Authority". As this term is used only once within the rules, a commenter believes it may be better to delete it.

21. "Specimen". As this term is not used anywhere in the text of the rules, a commenter recommends it be removed.

22. "Transport Manifest". Rather than use the term "includes" in this definition, a commenter recommends using the term "is comprised of" to avoid any confusion or question as to whether anything more is needed to be deemed a complete "Transport Manifest."

23. "Unique ID". As this term is not used anywhere in the text of the rules, a commenter recommends it be removed.

AGENCY RESPONSE: The agency agrees or declines to delete, modify or redefine some terms in rule §24.1 as follows:

1. "Acceptable THC level". The agency disagrees and declines to make any changes in response to the comment. 7 C.F.R. §990.3(a)(2)(i) requires that all hemp include a procedure for testing that is able to accurately identify the component contents of at least 0.3% THC. For this reason, TDA is adopting the definition of "acceptable THC level" in accordance with 7 C.F.R. §990.3(a)(2)(i).

2. "Certified or Approved Hemp Seed". The agency declines to redefine this term at this time. TDA defined this term to be consistent with 7 C.F.R. §990.

3. "Commissioner". The agency agrees and has deleted this term in rule §24.1.

4. "Criminal History Report". The agency agrees and has deleted the word "report" in rule §24.1.

5. "Dry Weight Basis". The agency disagrees and declines to make any changes in response to the comment. The definition of "dry weight basis" is similar to the definition as stated in 7 C.F.R. §990.

6. "Governing Person" and "Key Participant". The agency declines to redefine this term at this time. TDA proposes to redefine these terms to be consistent with 7 C.F.R. §990. However, the agency agrees to modify rule §24.9(c), by removing "governing person", and replacing the term with the phrase "key participant of a license holder."

7. "Handle". The agency declines to redefine this term at this time. The current definition of "handle" is consistent with 7 C.F.R. §990 and the Texas Agriculture Code §122.
8. "Harvest". The agency declines to redefine this term at this time. TDA purposefully defined harvest to be consistent with 7 C.F.R. §990 and the Texas Agriculture Code §122. TDA also purposefully defined harvest to include the sale of any transplant to another license holder in order to create a regulatory framework whereby TDA is able to track the movement of each hemp lot when it leaves a license holder's control until it is delivered to a processor.

9. "Information Sharing System". The agency declines to redefine this term at this time. TDA purposefully defined this term to be consistent with 7 C.F.R. §990.

10. "License". The agency agrees this term needed modification for clarification. TDA added the word "sampler" in rule §24.1(42).

11. "Marijuana orMarijuana". The agency declines to redefine this term at this time. TDA defined this term to be consistent with 7 C.F.R. §990.

12. "Nonconsumable Hemp Product". The agency declines to redefine this term at this time. TDA purposefully defined this term to be consistent with the Texas Agriculture Codes §121 and §122.

13. "Organic Hemp". The agency declines to define this term at this time but will consider this in future rulemaking. Currently, organic standards and certification are governed by 7 C.F.R. §205 and Texas Agriculture Code §18.

14. "Permit orLot Permit". The agency agrees this term needed modification. TDA deleted the word "permit" in the rule.

15. "Phytocannabinoid". The agency declines to delete this term at this time. TDA purposefully defined this term to be consistent with 7 C.F.R. §990.

16. "Processing". The agency declines to redefine this term at this time. The current definition is consistent with the term's use and meaning within the agricultural industry.

17. "Producer". The agency agrees and has redefined this term in accordance with 7 C.F.R. §718.2.

18. "Sample Collection Date". The agency agrees and has not modified this term.

19. "Seed Source". The agency agrees and has deleted this term.

20. "Signing Authority". The agency declines to delete this term at this time. Defining this term is helpful in the implementation of the program.

21. "Specimen". The agency declines to delete this term at this time. Defining this term is helpful in the implementation of the program.

22. "Transport Manifest". The agency declines to redefine this term at this time. The current definition of this term is helpful in the implementation of the program.

23. "Unique ID". The agency declines to delete this term at this time. Defining this term is helpful in the implementation of the program.

COMMENT 18: A commenter submitted comments related to the decriminalization of marijuana for cultivation and personal use. AGENCY RESPONSE: The agency declines to address this matter as it is out of scope with the proposed rules.

COMMENT 19: A commenter asked for clarification of rule §24.15, pertaining to license holders who transplant. Specifically, the commenter asked if the "cultivation" area is where the seeds are germinated and the "final transplantation area," is where they are subsequently planted.

AGENCY RESPONSE: Yes, the "cultivation" area is where the seeds are germinated and the "final transplantation area," is where the transplants are subsequently planted for later harvest.

COMMENT 20: Multiple commenters object to the fee schedule in the rules.

AGENCY RESPONSE: The agency declines to make any changes to the fee schedule. TDA is authorized under Texas Agriculture Code §122.052 to set and collect the amounts stated. The hemp program is a cost recovery program at TDA, and TDA is tasked by the Texas Legislature to collect adequate funds through licensing and fees to support the costs of the program.

COMMENT 21: A commenter proposes that TDA's rules allow for non-facility-related amendments to be permitted without a fee subject to staff approval. The commenter further requested clarification of rules §24.13(d), §24.14(b), §24.14(d), and §24.16 (pertaining to facility addition fees and facility modification fees).

AGENCY RESPONSE: In response to the commenter's request that TDA change its rules to allow for non-facility-related amendments to be permitted without a fee subject to staff approval, TDA declines to revise its rules based on this comment. In regard to what changes constitute a addition or modification, rule §24.16(a) specifies that adding a new facility under an existing license - other than the facility specified in the original license application - constitutes a facility addition. Rule §24.16(b) specifies that changing the geospatial location of a facility already registered under an existing license constitutes a modification.

COMMENT 22: A commenter states that Oklahoma requires individuals to be a resident for two years prior to planting cannabis in the state and suggested that Texas residents, minorities, and veterans should be first to get a license in Texas. The commenter asked if there will be a preference given to Texas residents when it comes to getting a license for hemp.

AGENCY RESPONSE: Individuals are not required to be Texas residents for two years prior to planting cannabis in Texas. There is no preference given to Texas residents, veterans, or minorities in determining priority or issuance of hemp licenses.

COMMENT 23: A commenter requests that individuals should be able to grow hemp if they have a non-violent criminal history.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. Texas law and the IFR provide that persons with a State or Federal felony conviction related to a controlled substance are restricted from participating in the Texas hemp program for 10 years. The IFR further requires states to immediately notify authorities if a producer violates a state plan with a culpable mental state greater than negligence.

COMMENT 24: A commenter requests that there be a guaranteed number of permits set aside for Texas residents to produce hemp in the state.
AGENCY RESPONSE: There is no set limit for hemp permits, regardless of residency of producer.

COMMENT 25: A commenter requests additional information regarding licensing and asks if there is a way to pre-register for licensing and how long the licensing process will take.

AGENCY RESPONSE: Licenses will be processed in the order they are received. There will be no pre-registration for licenses. The time for processing each license will vary depending on the circumstances associated with each license application. TDA has up to 60 days from the license application date to issue a license.

COMMENT 26: A commenter requests more specification on what is considered a lot and for it to be more defined in the rules.

AGENCY RESPONSE: TDA declines to revise its rules in response to this comment. A lot is defined by rule §24.1(46) to implement the Texas Agriculture Code, federal law, and the USDA IFR.

COMMENT 27: A commenter requests clarification of a consolidated list of the requirements for a license.

AGENCY RESPONSE: TDA declines to provide an itemized list in response to this comment of what should or should not be included in a license application submission. TDA notes that TDA is promulgating license application forms that will be available online which will direct applicants to provide information required to complete a hemp license application.

COMMENT 28: A commenter requests a license be renewed every two years instead of annually.

AGENCY RESPONSE: The agency declines to make changes. Texas Agriculture Code §122.104 states that a license is valid for one year and shall be renewed annually.

COMMENT 29: Multiple commenters submitted comments proposing rules regulating the locations where hemp can be planted. Specifically, the commenter proposed restrictions on planting hemp near schools, residential and other highly populated areas due to the potential for theft and criminal activity.

AGENCY RESPONSE: The agency understands the risks associated with this emerging industry. However, TDA does not have the constitutional or statutory authority to regulate the proximity of hemp to schools, residential areas, or any other locations. Normally, these types of issues would be addressed at the local level through municipal ordinances. However, the Texas Agriculture Code §122.002 prohibits "a municipality, county, or other political subdivision of the state" from enacting, adopting, or enforcing "a rule, ordinance, order, resolution, or other regulation that prohibits the cultivation, handling, transportation, or sale of hemp."

COMMENT 30: A commenter asks for clarification regarding the evaluation criteria for an applicant, specifically, the language in rule §24.10(b) which states the applicant's history with other TDA programs "shall demonstrate a willingness to comply", and rule §24.10(c) requiring an applicant to "be in good standing with TDA."

AGENCY RESPONSE: The agency agrees that additional clarification is necessary. TDA did not make any changes to rule §24.10(b). Evidence of previous violations and compliance with agency final orders indicate a person's willingness to comply with agency rules and instructions. TDA took action to amend rule §24.10(c) "good standing" has been deleted and replaced with "the applicant does not owe TDA any money under a final order."

COMMENT 31: A commenter recommends rule §24.13(i) which requires licensees to notify TDA within 24 hours of any interaction with any U.S. authority followed by a written notification to TDA within 3 days, be deleted or amended specifically to apply to interactions with law enforcement which result in detention, arrest or citation.

AGENCY RESPONSE: TDA appreciates the comment. However, TDA declines to revise its rules based on this comment. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. Texas law and the IFR provide that persons with a State or Federal felony conviction related to a controlled substance are restricted from participation in the Texas hemp plan for 10 years. The IFR further requires states to immediately notify authorities if a producer violates a state plan with a culpable mental state greater than negligence. TDA's rules requiring licenses to immediately notify TDA of any interaction with law enforcement officials are therefore reasonable and necessary to comply with Texas state law, the federal guidelines contained in the IFR, and to protect the safety and welfare of the public.

COMMENT 32: A commenter comments that prohibiting license holders from producing or handling any cannabis that is not hemp, is too restrictive and requested that rule §24.14(a) be clarified or limited to only prohibit "knowingly or intentionally" producing or handling cannabis that is not hemp. The commenter notes concerns that "good actors" not be penalized for negligent violations.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. Rule §24.14(a) is a clear restatement of the prohibition against the production or handling of cannabis that is not hemp under Texas state and federal law. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. TDA further notes that its rules contain exceptions providing for situations where negligent violations of the rules occur.

COMMENT 33: A commenter asked whether the Department mandatory orientation course required by rule §24.8 will be available online. The commenter also asked when the course details will be provided to ensure sufficient time to complete, so as not to delay in submitting a license.

AGENCY RESPONSE: The Department mandatory orientation course required by rule §24.8 will be available online. The course will be available online at the time of filing for an application and will be approximately 30 minutes in length. It will not delay the applicant in submitting a license.

COMMENT 34: A commenter asked if the TDA will address potential issues with backlogged pending results, especially during crucial times such as harvesting.

AGENCY RESPONSE: TDA is bound by the Texas Agriculture Code requiring test results be available within 14 days from sample collection.

COMMENT 35: A commenter suggests that there be a split program for sampling and a separate workshop relating to sampling.
AGENCY RESPONSE: A Department mandatory training video, required to be viewed by all applicants, will be available online when applicants begin applying for hemp licenses. Separate, sampling-specific information and training materials, will be available to, and required to be viewed by, those seeking a sampler license.

COMMENT 36: Commenters object to the language in rule §24.21 requiring producers to harvest hemp plants within 15 days from sample collection. They request TDA to modify the 15-day window.

AGENCY RESPONSE: The agency disagrees and declines to make any changes in response to the comment. 7 C.F.R. §990.3 requires the State's plan to include a procedure to collect samples within 15 days prior to the anticipated harvest of cannabis plants. Although this 15-day requirement conflicts with the "20 day" language in Texas Agriculture Codes §122.154 and §122.201, Texas Agriculture Code §122.004 invalidates a provision of the Texas Agriculture Code if USDA "determines that the provision ... conflicts with 7 U.S.C. Chapter 38, Subchapter VII , and prevents the approval of the state plan submitted under Chapter 12 1." For this reason, TDA must enforce the 15-day requirement in accordance with 7 C.F.R. §990.3(a)(2)(i).

COMMENT 37: A commenter requests for TDA to issue waivers for pre-harvest and post-harvest testing in situations of force majeure when crops are destroyed by natural forces or some other circumstances outside the control of the license holder, and for TDA to define the term "force majeure".

AGENCY RESPONSE: This has been addressed in rule §24.21(b)(3) which allows for additional pre-harvest sample requests under unusual circumstances. TDA declines to define "force majeure" at this time. Force majeure events are generally recognized in the agricultural community and can result from weather conditions, economic conditions and acts of God. TDA will use its flexibility to determine force majeure conditions as they occur. 7 C.F.R. §990.3 requires the State's plan to include a procedure to collect samples within 15 days prior to the anticipated harvest of cannabis plants, and does not give the State the option of conducting post-harvest sampling.

COMMENT 38: Commenters object to the language in rule §24.15 regarding transplants, specifically the definition of a transplant, the requirement for a permit applicant to indicate the initial area of cultivation, final transplantation area and anticipated dates of transplant, and classifying a sale of a transplant to another license holder as a "harvest". Commenters request an exception to this harvest rule for some plants, perhaps with certain age or size restrictions, to be cultivated for sale without triggering all of the additional regulatory requirements designed to apply to the harvesting of a regular hemp crop.

AGENCY RESPONSE: The agency disagrees and declines to make any changes in response to the comment. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. The clear purpose and intent of the Texas state law, federal law, and federal guidelines (IFR) regarding the cultivation of hemp, is to not only permit the cultivation of hemp, but also to closely monitor its production, handling, transport, and destruction to ensure that marijuana, a controlled substance, is not produced or distributed into commerce illegally. The Texas Agriculture Code authorizes TDA to enter onto and randomly inspect land where hemp is grown to determine whether hemp is being cultivated in compliance with the law. The Texas Agriculture Code further authorizes the Texas Department of Public Safety ("DPS") to inspect and collect samples and mandates that license holders are required to allow - and to provide written consent to - TDA, DPS, and any other state or local law enforcement agency to enter on to all premises where hemp is cultivated or handled to conduct a physical inspection or to ensure compliance with the Texas Agriculture Code or TDA rules. In light of the clear need and legal mandates that TDA closely monitor hemp, a site inspection occurring at or near the time that a representative sample of a cannabis crop is taken is reasonable, as it provides an opportunity for TDA to inspect the hemp crop at or near harvest and provides notice that the hemp crop may soon be transported for processing, distributed into commerce, or destroyed in accordance with the law.

COMMENT 42: One commenter requests that TDA’s hemp sampling and collection procedures be revised to encompass sprouts, microgreens, and propagations/ transplants. The commenter requests that TDA’s sampling and collection procedures be revised to provide for procedures where an immature plant without flowers may be required to be tested.

AGENCY RESPONSE: TDA's sampling and collection procedures are based on the federal guidelines provided by USDA in its IFR. TDA appreciates the comment, however, and provides the following clarification: In the event a plant without flowers requires testing, a representative sample may be collected from
the growing portion of such plants in an amount and in a manner otherwise in compliance with TDA sampling and collection procedures pertaining to flowering cannabis plants.

COMMENT 43: Commenters request for TDA to include mobile laboratories to conduct testing. Multiple commenters proposed allowing non-DEA registered third party laboratories to conduct testing of hemp plants.

AGENCY RESPONSE: The agency disagrees and declines to make changes at this time. Per 7 C.F.R. §900, only DEA-registered laboratories are eligible to test hemp plants. The proposed rules do not prevent a DEA-registered laboratory from being a mobile laboratory.

COMMENT 44: Multiple commenters request an extension of the time limit laboratories should test hemp samples after receipt of such samples. Commenters also express concern regarding the requirement for laboratories to report results to TDA and producers no later than 14 days from sample collection date.

AGENCY RESPONSE: The agency declines to make changes at this time. Texas Agriculture Code §122.151(f) requires a license holder to be notified of the results of the test not later than the 14th day after the sample collection date or the date TDA receives the test results. As proposed, the rule allows the maximum flexibility to a producer to obtain sampling and testing services, given the fifteen (15) day window from notice of harvest to actual harvest.

COMMENT 45: A commenter requests for TDA to add the following language to rule §24.27(c): "unless the producer, law enforcement, or the Department request that the sample be retained for potential retesting, in which case the laboratory shall retain the sample for at least 30 days."

AGENCY RESPONSE: The agency disagrees and declines to make changes at this time. 30 days is a reasonable amount of time provided to the producer to request a second testing from the original sample if necessary.

COMMENT 46: A commenter requests a revision to rule §24.29 (b) to read "A license holder requesting a retest may use the same laboratory that conducted the first test, request that a portion of the retained sample be sent to a second laboratory for testing, or request that both the original and second laboratory conduct a second test on portions of the same sample."

AGENCY RESPONSE: The agency disagrees and declines to make changes at this time. Producers have the option of choosing where the original sample will be sent but producers must use the same laboratory for the first and final tests.

COMMENT 47: Multiple commenters request the potency testing be mandated with liquid chromatography instead of gas and that UV detectors be allowed for liquid chromatography.

AGENCY RESPONSE: The agency disagrees and declines to make changes at this time. TDA testing methods are consistent with USDA methods and standards as stated in 7 C.F.R. §900.

COMMENT 48: A commenter recommends for TDA to provide testing laboratories with personally identifying data sufficient for the laboratories to accommodate the large volume of samples during harvest season.

AGENCY RESPONSE: The agency is committed to assisting testing laboratories by providing the required information as much as possible while protecting certain personal and confidential information.

COMMENT 49: A commenter requests clarification on what rules laboratories must follow.

AGENCY RESPONSE: Laboratories will follow rule §24.24 and need to be registered with TDA under that rule.

COMMENT 50: A commenter requests clarification on laboratory registration fees.

AGENCY RESPONSE: The laboratory registration fee will be at least $250.00.

COMMENT 51: A commenter requests clarification on whether a testing laboratory may charge a fee to the farmer for the destruction of a hemp sample testing >0.3% THC on a dry weight basis.

AGENCY RESPONSE: Yes, per rule §24.13(b) "a license holder has a legal duty and obligation to destroy, at the license holder's expense, in accordance with DEA reverse distributor regulations". The contract between the producer and the reverse distributor is not under TDA's authority.

COMMENT 52: A commenter requests clarification on whether TDA plans to provide analytical testing laboratories the transport manifest.

AGENCY RESPONSE: The transport manifest will be provided to the producer or if the transport manifest is for testing then it will be provided to the producer or sampler.

COMMENT 53: A commenter requests clarification on whether forms/records/reports will be required from analytical laboratories.

AGENCY RESPONSE: Yes, rule §24.28 applies. The forms are currently being developed by TDA and will be available prior to any anticipated harvest date.

COMMENT 54: A commenter requests clarification on whether TDA has any plans to test hemp samples within state laboratories with state employees (or something similar).

AGENCY RESPONSE: Yes, State statute gives TDA the authority to test hemp samples as stated in Texas Agriculture Code §122.151.

COMMENT 55: A commenter requests clarification on whether a transport manifest for a preharvest sample transport is needed.

AGENCY RESPONSE: Transport manifests are not required prior to sampling but are necessary before the sample can be transported.

COMMENT 56: A commenter requests guidance on whether there is a source for use to educate individuals and laboratories to identify pest/diseases and what steps are required if a sample or a farmers lot is identified as containing a pest or disease.

AGENCY RESPONSE: This comment is not related to the proposed rules and will not be addressed. However, the agency will consider this comment in expanding the FAQ on the agency website.

COMMENT 57: A commenter requests clarification on whether rule §24.43 applies to laboratories and or sampling agents transporting samples for potency testing as it will increase cost to the farmers.

AGENCY RESPONSE: Yes this rule is in compliance with Texas Agriculture Code §122.201(c) which prohibits commingling.
COMMENT 58: A commenter asks when the list of department registered testing laboratories will be made available.

AGENCY RESPONSE: Laboratories will be able to register at the same time TDA begins accepting producer license application which will make the laboratory list available well before sampling is to be done.

COMMENT 59: A commenter suggests allowing disposal oversight by TDA and law enforcement agents to provide flexibility and minimize burdens on the farming community.

AGENCY RESPONSE: TDA declines to make changes at this time. 7 C.F.R. §990.3 requires the State’s plan to include a disposal procedure in accordance with DEA reverse distributor regulations found at 21 C.F.R. §1317.15.

COMMENT 60: Commenters submitted comments proposing rules allowing a hemp grower to remediate a portion of a hemp plant that tests over the acceptable THC level.

AGENCY RESPONSE: The agency declines to make any changes at this time. 7 C.F.R. §990.3(a)(3)(i) requires a State desiring to have primary regulatory authority over the production of hemp to follow a disposal procedure. Lots tested and not certified by the DEA-registered laboratory at or below the acceptable hemp THC level may not be further handled, processed or enter the stream of commerce and must be disposed of in accordance with 7 C.F.R. §990.27.

COMMENT 61: A commenter requests clarification on what is required for a completed disposal report and whether a transport manifest is required to send the material to a DEA-reverse distributor. The commenter also expressed concern regarding disposal timing issues.

AGENCY RESPONSE: The producer is responsible for rejecting out to a DEA-reverse distributor once a completed disposal report is submitted to TDA or as soon as the producer receives a hot test result. The producer is responsible for disposing of noncompliant hemp, or marijuana, according to the DEA-reverse distributor’s instructions. Per Texas Agriculture Code §122.356, a person transporting hemp plant material must have a cargo manifest or documentation (transport manifest). TDA expects law enforcement will prefer a transport manifest accompany any shipment of hemp material before processing.

COMMENT 62: A commenter states that rule §24.13(a) for inspection and entry provisions are overarching and unnecessary. The commenter recommended that TDA’s rules be revised to track the IFR.

AGENCY RESPONSE: TDA appreciates the comment and is mindful of the concerns of licensees. However, TDA declines to revise its rules based on this comment. TDA is committed to working with licensees and stakeholders to ensure that inspections are conducted in a reasonable and minimally invasive manner. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The hemp is plant is also essentially physically identical to marijuana plants. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. TDA further notes that its entry and inspections rules are reasonable and necessary and are mandated by provisions of the Texas Agriculture Code which authorize TDA to enter onto and randomly inspect land where hemp is grown to determine whether hemp is being cultivated in compliance with the law. The Texas Agriculture Code further authorizes the Texas Department of Public Safety (“DPS”) to inspect and collect samples and mandates that license holders are required to allow - and to provide written consent to - TDA, DPS, and any other state or local law enforcement agency to enter on to all premises where hemp is cultivated or handled to conduct a physical inspection or to ensure compliance with the Texas Agriculture Code or TDA rules.

COMMENT 63: A commenter requests TDA to create an internal, multi-tiered appeal process within TDA that must be exhausted prior to resorting to any formal adjudicatory proceedings, and clarify that before any penalties under the Texas Agriculture Code are assessed or whenever a person believes s/he has been adversely affected by a TDA decision, such appeal process should be followed.

AGENCY RESPONSE: Rule §24.38 provides an appeals process in accordance with Texas state law. TDA therefore declines to revise its rules in response to this comment. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public.

COMMENT 64: A commenter requests clarification on a "corrective action plan".

AGENCY RESPONSE: As stated in rule §24.33, the license holder is responsible for submitting the corrective action plan to TDA. Based upon a stated breach of law or rule, a corrective action plan provides proof of and explains how past actions or omissions were compliant with law and regulation, and/or how future activities will comply with law and regulation. TDA will review and approve/disapprove corrective action plans on a case by case basis.

COMMENT 65: A commenter recommends for TDA to limit the number of violations per license holder to one per season per license holder. The commenter also recommends for TDA to allow a suspended license holder to mitigate crop damage. The commenter also recommends TDA modify language related to the revocation of a license.

AGENCY RESPONSE: The agency declines to make changes at this time. The rules related to enforcement are consistent with 7 C.F.R. §990.

COMMENT 66: One commenter requests that rule §24.33(d), which provides for the issuance of corrective actions plans and for enforcement for negligently producing hemp or cannabis, be revised to include an additional step prior to license revocation. The commenter also requests that rule §24.36, relating to license revocation, be revised to limit application to circumstances when a "Key Principal" of a license holder or the "License Holder" itself engages in prohibited conduct.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. The Texas Agriculture Code, federal law, and the USDA IFR requires each USDA-approved State or Tribal plan to contain rules providing for the correction of negligent violations and TDA’s rules were developed to incorporate those requirements. Rule §24.33(d) provides a license holder an opportunity to submit a corrective action plan prior to revocation of its license. Rules §24.33 and §24.36 are reasonable and necessary to comply with Texas state law, the federal guidelines contained in the IFR, and to protect the safety and welfare of the public. Revocation of a license under either rule would be subject to review under existing, established Texas law, thereby affording recognized, appropriate due process. As previously noted, hemp is a unique crop that has the potential to turn into a controlled sub-
The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. Texas law and the IFR provide that persons with a State or Federal felony conviction related to a controlled substance are restricted from participating in the Texas hemp plan for 10 years. The IFR further requires states to immediately notify authorities if a producer violates a state plan with a culpable mental state greater than negligence.

COMMENT 67: A public commenter requests that Subchapter H regarding Transportation, be more specific information on whether or not there is a timeframe to submit a request for a manifest to transport any material.

AGENCY RESPONSE: TDA anticipates that transport manifests will be issued promptly upon receipt by TDA of all information relevant to a request for a transport manifest.

COMMENT 68: A commenter requests modification or deletion of rule §24.39(a) requiring a transport manifest for the transport of hemp outside a facility where hemp is produced.

AGENCY RESPONSE: The agency declines to modify or delete this rule. Texas Agriculture Code §122.356 requires a person transporting hemp plant material to have a cargo manifest or documentation (transport manifest).

COMMENT 69: Commenters object to the ban on bringing into Texas cannabis plants germinated outside Texas, as stated in rule §24.42(a), stating this would harm the growth of the industry by limiting access to plant material.

AGENCY RESPONSE: The agency agrees and has modified rule §24.42. Cannabis plants germinated outside Texas may enter Texas with a valid transport manifest issued by another state, U.S. territory, or Indian Nation under its USDA approved hemp plan, the federal hemp plan, or an existing 2014 Farm Bill program, and a phytosanitary certificate in accordance with Title 4 of the Texas Administrative Code Chapter 19.

COMMENT 70: A commenter requests that rule §24.39(b), which requires out-of-state hemp transported in Texas to be accompanied by "valid documentation authorized by another state, Indian Nation, or U.S. territory," be revised to provide for an alternative set of documentation that would be deemed valid and/or authorized for hemp transported from an out-of-state government that does not provide any government-authorized hemp documentation.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. Pursuant to Federal law, hemp may only be commercially grown under a USDA approved state or tribal plan or under a USDA plan, which require documentation of the production and destruction of hemp. The Texas Agriculture Code requires documentation indicating the provenance of out-of-state hemp and a statement that it was lawfully produced. Rule §24.39 simply restates Texas law and requires valid documentation that hemp was produced lawfully.

COMMENT 71: A commenter requests a revision of rule §24.43 which prohibits the transportation of hemp plant material with any other cargo that is not hemp material. The commenter believes this prohibition is too stifling and restrictive.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. Texas Agriculture Code §122.356(b)(1) prohibits the transportation of hemp plant material with any other cargo that is not hemp material. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The

hemp is plant is also essentially physically identical to marijuana plants. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public.

COMMENT 72: One commenter requests that rule §24.45, pertaining to the sale, possession, or purchasing of hemp seed, be revised for clarification. Specifically, the commenter requested clarification of whether vendors located out-of-state must possess a Texas license and a revision regarding the length of time that records of hemp seed sales must be retained.

AGENCY RESPONSE: TDA appreciates the comment and agrees to change rule §24.45 to clarify that vendors located out-of-state are not required to possess a Texas license. TDA has further changed rule §24.45 to clarify that records of hemp seed sales must be retained for five years.

COMMENT 73: A commenter asks when TDA will issue the certification process for certifying hemp seed pursuant to rule §24.44.

AGENCY RESPONSE: Hemp seed certification will be done in accordance with standard certification rules and procedures in accordance with Chapters 10 and 62 of the Texas Agriculture Code.

COMMENT 74: A commenter asks if Texas hemp seed producers have input in the hemp seed certification process.

AGENCY RESPONSE: Producers will be able to have input through traditional procedures such as the Texas Seed Board.

COMMENT 75: A commenter asks when the initial list of approved seed providers will be issued.

AGENCY RESPONSE: TDA is currently preparing a list and it will be available on TDA’s website in March, 2020.

COMMENT 76: A commenter asks when the requirements for seed certification will be issued.

AGENCY RESPONSE: The requirements for seed certification are currently issued and are the requirements by seed boards to certify seed that are already in place.

COMMENT 77: Commenters request TDA to allow private entities to also produce hemp for research purposes under a hemp research license.

AGENCY RESPONSE: The agency declines to make changes at this time but will consider this matter in future rulemaking. Private hemp researchers can do hemp research under a producer's license, following law and rule, and disposing of any non-compliant hemp according to DEA requirements.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§24.1 - 24.4

The adoption is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department. Chapters 12, 121 and 122 of the Code are affected by the adoption.

§24.1. Definitions.

Words used in this chapter in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand. For the pur-
poses of provisions and regulations of this chapter, unless the context otherwise requires, the following terms shall mean:

1) "Act" means Texas House Bill 1325, relating to the production and regulation of hemp in Texas, as codified in Chapters 121 and 122 of the Code.

2) "Acceptable hemp THC level" means a delta-9-tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3% or less. For example, if the reported delta-9-tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured delta-9-tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of "acceptable hemp THC level" affects neither the statutory definition of hemp, in 7 U.S.C. §1639o(1) and Texas Agriculture Code §121.001, nor the definition of "marihuana," in 21 U.S.C. §802(16) and in Texas Health and Safety Code §481.002(26).

3) "Administrative action" includes a denial, revocation or suspension of a license, or an assessed penalty.

4) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the Department's hemp program.

5) "Cannabis" means a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9-tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

6) "Certified or Approved hemp seed" means seed that meets the legal standards for seed quality and labeling required by Texas and federal law, the legal standards of the jurisdictions from where the seed is originally sold and produced, and the additional hemp seed quality and labeling requirements required by the Department.

7) "Contiguous" means all of the lots in or on a location owned or controlled by one owner or tenant, or the same owner and tenant, and no lot is separated from the other lots on the location by different ownership or control, or a public right of way, a navigable waterway, or an area greater than sixty feet.

8) "Controlled Substance" is defined in Tex. Health & Safety Code §481.002(5). The term does not include hemp, as defined by Tex. Agric. Code §121.001, or the tetrahydrocannabinols in hemp.

9) "Conviction" means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this chapter, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this chapter.

10) "Corrective action plan" means a plan established by the Department for a licensed hemp producer to correct a negligent violation or non-compliance with the hemp program, this chapter, or other state or federal statute. Based upon a stated breach of law or rule, a corrective action plan provides proof of and explains how past actions or omissions were compliant with law and regulation, and/or how future activities will comply with law and regulation.

11) "Criminal History" means the results of a criminal background investigation conducted by the Department.

12) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly.

13) "Cultivate" as defined by Tex. Agric. Code §122.001(1) means to plant, irrigate, cultivate or harvest a hemp plant.

14) "Days" means business days unless otherwise specified.

15) "Decarboxylation" means the removal or elimination of carboxyl group from a molecule or organic compound.

16) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven (87.7) percent of THC-acid.

17) "Delta-9 tetrahydrocannabinol or THC or Delta-9-THC" means the primary psychoactive component of cannabis. For the purposes of this chapter, the terms delta-9-THC and THC are interchangeable.

18) "Department or TDA" means the Texas Department of Agriculture.

19) "Drug Enforcement Administration or DEA" means the United States Drug Enforcement Administration.

20) "DPS" means the Texas Department of Public Safety.

21) "Dry weight basis" means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. Dry weight is a basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. The percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

22) "Entity" means a corporation, general partnership, joint stock company, association, limited partnership, limited liability partnership, limited liability company, series limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization. The term entity includes a domestic or foreign entity defined in Texas Business Organizations Code §1.002 that will be, or proposes to be, in hemp production within the State of Texas.

23) "Facility" means a location with a legal description and is within the legal control of a person or entity. A facility may consist of multiple fields, greenhouses, storage, and/or lots.

24) "Farm Service Agency or FSA" means an agency of the United States Department of Agriculture.

25) "Field" means an outdoor area of land consisting of one or more lots on which the producer will produce or store hemp.

26) "Final test" means the last Department-authorized laboratory test conducted from a final sample collected.

27) "Final sample" means the last Department-authorized sample collected from a lot.
(28) "Gas chromatography or GC" means a type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.

(29) "Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object. This includes GPS coordinates.

(30) "Greenhouse" means any indoor structure consisting of one or more lots on which the producer will produce or store hemp.


(32) "GPS" means Global Positioning System.

(33) "Handle" as defined by Tex. Agric. Code §122.001(3) means to possess or store a hemp plant on premises owned, operated, or controlled by a license holder for any period of time, or in a vehicle for any period of time other than during the actual transport of the plant from a premises owned, operated or controlled by a license holder to a premises owned, operated or controlled by another license holder, or a person licensed under Tex. Health & Safety Code, Chapter 443.

"Handle" also means to harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing. "Handle" also includes the disposal of cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.

(34) "Harvest" means to cut, gather, take, or remove all or part of the cannabis plants growing in a lot or lots, for the purpose of disposal, cloning, distribution, processing, storage, sale, or any other use. "Harvest" does not include transplants from one lot to another lot if both lots are within the same license holder's control, and the plants are transplanted according to the hemp program rules and procedures.

(35) "Hemp" or "industrial hemp" as defined Tex. Agric. Code §121.001 means the plant species Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(36) "Hemp research license" means a license issued to an institution of higher education to produce or handle hemp for research purposes.

(37) "High-performance liquid chromatography or HPLC" means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.

(38) "Information sharing system" means the database which allows the Department to share Texas hemp program information with federal and state agencies.

(39) "Institution of higher education" has the meaning assigned by Texas Education Code §61.003.

(40) "Key participants" means a sole proprietor, a partner in a general partnership, a general partner in a limited partnership, or a person with executive managerial control in an entity. A person with executive managerial control includes persons such as a trustee, independent or dependent executor or administrator of an estate, chief executive officer, managing member, manager, president, vice president, general partner, chief operating officer and chief financial officer, or their equivalents. This definition does not include non-executive employees such as farm, field, or shift managers that do not make financial planning decisions and that do not vote or exercise control of an entity.

(41) "Law enforcement agency" means any federal or Texas law enforcement agency.

(42) "License" as defined by Tex. Agric. Code §122.001(6) means a hemp producer, handler, or sampler license issued by the Department.

(43) "License holder" as defined by Tex. Agric. Code §122.001(7) means an individual or business entity holding a license.

(44) "License holder who transplants" means a license holder who cultivates cannabis plants for the purpose of transplanting all living parts of those same cannabis plants according to Department rules and procedures.

(45) "Lot" means a contiguous area in a facility, field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.

(46) "Lot permit" means a document issued by the Department authorizing a license holder to produce or handle a hemp crop within a lot.

(47) "Marijuana or marihuana" means all parts of the plant Cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term "marihuana" does not include hemp and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. "Marihuana" means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.

(48) "Measurement of Uncertainty (MU)" means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

(49) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this chapter.

(50) "Nonconsumable hemp product" as defined by Tex. Agric. Code §122.001(8) means a product that contains hemp, other than a consumable hemp product as defined by Tex. Health & Safety Code §443.001. The term includes cloth, cordage, fiber, fuel, paint, paper, particleboard, construction materials, and plastics derived from hemp.

(51) "Person" means an individual or entity, unless otherwise indicated.

(52) "Phytocannabinoid" means the Cannabinoid chemical compounds found in the cannabis plant, two of which are Delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).

(53) "Postdecarboxylation" means a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, and gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecar-
boxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in a given sample. See the definition for decarboxylation.

(54) "Processing" means converting an agricultural commodity into a marketable form.

(55) "Produce" means to cultivate hemp plants in Texas.

(56) "Producer" means a person who produces hemp. A producer includes an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm or facility, or would have shared had the crop been produced. A producer includes a grower of hybrid seed. A producer also means a person who stores the hemp plants they produced within Department-registered locations.

(57) "Program or hemp program" means the process created by the state of Texas and federal statutes and regulations to facilitate the regulation and cultivation of hemp as a crop.

(58) "Reverse distributor" means a person who is registered with the DEA in accordance with 21 C.F.R. §1317.15 to dispose of marijuana.

(59) "Sample" means a composite, representative portion from one variety of hemp plants in a hemp lot, collected prior to harvest in accordance with Department guidelines and procedures.

(60) "Sample collection date" means the date a hemp sample is collected by the Department or an authorized entity. To determine the sample collection date, the Department may take into consideration events of force majeure or unusual circumstances, including situations beyond a reasonable person's control.

(61) "Sampler" means a person or entity authorized by the Department to conduct the sampling and collection of hemp plants.

(62) "Signing authority" means an individual of a sole proprietorship, or an officer or agent of an entity with written authorization to commit the entity to a binding agreement or verify the contents of a governmental document.

(63) "Specimen" means a cutting taken from a hemp plant for the purposes of sample collection.

(64) "Storage" means any structure or container, whether temporary or permanent in nature, in which the producer or handler will store hemp. "Storage" does not include containers used to deliver samples.

(65) "The Code" means the Texas Agriculture Code.

(66) "Transplant" means to move a fully germinated seedling, mature plant, cutting, or clone from one lot and to replant it in another permanent lot under the control of the same license holder, for later harvest by the same license holder. "Transplant" also means a plant, cutting, or clone that has been moved from its initial lot of germination or cultivation for the purpose being transplanted.

(67) "Transport manifest" includes a shipping certificate, cargo manifest or transport document developed by the Department or a U.S. authority, authorizing transport of a hemp product within the State of Texas, any other state, the United States of America, or its territories.

(68) "TPIA" means the Texas Public Information Act, Texas Government Code, Chapter 52.

(69) "Unique ID" means the unique identifier established by the Department's hemp program.

(70) "USDA" means the United States Department of Agriculture.

(71) "U.S. authority" means the United States of America, USDA or a sub-agency thereof, a state, a US territory, or an Indian Nation, or federal, state or local law enforcement agency.

§24.2. Information Submitted to the United States Secretary of Agriculture.

(a) Not more than thirty (30) days after receiving and compiling the following information, the Department shall provide to the United States Secretary of Agriculture, or the Secretary's designee, the following information related to Department-licensed producers, in accordance with the Department's Information Gathering and Sharing Procedure:

(1) full name of individual or entity, residential or principal business address, telephone number, email address, name and title of each key participant of the entity, and employer identification number, if applicable;

(2) street address, and to the extent practicable, geospatial location for each production location where hemp will be produced in Texas;

(3) acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp;

(4) the total acreage of hemp planted, or square footage for greenhouses, harvested and if applicable, disposed; and

(5) the status and license number of the license holder.

(b) The Department shall provide real-time updates to USDA for all information that it reports to USDA under this rule, 7 C.F.R. §990.3, or 7 C.F.R. §990.70.

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 February 20, 2020.

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Assistant General Counsel
Texas Department of Agriculture
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Proposal publication date: January 10, 2020
For further information, please call: (512) 463-7476

SUBCHAPTER B. FEES

4 TAC §§24.5 - 24.7 The adoption is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department. Chapters 12, 121 and 122 of the Code 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.

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SUBCHAPTER C. LICENSING
4 TAC §§24.8 - 24.19

The adoption is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department. Chapters 12, 121 and 122 of the Code are affected by the adoption.

§24.8. License Application.
(a) Any person who wishes to produce, handle, or sample and collect hemp at any location in the State of Texas shall submit to the Department annually a completed license application in a form prescribed by the Department.

(b) A person who does not hold a valid license from the Department shall not produce, handle, or sample and collect hemp within the State of Texas.

(c) An applicant shall pay the required annual fee for each application, renewal or modification of a license.

(d) A license shall not be issued unless:
(1) the application is submitted online to the Department;
(2) the application is complete and accurate;
(3) the applicant has completed a Department mandatory orientation course;
(4) the applicant for a sampler license has completed an additional Department sampling and collection training course;
(5) the applicant has paid all required fees, in the amounts established by the Department or statute;
(6) the applicant's criminal history confirms that all key participants covered by the license have not been convicted of a felony, under state or federal law, relating to a controlled substance within the past ten (10) years, unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018;
(7) the application contains no false statements or misrepresentations and the applicant has not previously submitted an application with any false statements or misrepresentations; and
(8) the applicant's hemp license has not been terminated or suspended.

(e) Each applicant shall provide the following information for each license application:
(1) full name, Texas address, telephone number, and email address;
(2) if the applicant is submitting an application on behalf of an entity, the full name of the entity, the principal Texas business location address, the full names, titles, addresses, and emails of key participants, the full name, title, and email of the applicant who will have signing authority, and the Texas taxpayer ID number;
(3) for a producer or handler license:
   (A) street address and geospatial location including GPS for each facility where hemp will be cultivated or stored; and
   (B) proof of ownership or control over the location where hemp will be cultivated or stored; and
(4) all other information required by the Department.

(f) Licenses will not be automatically renewed, and must be renewed annually prior to license expiration. Renewal applications are subject to the same terms, information collection requirements, and approval criteria as required for initial applications.

(g) A license holder must submit a license modification if there is any change to the information submitted in the application including, but not limited to, sale of a business, a change in or new location of the facility for the production, handling, or storage of hemp in Texas, or a change in the key participants.

(h) The Department shall notify each applicant by letter or email of the denial or approval of the person's application.

§24.9. Ineligibility for a License.
(a) A person under the age of eighteen (18) years of age at the time the application is submitted to the Department is ineligible for a license.

(b) A person who has had a hemp license revoked by the Department, USDA, another state, Indian nation, or U.S. territory is ineligible to apply for participation in the Department hemp program for a period of five (5) years from the date of revocation. Upon application following the five-year exclusionary period, the Department may deny an application for any lawful reason, including previous conduct that occurred while licensed by the Department, USDA, another state, Indian nation, or U.S. territory.

(c) A person who is or has been convicted of a felony relating to a controlled substance under federal law or the law of any state may not, before the 10th anniversary of the date of the conviction, hold a license, or be a key participant of a license holder, or be a governing person of a business entity that holds a license unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018.

(d) A person who falsifies any information contained in a license application to the Department, or has previously submitted an application to the Department, USDA, another state, Indian nation, or U.S. territory with any materially false statements or misrepresentations is ineligible for a license.

(a) The applicant shall submit a complete application with all required components and attachments.
(b) The applicant's history with other TDA programs, if any, shall demonstrate a willingness to comply with the Department’s rules and instructions from Department staff.

(c) The applicant does not owe TDA any money under a final order.

(d) The applicant must not have a criminal conviction described in this subchapter.


(a) As an initial and continuing condition of licensure under the Department's hemp program, a license holder consents to entry on and inspection of all locations identified in an initial or renewal application, and all land and premises where hemp or other cannabis plants or materials are located. Such consent includes representatives of the Department or U.S. authority, who may enter such location(s), land, and premises with or without cause, and with or without advance notice.

(b) As an initial and continuing condition of licensure under the Department's hemp program, a license holder has a legal duty and obligation to destroy, at the license holder's expense, in accordance with DEA reverse distributor regulations found at 21 C.F.R. §1317.15, and without compensation from the State of Texas, USDA or the federal government, any:

1. material found in excess of an acceptable hemp THC level;
2. plants located in an area that is not licensed by the Department; and
3. plants not accounted for in required reporting to the Department.

(c) A license holder shall not sell, assign, loan, transfer, pledge or otherwise dispose of, alienate or encumber a license. A license is not transferrable upon the death of a license holder, except upon the death of a license holder the independent or dependent executor of the deceased license holder may contract with another license holder to cultivate, harvest, handle, test, and convey the hemp crop existing at the time of the license holder's death.

(d) A license holder shall not produce or handle hemp in any location other than the location listed in an initial or renewal application or facility addition or modification request.

(e) A license holder, other than a Hemp Research License Holder, shall not interplant hemp with any other crop without express written permission from the Department.

(f) A license holder shall comply with restrictions established by the Department limiting the movement of hemp plants and plant parts.

(g) A license holder shall ensure that at any time hemp is in transit, whether in intrastate or interstate commerce, a Department issued transport manifest shall be available for inspection upon the request of a representative of the Department, or U.S. authority.

(h) Upon request from a representative of the Department, or U.S. authority, a license holder shall immediately produce a copy of his or her license for inspection.

(i) A license holder shall notify the Department of any interaction with any U.S. authority, within twenty-four (24) hours following such interaction, by telephone call to the Department and follow-up in writing to the Department within three (3) calendar days of the occurrence.

(j) A license holder shall notify the Department of any theft of cannabis materials, whether growing or not, within 48 hours of discovery.

(k) A license holder shall report to the USDA, Agricultural Marketing Service (AMS), or Farm Service Agency (FSA), consistent with USDA requirements:

1. their license or authorization number, street address, and facility and lot geospatial location, including all transplantation areas, where hemp is and will be produced;
2. the acreage dedicated to the production of hemp, or greenhouse indoor square footage dedicated to the production of hemp, and the total acreage or square footage of hemp planted, harvested and if applicable, disposed; and
3. any change in the facility or lot geospatial location or amount of acreage dedicated to the production of hemp, and any change in the facility or lot geospatial location or amount of greenhouse indoor square footage dedicated to the production of hemp, including the total acreage or square footage of hemp planted, harvested and if applicable, disposed due to said changes.

(l) Failure to comply with this chapter, or any procedure or process established by the Department related to the cultivation, handling, sampling and collection, processing, testing, storage or transport of hemp, or any request by the Department related to the cultivation, handling, sampling and collection, processing, testing, storage or transport of hemp, shall constitute grounds for appropriate law enforcement action including, without limitation, the assessment of administrative penalties, the requirement to undertake corrective action, the denial of an initial or renewal application, the revocation of a license, the referral to other state and federal agencies for civil or criminal action, or any combination of such remedies by the Department.

§24.15. License Holders Who Transplant.

(a) In order to be eligible to transplant cannabis plants, a license holder must acquire a lot permit for the initial area of cultivation and indicate the final transplantation area, and anticipated date of transplant.

(b) The area where a license holder who transplants initially cultivates cannabis plants and the final transplantation area shall constitute one lot with two (2) registered geospatial locations.

(c) A license holder shall not divide a lot from the initial area of cultivation for transplant into more than one (1) transplantation area.

(d) In the event the initial area of cultivation is not within the same facility as the final transplantation area, the license holder who transplants must request a transport manifest from the Department before transporting a lot of cannabis plants to a separate facility for transplanting purposes. A transport manifest shall be valid for five (5) days from the date of issuance.

(e) A sale or transfer of a lot of cannabis plants from a license holder to another license holder for transplant is considered a harvest.

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-202000731
SUBCHAPTER D. INSPECTIONS, SAMPLING AND COLLECTION

4 TAC §§24.20 - 24.23

The adoption is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department. Chapters 12, 121 and 122 of the Code are affected by the adoption.

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SUBCHAPTER E. TESTING

4 TAC §§24.24 - 24.29

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§24.24. Testing Laboratory.

(a) Registration.

(1) An independent testing laboratory, or a laboratory in an institution of higher education, must be registered with the Department before performing any test related to the Department hemp program.

(2) An independent testing laboratory or a laboratory in an institution of higher education shall submit a complete application for registration in a form prescribed by the Department.

(3) An independent testing laboratory or a laboratory in an institution of higher education must be accredited by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 and must be registered with DEA.

(b) Registered Laboratories.

(1) A list of Department-registered laboratories shall be available to license holders on the Department website.

(2) A license holder may test a hemp sample using a registered laboratory in accordance with Tex. Agric. Code §122.151(c).

(3) A license holder who uses a registered laboratory shall pay that laboratory’s fees.

(c) State of Texas Laboratory.

(1) A license holder may test a hemp sample using a State of Texas Laboratory operated by the Department or its representative (State Laboratory).

(2) The State Laboratory shall be used if the license holder fails to use a registered laboratory.

(3) A license holder shall pay the State laboratory fees.

(4) The State Laboratory shall be registered with DEA.

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SUBCHAPTER F. DISPOSAL

4 TAC §§24.30, §24.31

The adoption is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department. Chapters 12, 121 and 122 of the Code are affected by the adoption.

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SUBCHAPTER H. TRANSPORTATION
4 TAC §§24.39 - 24.43

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(a) A Department-issued transport manifest shall be required for the transportation of hemp outside a facility where the hemp is produced.

(b) Hemp harvested outside of Texas that has no living tissue, transported in Texas, including seed, shall be accompanied by a transport manifest, or other valid documentation authorized by another state, the USDA, Indian Nation, or U.S. territory.

§24.40. Transport Manifests for Test Samples.

A Department-issued transport manifest, or other valid documentation authorized by another state, the USDA, Indian Nation, or U.S. territory, shall accompany all samples collected and transported to a laboratory for testing.

§24.42. Living Tissue Hemp Plants Originating Outside the State of Texas.

No person shall bring into the State of Texas a hemp plant, that originated from cannabis plants germinated, cloned, or transplanted outside of the State of Texas without a valid transport manifest, or other valid documentation authorized by another state, the USDA, Indian Nation, or U.S. territory, and a phytosanitary certificate in accordance with Title 4 of the Texas Administrative Code Chapter 19.

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SUBCHAPTER I. SEED
4 TAC §§24.44 - 24.48

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§24.45. License Required to Sell, Possess, Hold or Purchase Hemp Seed.

After May 1, 2020, a person or entity may not sell, possess, hold, or purchase hemp seed in Texas unless that person holds a valid and active license issued by the Department for the production and handling of hemp. A person or entity based out-of-state is not required to be a license holder in Texas to sell hemp seed to a person or business entity in Texas, but may not do so unless such hemp seed has been certified or approved in accordance with §24.48 of this title (relating to Certification or Approval of Hemp Seed).

§24.47. Hemp Seed Recordkeeping.

A person who sells, offers to sell, distributes, or uses hemp seed in Texas shall maintain records for five (5) years indicating:

(1) the origin of the hemp seed for five (5) years;
(2) the person or entity from whom the person purchased the hemp seed;
(3) any documentation indicating certification or approval of the provenance, quality, and variety of the hemp seed; and
(4) the location and jurisdiction of origin of the hemp seed.
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PECIALIZATION J. AGRICULTURAL OR ACADEMIC HEMP RELATED RESEARCH

4 TAC §24.49, §24.50

The adoption is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department. Chapters 12, 121 and 122 of the Code are affected by the adoption.

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CHAPTER 30. COMMUNITY DEVELOPMENT

SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

The Texas Department of Agriculture (Department) adopts the repeal of Title 4, Part 1, Chapter 30, Subchapter A, Division 3, §30.50, relating to the Community Development Fund, without changes to the text as published in the December 27, 2019, issue of the Texas Register (44 TexReg 8135). The repealed rule will not be republished.

The Department also adopts new Subchapter A, Division 3, §30.50, relating to the Community Development Fund, with changes to the proposed text as published in the December 27, 2019, issue of the Texas Register (44 TexReg 8135). The adopted new rule will be republished. The adopted rule incorporates minor edits to clarify language, formalizes existing policy and guidelines, and includes revisions of necessary policy and administrative changes to further enhance operations.

The 38-day comment period ended February 3, 2020. The Department held two public hearings regarding the rules during the public comment period. During this period, the Department received written or oral comments from the following: City of Bowie; City of Canadian; City of Canyon; Carson County; Cottle County; Montague County; Ochiltree County; Alamo Area Council of Governments; Texas Association of Regional Councils; Association of Rural Communities in Texas; GrantWorks, Inc.; and Langford Community Management.

A summary of comments relating to the new rule and the Department’s responses follow.

Comment: Seven commenters preferred no changes to the existing Regional Review Committee (RRC) system or requested consideration of an alternative similar to the current RRC that still streamlines the administrative burden. Six commenters identified concerns of this new scoring system, including decreased local control and the inability of a state-wide committee to understand regional differences in local needs, culture and geography. One commenter supported the state-wide scoring system as an improvement that will benefit the entire state.

Response: The Department appreciates the input received and has carefully considered these concerns both before and after publishing the proposed rule. The agency has incorporated specific measures to ensure regional representation in the scoring process and preserve the project priorities that are critical to each region’s needs. No changes to the rule have been made as a result of these comments.

Comment: Six commenters requested clarification of the membership requirements for the Unified Scoring Committee. Five requested confirmation that one member will be appointed to represent each state planning region, and one commenter requested that nominations for membership also be accepted from persons not nominated by the state planning region.

Response: The adopted rule incorporates minor edits to clarify the nomination process.

Comment: Four commenters requested to increase the number of points assigned for Regional Project Priorities.

Response: The Department reviewed the use of Project Priorities in the most recent application cycle. The assignment of points under the new rule is generally consistent with the Project Priority points assigned by RRCs. No changes to the rule have been made as a result of these comments.

Comment: Five commenters expressed concern about potential criteria that may be adopted by the new committee, including barriers to entry, matching funds, and financial resources.

Response: The Department recognizes this concern and recommends the commenters and other concerned community members communicate clearly with the members of the Unified Scoring Committee (USC) the impact that certain scoring criteria will have on their community’s ability to compete for grant funds. No changes to the rule have been made as a result of these comments.
Comment: Four commenters suggested including language regarding the amount of funding allocated to each region and/or each grant amount.

Response: The funding allocation formula and the maximum and minimum grant amounts are included in the State of Texas One Year Action Plan submitted to the U.S. Department of Housing and Urban Development. It is not necessary to also include such language in the Texas Administrative Code. No changes to the rule have been made as a result of these comments.

Comment: One commenter expressed concern regarding the potential conflict of interest for state planning regions that administer grant contracts and will have a formal role under the new rule.

Response: The Department has considered this concern and has determined that the role of state planning regions is limited and thus should cause no possible conflict. No changes to the rule have been made as a result of these comments.

4 TAC §30.50

The adoption is made under Texas Government Code §487.051, which designates the Department as the agency to administer the state’s community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the adoption is Texas Government Code, Chapter 487.

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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4 TAC §30.50

The adoption is made under Texas Government Code §487.051, which designates the Department as the agency to administer the state’s community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the adoption is Texas Government Code, Chapter 487.

§30.50. Community Development (CD) Fund.

(a) Eligibility. In addition to meeting the application threshold requirements in §30.25 of this subchapter (relating to Application Threshold Requirements), in order to be eligible for community development funds, a community must document that at least 51.00% of the persons who would directly benefit from the implementation of each activity and target area proposed in the application are of low to moderate income.

(b) Application cycle. Applications are accepted on a biennial basis and selected for award pursuant to regional competitions held during the first year of the biennial cycle. An eligible community may submit one application per cycle as prescribed in the most recent application guide for this fund.

(c) Regional allocations. Each state planning region is provided with a regional CD Fund allocation for each program year of the biennial cycle once HUD releases the state’s annual CDBG allocation.

(d) Selection procedures.

(1) Initial review. Upon receipt of an application, the department performs an initial review for application completeness and eligibility in accordance with §30.29 of this subchapter (relating to Application Review). Only the department may disqualify an application from consideration.

(2) Scoring process. During the first program year of the application cycle, eligible applications are scored and ranked by the department using criteria determined by the state planning region, the Unified Scoring Committee, and the department as described in subsection (e) of this section.

(3) Awards. After the department determines the final rankings of applications, awards are made based on each region’s allocation and awarded until funds allocated to the region are depleted. If the program year allocation is insufficient to completely fund the next highest ranked application in the region, projects may be funded using TxCDBG deobligated funds or other funds, to the extent available. The department may also pool the remaining funds from each region to maximize the total number of applications to be fully funded.

(e) Scoring criteria.

(1) Regional project priority category. Each state planning region, as defined by Chapter 391 of the Local Government Code, is responsible for establishing the project types that will be considered first, second, or third priority projects.

(A) The governing body of the state planning region shall establish the priorities and communicate the decision to the department or may appoint a committee to carry out these tasks.

(B) Public meeting. The public must be given an opportunity to comment on the project priorities to be considered. The designated committee must convene in an open meeting for discussion and action to adopt project priorities.

(i) Notice of the public meeting must be advertised to the general public through a regional newspaper or other similar media. Each community eligible to participate in the application cycle must also be contacted directly with written notice of the public meeting.

(ii) The public meeting is subject to the Texas Open Meetings Act.

(C) The department will provide a format for establishing the criteria and a deadline for submitting the regional decision to the department to be incorporated into the application guide.

(D) State planning regions that use internal staff to prepare applications and administer CDBG grants must address the potential conflicts of interest of regional participation in selecting project priorities. For these regions, staff responsible for any part of the grant application process:

(i) may not participate in the planning or administration of the public meeting or committee duties, including distributing public meeting notices, explaining public meeting requirements to
committee members, conducting the committee meeting, or submitting the results of the committee to the department; and

(ii) may attend the public meeting but may not present recommendations to the committee except during the public comment portion of the meeting, subject to the same time limits applied to other commenters.

(E) Twenty-five percent of the total available points will be determined by regional project priority categories.

(ii) Department scoring criteria. The following factors are considered by the department when scoring CD Fund applications (detailed application and scoring information are available in the application guidelines):

(A) Past performance--the department will consider a community's performance on all previously awarded TxCDBG contracts within the past 4 years preceding the application deadline. Evaluation of a community's past performance will include the following:

(i) completion of contract activities within the original contract period;
(ii) submission of environmental review requirements within prescribed deadlines;
(iii) submission of the required close-out documents within the period prescribed for such submission; and
(iv) maximum utilization of grant funds awarded.

(B) Other programmatic priorities--the department may establish other scoring criteria to meet programmatic goals, so long as the application cycle allows sufficient time after the publication of such scoring criteria for communities to take action to maximize their score.

(C) Ten percent of the total available points will be determined by department scoring criteria.

(3) Unified Scoring Committee (USC) criteria. The USC is responsible for determining objective scoring factors for all regions in accordance with the requirements of this section and the current TxCDBG Action Plan. The USC must establish the numerical value of the points assigned to each scoring factor as described in the Committee Guidelines provided by the department.

(A) USC composition. The Agriculture Commissioner will appoint each member of the USC, to serve at the discretion of the Commissioner.

(i) Twenty-four (24) members shall be appointed to the USC. The Commissioner shall ensure geographic representation for each state planning region when appointing members.

(ii) Each member must be either an elected or appointed official of a non-entitlement community at the time of appointment.

(iii) The governing body of each state planning region may nominate one individual to be considered for appointment. The department will establish a timeline for such nominations.

(B) Public hearing. The public must be given an opportunity to comment on the scoring criteria considered. The department will convene a public hearing for the USC to discuss and select the objective scoring criteria that will be used to score and rank applications within each region.

(i) Notice of public hearing. USC proceedings are subject to the Texas Open Meetings Act. The department will publish notice of the hearing in the Texas Register; post the notice on its website, and announce the hearing details through the CDBG email listserv that is available for all stakeholders.

(ii) Attendance at meetings. A quorum is required for the USC public meeting. A USC member may designate a proxy to attend the meeting. Proxies are counted for purposes of determining the presence of a quorum and may participate in the discussion regarding potential scoring criteria but may not vote on matters before the USC.

(C) Requirements for scoring criteria.

(i) All scoring criteria selected by the USC must be in compliance with 24 CFR §91.320(k)(1)(i), which states in relevant part, "The statement of method of distribution must provide sufficient information so that units of general local government will be able to understand and comment on it, understand what criteria and information their application will be, and be able to prepare responsive applications."

(ii) Prior to the scheduled USC public hearing, the department will publish a list of previously approved scoring criteria that comply with objective scoring requirements. The department will also provide an opportunity for USC members, communities, and other stakeholders to submit additional scoring criteria to the department to be reviewed for compliance prior to the public hearing.

(iii) The USC may not adopt scoring factors that directly negate or offset the department's scoring factors.

(D) Final selection of scoring criteria.

(i) The final selection of the scoring criteria is the responsibility of the USC and must be consistent with the requirements of the current TxCDBG Action Plan.

(ii) The department will review the scoring factors selected to ensure that all scoring factors are objective and publish the approved scoring methodology in the application guide. The department may provide further details or elaboration on the objective scoring methodology, data sources, and other clarifying details without the necessity of a subsequent USC meeting.

(E) Sixty-five percent of the total available points will be determined by USC scoring criteria.

(f) Other department responsibilities. The department may:

(1) establish the maximum number of USC scoring factors that may be used in order to improve review and verification efficiency, or exclude certain scoring factors if the data is not readily available or verifiable in a timely manner. To ensure consistency, the department may determine the acceptable data source for a particular scoring factor;

(2) establish a deadline for each state planning region to select and submit to the department its project type priorities and nomination for the USC;

(3) publish Committee Guidelines to assist the USC in selecting scoring criteria that meet federal, state and program requirements:

(A) For any region for which no project priorities are submitted, applications will be scored according to the priorities published in the Committee Guidelines.

(B) In the event the USC fails to approve an objective scoring methodology to the satisfaction of the department consistent with the requirements in the current TxCDBG Action Plan, the department will establish scoring factors using the scoring factors identified in the Committee Guidelines; and
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TITLE 16. ECONOMIC REGULATION
PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION
CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §§70.22 - 70.25, 70.30, 70.60, 70.70, 70.73, 70.101

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 70, §§70.22, 70.25, 70.30, and 70.60, regarding the Industrialized Housing and Buildings program, without changes to the proposed text as published in the November 29, 2019, issue of the Texas Register (44 TexReg 7278). Sections 70.22, 70.25, 70.30, and 70.60 will not be republished.

The amendments to §§70.23, 70.24, 70.70, 70.73, and 70.101, regarding the Industrialized Housing and Buildings program, are adopted with changes to the proposed text as published in the November 29, 2019, issue of the Texas Register (44 TexReg 7278). Sections 70.23, 70.24, 70.70, 70.73, and 70.101 will be republished. The adopted changes are referred to as “adopted rules.”

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules are necessary to implement House Bill (HB) 1385 and HB 2546, 86th Legislature, Regular Session (2019) and make clean-up and clarification changes.

HB 1385 Changes

HB 1385 removed the height limit for industrialized housing and buildings regulated by the Department. The adopted rules are necessary to ensure the safety of the public as structures taller than four stories or 60 feet are now regulated by the Department. Specifically, the adopted rules ensure that persons who perform design review or inspections have necessary expertise in fire safety. The adopted rules also require builders who install structures taller than 75 feet to be registered with the Department as industrialized builders, rather than obtaining installation or alteration permits, so that the Department is better able to ensure that all necessary inspections are performed. In addition, the adopted rules remove an exemption that conflicts with the changes made by HB 1385. The adopted rules also require manufacturers to complete a certification update if they wish to construct modules or modular components that are outside the scope of their existing certification. This change is necessary to ensure that modules and modular components for new projects, such as taller structures that were not previously under the Department’s regulation, will be constructed in accordance with the mandatory building codes. Furthermore, the adopted rules extend the deadline for completing work to 365 days for structures built to a code other than the International Residential Code (IRC), giving builders more time to complete more complex structures.

Additionally, the adopted rules update the site inspection requirements to account for taller, more complex structures built under the Department’s program. The adopted rules do not create additional inspection requirements, but better describe the existing requirements so that they apply to all industrialized housing and buildings regulated by the Department. For example, the adopted rules delete existing language stating that on-site inspections are normally completed in three phases, as this is not true for taller and more complex structures. The adopted rules explicitly require all inspections required by the mandatory building codes, including special inspections, which may be required for taller structures. The adopted rules also require that special inspections be conducted by persons who are approved by the Industrialized Housing and Buildings Code Council (Council) and require Department approval in order to change the person or agency once the special inspection has already begun. These changes are necessary to ensure that taller structures are adequately inspected.

HB 2546 Changes

HB 2546 gives manufacturers and builders the option to construct single-family industrialized housing in accordance with certain local amendments to the statewide energy code in Texas for single-family residential construction. Those local amendments or alternative compliance paths must be requested by a municipality, county, or group of counties in the climate zone where the housing will be located and must be determined by the Energy Systems Laboratory at Texas A&M University to be equally or more stringent than the statewide energy code. The bill also required manufacturers and builders to make available all documentation necessary to evaluate the industrialized housing.

The adopted rules require manufacturers to send design review agencies information on the local amendments or alternative compliance paths to which the manufacturer will construct a modular home. This is necessary to enable the design review agency to properly review the plans for the home. The adopted rules also add an amendment to the mandatory building codes to allow single-family housing to be constructed in accordance with the local amendments and alternative compliance paths that are authorized by HB 2546.

Clean-up and Clarification Changes

The adopted rules also include several changes designed to make the rules easier to understand by adding a new subsection to the amendments to the mandatory building codes, in order to clarify that electrical tests must be performed on modular buildings as well as homes. These tests are already required in the current rules, but there is some confusion because the current rules reference a section of the National Electrical Code (NEC) which pertains to manufactured housing. By adding a new Article 545.14 to the NEC, the adopted rules will make it clearer that...
electrical testing is to be performed on both housing and buildings.

The adopted rules also use new language to clarify which buildings are exempt from site inspections, as the adopted language is more precise than the existing language and may lessen any confusion about which buildings do not require site inspections. Additionally, the adopted rules clarify that the prohibition on destructive disassembly applies only to modules or modular components completed in the plant and certified by a Department-issued decal or insignia. This is necessary as projects may include a mixture of modular and site-built construction.

The adopted rules also make clean-up changes, including incorporating third-party inspection agencies into the rule regarding site inspections, and changing the description of how violations and corrective actions must be documented. The new description of how to document violations gives the Department flexibility to prescribe new, more efficient methods of documentation in the future. The clean-up change adding third-party inspection agencies is necessary because the agencies are already involved, through their inspectors, in the site inspection process.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §70.22 by requiring fire safety reviewers to have International Code Council (ICC) certification as a fire plans examiner.

The adopted rules amend §70.23 to require ICC or National Fire Protection Association (NFPA) fire inspector certifications for various third-party inspection agency personnel. Specifically, the third-party inspection agency supervisor of inspections must have ICC or NFPA certification as a fire inspector I. Inspectors who perform in-plant inspections of modules or modular components that will be part of a project over 75 feet must have ICC or NFPA certification as a fire inspector I and inspectors who perform installation inspections of a project over 75 feet must have ICC or NFPA certification as a fire inspector II.

The adopted rules amend §70.24 by requiring third-party site inspectors who perform installation inspections of industrialized housing or buildings taller than 75 feet to have ICC or NFPA certification as a fire inspector II.

The adopted rules amend §70.25 by prohibiting installation permits or alteration permits for structures that are taller than 75 feet.

The adopted rules amend §70.30 by removing an exemption for structures that are taller than 4 stories or 60 feet. The adopted amendments also renumber the subsection accordingly.

The adopted rules amend §70.60 by requiring a manufacturer, who wishes to construct modules or modular components outside the scope of the manufacturer's current certification, to complete a certification update inspection for the aspects of construction for which the manufacturer is not currently certified.

The adopted rules amend §70.70 by: (1) requiring manufacturers to send design review agencies any local amendments or alternative compliance paths, to which the manufacturer will construct a modular home; and (2) referring to a new section of the NEC, which is added in §70.101 of the adopted rules, and specifying the electrical tests that must be performed on industrialized houses and buildings.

The adopted rules amend §70.73 by:

- removing language stating that on-site inspections are normally accomplished in three phases, and instead explicitly requiring all inspections required by certain codes (the IBC, IMC, IPC, IFC, IFGC, IECC, IFC, and IRC), special inspections required by the IBC, a set inspection, and a final inspection;
- requiring that special inspections be conducted by persons who are approved by the Council and meet all applicable requirements;
- requiring Department approval to change the inspector or agency once the special inspection has already begun;
- providing a longer deadline for completion (365 days) for structures that are built to a code other than the IRC;
- clarifying which structures are exempt from site inspections;
- clarifying that the prohibition on destructive disassembly during site inspections applies only to modules or modular components completed in a plant and certified by a Department-issued decal or insignia;
- changing the word "assuring" to "ensuring" as this wording may be clearer;
- adding inspection agencies as persons who may be contacted to schedule inspections;
- adding that an industrialized builder or installation permit holder may not change the inspection agency for a project once started without written approval from the Department;
- requiring inspection violations and corrective actions to be documented in accordance with Council procedures, rather than on a specific form;
- subsection (c) (1-3) was inadvertently omitted from the proposed text and is as published. No changes have been made to original TAC language.

The adopted rules amend §70.101(h)(5) to allow single-family industrialized housing to be built in accordance with the energy code with any local amendments or alternative compliance paths that are requested by a municipality, county, or group of counties located in the climate zone where the house will be located and determined by the Texas Energy Systems Laboratory to be equally or more stringent than the energy code adopted by the State Energy Conservation Office (SECO). The adopted amendments also renumber the subsection accordingly.

The adopted rules amend §70.101(j) by adding a new section of the NEC, specifying which electrical tests must be performed on industrialized housing and buildings.

PUBLIC COMMENTS

The Department drafted and distributed the rules to persons internal and external to the agency. The rules were published in the November 29, 2019, issue of the Texas Register (44 TexReg 7278). The deadline for public comments was December 30, 2019. The Department received comments from three interested parties on the rules during the 30-day public comment period. The public comments are summarized below.

Comment: One individual commenter disagreed that there will be no probable economic costs to persons who are required to comply with the proposed rules, commenting that the proposed rules created a requirement for a final inspection after all corrections are complete.
**Department Response:** The Department disagrees with the comment because the existing rules include a requirement for additional inspections to correct violations and a successful final inspection showing that there are no outstanding violations. The Department did not make any changes to the proposed rules in response to this comment.

Comment: RCS Enterprises, LP, stated that fire systems for large buildings are not typically handled within ICC design criteria, and that third parties who might not have ICC certifications often design, inspect, and install fire suppression systems in large buildings. The commenter recommended that the proposed rules be amended to allow these companies to design and inspect fire systems.

**Department Response:** The Department disagrees with the recommendation because the proposed rules do not prohibit manufacturers and builders from working with various companies to design, inspect, or install fire suppression systems. Rather, the proposed rules pertain to the qualifications that are required for design review agency personnel, third-party inspectors and inspection agency staff, and third-party site inspectors. The Department has determined that ICC certifications are appropriate for these persons. The Department did not make any changes to the proposed rules in response to this comment.

Comment: Fluor opposes the proposed rules and states that only the National Fire Protection Association (NFPA) may amend the National Electrical Code (NEC). The commenter also stated that the Department may only supplement the NEC through legislation.

**Department Response:** The Department disagrees with the comment. The proposed rules adopt the NEC language as the Department's own rule language. As such, the Department is not amending the NEC as issued by the NFPA. Rather, it is amending its own rule language. Furthermore, the proposed rules fall within the Commission's rulemaking authority and the Council's authority to issue instructions to ensure compliance with approved designs, plans, and specifications. The Department did not make any changes to the proposed rules in response to this comment.

Comment: Fluor opposes the proposed rules because the commenter believes that equipment shelters and certain other modular structures in petrochemical plants do not fall within the Department's IHB program. The commenter also expressed concern that the Department's IHB program is not able to adequately regulate these structures and that Department regulation of these structures is not necessary.

**Department Response:** The Department disagrees with the comment. There is not an exemption under Occupations Code, Chapter 1202 for equipment shelters or structures located in petrochemical facilities, and the Department does not have authority to exempt these structures from the Department's IHB program. The Department did not make any changes to the proposed rules in response to this comment.

Comment: Fluor opposes the proposed amendment to §70.73 clarifying which buildings are exempt from site inspection requirements. The commenter believes that this change must be accomplished through legislation.

**Department Response:** The Department disagrees with the comment. The proposed amendment falls within the Commission's rulemaking authority and the Council's authority to establish procedures for inspecting the construction and installation of industrialized housing and buildings. The Department did not make any changes to the proposed rules in response to this comment.

Comment: Fluor opposes the proposed amendment to §70.101 specifying the electrical tests that must be conducted on industrialized housing and buildings. The commenter expressed concern that the tests, as described, did not make sense for structures housing electrical equipment, and that if these tests were performed on the structures, the tests could damage the equipment.

**Department Response:** The Department disagrees with the comment. The testing required by the proposed rule must be performed on the electrical systems for the structure itself, not the specialized equipment housed inside. Moreover, the testing is to be performed in the manufacturing facility where the structure is constructed, and the manufacturer's compliance control manual provides procedures for safely performing the required testing. The Department did not make any changes to the proposed rules in response to this comment.

Comment: Fluor expressed concern that equipment shelters are entering Texas from outside the United States and are not being inspected pursuant to Department IHB program requirements. The commenter opposes the proposed rules because the commenter believes that including these buildings in the Department IHB program imposes costs on Texas manufacturers and is not fair to Texas businesses trying to abide by the law.

**Department Response:** The Department disagrees with the comment. There is no exemption for equipment shelters under the IHB statute, and the Commission and Department do not have authority to exempt these structures from the Department's IHB program. The Department encourages the commenter and anyone who has information regarding a violation of Department law or rules to file a complaint at https://www.tdlr.texas.gov/complaints/, by fax to (512) 539-5698, or by mail to TDLR, Enforcement Division, P.O. Box 12157, Austin, Texas 78711. The Department did not make any changes to the proposed rules in response to this comment.

Comment: Fluor disagrees with the Department's assessment that the proposed rules: will not affect local employment; will not impose economic costs on persons who are required to comply with the proposed rules; will not create a new regulation; do not increase or decrease the number of individuals subject to the rule's applicability; and will not have an adverse effect on small businesses, micro-businesses, and rural communities. Specifically, the commenter states that continuing to regulate equipment buildings at petrochemical facilities will have a fiscal impact on communities, plants, and small businesses.

**Department Response:** The Department disagrees with the comment, and the comment is beyond the scope of the proposed rules. The Department's assessments referenced by the commenter relate only to the changes made by the proposed rules, not the impact of the existing rules that are continued in effect. The Department did not make any changes to the proposed rules in response to this comment.

Comment: Fluor requested a six-month delay in adopting the proposed rules so that others in the industry have an opportunity to voice concerns they may have.

**Department Response:** The Department disagrees with a delay because most of the proposed rules are necessary to implement legislation that was effective September 1, 2019. Moreover, the
proposed rules were presented to members of the industrialized flooring and buildings industry prior to publication, and the public has had the required amount of time under the law to comment on the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

COUNCIL RECOMMENDATIONS AND COMMISSION ACTION

The Texas Industrialized Building Code Council met on January 9, 2020, to discuss the proposed rules and the comments received. The Council recommended adopting the proposed rules with changes to §70.23 and §70.24. Specifically, the Council recommended accepting NFPA fire inspector certification as well as ICC certification. In addition to the Council’s recommendations, the Department recommended inserting a cross-reference in §70.70(c)(9) and correcting a typographical error in §70.101(j)(2)(B). At its meeting on February 18, 2020, the Commission adopted the proposed rules with changes as recommended by the Board and the Department.

STATUTORY AUTHORITY

The amended rules are adopted under Texas Occupations Code, Chapters 51 and 1202 which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the adopted rules.

§70.23. Criteria for Approval of Third Party Inspection Agencies and Inspectors.

(a) An agency seeking council approval as a third party inspection agency shall submit a written application to the executive director. The application will indicate the agency name, address, and telephone number of each office through which third party inspections will be coordinated.

(b) The application will include the following information.

(1) An organizational chart shall be submitted showing the names of managerial and technical personnel responsible for in-plant and on-site construction inspections.

(2) A resume for each person listed in the organizational chart shall be submitted indicating academic and professional qualifications, experience in related areas, and specific duties within the agency. All certifications must be current with ICC.

(3) Complete documentation to substantiate the agency’s ability to perform in-plant and on-site construction inspections and follow-up inspections to determine the compliance of a building manufacturer with the standards and rules shall be submitted. The application will include a formal description of the agency's supervision and training program for inspectors, performance records of manufacturers, examples of inspection reports, agreements or contracts with manufacturers, and any other pertinent information.

(4) A statement of certification shall be submitted, signed by the agency manager or chief executive officer, that:

(A) its board of directors, as a body, and its managerial and inspection personnel, as individuals, are free to exercise independence of judgment in the performance of their duties within the agency;

(B) its activities pursuant to the discharge of responsibilities as a third party inspection agency will not result in financial benefit to the agency via stock ownership or other financial interests in any producer, supplier, or vendor of products involved, other than through standard fees for services rendered;

(C) the agency will consistently and uniformly implement the policies and determinations of the council with regard to interpretations of the standards and rules;

(D) the agency will not provide design services or prepare compliance control manuals for manufacturers for whom it acts as a third party inspection agency;

(E) all information contained in the application for approval as a third party inspection agency is true, timely, and correct; and

(F) all future changes will be immediately communicated to the department;

(5) A list of states in which the agency is currently approved to provide product certification or validation or third party inspection services and a complete description of each system and program involved shall be submitted.

(c) The minimum personnel requirements and qualifications are as follows.

(1) The manager or chief executive officer shall have:

(A) a minimum of five years experience in building code enforcement or compliance control of building systems;

(B) a minimum of one year experience in responsible technical project planning and management; and

(C) licensure as a professional engineer or architect in the State of Texas. The applicant's license number must be included on the resume.

(2) The supervisor of inspections shall have:

(A) a high school diploma or equivalent;

(B) a minimum of five years experience as an inspector in manufactured buildings or related compliance control or equivalent;

(C) certification as a fire inspector II as granted by ICC or NFPA; and

(D) certification as a residential energy inspector/plans examiner as granted by ICC, as a commercial energy inspector as granted by ICC, and as:

(i) a residential combination inspector as granted by ICC; or

(ii) a commercial combination inspector as granted by ICC; or

(iii) a combination inspector as granted by ICC.

(3) Each inspector shall submit a written application to the executive director. The application shall include the following.

(A) A resume that includes the inspector's academic and professional qualifications, experience in related areas, and relevant ICC certifications. Each inspector shall have:

(i) a high school diploma or equivalent;

(ii) a minimum of one year experience in building code enforcement, compliance control inspection, or building experience.

(B) Evidence of certification as a residential energy inspector as granted by ICC or as a commercial energy inspector as granted by ICC or both. The inspector must have a residential energy
certification to inspect housing and a commercial energy certification to inspect buildings.

(C) Evidence of certification as:

(i) a residential combination inspector as granted by ICC; or

(ii) a commercial combination inspector as granted by ICC; or

(iii) a combination inspector as granted by ICC; or

(iv) one of each of the individual certifications from ICC that comprise the combination certifications referenced in clauses (i), (ii), and (iii) provided that the inspector has one in each area: building, mechanical, plumbing, and electrical.

(4) An inspector who performs an in-plant inspection of modules or modular components that will be part of a housing or building project over 75 feet in height must also have ICC or NFPA certification as a fire inspector I or II.

(5) An inspector who performs an installation inspection of industrialized housing or buildings over 75 feet in height must also have ICC or NFPA certification as a fire inspector II.

§70.24. Criteria for Approval of Third Party Site Inspectors.

(a) A person seeking approval as a third party site inspector shall submit a written application to the executive director. The application will include the following information.

(1) A resume that includes the inspector's academic and professional qualifications, experience in related areas, and relevant ICC certifications.

(2) Evidence of current ICC certifications required for approval by the council.

(3) A statement signed by the inspector certifying that:

(A) the inspector's activities pursuant to the discharge of responsibilities as a third party site inspector will not result in financial benefit to the inspector via stock ownership or other financial interests in any producer, supplier, or vendor of products involved other than through standard fees for services rendered;

(B) the inspector will consistently and uniformly implement the policies and determinations of the council with regard to interpretations of the mandatory building codes and rules;

(C) the inspector will enforce the mandatory building codes adopted by the council;

(D) all information contained in the application for approval as a third party site inspector is true, timely, and correct; and

(E) all future changes will be immediately communicated to the department.

(b) The minimum qualifications for a third party site inspector are as follows:

(1) a high school diploma or equivalent;

(2) a minimum of three years experience in building code enforcement, building inspections, or building experience. At least one year of experience shall be in the performance of building inspections;

(3) one of the following energy code certifications: certification as a residential energy inspector/plans examiner, as a commercial energy inspector, or both. The inspector must have a residential energy certification to inspect housing and a commercial energy certification to inspect buildings;

(4) one of the following code certification combinations:

(A) a residential combination inspector as granted by ICC. In lieu of a residential combination inspector the inspector may have one of each of the individual certifications that are needed for certification as a residential combination inspector, commercial combination inspector, or combination inspector. Inspectors with residential inspector certifications may only perform site inspections for industrialized housing complying with the International Residential Code; or

(B) a commercial combination inspector as granted by ICC. In lieu of a commercial combination inspector the inspector may have one of each of the individual certifications that are needed for certification as a commercial combination inspector or a combination inspector. Inspectors with a commercial inspector certification may only perform site inspections for industrialized buildings or site-built REFs; or

(C) a combination inspector as granted by ICC. In lieu of a combination inspector the inspector may have one of each of the individual certifications that are needed for certification as a combination inspector. Inspectors with this certification may perform site inspections for any industrialized housing, buildings, or site-built REFs; and

(5) ICC or NFPA certification as a fire inspector II if the inspector will perform installation inspections of industrialized housing or buildings over 75 feet in height.

§70.70. Responsibilities of the Registrants--Manufacturer's Design Package and REF Builder's Construction Documents.

(a) Review and approval. The manufacturer's design package and the REF builder's construction documents must be reviewed and approved in accordance with the following.

(1) The manufacturer or REF builder shall select a council-approved design review agency (DRA) to perform all required review and evaluation of plans, designs, specifications, compliance control, and on-site construction documentation, etc. This selection shall be made in writing to the executive director and will state the name, address, and registration number of the design review agency selected.

(2) An approved DRA shall review all designs, plans, specifications, calculations, compliance control programs, on-site construction documentation or specifications, and other documents as necessary to assure compliance with the mandatory building codes in accordance with the interpretations, instructions, and determinations of the council.

(A) The reviews are to be performed or directly supervised by the DRA's certified plans reviewers for the discipline (electrical, plumbing, mechanical, structural, building planning, or fire safety) as listed and approved in the agency's organizational chart. A DRA's plans reviewers must be certified pursuant to the criteria established by the council as set forth in §70.22.

(B) The DRA will obtain from the manufacturer or REF builder all information necessary to assure that the manufacturer's designs and procedures are in compliance with the mandatory building codes and the sections in this chapter.

(3) All documents shall have pages numbered and arranged in accordance with a table of contents. The floor plans shall have no scale smaller than 1/8th inch equals one foot. All documents shall be identified to indicate the manufacturer's or REF builder's name and registered physical address.

(4) The DRA will signify approval of a drawing, specification, calculation, or any other document, including revisions and ad-
ditions, in the manufacturer's design package and in the REF builder's construction documents by applying the council's stamp to each page.

(A) An alternate council stamp as approved by the council may be used on all designs, plans, specifications, calculations, and other documentation with the exception of the first or cover page and the table of contents or index pages of the design package.

(B) The original council stamp with original signature will be required on the first or cover page and the table of contents or index pages of the design package.

(C) The signature on the original council stamp must be the signature of the manager or chief executive officer of the DRA. The manager or chief executive officer of the DRA must be licensed in the State of Texas as a professional engineer or architect in accordance with the criteria for approval of DRA's established by the council.

(D) The stamp shall not be placed on any designs, plans, or specifications that do not meet the requirements of the applicable mandatory building codes or the requirements of these sections.

(E) The DRA shall forward a copy of all approved documents to the department within 5 days of approval and shall forward one approved copy to the manufacturer or the REF builder.

(F) The DRA shall keep copies of all approved documents for a minimum of 5 years from the date that these documents are superseded by adoption of later editions of the mandatory building codes and make a copy of these documents available to the department upon request.

(G) The manufacturer shall keep a copy of all approved documents for a minimum of ten years from the date the last unit constructed from the documents is shipped and make a copy of these documents available to the department upon request.

(H) The REF builder shall keep a copy of all approved construction documents for a minimum of 10 years from the date of completion of the units covered by the documents and make a copy of these documents available to the department upon request.

(I) The manufacturer or the REF builder shall make a copy of all approved documents available to the person performing inspections.

(5) Manufacturers and REF builders will be notified of the change in code editions 180 days before the effective date of the change. Manufacturers or REF builders who wish to continue building to previously approved documents must resubmit these documents to their DRA for review and approval to the new code editions. Only documents that meet the new code editions may be approved. Approval of these documents will be evidenced by application of a new approval date and the council's stamp of approval to each document.

(A) All construction begun on or after effective date of adoption of the new code editions must comply with the new code editions and be constructed in accordance with design packages approved to the new code editions.

(B) Construction to plans approved to the old code editions begun prior to effective date of adoption of the new code editions, or prior to the manufacturer's effective transition date, must be completed, inspected by a Texas approved inspector, and labeled (TX decal must be attached to the unit) within 180 days of the adoption of the new code editions, or the unit shall not be eligible for a Texas decal.

(C) A manufacturer may transition from the current code edition to the new code edition as follows.

(i) The approval date on all documents in the manufacturer's design package will be on or after the effective date of adoption of the new edition of the codes in §70.100. Approvals dated before the effective date of adoption of the codes in §70.100 will no longer be valid for new construction by the manufacturer.

(ii) The manufacturer may transition approval of documents in his design package any time within the 180 days prior to the effective date of the adoption of the new editions of the codes. The manufacturer must notify the department in writing of the effective date of transition. All documents approved on or after that date shall be to the new editions of the codes. All previously approved supporting documentation, such as compliance control manuals, system calculations, etc., must be resubmitted to the DRA for review and approval to the new code editions and must be approved as of the effective date of transition specified by the manufacturer. Approvals dated before the transition date of adoption of the codes in §70.100 will no longer be valid for new construction by the manufacturer.

(6) A DRA may withdraw the approval of any document whenever the approval is later found to be in violation of code requirements or the rules and regulations in this chapter. Notice of the withdrawal of the approval shall be in writing and shall set forth the reasons for the withdrawal. Any withdrawal of approval shall have prospective effect only, except for life safety items.

(7) A DRA may not revise or correct documents submitted for review and approval by the manufacturer or REF builder except as provided in this subsection. DRAs may make red ink corrections to documents provided the corrections meet all of the following criteria:

(A) limited to corrections of minor deviations;

(B) the corrected items can be verified by reference to prescriptive code requirements;

(C) the change does not involve any change of design or require design;

(D) the red ink correction is valid for 10 working days and may not be extended; and

(E) the corrections must be numbered and initialed by the DRA and the statement, "As noted with (number) corrections" shall appear near the stamp of the council with the number of corrections entered.

(b) In-plant documentation for manufacturers and construction documents for REF builders. The manufacturer and REF builder shall provide the DRA the documentation necessary to demonstrate compliance with the mandatory building codes in §70.100 and §70.101. At a minimum the documentation shall include the following:

(1) specifications or detail drawings for all materials, devices, appliances, equipment, and fasteners used in construction, including listings and evaluation reports for materials or methods of construction where required by the mandatory building code or to demonstrate compliance of an approved alternate material or method of construction in accordance with §70.103;

(2) detailed drawings of all assemblies and components (with cross-sections as necessary to identify major building components);

(3) floor plans for all models and options;

(4) electrical schematics for all models and options;

(5) water system and drain-waste-vent system drawings for all models and options;

(6) gas piping system drawings for all models and options;
(7) mechanical system drawings for all models and options;
(8) fire protection, fire safety, and exit details;
(9) energy compliance details, including any local amendments or alternative compliance paths to which the structure will be constructed under Occupations Code, Section 1202.1536;
(10) heating, ventilation, and air conditioning details;
(11) structural, thermal, and electrical load calculations;
(12) weather resistance details;
(13) condensation protection details;
(14) decay protection details;
(15) insect and vermin protection details;
(16) fastening schedule;
(17) assembly and connection instructions for all components, materials, devices, equipment, and appliances;
(18) together on either the floor plan or the cover or title sheet for each model or project in a title block format:
   (A) name and date of applicable codes;
   (B) identification of permissible type of gas for appliances;
   (C) maximum snow load (roof)(psf);
   (D) maximum wind speed (mph) and exposure;
   (E) seismic design criteria;
   (F) occupancy/use group type;
   (G) construction type;
   (H) special conditions and/or limitations;
   (I) the location of the data plate on the building or dwelling unit; and
   (J) the location of the decal or insignia on each module or modular component, or for REF builders, the location of the decal on the building;
(19) compliance control manual (reference subsection (c)); and
(20) on-site construction documentation (reference subsection (d)).

(c) Compliance control program for manufacturers. The utilization of mass production techniques and assembly line methods in the construction of industrialized housing, buildings, modules, and modular components along with the fact that a large part of such construction cannot be inspected at the ultimate building site, requires manufacturers to develop an adequate compliance control program to assure that these structures meet or exceed mandatory code requirements and are in compliance with the rules and regulations of this chapter. The compliance control program shall be documented in the form of a manual that must be approved by the design review agency. A 100% inspection of the construction of industrialized housing or buildings may be authorized in lieu of a compliance control program and certification of the manufacturer in accordance with §70.60. The manufacturer shall provide the design review agency a compliance control manual that must, at the minimum, contain the following:

(1) a table of contents;
(2) a chart indicating the manufacturer’s organizational structure to assure compliance and to assure that the compliance control staff shall maintain independence from the production personnel;
(3) a statement that defines the obligation, responsibility, and authority for the manufacturer’s compliance control program;
(4) identification of compliance control personnel, their accountability by position, responsibility for inspections, method of marking nonconformances observed, and system for assuring corrections are made;
(5) materials handling methods, including inspection checklists, for receiving materials and methods for marking and removing rejected materials both upon receipt and from the production line. The area for rejected materials must be clearly indicated to assure that such material is not used;
(6) a description of an identification system to mark each individual module, or modular component, at the first stage of production to assure appropriate inspection and rechecking of any deviation corrections;
(7) a diagram of the manufacturing sequence with the plant layout, including a description of the activities to be performed along with a listing of those that may be performed at one or more stations;
(8) an inspection checklist including:
   (A) a list of inspections to be made at each production station; and
   (B) accept/reject criteria (each significant dimension and component should be given tolerances);
   (C) an energy compliance checklist that enumerates the energy code-compliance features of the module or modules and includes a signature space for the compliance control inspector or manager. A copy of this checklist shall be shipped with the module or modules.
(9) step-by-step test procedures, a description of the station at which each production test is performed, a description of required testing equipment, and procedures for periodic checking, recalibration, and readjustment of test equipment. Procedures shall be included for, but not limited to, electrical tests as specified in the National Electrical Code, Article 545.14 (as added by §70.101(j)(2)), gas supply pressure tests, water supply pressure tests, drain-waste-vent system tests, concrete slump tests, and concrete strength tests;
(10) storage procedures for completed structures at the plant and for any other locations prior to installation;
(11) a statement indicating the person who is responsible for compliance control at each manufacturing facility and who will assume responsibility for decals and insignia, application of the decals and insignia, and the reporting procedure;
(12) a procedure for maintaining reliable, retrievable records of the inspections performed, decal and insignia numbers assigned, the deficiencies and how they were corrected, and the site to which the modules or modular components were transported;
(13) procedures and information to demonstrate how the modules and modular components are to be transported to the building site so that damage will not occur or that compliance deviations will not result (actual transportation without damage or deviation is evidence sufficient to justify the method); and
(14) procedures that assure that the compliance control procedures are complied with on all regulated structures. As a min-
imum, regulated structures must be identified prior to commencing construction.

(d) On-site construction specifications or documentation for manufacturers. All work to be performed on the building site shall be specifically identified and distinguished from construction to be performed in the manufacturing facility, e.g., assembly and connection of all modules, modular components, systems, equipment, and appliances and attachment to the foundation system. The work to be performed on-site shall be described in detail in documents (architectural sheets, specifications, instructions, etc.) which shall be made available to the builder for use at the site and provided as required for review and inspection to the agency having local authority. The manufacturer shall provide the design review agency on-site construction documentation which must, at the minimum, contain the following:

1. critical load points for attachment of the house or building or component to the foundation;
2. details for module to module or modular component assembly and connection;
3. minimum requirements for connection and attachment of all modules and modular components to the foundation system;
4. firestopping and draftstopping details;
5. details for fire exits, balconies, walkways, and other site-built attachments;
6. exterior weatherproofing details;
7. details for thermal, condensation, decay, corrosion, and insect protection;
8. electrical, mechanical, heating, cooling, and plumbing system completion details;
9. electrical, mechanical, heating, cooling, and plumbing system test procedures;
10. fire safety provisions; and
11. specifications and instructions for cooling equipment, and complete information necessary to calculate sensible heat gain along with information on the sizing of the air distribution system, if applicable, and the R values of insulation in the ceiling, walls, and floors.

(e) Other construction documentation for REF builders. Construction documentation for the foundation and site specific elements, such as ramps and stairs, of the site-built REFs shall be reviewed and approved by the DRA, the local building official, or, in areas where the building site is outside a municipality or within a municipality with no building department or agency, by the school district. At a minimum the documentation shall include all construction documentation necessary to complete the building at the first commercial site including a foundation system design meeting the requirements of §70.73(h). The use of ground anchors shall comply with §70.73(i).

(f) Non-site specific buildings. Whenever the manufacturer does not know, at the time of construction, where the building is to be placed, in lieu of providing the site specific construction details or typical site construction details as required in subsection (d), the manufacturer may provide special conditions and/or limitations on the placement of the building. These special conditions and/or limitations will serve to alert the local building official of items, such as handicapped accessibility and placement of the building on the property, which the local building official may need to verify for conformance to the mandatory building codes. Certain site-related details, such as module to module connections, must still be provided by the manufacturer. It is the responsibility of the DRA to verify that such site-related details are included in the manufacturer's approved design package.

§70.73. Responsibilities of the Registrants—Building Site Construction and Inspections.

(a) Industrialized housing shall be installed on a permanent foundation system.

(b) The initial construction and inspection of a site-built REF at the 1st commercial site falls under the provisions of §70.79. Subsequent installation of REFs shall comply with this section.

(c) Responsibility for on-site construction. The industrialized builder or installation permit holder shall be responsible for assuring that the foundation and the installation of an industrialized house, building, or site-built REF complies with the manufacturer's or REF builder's on-site construction specifications or documentation that have been approved in accordance with §70.70, any unique on-site construction details, the engineered foundation design, and the mandatory building codes.

1. The industrialized builder or installation permit holder is responsible for assuring that all sub-contractors are licensed as required by applicable state law.

2. The industrialized builder is not responsible for construction performed by the installation permit holder as specified on the installation permit application submitted to the department. Construction not covered by the installation permit is the responsibility of the industrialized builder.

3. The installation permit holder is responsible only for the construction specified on the installation permit application submitted to the department.

(d) For purposes of this chapter and Texas Occupations Code, Chapter 1202, a final inspection of on-site construction of industrialized housing and buildings is successful if it meets one of the following:

1. Inside a municipality: All on-site construction has been completed to the satisfaction of the municipality's building inspection department and a record of final inspection was issued authorizing the release of the house or building for occupancy.

2. Outside the jurisdiction of a municipality or within a municipality without a building inspection department: All inspections required in accordance with subsection (f) have been completed and a final on-site inspection report has been issued with no outstanding violations from any of these inspections. For purposes of this section, a violation is any of the following:

   A) on-site construction that does not meet the mandatory building codes;
   B) failure to correct damage to the factory-built portion of the house or building that was caused by on-site construction;
   C) on-site construction that does not follow the documents approved in accordance with §70.70, the engineered foundation system drawings, or unique on-site construction detail drawings; or
   D) on-site construction that is incomplete.

(e) Responsibility for inspections within jurisdiction of a municipality. When the building site is within a municipality that has a building inspection agency or department, the local building official will inspect all on-site construction done at the site and the attachment of the structure to the foundation to assure completion and attachment in accordance with the documents approved in accordance with §70.70,
the foundation system drawings, any unique on-site construction detail drawings, and the mandatory building codes.

1. A municipality that regulates the on-site construction or installation of industrialized housing or buildings may require and review, for compliance with the mandatory building codes, a complete set of plans and specifications, including the foundation system design and any unique on-site construction details.

2. The industrialized builder or installation permit holder shall not permit occupation of, or release for occupation, the industrialized house or building unless approved by the municipality.

3. The industrialized builder or installation permit holder is responsible for ensuring that all inspections are completed in accordance with procedures established by the municipality's building inspection department.

4. Responsibility for inspections outside the jurisdiction of a municipality or within a municipality without a building inspection agency or department. When the building site is outside a municipality, or within a municipality that has no building department or agency, a council-approved inspector will perform the required inspections in accordance with this section and the inspection procedures established by the council to assure compliance and attachment in accordance with the documents approved in accordance with §70.70, the mandatory building codes, the foundation system drawings, and any unique on-site construction detail drawings.

1. Minimum inspection requirements are listed below. Re-inspections are required whenever deviations from the approved construction documents or mandatory building codes are noted. Inspections may occur concurrently. The industrialized builder or installation permit holder shall ensure that work is not concealed prior to the inspection.

2. Inspections completed during installation shall be as required by the inspection requirements of Chapter 1 of the IBC, IMC, IPC, IFC, IFGC, IECC, IFC, and IRC as applicable.

3. A set inspection shall be completed for each module set or for each modular component installed.

4. Special inspections shall be completed as required per Chapter 17 of the IBC.

5. A final inspection shall be made after all construction and all corrections are complete.

6. For structures built in accordance with the IRC, the final inspection shall be completed within 180 days of the start of construction. For all other structures, the final inspection shall be completed within 365 days of the start of construction. The department may grant an extension upon receipt of a written request that demonstrates a justifiable cause.

7. Site inspections are required for the first installation of all industrialized housing and permanent industrialized buildings. Exception: Site inspections are not required for the installation of equipment buildings or shelters where the structure is occupied only during installation and maintenance of the equipment housed in the structure, unless the structure is also classified as a hazardous occupancy by the mandatory building code.

8. Site inspections are required for industrialized buildings that are designed to be moved from one commercial site to another commercial site if the buildings are used as a school or place of religious worship.

9. The industrialized builder, or installation permit holder, is responsible for scheduling each phase of the inspection with the inspector or inspection agency and for ensuring that all inspections have been completed.

10. The industrialized builder, or installation permit holder, may utilize a different inspector or inspection agency for different projects, but may not change the inspector or agency for a project once started without the written approval of the department.

11. Special inspections required by the mandatory building codes shall be conducted by persons who are approved in accordance with Council procedures and meet the qualification requirements outlined in Chapter 17 of the IBC or as required by applicable State laws. Persons or agencies that perform special inspections may not be changed once the inspection has begun without approval from the department.

12. The inspector shall give the industrialized builder or installation permit holder a copy of the site inspection report upon completion of each inspection including re-inspections. Violations shall be documented in accordance with the Council approved inspection procedures. The industrialized builder or installation permit holder is responsible for ensuring that all violations are corrected.

13. The industrialized builder, or installation permit holder, shall not permit occupancy, or release the house or building for occupation, until a successful final inspection has been completed. A final on-site inspection report shall be issued showing no outstanding violations prior to occupation, or release for occupation, of the house or building. Exception: Occupancy of the house or building may be permitted and approved with outstanding items provided that the items are not in violation of the mandatory building codes.

14. The industrialized builder or installation permit holder shall maintain a copy of the on-site inspection reports in accordance with the requirements of §70.50 and make a copy of all on-site inspection reports available to the department upon request. The reports shall include a list of all violations and corrective action in accordance with the inspection procedures approved by the council.

15. The industrialized builder shall give a copy of the on-site inspection reports to the owner of the building upon request.

16. The industrialized builder shall give a copy of the department's final on-site inspection report to the owner of the industrialized house at one of the following events:

(i) the closing of the purchase of the house; or

(ii) no later than 15 days after the successful final inspection of on-site construction is complete. A copy of the other on-site inspection reports shall be given to the owner if requested.

17. Destructive disassembly shall not be performed at the site in order to conduct tests or inspections on the modules or modular components completed in the plant and certified by the decal or insignia attached by the manufacturer, nor shall there be imposed standards or test criteria different from those required by the approved installation instructions, on-site construction documentation, and the applicable mandatory building code. Nondestructive disassembly may be performed only to the extent of opening access panels and cover plates.

18. Foundation system designs. A licensed professional engineer (or architect for one and two family dwellings or buildings having one story and total floor area of 5,000 square feet or less) shall design and seal the foundation systems for each industrialized house or building. Review by a DRA is not needed or required. A municipality that regulates the on-site construction or installation of industrialized housing or buildings may review the foundation system design for compliance with the mandatory building code. Foundation system designs shall comply with the mandatory building code referenced in §70.100.
and §70.101 and shall contain complete details for the construction and attachment of the house or building on the foundation, including, but not limited to the following:

(1) address or area for which the foundation is suitable;
(2) minimum load specifications, including wind loads, seismic design loads, soil bearing capacity, and if the foundation is designed for expansive soils;
(3) site preparation details;
(4) material specifications;
(5) requirements for corrosion resistance, protection against decay, and termite resistance;
(6) size, configuration, and depth below grade of all footings, piers, and slabs including, but not limited to, details of concrete reinforcement, spacing of footings and piers, capping of piers, and mortar or concrete fill requirements for piers;
(7) fastening requirements, including, but not limited to, size, spacing, and corrosion resistance;
(8) requirements for surface drainage; and
(9) details for enclosure of the crawl space, including details for ventilation and access.

(i) Ground anchors. The use of ground anchors in the installation of industrialized housing is not permitted. The use of ground anchors in the installation of industrialized buildings is allowed if deemed appropriate by a municipality or other political subdivision. The foundation design shall be prepared by a licensed professional engineer and shall contain complete details for the construction and attachment of the building on the foundation, including, but not limited to the following:

(1) address or area for which the foundation is suitable, including a soil investigative report prepared by a qualified engineer or a description of the soil type for which the anchoring system is suitable;
(2) minimum load specifications, including wind loads, seismic design loads, soil bearing capacity, and if the foundation is designed for expansive soils;
(3) site preparation details;
(4) material specifications;
(5) requirements for corrosion resistance, protection against decay, and termite resistance;
(6) size, configuration, and depth below grade of all footings and piers including spacing of footings and piers;
(7) specification and installation requirements for the tie-down anchoring system, including specifications for corrosion resistance for the ground anchors and associated tie-down system;
(8) requirements for surface drainage; and
(9) details for enclosure of the crawl space, including details for ventilation and access.

(j) Unique on-site construction details. Unique on-site construction details as defined by §70.10(a) shall be designed and sealed by a licensed Texas professional engineer (or architect for one and two family dwellings or buildings having one story and total floor area of 5,000 square feet or less) and review by a DRA is not needed or required. The unique on-site construction details shall comply with the mandatory building codes referenced in §70.100 and §70.101. A municipality that regulates the on-site construction or installation of industrialized housing or buildings may require and review the unique on-site details for compliance with the mandatory building code.

§70.101. Amendments to Mandatory Building Codes.

(a) The council shall consider and review all amendments to these codes which are approved and recommended by ICC, and if they are determined to be in the public interest, the amendments shall be effective 180 days following the date of the council’s determination or at a later date as set by the council.

(b) Any amendment proposed by a local building official, and determined by the council following a public hearing to be essential to the health and safety of the public on a statewide basis, shall become effective 180 days following the date of the council’s determination or at a later date as set by the council.

(c) The 2015 International Building Code shall be amended as follows.

(1) Amend Section 101 General as follows.

(A) Amend Section 101.1 Title to read as follows: "These regulations shall be known as the Building Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend Section 101.2 Scope by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(C) Amend Section 101.2.1 Appendices by adding the following: "Appendices C, F, and K shall be considered part of this code."

(D) Amend Section 101.4 Referenced codes to read as follows: "The other codes listed in Sections 101.4.1 through 101.4.9 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference. Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(E) Amend Section 101.4.7 Existing buildings to add the following sentence: "Moved industrialized buildings that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(F) Add new Section 101.4.8 Electrical to read as follows: "The provisions of Appendix K shall apply to the installation of electrical systems, including alterations, repairs, replacements, equipment, appliances, fixtures, fittings and appurtenances thereto. Any reference to NFPA 70 or the Electrical Code shall mean the Electrical Code as adopted."

(G) Add new Section 101.4.9 Accessibility to read as follows: "Buildings and facilities shall be designed and constructed to be accessible in accordance with this code and the Texas Accessibility Standards (TAS). Wherever reference elsewhere in this code is made to ICC A117.1, the TAS of Texas Government Code, Chapter 469, Elimination of Architectural Barriers shall be substituted. Buildings subject

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to the requirements of the Texas Accessibility Standards are described in Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68.”

(2) Amend Section 104.1 General by adding the following: "The term building official as used in this code, or as used in the codes and standards referenced in this code, shall mean the Texas Commission of Licensing and Regulation, the executive director of the Texas Department of Licensing and Regulation, the Texas Industrialized Building Code Council, or the local building official in accordance with the powers and duties assigned to each in Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings.”

(3) Amend Section 107.1 General by adding the following: "Construction documents depicting the structural design of buildings to be located in hurricane prone regions shall be prepared and sealed by a Texas licensed professional engineer.”

(4) Amend Section 111 Certificate of Occupancy as follows.

(A) Amend Section 111.1 Use and occupancy to read as follows: "A building or structure shall not be used or occupied, and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made, until the local building official has issued a certificate of occupancy in accordance with the locally adopted rules and regulations.”

(B) Amend Section 111.2 Certificate issued to read as follows. "The local building official shall issue a certificate of occupancy in accordance with the locally adopted rules and regulations. After the local building official inspects the industrialized house or building and does not find violations of the provisions of this code or other laws that are enforced by the department of building safety, the local building official shall issue a record of final inspection authorizing the release of the house or building for occupancy.”

(C) Delete Items 1 through 12 of Section 111.2.

(D) Amend Section 111.3 Temporary occupancy to read as follows: "The local building official may issue a temporary certificate of occupancy in accordance with locally adopted rules and regulations.”

(E) Add new Section 111.5 Industrialized housing and buildings installed outside the jurisdiction of a municipality or within a municipality without an inspection department to read as follows: "The installation of buildings installed outside the jurisdiction of a municipality or within a municipality without an inspection department shall comply with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, Administrative Rules Industrialized Housing and Buildings.”

(5) Amend Section 311.3 Low-hazard storage, Group S-2 by adding the following to the list of uses that are covered by this occupancy group: "Equipment shelters or equipment buildings.”

(6) Amend Chapter 11 Accessibility as follows.

(A) Amend Section 1101.2 Design to read as follows: "Buildings and facilities shall be designed and constructed to be accessible in accordance with this code and the Texas Accessibility Standards (TAS)”

(B) Delete Section 1102 through Section 1111.

(7) Amend Chapter 35 Referenced Standards as follows.

(A) Delete the following standard: "ICC A117.1-09, Accessible and Usable Buildings and Facilities.”

(B) Add TDLR, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 as a promulgating agency; add 2012 TAS, Texas Accessibility Standards as adopted under 16 Texas Administrative Code, Chapter 68 as the referenced standard; and add code sections 202, 907.5.2.3.3, 1009.8.2, 1009.9, 1009.11, 1010.1.9.7, 1012.1, 1012.6.5, 1012.10, 1013.4, 1023.9, and 1101.2 as the referenced code sections.

(C) Add code section 101.4.8 as a referenced code section for NFPA Standard 70-14, National Electrical Code.

(8) Amend Section K111.1 Adoption to read as follows: "Electrical systems and equipment shall be designed, constructed and installed in accordance with NFPA 70 except as otherwise provided in this code.”

(d) The 2015 International Residential Code shall be amended as follows.

(1) Amend Section R101 General as follows.

(A) Amend Section R101.1 Title to read as follows: "These regulations shall be known as the Residential Code for One- and Two-family Dwellings of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'”

(B) Amend Section R101.2 Scope by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control.”

(2) Amend Section R102 Applicability as follows.

(A) Amend Section R102.4 Referenced codes and standards to read as follows: "The codes and standards referenced in this code shall be considered part of the requirements of this code to the prescribed extent of each reference and as further regulated in Sections R102.4.1 through R102.4.4. Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well.”

(B) Add new Section R102.4.3 Electrical code to read as follows: "The provisions of the National Electrical Code, NFPA 70, shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto. Any reference to NFPA 70 or the Electrical Code shall mean the Electrical Code as adopted. Any reference to chapters 34 through 43 of this code shall mean the Electrical Code as adopted.”

(C) Add new Section R102.4.4 TDI Code-Wind design to read as follows: "The wind design of buildings to be placed in the first tier counties along the Texas coast and designated catastrophe areas as defined by the Texas Department of Insurance (TDI) shall also comply with the current effective code and amendments adopted by the TDI, hereafter referred to as the TDI Code. Where conflicts occur between the provisions of this code and the TDI Code as they relate to the requirements for wind design, the more stringent requirements shall apply. Where conflicts occur between the provisions of this code and the editions of the codes specified by the Texas Department of Insurance as they relate to requirements other than wind design, this code shall apply.”

(D) Amend Section R102.5 Appendices by adding the following: "Appendices G, H, K, P, S and U shall be considered part of this code.”
(E) Add new Section R102.8 Moved industrialized housing to read as follows: "Moved industrialized housing shall comply with the requirements of the local building official for moved buildings."

(3) Amend Section R104.1 General by adding the following: "The term building official as used in this code, or as used in the codes and standards referenced in this code, shall mean the Texas Commission of Licensing and Regulation, the executive director of the Texas Department of Licensing and Regulation, the Texas Industrialized Building Code Council, or the local building official in accordance with the powers and duties assigned to each in Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings."

(4) Amend Section R106.1 Submittal documents by adding the following: "Construction documents depicting the structural design of buildings to be located in hurricane prone regions and in the first tier counties along the Texas coast and designated catastrophe areas as defined by the Texas Department of Insurance (TDI) shall be prepared and sealed by a Texas licensed professional engineer."

(5) Amend Section R110 Certificate of Occupancy as follows:

(A) Amend Section R110.1 Use and occupancy by amending the first sentence to read as follows: "A building or structure shall not be used or occupied, and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made, until the local building official has issued a certificate of occupancy in accordance with locally adopted rules and regulations."

(B) Amend Section R110.2 Change in use to read as follows: "Changes in the character or use of new industrialized housing are not allowed. Changes in the character or use of existing industrialized housing shall not be made except as authorized by the local building official."

(C) Amend Section R110.3 Certificate issued to read as follows: "The local building official shall issue a certificate of occupancy in accordance with the locally adopted rules and regulations. After the local building official inspects the industrialized house or building and does not find violations of the provisions of this code or other laws that are enforced by the department of building safety, then the local building official shall issue a record of final inspection authorizing the release of the house or building for occupancy."

(D) Delete Items 1 through 9 of Section R110.3.

(E) Amend Section R110.4 Temporary occupancy to read as follows: "The local building official may issue a temporary certificate of occupancy in accordance with locally adopted rules and regulations."

(F) Add new Section R110.6 Industrialized housing installed outside the jurisdiction of a municipality or in a municipality without an inspection department to read as follows: "The installation of industrialized housing installed outside the jurisdiction of a municipality or within a municipality without an inspection department shall comply with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, Administrative Rules Industrialized Housing and Buildings."

(6) Amend Section R301.2 Climatic and geographic design criteria by adding the following sentence: "If no additional criteria have been established, or if there is no local jurisdiction to set the additional criteria, then the additional criteria shall be in accordance with the requirements in the footnotes of Table R301.2(1) and Sections R301.2.1 through R301.8 of this code."

(7) Amend Section R302.2 Townhouses, Item #2 by adding the following exception: "Exception: Two structurally independent one-hour fire-resistance-rated wall assemblies, tested in accordance with ASTM E 119 or UL 263 with exposure from both sides, may be substituted for a 2-hour fire-resistance-rated common wall assembly. The walls shall be constructed without plumbing or mechanical equipment, ducts or vents in the cavity of the walls. Penetrations of each wall for electrical outlet boxes shall be in accordance with Section R302.4."

(8) Amend Section R303.9 Required heating to read as follows: "Every dwelling unit shall be provided with heating facilities capable of maintaining a minimum room temperature of 68°F (20°C) at a point 3 feet (914 mm) above the floor and 2 feet (610 mm) from exterior walls in habitable rooms at the design temperature. The installation of one or more portable space heaters shall not be used to achieve compliance with this section."

(9) Amend Section R313 Automatic Fire Sprinkler Systems as follows:

(A) Amend Section R313.1 Townhouse automatic fire sprinkler systems to read as follows: "The common wall between townhouses shall be constructed in accordance with Section R302.2(2) if an automatic residential fire sprinkler system is not installed. The fire-rating of the common wall may be reduced in accordance with Section R302.2(1) if an automatic residential fire sprinkler system is installed in townhouses."

(B) Amend Section R313.2 One- and two-family dwelling automatic fire systems to read as follows: "One- and two-family dwelling automatic fire sprinkler systems. The construction, projections, openings and penetrations of exterior walls of one- and two-family dwellings and accessory buildings shall comply with Table R302.1(1) if an automatic residential fire sprinkler system is not installed. The construction, projections, openings and penetrations of the exterior walls of one- and two-family dwellings and their accessory uses may be constructed in accordance with the requirements of Table R302.1(2) if an automatic residential fire sprinkler system is installed in one- and two-family dwellings."

(10) Amend the second sentence of Section R902.1 Roofing covering materials to read as follows: "Class A, B or C roofing shall be installed.

(11) Amend Chapter 11 Energy Efficiency as follows:

(A) Replace N1101.2 Intent with N1101.2 Compliance to read as follows: "Compliance shall be demonstrated by meeting the requirements of the Residential Provisions of the International Energy Conservation Code."

(B) Delete Section N1101.3 through Section N1111.

(12) Delete Part VIII-Electrical, Chapters 34 through 43.

(13) Amend Chapter 44 Referenced Standards as follows:


(B) Add code section R102.3 and delete code sections E3401.1, E3401.2, E4301.1, Table E4303.2, E4304.3, and E4304.4 as referenced code sections for NFPA 70-14, National Electrical Code.

(C) Add TDI, Texas Department of Insurance, Windstorm Inspections Program, 333 Guadalupe Street, Austin, Texas 78701 as a promulgating agency, add TDI Code, Building Codes adopted by TDI for the Windstorm Inspection Program, as the ref-
erenced standard, and add code sections R102.4.4 and R106.1 as the referenced code sections.

(14) Amend Section U101.1 General to read as follows: "These provisions shall be applicable for new construction where solar-ready provisions are provided."

(e) The 2015 International Fuel Gas Code shall be amended as follows.

(1) Amend Section 101 General as follows.

(A) Amend Section 101.1 Title to read as follows: "These regulations shall be known as the Fuel Gas Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend Section 101.2 Scope by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend Section 102 Applicability as follows.

(A) Amend Section 102.4 Additions, alterations or repairs by replacing the first sentence with the following: "The provisions of the International Existing Building Code shall apply to all matters governing the repair, alterations, or additions of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(B) Amend Section 102.5 Change in occupancy by adding the following to the beginning of the section: "The provisions of the International Existing Building Code shall apply to all matters governing a change in the occupancy of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(C) Amend Section 102.7 Moved buildings by replacing the first sentence with the following: "Moved industrialized buildings that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(D) Amend Section 102.8 Referenced codes and standards by adding the following: "Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(3) Amend Chapter 15 Referenced Standards by adding ICC Standard IEBC-15, International Existing Building Code, referenced in code sections 102.4 and 102.5.

(g) The 2015 International Plumbing Code shall be amended as follows.

(1) Amend Section 101 General as follows.

(A) Amend Section 101.1 Title to read as follows: "These regulations shall be known as the Plumbing Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend Section 101.2 Scope by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend Section 102 Applicability as follows.

(A) Amend Section 102.4 Additions, alterations or repairs by replacing the first sentence with the following: "The provisions of the International Existing Building Code shall apply to all matters governing the repair, alterations, or additions of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(B) Amend Section 102.5 Change in occupancy by replacing the first sentence with the following: "The provisions of the International Existing Building Code shall apply to all matters governing a change in the occupancy of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(C) Amend Section 102.7 Moved buildings by replacing the first sentence with the following: "Moved industrialized buildings that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(D) Amend Section 102.8 Referenced codes and standards by adding the following: "Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(3) Amend Chapter 15 Referenced Standards by adding ICC Standard IEBC-15, International Existing Building Code, referenced in code sections 102.4 and 102.5.

(f) The 2015 International Mechanical Code shall be amended as follows.

(1) Amend Section 101 General as follows.

(A) Amend Section 101.1 Title to read as follows: "These regulations shall be known as the Mechanical Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"
occupied industrialized buildings that are designed to be transported
from one commercial site to another commercial site."

(B) Amend Section 102.5 Change in occupancy by
adding the following to the beginning of the section: "The provisions
of the International Existing Building Code shall apply to all matters
governing a change in the occupancy of existing previously occupied
industrialized buildings that are designed to be transported from one
commercial site to another commercial site."

(C) Amend Section 102.7 Moved buildings to add
the following sentence: "Moved industrialized buildings that bear
approved certification decals or insignia, and that may also bear
an alteration decal, in accordance with the requirements of Texas
Occupations Code, Chapter 1202 and 16 Texas Administrative Code,
Chapter 70, and that have not been altered or modified since the decal,
insignia, or alteration decal was attached, shall be considered to be in
compliance with the current mandatory building codes adopted by the
Texas Industrialized Building Code Council."

(D) Amend Section 102.8 Referenced codes and stan-
dards by adding the following: "Whenever amendments to the refer-
cenced codes have been adopted, each reference to said code shall be
considered to reference the amendment as well."

(3) Amend Section 403 Minimum Plumbing Facilities as
follows.

(A) Add new Section 403.5 Industrialized housing and
buildings exceptions to read as follows: "Plumbing fixtures for indus-
trialized buildings shall be provided as required by Table 403.1 except
as allowed in Sections 403.5.1, 403.5.2 and 403.5.3."

(B) Add new Section 403.5.1 Buildings that are not nor-
mally occupied to read as follows: "Buildings, such as equipment or
communication shelters, that are not normally occupied or that are only
occupied to service equipment, shall not be required to provide plumb-
ing facilities. EXCEPTION: Buildings that are normally occupied
that are also classified as a Group H occupancy must be provided with
plumbing facilities required for this type of occupancy such as require-
ments for emergency showers and eyewash stations."

(C) Add new Section 403.5.2 Other industrialized
buildings to read as follows: "All other industrialized buildings shall
contain the minimum plumbing fixtures required in accordance with
Table 403.1 unless the building is a non-site specific building and the
plans and the data plate contain a special condition/limitation note
that the minimum number of required fixtures shall be provided in
another building located on the installation site with a path of travel
that does not exceed a distance of 500 feet. The plumbing facilities
must be accessible to the occupants of the industrialized building.
Non-site specific buildings and special condition limitation notes shall be
as defined in the 16 Texas Administrative Code, Chapter 70, rules
governing the Texas Industrialized Housing and Buildings Program."

(D) Add new Section 403.5.3 Requirements for service
sinks for industrialized buildings to read as follows: "Commercial
industrialized buildings with areas of less than or equal to 1,800 square
feet shall not be required to contain a service sink provided that the
building contains a lavatory and water closet that can be substituted for
the service sink. EXCEPTION: A building of less than 1,800 square
feet in area without any plumbing facilities shall comply with section
403.5.2."

(4) Amend Chapter 13 Referenced Standards by adding
ICC Standard IEBC-15, International Existing Building Code, refer-
cenced in code sections 102.4 and 102.5.

(h) The 2015 International Energy Conservation Code shall
be amended as follows.

(1) Amend Section C101 Scope and General Requirements
and R101 Scope and General Requirements as follows.

(A) Amend Section C101.1 Title and Section R101.1 Ti-
tle to read as follows: "These sections shall be known as the Energy
Conservation Code of the Texas Industrialized Housing and Buildings
Program, hereinafter referred to as 'this code'."

(B) Amend Section C101.2 Scope and R101.2 Scope by
adding the following: "Where conflicts occur between the provisions
of this code and the provisions of Texas Occupations Code, Chapter
1202, Industrialized Housing and Buildings, or the provisions of 16
Texas Administrative Code, Chapter 70, rules governing the Texas In-
dustrialized Housing and Buildings Program, the provisions of Texas
Occupations Code, Chapter 1202 and 16 Texas Administrative Code,
Chapter 70 shall control."

(2) Amend Section C102 Alternate Materials - Method of
Construction, Design or Insulating Systems and R102 Alternate Ma-
terials, Design and Methods of Construction and Equipment as follows.

(A) Add new Section C102.1.2 Compliance software
tools to read as follows: "The following software tools may be used to
demonstrate energy code compliance for commercial buildings. The
mandatory requirements of this code apply regardless of the software
program that is used to demonstrate compliance. 1. The PLLN/DOE
software programs COMcheck. 2. Software programs approved by the
State Energy Conservation Office. 3. Other software programs if ap-
proved by the executive director or the Council."

(B) Add new Section R102.1.2 Compliance software
tools to read as follows: "The following software tools may be used to
demonstrate energy code compliance for commercial buildings. The
mandatory requirements of this code apply regardless of the software
program that is used to demonstrate compliance. 1. The
PLLN/DOE software programs RESecheck. 2. The Texas Energy
Systems Laboratory International Code Compliance Calculator, IC3.
3. Software programs approved by the State Energy Conservation
Office. 4. Other software programs if approved by the executive
director or the Council."

(3) Amend Section C106.1 Referenced codes and stan-
dards and Section R106.1 Referenced Codes and Standards by adding
the following: "Whenever amendments to the referenced codes have
been adopted, each reference to said code shall be considered to refer-
tence the amendment as well."

(4) Add new Section C401.2.2 Buildings for state agen-
cies and institutions of higher education to read as follows: "Build-
ings for state agencies and institutions of higher education shall com-
ply with the energy standard adopted pursuant to Texas Government
Code, §447.004 by the State Energy Conservation Office (SECO), and
implementation through 34 Texas Administrative Code, Chapter 19,
Subchapter C, Energy Conservation Design Standards."

(5) Add new item 4 to Section R401.2 Compliance to read
as follows: "Alternative for single-family housing only. A manufac-
turer or builder may choose to use the energy code with any local
amendments or alternative compliance paths that are requested by a
municipality, county, or group of counties located in the climate zone
where the house will be located and are determined by the Texas En-
ergy Systems Laboratory to be equally or more stringent than the en-
ergy code adopted by the State Energy Conservation Office (SECO)."

(6) Add new Section C501.7 Moved buildings to add
the following sentence: "Moved industrialized buildings that bear
approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of the Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council.

(7) Amend Chapter C6 Referenced Standards and Chapter R6 Referenced Standards as follows.

(A) Add to Chapter C6 PNNL/DOE, Pacific Northwest National Laboratory/Department of Energy Conservation, https://www.energycodes.gov/software-and-webtools, as a promulgating agency, COMcheck Version 4.0.5.2 or later, Commercial Energy Compliance Software as the referenced standard, and section C102.1.2 as the referenced code section.

(B) Add to Chapter R6 PNNL/DOE, Pacific Northwest National Laboratory/Department of Energy Conservation, https://www.energycodes.gov/software-and-webtools, as a promulgating agency, RESecheck Version 4.6 or later, Residential Energy Compliance Software as the referenced standard, and section R102.1.2 as the referenced code section.

(C) Add to Chapter R6 the Texas Energy Systems Laboratory, 402 Harvey Mitchell Parkway South, College Station, TX 77845-3581, as a promulgating agency, IC3, v 3.10 or later, International Code Compliance Calculator as the referenced standard, and section R102.1.2 as the referenced code section.

(i) The 2015 International Existing Building Code shall be amended as follows.

(1) Amend Section 101 General as follows.

(A) Amend Section 101.1 Title to read as follows: "These regulations shall be known as the Existing Building Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend Section 101.2 Scope by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend Section 102 Applicability as follows.

(A) Amend Section 102.4 Referenced codes and standards to read as follows: "The codes and standards referenced in this code shall be considered to be part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Sections 102.4.1 through 102.4.3. Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(B) Add new Section 102.4.3 Accessibility for existing buildings to read as follows: "Wherever reference elsewhere in this code is made to sections in Chapter 11 of the International Building Code or ICC A117.1, the Texas Accessibility Standards (TAS) of Texas Government Code, Chapter 469, Elimination of Architectural Barriers shall be substituted."

(3) Amend the first sentence of Section 1401.2 Applicability to read as follows: "Structures existing prior to August 1, 2017, in which there is work involving additions, alterations or changes of occupancy shall be made to conform to the requirements of this chapter or the provisions of Chapters 5 through 13."

(4) Amend Chapter 15 Referenced Standards as follows.

(A) Delete the following standard: "ICC A117.1-09, Accessible and Usable Buildings and Facilities."

(B) Add TDLR, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, TX 78711 as a promulgating agency; add 2012 TAS, Texas Accessibility Standards as adopted under 16 Texas Administrative Code, Chapter 68 as the referenced standard; and add code sections 102.4, 410.8.2, 410.8.3, 410.8.10, 705.1.2, and 705.1.3 as the referenced code sections.

(j) The 2014 National Electrical Code shall be amended as follows.

(1) Add the following to Article 310.1 Scope: "Aluminum and copper-clad aluminum shall not be used for branch circuits in buildings classified as a residential occupancy. Aluminum and copper-clad aluminum conductors, of size number 4 AWG or larger, may be used in branch circuits in buildings classified as occupancies other than residential."

(2) Add new Article 545.14, Testing, to read as follows.

(A) "(A) Dielectric Strength Test. The wiring of each modular house, building, or component shall be subjected to a 1-minute, 900-volt, dielectric strength test (with all switches closed) between live parts (including neutral conductor) and the house, building, or component ground. Alternatively, the test shall be permitted to be performed at 1080 volts for 1 second. This test shall be performed after branch circuits are complete and after luminaires or appliances are installed. Exception: Listed luminaries or appliances shall not be required to withstand the dielectric strength test. Exception: A DC dielectric tester can be used as an alternate to the use of an AC dielectric tester. The applied test voltage for testing with a DC tester shall be 1.4114 times the value of the equivalent AC test voltage."

(B) "(B) Continuity and Operational Tests and Polarity Checks. Each modular house, building, or component shall be subjected to all of the following: (1) An electrical continuity test to ensure that all exposed electrically conductive parts are properly bonded; (2) An electrical operational test to demonstrate that all equipment, except water heaters and electric furnaces, are connected and in working order; (3) Electrical polarity checks of permanently wired equipment and receptacle outlets to determine that connections have been properly made."

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 February 24, 2020.

TRD-202000823
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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Proposal publication date: November 29, 2019
For further information, please call: (512) 463-3671

CHAPTER 82. BARBERS
The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 82, §§82.10, 82.20 - 82.22, 82.28, 82.52, 82.70, 82.72, 82.74, 82.77, 82.80, 82.120.

The adopted rules amend §82.28, by updating incorrect use of the term "reciprocity" with the term "substantial equivalence" and lowers the number of hours required for training from 1,500 to 1,000 hours for substantial equivalence.

The adopted rules amend §82.52, by increasing the inspection cycle for certain barbershops, specialty shops, dual shops, mini-barbershops, and mini-dual shops from two to four years. Barbershops, specialty shops, dual shops, mini-barbershops, and mini-dual shops that practice: treating a person's nails by cutting, trimming, polishing, tinting, coloring, cleansing, manuciring, or pedicuring; or attaching false nails; or massaging, cleansing, treating, or beautifying a person's hands will remain on a two-year inspection cycle.

The adopted rules amend §82.70, by clarifying that a licensee performing digitally prearranged remote services is allowed to perform these services at a location other than a licensed facility if the appointment is made through a remote service business's digital network. These adopted rules implement HB 2847.

The adopted rules amend §82.72, by updating language and equipment requirements for barber schools by removing outdated requirements to remove regulatory burdens and provide clarity.

The adopted rules amend §82.74, by rewording subsection (a) for clarity and correctly referencing "class" days instead of "barber curriculum" days and changes the required hours for out-of-state transfer students from 1,500 to 1,000.

The adopted rules add new §82.77 regarding remote service business responsibilities. The adopted new rule outlines the requirements for operating a remote service business and the digitally prearranged remote services that may or may not be performed by a licensee working for a remote service business. This new rule implements HB 2847.

The adopted rules amend §82.80, by replacing the incorrect use of the term "reciprocity" with "substantial equivalence."

The adopted rules amend §82.120, by adding the term "standards" after "curriculum" for clarity, lowering the number of curriculum hours required for a Class A Barber license from 1,500 to 1,000, and updating the curriculum standards for both Class A Barber private and public post-secondary barber schools and for high schools.

PUBLIC COMMENTS
The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 3, 2020, issue of the Texas Register (45 TexReg 35). The deadline for public comments was February 3, 2020. The Department received comments from 76 interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: Twenty-nine commenters are against the reduction in hours from 1,500 to 1,000.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to

ADOPTED RULES  March 6, 2020  45 TexReg 1689
public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on the vote to reduce the hours required for a Class A Barber License from 1,500 to 1,000 and failed to make a recommendation to the Commission.

The Department respectfully disagrees with these comments because upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: Fifteen commenters are in favor of the reduction of hours from 1,500 to 1,000.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on the vote to reduce the hours required for a Class A Barber License from 1,500 to 1,000 and failed to make a recommendation to the Commission.

The Department respectfully agrees with these comments because upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: Six commenters asked specific questions regarding how the reduction in hours will affect them personally.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

These comments raise issue-specific questions about the application of the proposed rules for each commenter. These comments have been referred to the appropriate division for review.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on the vote to reduce the hours required for a Class A Barber License from 1,500 to 1,000 and failed to make a recommendation to the Commission.

Upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: Six commenters asked issue-specific questions regarding the transition and implementation of the 1,500 to 1,000-hour change.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

The commenters raise issue-specific questions regarding the application and procedures for schools to transition from 1,500 to 1,000. These comments have been referred to the appropriate division for review.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on the vote to reduce the hours required for a Class A Barber License from 1,500 to 1,000 and failed to make a recommendation to the Commission.

Upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: One commenter would like to see the curriculum changed or updated.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

There are no changes to the curriculum standards that are required to be taught by barber schools. This comment has been referred to the appropriate division for review.

No change has been made to the proposed rules in response to this comment.

Comment: Two commenters would like to know more information about "Hyaluron Pen Hyaluronic Acid."

Department Response: The comment regarding "Hyaluron Pen Hyaluronic Acid" are beyond the scope of the proposed rules.
No change has been made to the proposed rules in response to these comments.

Comment: One commenter would like to know if they can get their instructor license for 100 hours because they have 1,500 hours.

Department Response: The commenter raises an issue-specific question. This comment is beyond the scope of the proposed rules. However, there have been no changes to the requirement for obtaining an instructor license.

No change has been made to the proposed rules in response to this comment.

Comment: One commenter would like a refund for their school tuition now that the hours have been reduced.

Department Response: The comment regarding refunds is beyond the scope of the proposed rules.

No change has been made to the proposed rules in response to these comments.

Comment: Two commenters would like to know how to renew their license.

Department Response: The comments regarding license renewal are beyond the scope of the proposed rules. This comment has been referred to the appropriate division for review.

No change has been made to the proposed rules in response to these comments.

Comment: One commenter would like to order the rules and regulation book.

Department Response: The comment regarding the rules and regulation book is beyond the scope of the proposed rules. This comment has been referred to the appropriate division for review.

No change has been made to the proposed rules in response to this comment.

Comment: One commenter has questions regarding remote services and wanted to know if the law was modeled after the law or rules of another state.

Department Response: The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which implements remote services.

The Department is unaware of any other state that has similar laws or rules for remote services.

No change has been made to the proposed rules in response to this comment.

Comment: One commenter wanted a copy of the proposed rules.

Department Response: This comment has been referred to the appropriate division for review.

No change has been made to the proposed rule in response to this comment.

Comment: One commenter submitted an email with their name and the name of their hair salon.

Department Response: The comment is beyond the scope of the proposed rules.

No change has been made to the proposed rules in response to these comments.

Comment: One commenter would like to know if there they will receive student loan forgiveness for 500 hours.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

The comment regarding student loan forgiveness is beyond the scope of the proposed rules.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on the vote to reduce the hours required for a Class A Barber License from 1,500 to 1,000 and failed to make a recommendation to the Commission.

Upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: One commenter would like to see the curriculum updated and apprenticeships for salons.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

There are no changes to the curriculum standards that are required to be taught by barber schools. Apprenticeships are beyond the scope of the proposed rules. The comment has been referred to the appropriate division for review.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on the vote to reduce the hours required for a Class A Barber License from 1,500 to 1,000 and failed to make a recommendation to the Commission.

Upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: One commenter would like to have a structure for the curriculum and allow each school to decide the hours.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.
As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on recommending the proposed rules reducing the hours required for a Class A Barber License from 1,500 to 1,000.

Upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: One commenter would like for students to be able to sit for early examinations prior to 900 hours.

Department Response: The proposed rules do not address early examination requirements. This comment is beyond the scope of the proposed rules and has been referred to the appropriate division for review.

No change has been made to the proposed rules in response to this comment.

Comment: One commenter asked specific questions regarding how the reduction in hours will affect them personally and is in favor of the proposed reduction in hours.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on the vote to reduce the hours required for a Class A Barber License from 1,500 to 1,000 and failed to make a recommendation to the Commission.

Upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: One commenter would like to wait and see the impact on the reduction of hours on the Cosmetologists program.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on the vote to reduce the hours required for a Class A Barber License from 1,500 to 1,000 and failed to make a recommendation to the Commission.

Upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: One commenter hopes that the rules for the reduction of hours is well thought out and planned.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on the vote to reduce the hours required for a Class A Barber License from 1,500 to 1,000 and failed to make a recommendation to the Commission.

Upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: One commenter would like to know how students will be affected by the reduction in hours and the examination will change.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on recommending the proposed rules reducing the hours required for a Class A Barber License from 1,500 to 1,000.

Upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: One commenter would like for students to be able to sit for early examinations prior to 900 hours.

Department Response: The proposed rules do not address early examination requirements. This comment is beyond the scope of the proposed rules and has been referred to the appropriate division for review.

No change has been made to the proposed rules in response to this comment.

Comment: One commenter asked specific questions regarding how the reduction in hours will affect them personally and is in favor of the proposed reduction in hours.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

This comment raises a specific question about the application of the proposed rules. This comment has been referred to the appropriate division for review.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on the vote to reduce the hours required for a Class A Barber License from 1,500 to 1,000 and failed to make a recommendation to the Commission.

Upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: One commenter would like to know how students will be affected by the reduction in hours and the examination will change.

Department Response: House Bill 2847, 86th Legislature, Regular Session (2019) lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000.

As a result of this legislative change for the Cosmetologists program, the Advisory Board on Barbering met on November 4, 2019 to discuss lowering the number of hours required to obtain a Class A Barber License from 1,500 to 1,000. The Advisory Board members reviewed several recommendations, listened to public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.
public testimony, and extensively discussed whether the hours should be reduced. The Advisory Board voted to propose rules to reduce the hours required for a Class A Barber License from 1,500 to 1,000.

This comment raises a specific question about the application of the proposed rules. This comment has been referred to the appropriate division for review.

There will be no changes to the examination as a result of these proposed rules.

On February 10, 2020, the Advisory Board met to discuss the proposed rules and comments received. The Advisory Board members split 2-2 on the vote to reduce the hours required for a Class A Barber License from 1,500 to 1,000 and failed to make a recommendation to the Commission.

Upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission debated and recommended that no changes to the proposed rules be made in response to this comment.

Comment: One commenter believes that the proposed rules on remote services would be beneficial.

**Department Response:** The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which implements remote services.

No change has been made to the proposed rules in response to this comment.

**ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION**

The Advisory Board on Barbering met on February 10, 2020, to discuss the proposed rules and the comments received. The Advisory Board recommended that the Commission adopt the proposed rules, without changes, except the reduction from 1,500 to 1,000 hours, as published in the Texas Register. The Advisory Board split 2-2 on the vote to lower the hours from 1,500 to 1,000 and failed to make a recommendation to the Commission on this issue.

Upon consideration of the proposed rules, public comments received, and actions of the Advisory Board, the Commission adopted the proposed rules without changes.

**STATUTORY AUTHORITY**

The rules are adopted under Texas Occupations Code, Chapters 51, 1601, and 1603, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on February 24, 2020.

TRD-202000824

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Proposal publication date: January 3, 2020
For further information, please call: (512) 463-8179

CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.10, 83.20 - 83.23, 83.25, 83.28, 83.52, 83.70, 83.72, 83.74, 83.77, 83.80, 83.120

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 83, §§83.10, 83.20 - 83.23, 83.25, 83.28, 83.52, 83.70, 83.72, 83.74, 83.80, and 83.120; and new rule §83.77, regarding the Cosmetologist program, without changes to the proposed text as published in the January 3, 2020, issue of the Texas Register (45 TexReg 42). The adopted changes are referred to as "adopted rules." The adopted rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 83, Cosmetologists, implement Texas Occupations Code, Chapter 1602, Cosmetologists, and Chapter 1603, Regulation of Barbering and Cosmetology. The adopted rules implement necessary changes as required by House Bill (HB) 2847, 86th Legislature, Regular Session (2019). As required by HB 2847, the adopted rules lower the number of hours required to obtain an Operator License from 1,500 to 1,000; increase the inspection cycle for establishments that provide certain services; and provide for the regulation of remote service businesses and digitally prearranged remote services. The adopted rules also include recommendations from the Advisory Board's workgroups to reduce regulatory burdens and providing more clarity to the industry by using more updated and standardized terminology.

The adopted rules and options for the 1000-hour curriculum standards were presented to and discussed by the Advisory Board on Cosmetology (Advisory Board) at its meeting on November 18, 2019. The Advisory Board did not make any other changes to the proposed rules and after considering the options, recommended a curriculum standard for publication. The Advisory Board voted and recommended that the rules be published in the Texas Register for public comment.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §§83.10, by adding definitions for "Digital Network," "Digitally Prearranged Remote Service," and "Remote Service Business." The adopted rules update terminology by removing the incorrect term of "reciprocity," replacing it with the term "substantial equivalence." The adopted rules update the scope for certain license types as required by HB 2847 and add the term "standards" after "curriculum."

The adopted rules amend §§83.20, by adding the term "standards" after "curriculum" for clarity, lowering the number of hours required to obtain an Operator License from 1,500 to 1,000, providing for the orderly transition from 1,500 to 1,000-hours for students and schools, and establishing requirements for individuals
to notify the Department of their intention to operate a remote service business as established by HB 2847.

The adopted rules amend §83.21, by removing the term "curriculum" for clarity and removing requirements for 1,500-hour program.

The adopted rules amend §83.22, by establishing requirements for beauty salons, specialty salons, dual shops, mobile shops, mini salons, or mini-dual shops to notify the Department of their intention to operate a remote service business as established by HB 2847.

The adopted rules amend §83.23, by updating language for clarity on certificates of approval for curriculum standards.

The adopted rules amend §83.25, by adding the term "standards" after "curriculum" for clarity.

The adopted rules amend §83.28, by updating incorrect use of the term "reciprocity" with the term "substantial equivalence."

The adopted rules amend §83.52, by increasing the inspection cycle for certain beauty salons, specialty salons, dual shops, mini-salons, or mini-dual shops from two to four years. Beauty salons, specialty salons, dual shops, mini-salons, or mini-dual shops that practice: treating a person's nails by cutting, trimming, polishing, tinting, coloring, cleansing, manicuring, or pedicuring; or attaching false nails; or massaging, cleansing, treating, or beautifying a person's hands will remain on a two-year inspection cycle.

The adopted rules amend §83.70, by clarifying that a licensee performing digitally prearranged remote services is allowed to perform these services at a location other than a licensed facility, if the appointment is made through a remote service business's digital network. These adopted rules implement HB 2847.

The adopted rules amend §83.72, by adding the term "standards" after "curriculum" for clarity and updating language and equipment requirements for beauty culture schools to remove regulatory burdens and provide clarity.

The adopted rules amend §83.74, by adding the term "standards" after "curriculum" for clarity.

The adopted rules add new §83.77 regarding remote service business responsibilities. The adopted new rule outlines the requirements for operating a remote service business and the digitally prearranged remote services that may or may not be performed by a licensee working for a remote service business. This new rule implements HB 2847.

The adopted rules amend §83.80, by replacing the incorrect use of the term "reciprocity" with "substantial equivalence."

The adopted rules amend §83.120, by adding the term "standards" after "curriculum" for clarity, lowering the number of curriculum hours required for an Operator license from 1,500 to 1,000 and updating the curriculum standards for both private and public post-secondary cosmetology schools and for high schools.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 3, 2020, issue of the Texas Register (45 TexReg 42). The deadline for public comments was February 3, 2020. The Department received comments from 133 interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment---Forty-seven commenters are against the reduction in hours from 1,500 to 1,000.

Department Response---The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

No change has been made to the proposed rules in response to these comments.

Comment---Nineteen commenters are in favor of the reduction of hours from 1,500 to 1,000.

Department Response---The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

No change has been made to the proposed rules in response to these comments.

Comment---Fourteen commenters asked specific questions regarding how the reduction in hours will affect them personally.

Department Response---The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

These comments raise issue-specific questions about the application of the proposed rules for each commenter. These comments have been referred to the appropriate division for review.

No change has been made to the proposed rules in response to these comments.

Comment---Nine commenters asked issue-specific questions regarding the transition and implementation of the 1,500 to 1,000-hour change.

Department Response---The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

The commenters raise issue-specific questions regarding the application and procedures for schools to transition from 1,500 to 1,000. These comments have been referred to the appropriate division for review.

No change has been made to the proposed rules in response to these comments.

Comment---Nine commenters submitted suggestions regarding the curriculum standards and suggest more hours be devoted to hair care instead of nails and skin care.

Department Response---The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator
License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

The Advisory Board on Cosmetology met on November 18, 2019, to discuss proposed curriculum standards. The Advisory Board members considered several recommendations and discussed the need to ensure that an Operator License is properly trained on hair, nail, and skin care because the license allows them to practice and perform all cosmetology services.

No change has been made to the proposed rules in response to these comments.

Comment—One commenter wanted to know the proposed curriculum standards.

Department Response—The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

The proposed rules provide for the following curriculum standards:

Hair Care (Cutting, styling, coloring, chemical textures, and related theory and application; business skills; professional development): 800 Hours

Nail Care (Manicuring and related theory and applications, business skills; professional development and salon management; health; safety; and laws): 100 Hours

Skin Care (Facials, hair removal, and related theory and application; business skills; professional development and salon management; health; safety; and laws): 100 Hours

These comments have been referred to the appropriate division for review.

No change has been made to the proposed rules in response to these comments.

Comment—Three commenters would like to know what has been removed from the curriculum because of the reduction in hours.

Department Response—The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

There are no changes to the curriculum standards that are required to be taught by beauty schools, only an adjustment in the hours to be taught in each area.

No change has been made to the proposed rules in response to these comments.

Comment—Two commenters would like to see the curriculum changed or updated.

Department Response—The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

There are no changes to the curriculum standards that are required to be taught by beauty schools, only an adjustment in the hours to be taught in each area. These comments have been referred to the appropriate division for review.

No change has been made to the proposed rules in response to these comments.

Comment—One commenter would like to see the curriculum updated and apprenticeships for salons.

Department Response—The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

There are no changes to the curriculum standards that are required to be taught by beauty schools, only an adjustment in the hours to be taught in each area. Apprenticeships are beyond the scope of the proposed rules. The comments have been referred to the appropriate division for review.

No change has been made to the proposed rules in response to this comment.

Comment—One commenter is against the reduction in hours, would like to see changes made to the license so that it can cover multiple occupations, and is frustrated with agency operations.

Department Response—The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

The comments regarding licensure and agency operations are beyond the scope of the rulemaking.

No change has been made to the proposed rules in response to this comment.

Comment—One commenter would like to have a structure for the curriculum and allow each school to decide the hours.

Department Response—The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

The curriculum standards are to ensure that all cosmetology students receive minimum instruction in hair, nail, and skin care to ensure minimum competency. The proposed curriculum standards provide less prescriptive curriculum standards and allow schools more flexibility to determine what should be taught.

No change has been made to the proposed rules in response to this comment.

Comment—One commenter would like to see corporate beauty schools be required to have licensed cosmetology professionals as directors.

Department Response—The comment on beauty school personnel or business organization is beyond the scope of the proposed rules.
No change has been made to the proposed rules in response to this comment.

Comment--One commenter would like for students to be able to participate in paid internships.

Department Response--The comment regarding paid internships is beyond the scope of the proposed rules. This comment has been referred to the appropriate division for review.

No change has been made to the proposed rules in response to this comment.

Comment--One commenter feels that the reduction in hours will allow the Medical Spa Industry to "consume the Esthetician services" and result in new regulation.

Department Response--The comment regarding the Medical Spa Industry and new regulation are beyond the scope of the proposed rules.

No change has been made to the proposed rules in response to this comment.

Comment--Two commenters would like to know if there has been any change to the Esthetician License requirements.

Department Response--The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

There has not been a reduction in the number of hours required to obtain an Esthetician License.

No change has been made to the proposed rules in response to this comment.

Comment--One commenter would like to know if there are any changes to the Manicurist/Esthetician License requirements.

Department Response--The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

There has not been a reduction in the number of hours required to obtain a Manicurist/Esthetician License.

No change has been made to the proposed rules in response to this comment.

Comment--Two commenters would like to know more information about "Hyaluron Pen Hyaluric Acid."

Department Response--The comments regarding "Hyaluron Pen Hyaluric Acid" are beyond the scope of the proposed rules.

No change has been made to the proposed rules in response to these comments.

Comment--One commenter would like to know if they can get their instructor license for 100 hours because they have 1,500 hours.

Department Response--The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

The commenter raises an issue-specific question. However, there have been no changes to the requirement for obtaining an instructor license.

No change has been made to the proposed rules in response to this comment.

Comment--One commenter would like to know how to obtain an accommodation for their daughter.

Department Response--The comment regarding accommodations for students is beyond the scope of the proposed rules. This comment has been referred to the appropriate division for review.

No change has been made to the proposed rules in response to this comment.

Comment--Two commenters would like a refund for their school tuition now that the hours have been reduced.

Department Response--The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

The comment regarding refunds is beyond the scope of the proposed rules.

No change has been made to the proposed rules in response to these comments.

Comment--Three commenters would like to know how to renew their license.

Department Response--The comments regarding license renewal are beyond the scope of the proposed rules. This comment has been referred to the appropriate division for review.

No change has been made to the proposed rules in response to these comments.

Comment--Two commenters would like to submit name changes on their licenses.

Department Response--The comments regarding name changes are beyond the scope of the proposed rules. This comment has been referred to the appropriate divisions for review.

No change has been made to the proposed rules in response to these comments.

Comment--One commenter would like to note that the business was sold and cancel the license.

Department Response--The comments regarding cancellation of a business licenses are beyond the scope of the proposed rules.
This comment has been referred to the appropriate division for review.

No change has been made to the proposed rule in response to these comments.

Comment--One commenter would like to order the rules and regulation book.

**Department Response**--The comment regarding the cosmetology rules and regulation book is beyond the scope of the proposed rules. This comment has been referred to the appropriate division for review.

No change has been made to the proposed rules in response to this comment.

Comment--One commenter has questions regarding remote services and wanted to know if the law was modeled after the law or rules of another state.

**Department Response**--The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which implements remote services.

The Department is unaware of any other state that has similar laws or rules for remote services.

No change has been made to the proposed rules in response to this comment.

Comment--One commenter wanted a copy of the proposed rules.

**Department Response**--This comment has been referred to the appropriate division for review.

No change has been made to the proposed rule in response to this comment.

Comment: One commenter submitted an email with their name and the name of their hair salon.

**Department Response**--This comment is beyond the scope of the proposed rules. No change has been made to the proposed rules in response to this comment.

Comment--One commenter asked specific questions regarding how the reduction in hours will affect them personally and is in favor of the proposed reduction in hours.

**Department Response**--The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

This comment raises a specific question about the application of the proposed rules. This comment has been referred to the appropriate division for review.

No change has been made to the proposed rules in response to this comment.

Comment--One commenter would like to know how students will be affected by the reduction in hours and how the examination will change.

**Department Response**--The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

This comment raises a specific question about the application of the proposed rules. This comment has been referred to the appropriate division for review.

There will be no changes to the examination as a result of these proposed rules.

No change has been made to the proposed rules in response to this comment.

Comment--One commenter is against the reduction in hours from 1,500 to 1,000 and believes there should be apprentice- ships prior to graduation.

**Department Response**--The proposed rules implement House Bill 2847, 86th Legislature, Regular Session (2019) which lowers the number of hours required to obtain a Cosmetology Operator License from 1,500 to 1,000. The changes made by House Bill 2847 apply only to students applying for a Cosmetology Operator License on or after September 1, 2020.

Apprenticeships are beyond the scope of the proposed rules. The comments have been referred to the appropriate division for review.

No change has been made to the proposed rules in response to these comments.

**ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION**

The Advisory Board on Cosmetology met on February 10, 2020, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the Texas Register without changes made in response to public comment. At its meeting on February 18, 2020, the Commission adopted the proposed rules without changes, as recommended by the Advisory Board.

**STATUTORY AUTHORITY**

The rules are adopted under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department’s governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on February 24, 2020.

TRD-202000827
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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Proposal publication date: January 3, 2020
For further information, please call: (512) 463-8179

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CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter D, §84.50; Subchapter M, §84.502; and Subchapter N, §84.600, regarding the Driver Education and Safety Program. The Commission has adopted the amended rules without changes to the proposed text as published in the November 8, 2019, issue of the Texas Register (44 TexReg 6655). The rules will not be republished.

The amendments to Subchapter M, §84.500, regarding the Driver Education and Safety program, are adopted with changes to the proposed text as published in the November 8, 2019, issue of the Texas Register (44 TexReg 6655) and will be republished. The adopted changes are referred to as "adopted rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

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

The adopted rules are necessary to implement House Bills (HB) 105 and 2048, 86th Legislature, Regular Session (2019). These rule changes have been combined into one proposal to ensure that the rules to implement HB 105 are adopted by March 1, 2020, as required in that bill. Additionally, HB 2847, 86th Legislature, Regular Session (2019), also affects Chapter 1001, Texas Education Code and requires rulemaking. The rules associated with HB 2847 we anticipate will be proposed later in 2020, as they relate to driver education schools and qualifications for driver education instructors.

HB 105 amends Chapter 1001, Education Code, by requiring that information relating to safely operating a vehicle near overweight or oversized vehicles be included in all driver education and driving safety courses.

HB 2048 repeals Chapter 708, Transportation Code, concerning the Driver Responsibility Program (DRP). The bill also amends Chapter 1001, Education Code, by specifying the driving and safety offenses which would prevent someone from conducting a Parent Taught Driver Education Course. The qualifications for a Driver Education Instructor have been modified also, to mirror the changes to §1001.112, of the Education Code as amended by the bill.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §84.50 by adding a new subsection that sets forth the disqualifying traffic offenses that would prevent a person from conducting a parent-taught driver education course.

The adopted rules amend §84.500 by (1) adding the requirement to include information about safe motor vehicle operation around oversize and overweight vehicles in the curriculum of driver education and driving safety courses and (2) amending the driver education instructor qualifications to mirror what is in §84.50(b)(3) of this Chapter relating to disqualifying traffic offenses.

The adopted rules amend §84.502 by adding the requirement to include information about safe motor vehicle operation around oversize and overweight vehicles in the curriculum of driver education and driving safety courses.

The adopted rules amend §84.600 by adding the requirement to include information about safe motor vehicle operation around oversize and overweight vehicles in the curriculum of driver education courses for public schools, educational service centers, and colleges and universities.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the November 8, 2019, issue of the Texas Register (44 TexReg 6655). The deadline for public comments was December 9, 2019. The Department received comments from one interested party on the proposed rules during the 30-day public comment period and one late comment. The public comments are summarized below.

Comment: AVA Driving School submitted a comment expressing concern about possible confusion that the proposed changes to §84.50(b) and §84.500(c) related to the eligibility requirements to be a Parent-Taught Driver Education (PTDE) Instructor or an instructor trainee applicant for a Driver Education Instructor Development Course (IDC) could cause for licensees. The commenter pointed out that the proposed changes to §84.50(b) referred to conviction for specific crimes and moving violations regarding eligibility to instruct PTDE but raised a question as to whether the same eligibility requirements for an individual to instruct PTDE also applied to instructor trainee applicants for a Driver Education IDC.

Department Response: The Department appreciates the commenter’s concerns and notes that the proposed changes to the eligibility requirements in §84.50(b)(3) relate to those individuals seeking to conduct a PTDE course. In implementing House Bill 2048, the Department modified §84.50(b) to include the type and number of moving violations, in addition to the previously enumerated criminal offenses, that could disqualify an individual from conducting a PTDE course.

HB 2048 modified Education Code §1001.112 to add additional eligibility requirements to an individual seeking to be a PTDE instructor to include conviction for a type and number of moving violations cited under Section 542.304, Transportation Code. The proposed rules add the specific eligibility requirements from the Transportation Code to §84.50(b)(3) and §84.500(c)(2) of the Department's rules.

The Department acknowledges that the previous proposed rule text in §84.500(c)(2) may give rise to some confusion to the eligibility requirements that relate to instructor trainee applicants in a Driver Education IDC setting. Thus, the Department amends the rule text in proposed §84.500(c)(2) to specifically cite to §84.50(b)(3) and thereby limits the eligibility requirements for an instructor trainee applicant to enroll in a Driver Education IDC to the type and number of moving violations indicated in §84.50(b)(3). The Department did make a change to the proposed rules in response to this comment.

Comment: Drive Defensively in Texas, LLC, submitted a late comment on the proposed rule package. The commenter questioned the requirement that each driving safety course be required to provision both the "Flashing Lights" video and its accompanying slides in its curriculum. The commenter maintained that requiring both elements would be excessive and restrictive to instructors and course providers.

Department Response: The Department appreciates the commenter’s submission and concerns. The Community Safety Ed-
ucation Act (Senate Bill 30) was passed in 2017 by the 85th Regular Legislature and amended Chapter 1001, Education Code by adding Section 1001.109. That statute specifically required the dissemination of information related to law enforcement procedures be included in each driver education and driving safety course. The "Flashing Lights" video and accompanying slides are the by-product of the legislation. The Department implemented the mandates of Senate Bill 30 in an administrative rulemaking as required. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Driver Training and Traffic Safety Advisory Committee (Committee) met on December 18, 2019, to discuss the proposed rules and the comments received. The Committee did not have a quorum and therefore could not take action to make a recommendation to adopt the proposed rules. The rules and public comment received prior to December 9, 2019 were discussed in an open meeting and the Department recommended a change to §84.500 without objection from the present members of the Committee. At its meeting on February 18, 2020, the Commission adopted the proposed rules with the changes described above.

SUBCHAPTER D. PARENT TAUGHT DRIVER EDUCATION

16 TAC §84.50

STATUTORY AUTHORITY

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

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

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

Filed with the Office of the Secretary of State on February 24, 2020.

TRD-2020000825
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: March 15, 2020
Proposal publication date: November 8, 2019
For further information, please call: (512) 463-3671

SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION.

16 TAC §84.500, §84.502

STATUTORY AUTHORITY

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

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

§84.500. Courses of Instruction for Driver Education Schools.

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

(b) This subsection contains requirements for driver education courses. All course content and instructional material shall include current statistical data, references to law, driving procedures, and traffic safety methodology. For each course, curriculum documents and materials may be requested as part of the application for approval.

(1) Minor and adult driver education course.

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

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

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

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

(C) Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the educational objectives established by the department in the Program of Organized Instruction in Driver Education and Traffic Safety (POI) and meet the requirements of this subchapter. In addition, the educational objectives that must be provided to every student enrolled in a minor and adult driver education course shall include information relating to litter prevention, anatomical gifts, safely operating a vehicle near oversized or overweight vehicles, leaving children in vehicles unattended, distractions, motorcycle awareness, alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle, and recreational water safety.
(D) Driver education schools that desire to instruct students age 14 and over in a traditional classroom program shall provide the same beginning and ending dates for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the seventh hour of classroom instruction has begun.

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

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

(G) Videos, tape recordings, guest speakers, and other instructional media that present concepts required in the POI may be used as part of the required 32 hours of traditional classroom instruction. Instructors shall refrain from using any type of media for an extended period of time and should only use videos for no more than 640 minutes. PowerPoint slides or equivalent software solutions are considered to be approved teaching aids and does not fall into the restricted media aids.

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

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

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

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

(L) When a student changes schools, the school must follow the current transfer policy developed by the department and Texas Department of Public Safety (DPS).

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

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

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

(P) All in-car instruction provided by the school shall begin no earlier than 5:00 a.m. and end no later than 11:00 p.m. The division may approve exceptions; however, the request shall be made in writing by the school owner or school director and include acknowledgment by all parents in the form of signatures.

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

(R) Four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for 1 hour of behind-the-wheel instruction and 1 hour of in-car observation. Two periods of at least 55 minutes per hour of multivar driving range instruction may be substituted for 1 hour of behind-the-wheel instruction and 1 hour of in-car observation relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to actual behind-the-wheel instruction.

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

(T) A student issued a DE-964 under the block and concurrent programs must subsequently complete the required classroom instruction. If a student does not subsequently complete the required class instruction, the instructor must complete DPS Form DL-42 and send it to the DPS division responsible for license and driver records. Form DL-42 should be prepared as soon as it is evident the student will not complete the required hours of instruction. The DPS may then revoke the student's instruction permit.

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

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

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

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

(ii) Instructor license required. Students shall receive classroom instruction from a licensed supervising teacher, driver education teacher, supervising teaching assistant-full or teaching assistant-full.

(iii) Minimum course content. The driver education course exclusively for adults shall consist of six clock hours of classroom instruction that meets the following topics.

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

(II) Your license to drive--minimum of 20 minutes. Objective: The student reduces risk and accepts driving as a privilege by legally and responsibly possessing a driver's license, registering and having a current inspection on a motor vehicle, and obeying the Safety Responsibility Act.
(III) Right-of-way—minimum of 50 minutes. Objective: The student reduces risk by legally and responsibly accepting or yielding the right-of-way.

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

(V) Controlling traffic flow—minimum of 40 minutes. Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of traffic laws and procedures for controlling traffic flow.

(VI) Alcohol and other drugs—minimum of 50 minutes. Objective: The student legally and responsibly performs reduced-risk driving practices by adopting zero-tolerance driving and lifestyle practices related to the use of alcohol and other drugs and applying knowledge and understanding of alcohol and other drug laws, regulations, penalties, and consequences.

(VII) Cooperating with other roadway users—minimum of 20 minutes. Objective: The student reduces risk by legally and responsibly cooperating with law enforcement and other roadway users, including vulnerable roadway users in emergency and potential emergency situations and safely operating a vehicle near oversized or overweight vehicles.

(VIII) Managing risk—minimum of 50 minutes. Objective: The student reduces and manages risk by legally and responsibly understanding the issues commonly associated with motor vehicle collisions, including poor decision making, risk taking, impaired driving, distractions, speed, failure to use a safety belt, driving at night, and using a wireless communications device while operating a vehicle.

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

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

(I) The instructor shall be physically present in appropriate proximity to the student for the type of instruction being given. The teacher of record shall sign all completed classroom instruction records provided by a supervising teaching assistant-full or teaching assistant-full.

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

(III) Self-study assignments, videos, tape recordings, guest speakers, and other instructional media that present topics required in the course shall not exceed 120 minutes of instruction. PowerPoint slides or equivalent software solutions are considered to be approved teaching aids and does not fall into the restricted media aids.

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

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

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

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

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

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

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

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

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

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

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

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

(II) Students shall receive classroom instruction from a licensed supervising teacher, driver education teacher, or teaching assistant-full.

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

(I) Course topics. The course requirements described in subparagraph (A)(iii) shall be met.

(II) Length of course. The course must be 6 hours in length, which is equal to 360 minutes. A minimum of 330 minutes of instruction must be provided. Thirty minutes of time, exclusive of the 330 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

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

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

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

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

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

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

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

(d-) Time allotment for questions. The on-
line course may allocate up to 60 seconds for questions presented over
the Internet and 60 seconds for questions presented by telephone.

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

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

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

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

(a-) Time to respond. The student must cor-
rectly answer a personal validation question within 60 seconds.

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

(c-) Exclusion from the course. The online
course shall exclude the student from the course after the student has
incorrectly answered more than 30% of the personal validation ques-
tions.

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

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

(a-) Time to respond. The student must cor-
rectly answer a personal validation question within sixty (60) seconds.

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

(c-) Exclusion from the course. The online
course shall exclude the student from the course after the student has
incorrectly answered more than 30% of the personal validation ques-
tions.

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

(vi) Content validation. The online course shall in-
corporate a course content validation process that verifies student par-
ticipation and comprehension of course material, including the follow-

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

(II) Testing the student’s participation in multi-
media presentations. The online course shall ask at least 1 course vali-
dation question following each multimedia clip of more than sixty (60)
seconds.

(a-) Test bank. For each multimedia presen-
tation that exceeds sixty (60) seconds, the online course shall have a
test bank of at least four (4) questions.

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

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

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

(III) Course participation questions. The online
course shall test the student’s course participation by asking at least
two questions from each of the seven topics listed in subparagraph
(A)(v)(II)-(VIII).

(a-) Test bank. The test bank for course par-
ticipation questions shall include at least ten questions from each of the
seven topics identified in subparagraph (A)(v)(II)-(VIII).

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

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

(IV) Comprehension of course content. The on-
line course shall test the student’s mastery of the course content by ad-
ministering at least 30 questions covering the highway signs and traffic
laws required under Texas Transportation Code, §521.161.

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

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

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

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

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

(I) the student's first, middle, and last name;
(II) the student's date of birth and gender;
(III) a record of all questions asked and the student's responses;
(IV) the name or identity number of the staff member entering comments, retesting, or revalidating the student;
(V) both answers and a reasonable explanation for the change if any answer to a question is changed by the school for a student who inadvertently missed a question; and
(VI) a record of the time the student spent in each unit and the total instructional time the student spent in the course.

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

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

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

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

(xiii) Additional requirements for online courses.

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

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

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

(IV) Domain names. Each school offering an online course must offer that online course from a single domain. The online course may accept students that are redirected to the online course domain, as long as the school license number appears on the source that redirects the student to the online course domain. The student must be redirected to a webpage that clearly identifies the licensed school offering the online course before the student begins the registration process, supplies any information, or pays for the course.

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

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

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

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

(A) Six-semester-hour instructor development course. The driver education instructor development program instructional objectives must be equivalent to 6 semester hours or 90 clock hours of driver and traffic safety education instructor training and shall include:

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

(I) overview of Driver Education I;
(II) minor and adult driver education curriculum overview and course goals;
(III) school and instructor liability and responsibility;
(IV) student evaluation and assessment;
(V) instructor conduct, including professionalism and public relations;
(VI) rules, codes, and standards for driver education programs; and
(VII) classroom progress examination for Driver Education I.

(ii) Driver Education II—minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the HTS in accordance with the standards for mi-
nor and adult driver education and traffic safety for in-car instruction. Instruction shall address the following topics:

(I) overview of Driver Education II;
(II) minor and adult driver education in-car curriculum overview;
(III) commentary driving techniques;
(IV) factors that influence learning and habit formation;
(V) in-car lesson planning, including scheduling and designing;
(VI) vocabulary and communication;
(VII) risk management;
(VIII) general guidelines for conducting behind-the-wheel and in-car observation;
(IX) in-car debriefing techniques;
(X) proper record keeping and maintenance;
(XI) classroom progress examination for Driver Education III; and
(XII) in-car laboratory, including:
(-a-) initial assessment of trainee's driving skills by instructor trainer;
(-b-) observation of in-car teaching techniques as given by a licensed instructor;
(-c-) practice of instructor risk-management and emergency procedures, including taking control of the vehicle under the supervision and observation of a licensed instructor;
(-d-) in-car trainee student teaching under the supervision and observation of a licensed instructor; and
(-e-) trainee in-car student teaching final progress assessment under the supervision and observation of a licensed instructor.

(B) Nine-semester-hour instructor development course. The driver education instructor development program instructional objectives must be equivalent to 9 semester hours or 135 clock hours of driver and traffic safety education instructor training and shall include:

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

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

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

(C) Supervising instructor development course. The supervising driver education instructor development program instructional objectives must be equivalent to 6 semester hours or 90 clock hours of driver and traffic safety education instructor training and shall include:

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

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

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

(IX) classroom progress examination for Supervising Instructor I; and

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

(I) overview of Supervising Instructor II;
(II) student evaluation and assessment;
(III) commentary driving techniques;
(IV) in-car debriefing techniques;
(V) scheduling driver education programs;
(VI) proper record keeping and maintenance;
(VII) school and instructor liability and responsibility;
(VIII) instructor conduct, including professionalism and public relations;
(IX) risk management;
(X) simulation theory and multicar range;
(XI) professional growth;
(XII) classroom progress examination for Supervising Instructor II; and
(XIII) classroom laboratory, including:
   (a-) observation of nine-semester-hour driver education instructor development course classroom teaching techniques as given by a licensed instructor; and
   (b-) classroom practice student teaching of a nine-semester-hour driver education instructor development course under the supervision and observation of a licensed instructor.

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

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

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

(5) A properly licensed supervising driver education teacher or supervising teaching assistant-full shall teach the 6-semester-hour, 9-semester-hour, and supervising instructor development courses. The supervising teacher may allow a driver education teacher, teaching assistant-full, or teaching assistant to provide training under the direction of the supervising teacher in areas appropriate for their level of certification and/or licensure. The supervising teacher is responsible for certifying all instruction conducted by the driver education teacher, teaching assistant-full, or teaching assistant, including independent study and research assignments, which shall not exceed 25% of the total training program time.

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

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

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

   (A) a description of the plan by which the course will be presented;
   (B) the subject of each unit;
   (C) the educational objectives of each unit;
   (D) time to be dedicated to each unit;
   (E) instructional resources for each unit, including names or titles of presenters and facilitators; and
   (F) a plan by which the school owner will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

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

   (A) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of a licensed driver education instructor;
   (B) the course pertains to subject matters that relate directly to the practice of driver education instruction, instruction techniques, or driver education-related subjects; and
   (C) the entire course shall be taught by individuals with recognized experience or expertise in the area of driver education or related subjects. The division may request evidence of the individuals’ experience or expertise.

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

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

(f) Schools applying for approval of additional courses after the original approval has been granted shall submit the documents designated by the division with the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school’s compliance is in question at the time of application.

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

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

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

   (1) Information contained in the application for the course approval is found to be untrue.
   (2) The school has failed to maintain the instructors, facilities, equipment, or courses of study on the basis of which approval was issued.
   (3) The school offers a course which has not been approved or for which there are no instructors or equipment.
(4) The school has been found to be in violation of TEC, Chapter 1001, and/or this chapter. 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 February 24, 2020.
TRD-202000826
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: March 15, 2020
Proposal publication date: November 8, 2019
For further information, please call: (512) 463-3671

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

16 TAC §84.600

STATUTORY AUTHORITY

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

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

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

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 3. RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT
The State Board of Education (SBOE) adopts amendments to §§33.10, 33.15, 33.20, 33.25, 33.30, 33.35, and 33.60, concerning the statement of investment objectives, policies, and guidelines of the Texas Permanent School Fund (PSF). The amendments are adopted without changes to the proposed text as published in the December 20, 2019 issue of the Texas Register (44 TexReg 7791) and will not be republished. The adopted amendments reorganize references to the PSF distribution policy, include references to new authority and duties assigned by the 86th Texas Legislature, 2019, and address permissible fixed income investments.

REASONED JUSTIFICATION: In accordance with statute, the rules in 19 TAC Chapter 33 establish investment objectives, policies, and guidelines for the PSF.

Legislation from the 86th Texas Legislature, 2019, made changes to the Texas Education Code (TEC) and the Texas Natural Resources Code that impact the PSF and the SBOE’s authority and duties related to the PSF.

The amendment to §33.10, Purposes of Texas Permanent School Fund Assets and the Statement of Investment Policy, specifies that one objective of the PSF distribution policy is to maintain the value of assets per student after adjusting for inflation, as stated in 19 TAC §33.15.

The amendments to §33.15, Objectives; §33.20, Responsible Parties and Their Duties; §33.30, Standards of Performance; and §33.60, Performance and Review Procedures, implement Senate Bill 608 and House Bill 4388, 86th Texas Legislature, 2019, by accounting for the creation of the Liquid Account within the PSF and the requirement that the SBOE and School Land Board send quarterly investment and financial reports to one other.

The amendment to §33.25, Permissible and Restricted Investments and General Guidelines for Investment Managers, allows for specific uses of U.S. Treasury futures and the acquisition of a limited percentage of speculative-grade rated securities in the fixed income portfolio to enhance portfolio management abilities.

The amendment to §33.35, Guidelines for the Custodian and the Securities Lending Agent, removes a reference to a credit ratings firm that is no longer providing the services.

The SBOE approved the proposed amendments for first reading and filing authorization at its November 15, 2019 meeting and for second reading and final adoption at its January 31, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendments for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will align the rules with statute as soon as possible. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 20, 2019, and ended January 24, 2020. The SBOE also provided an opportunity for registered oral and written comments at its January 2020 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

STATUTORY AUTHORITY. The amendments are adopted under Texas Constitution, Article VII, §5(a), which authorizes the State Board of Education (SBOE) to make distributions from the Permanent School Fund (PSF) to the available school fund with certain limits; Texas Constitution, Article VII, §5(f), which authorizes the SBOE to manage and invest the PSF according to the prudent investor standard and make investments it deems appropriate; Texas Education Code (TEC), §43.001, which describes the PSF as a perpetual endowment; TEC, §43.0052, as added by HB 4388, 86th Texas Legislature, 2019, and Texas Natural Resources Code, §32.068 and §51.414, as added by HB 4388, which created the Liquid Account within the PSF to be managed by the SBOE and require the SBOE and School Land Board to send quarterly investment and financial reports to the other; and Texas Natural Resources Code, §32.012, as amended by SB 608, 86th Texas Legislature, 2019, and
§32.0161, as added by SB 608, which require the SBOE to submit to the governor a list of six nominees for each of two positions on the School Land Board and require the SBOE and the School Land Board to hold a joint annual public meeting to discuss the PSF.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Constitution, Article VII, §5(a) and (f); Texas Education Code (TEC), §43.001; TEC, §43.0052, as added by House Bill (HB) 4388, 86th Texas Legislature, 2019; and Texas Natural Resources Code, §32.012, as amended by Senate Bill 608, 86th Texas Legislature, 2019; §32.0161, as added by SB 608, 86th Texas Legislature, 2019; and §32.068 and §51.414, as added by HB 4388, 86th Texas Legislature, 2019.

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

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TRD-202000803
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 15, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 475-1497

CHAPTER 74. CURRICULUM REQUIREMENTS
SUBCHAPTER C. OTHER PROVISIONS
19 TAC §74.26
The State Board of Education (SBOE) adopts an amendment to §74.26, concerning award of credit. The amendment is adopted without changes to the proposed text as published in the December 20, 2019 issue of the Texas Register (44 TexReg 7805) and will not be republished. The adopted amendment updates the rule to clarify that a district may award credit proportionately for successful completion of half of a course regardless of the time duration of the course.

REASONED JUSTIFICATION: For students to earn state credit toward specific graduation requirements, a course must be approved by the SBOE and included in SBOE rule. Section 74.26 addresses the award of credit by a school district for high school courses. The rule outlines the general provisions for the award of credit toward state graduation requirements, including the award of credit for transfer students and students who complete high school courses in earlier grade levels and academic requirements for the award of credit. The rule also permits districts to award credit proportionately to students who are able to successfully complete only one semester of a two-semester course.

At the January-February 2018 SBOE meeting, the board approved for second reading and final adoption revisions to the award of credit for International Baccalaureate (IB) courses for 19 TAC Chapters 110, 111, 112, and 114. At the April 2018 SBOE meeting, the board approved for second reading and final adoption revisions to the award of credit for Advanced Placement (AP) and IB courses for 19 TAC Chapters 113, 118, and 126.

A discussion item regarding §74.26 was included on the agenda for the Committee on Instruction during the September 2019 SBOE meeting. At that time, the committee instructed staff to prepare a proposal to update the rule to clarify that districts may award credit proportionately for successful completion of half of a course regardless of the time duration of the course.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 15, 2019 meeting and for second reading and final adoption at its January 31, 2020 meeting.

In accordance with Texas Education Code (TEC), §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts to award credit proportionately for successful completion of half of a course regardless of the time duration of the course beginning in the 2019-2020 school year. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 20, 2019, and ended January 24, 2020. The SBOE also provided an opportunity for registered oral and written comments at its January 2020 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comment received and corresponding response.

Comment. One district administrator asked whether the proposed amendment to §74.26 would allow a student who completes only half of a one-half credit course to be awarded one-quarter credit.

Response. The SBOE provides the following clarification. Students may not earn less than one-half credit for any course.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.102(c)(4) and §28.025(a).

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

Filed with the Office of the Secretary of State on February 24, 2020.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 15, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 475-1497

CHAPTER 117. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR FINE ARTS
SUBCHAPTER C. HIGH SCHOOL

19 TAC §§117.312 - 117.314

The State Board of Education (SBOE) adopts amendments to §§117.312 - 117.314, concerning Texas Essential Knowledge and Skills (TEKS) for fine arts. The amendments are adopted without changes to the proposed text as published in the December 20, 2019 issue of the Texas Register (44 TexReg 7819) and will not be republished. The adopted amendments revise the TEKS for music to align with current International Baccalaureate (IB) course offerings in music.

REASONED JUSTIFICATION: In order for students to earn state credit toward specific graduation requirements, a course must be approved by the SBOE and included in administrative rule. At the September 2017 SBOE meeting, the committee discussed IB courses that are not currently included in SBOE rule and considerations regarding the appropriate amount of state credit that should be awarded for IB courses. At that time, the board requested that agency staff prepare rule text to address these issues and requested that staff balance the chapters that would be updated over two different meetings. At the January-February 2018 meeting, the SBOE approved proposed revisions to English language arts and reading, mathematics, science, and languages other than English IB courses for second reading and final adoption. The SBOE’s approval included the addition of eight IB courses to SBOE rules and updates that increased the amount of credit available for 17 IB courses currently in rule. The revisions became effective August 27, 2018.

At the April 2018 meeting, the SBOE approved for second reading and final adoption proposed revisions to align the TEKS in science, social studies, economics, and technology applications with additional IB course offerings and update the amount of credit available for both IB and Advanced Placement (AP) courses in these subject areas. The SBOE’s approval included the addition of nine IB courses to SBOE rules and updates to the amount of credit available for seven AP and IB courses currently in rule. The revisions became effective August 27, 2018.

At the January-February 2019 meeting, the SBOE approved for second reading and final adoption two proposed new courses in IB Film in 19 TAC Chapter 117, Subchapter C. The IB film courses became effective August 26, 2019.

The amendments to §§117.312 - 117.314 update the high school music TEKS to align with current IB course offerings in music.

The SBOE approved the proposed amendments for first reading and filing authorization at its November 15, 2019 meeting and for second reading and final adoption at its January 31, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendments for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2020-2021 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement these amendments when they begin their school year. The effective date is August 1, 2020.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 20, 2019, and ended January 24, 2020. The SBOE also provided an opportunity for registered oral and written comments at its January 2020 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

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

Filed with the Office of the Secretary of State on February 24, 2020.

TRD-202000801
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 1, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. RULEMAKING

22 TAC §71.1

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §71.1 (Definitions), without changes to the text as published in the October 4, 2019 issue of the Texas Register (44 TexReg 5719). The repealed rule will not be republished.

The Board is replacing this rule with new 22 TAC §71.1 in a separate rulemaking action.

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.

Filed with the Office of the Secretary of State on February 21, 2020.
22 TAC §71.1
The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §71.1 (Petition for Adoption of Rules), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5720). The rule will not be republished.

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 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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TRD-202000746
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: March 12, 2020
Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §71.2
The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §71.2 (Petition for Adoption of Rules), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5721). The repealed rule will not be republished. The Board has adopted an updated version of the text of this rule in a new §71.1 in a separate rulemaking action.

The Board received no comments concerning the repeal of this 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.

Filed with the Office of the Secretary of State on February 21, 2020.
TRD-202000754

Christopher Burnett
Executive Director
Texas Board of Chiropractic Examiners
Effective date: March 12, 2020
Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

CHAPTER 72. FEES, LICENSE APPLICATIONS, AND RENEWALS
22 TAC §72.1
The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.1 (Definitions), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5721). The purpose of this action is to remove superfluous rules and make the Board's rules easier to read and navigate. The repeal will not be republished.

The Board received no comments regarding the repeal.
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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Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §72.10
The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §72.10 (Jurisprudence Exam Disqualification), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5722). The repealed rule will not be republished. The Board is adopting updated text for the rule in a separate rulemaking action.

The Board received no comments concerning the repeal.
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.

Filed with the Office of the Secretary of State on February 21, 2020.
22 TAC §72.10

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.10 (Appealing a Denied Application or Permit), with non-substantive changes to the proposed text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5723). The rule will be republished.

The adopted rule updates the text relating to the process for an individual to appeal a Board denial of an application for a license or permit by requesting a hearing at the State Office of Administrative Hearings.

The Board received no comments concerning the rule.

The 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 the adopted new rule.

§72.10 Appealing a Denied Application or Permit.

(a) An individual whose license or permit application has been denied by the Board may request a hearing be held by the State Office of Administrative Hearings (SOAH).

(b) An individual shall ask for a hearing by filing a request in writing to the Board within 30 days of receiving notice of the application or permit denial.

(c) A written request for a hearing shall include the legal and factual basis for seeking to overturn the Board’s denial of the application or permit.

(d) The Board shall deny any request for a hearing not timely received.

(e) The Board shall file a docket request for a SOAH hearing within 10 days.

(f) The Board shall give notice of the hearing date, time, and location to a denied individual at least 10 days before the hearing.

(g) A hearing under this section shall be conducted under Texas Government Code Chapter 2001 and SOAH 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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TRD-202000763
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: March 12, 2020
Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §72.12

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §72.12 (Criminal History Evaluation Letters), without changes to the proposed text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5724). The rule will not be republished.

The Board received no comments concerning the repeal.

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.

§72.12 Criminal History Evaluation Letters.

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

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

TRD-202000772
Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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Proposal publication date: October 4, 2019  
For further information, please call: (512) 305-6700  

CHAPTER 75. BUSINESS PRACTICES

22 TAC §75.1
The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §75.1 (Code of Ethics), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5725). The repealed rule will not be republished. The Board has replaced the existing rule in a separate rulemaking action.

The Board received no comments concerning the repeal.

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 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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Proposal publication date: October 4, 2019  
For further information, please call: (512) 305-6700  

22 TAC §75.3
The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §75.3 (Fraud Prevention), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5726). The rule will not be republished. The adopted rule updates the text relating to what constitutes the ethical practice of chiropractic for clarity. The purpose is to provide clearer guidance to the Board's licensees as to their ethical requirements.

The Board received no comments concerning the rule.

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

The 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 the adopted new rule.

§77.1. Advertising and Public Communications.

(a) A licensee, or a licensee's employee, agent, or partner may not use or authorize the use of any public communication or advertising containing a false, misleading, deceptive, or fraudulent claim, or indicating the licensee provides services outside the scope of practice.

(b) A licensee shall identify the licensee as "doctor of chiropractic," "D.C.,” "chiropractic," or "chiropractor" in all public communication or advertising if the licensee uses the term "doctor" or "Dr." in the communication or advertising.

(c) An individual may not use the terms "doctor of chiropractic," "D.C.," "chiropractor," or "chiropractic" in any public communication or advertising without holding an active license.

(d) A licensee shall identify by name the board certifying the licensee's credentials in any public communication or advertising using the term "Board Certified" or similar term.

(e) An unlicensed individual who holds a doctorate of chiropractic degree may use the individual's academic title in public communication or advertising if the individual clearly indicates the individual's status as unlicensed in Texas, such as "DC - retired" or similar language.

(f) In any public communication or advertising, if a licensee makes a claim based on a research study, the licensee shall:

(1) clearly identify the research study; and

(2) provide the source of the research study to the Board or the public upon request.

(g) In any public communication or advertising, a licensee may not state any service is free unless the communication or advertising clearly states all component services which are included.

(h) A licensee shall be responsible for any agent, employee, or partner acting on the licensee's behalf who violates this section.

(i) An individual violating this section is subject to disciplinary action.

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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Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §77.2

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §77.2 (Advertising, Public Communications,
and Telemarketing), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5729). The repealed rule will not be republished. The Board is replacing the existing rule in a separate rulemaking action.

The Board received no comments concerning the proposed repeal.

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 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.

Filed with the Office of the Secretary of State on February 24, 2020.

TRD-202000815
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: March 15, 2020
Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §77.2

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §77.2 (Telemarketing), without changes to the proposed text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5730). The rule will not be republished. The adopted rule updates and clarifies the language on telemarketing practices by licensees and their agents.

The Board received no comments concerning the rule.

The 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 the adopted rule.

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

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

22 TAC §77.3

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §77.3 (Patient's Rights to Disclosure of Charges), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5730). The repealed rule will not be republished.

The Board received no comments concerning the repeal.

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 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 §77.3

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §77.3 (Patient's Rights to Disclosure of Charges) with changes to the proposed text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5731). The rule will be republished. The adopted rule clarifies the text of a licensee's obligation to timely provide patients with a statement of charges.

The Board received one comment from Dr. Cynthia Tays, who suggested clarifying language for subsection (a). The Board agreed with Dr. Tays and incorporated her suggestion into the body of the rule.

The 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 the adopted rule.

§77.3.  Patient's Rights to Disclosure of Charges.

(a) A licensee shall provide a written receipt or summary of all charges for that day to any patient making such request.

(b) A licensee who violates this section is subject to disciplinary action.

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 February 21, 2020.

TRD-202000789
CHAPTER 78. SCOPE OF PRACTICE

22 TAC §78.2

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §78.2 (Prohibitions), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5732). The repealed rule will not be republished.

The Board received no comments on the repeal.

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 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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TRD-202000780
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §78.3

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §78.3 (General Delegation of Responsibility), without changes to the proposed text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5732). The rule will not be republished.

The Board received no comments on the repeal.

The 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 the 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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TRD-202000783
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §78.4
The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §78.4 (Delegation to Chiropractic Students and Recent Graduates) without changes as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5734). The rule will not be republished. This action moves existing language relating to students and recent graduates from §78.3 (General Delegation of Responsibility) into a stand-alone rule. The new rule clarifies when a licensee may delegate responsibility to a student or recent graduate, the limits on that delegation, and the requirements to notify the Board when employing or supervising those individuals. The Board’s intent is to make the requirements for students and recent graduates easier to both find and read. The Board is repealing and replacing the general delegation rule (§78.3) in separate rulemaking actions.

The Board received no comments on the proposed 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 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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TRD-202000760
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §78.5
The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §78.5 (Spinal Screenings), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5735). The repealed rule will not be republished. This rule is no longer necessary as the Board’s recently adopted rules on a licensee’s place of business (§75.2) and mandatory notices to the public (§75.6 and §75.7) include the requirements applicable to spinal screenings.

The Board received no comments concerning the repeal.

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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TRD-202000756
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

CHAPTER 79. UNPROFESSIONAL CONDUCT
22 TAC §79.2
The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §79.2 (Lack of Diligence), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5737). The repealed rule will not be republished. The Board is replacing the rule in a separate rulemaking action.

The Board received no comments concerning the repeal.

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 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.

Filed with the Office of the Secretary of State on February 21, 2020.
TRD-202000784
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §79.2
The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §79.2 (Lack of Diligence), without changes to the proposed text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5737). The rule will not be republished. The adopted rule updates the text relating to what constitutes the diligent practice of chiropractic for clarity. The purpose is to make the Board’s rules easier to navigate for licensees.
The Board received no comments concerning the rule.

The 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 the adopted rule.

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

Filed with the Office of the Secretary of State on February 21, 2020.

TRD-202000785
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §79.4

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §79.4 (Impaired Licensees and Applicants), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5738). The repealed rule will not be republished.

The Board received no comments concerning the proposed repeal.

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 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.

Filed with the Office of the Secretary of State on February 21, 2020.

TRD-202000786
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §79.4

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §79.4 (Impaired Licensees and Applicants), without changes to the proposed text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5739). The rule will not be republished. The adopted rule updates text of what grounds the Board will consider in determining if a licensee or applicant is incapable of holding a license due to substance abuse or health conditions. The rule also includes new language encouraging licensees or applicants to self-report any substance abuse or health issues to the Board.

The Board received no comments concerning the rule.

The 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 the adopted rule.

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

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TRD-202000787
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 §80.10

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §80.10 (Time Limits for Filing a Complaint), without changes to the proposed text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5740). The rule will not be republished. This action establishes a time limit for filing a complaint alleging a rule violation with the Board. The six year limit mirrors the length of time a licensee is required to maintain patient records.

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 the 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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TRD-202000761
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

CHAPTER 81. ENFORCEMENT ACTIONS AND HEARINGS

ADOPTED RULES March 6, 2020 45 TexReg 1717
22 TAC §81.1

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §81.1 (Definitions), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5741). The purpose of this action is to remove superfluous rules and make the Board's enforcement rules easier to read and navigate. The repeal will not be republished.

The Board received no comments concerning the proposed repeal.

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.

Filed with the Office of the Secretary of State on February 21, 2020.

TRD-202000757
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: March 12, 2020
Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §81.3

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §81.3 (Application Denial), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5741). The repealed rule will not be republished. The existing process for appealing the Board's denial of a license application is being separately adopted in an updated rulemaking action for §72.10 (Appealing a Denied Application). The appeals process is not an enforcement action and therefore properly belongs in the fees, applications, and renewals chapter (Chapter 72).

The Board received no comments concerning the repeal.

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.

Filed with the Office of the Secretary of State on February 21, 2020.

TRD-202000758

Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: March 12, 2020
Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

22 TAC §81.11

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §81.11 (Extensions of Time), without changes to the text as published in the October 4, 2019, issue of the Texas Register (44 TexReg 5742). The repealed rule will not be republished. The requirements and procedures for requesting extensions of time in an administrative hearing are already detailed in the Administrative Procedures Act (Government Code Chapter 2001) and the rules of the State Office of Administrative Hearings (1 TAC Chapter 155), thus making this rule superfluous.

The Board received no comments concerning the repeal.

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.

Filed with the Office of the Secretary of State on February 21, 2020.

TRD-202000759
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: March 12, 2020
Proposal publication date: October 4, 2019
For further information, please call: (512) 305-6700

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 133. LICENSING
SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.29

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts a new rule, 22 Texas Administrative Code (TAC), Chapter 133, Subchapter C, §133.29, regarding the Application for Temporary License for Military Spouses Who Are Licensed or Registered in Another State, without changes to the proposed text as published in the January 3, 2020, issue of the Texas Register (45 TexReg 66). The rule will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION
The adopted rule implements Senate Bill (SB) 1200, 86th Legislature, Regular Session (2019), which amends Texas Occupations Code, Chapter 55, to authorize a military spouse to engage in a business or occupation for which a license is required, without obtaining the applicable license, if the military spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in Texas. SB 1200 also authorizes a licensing agency to issue a license to a military spouse who meets such requirements.

The adopted rule is necessary to establish a process for the Board to identify which jurisdictions have licensing or registration requirements that are substantially equivalent to the requirements in Texas and to verify that a military spouse is licensed or registered in good standing in one of such jurisdictions. The adopted rule also provides for the issuance of a license or registration to a military spouse who meets these qualifications and successfully passes a criminal history background check. The license or registration issued under this rule would expire annually and may be renewed twice, but expires on the third anniversary of the date the Board provided confirmation to the military spouse.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rule. The 30-day public comment period began on January 3, 2020, and ended February 2, 2020. The Board received no comments from the public.

STATEMENT OF AUTHORITY

The new rule is adopted, without changes, pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaw necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering and land surveying. The new rule is adopted in accordance with Texas Occupations Code §1001.301, which requires a license to practice engineering. The new rule is also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 53 and 1001, which establish the Board’s statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Board.

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

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

Filed with the Office of the Secretary of State on February 24, 2020.

TRD-202000800
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: March 15, 2020
Proposal publication date: January 3, 2020
For further information, please call: (512) 440-7723