Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER BB. COMMISSIONER RULES CONCERNING THE RURAL PATHWAY EXCELLENCE PARTNERSHIP (R-PEP) PROGRAM

19 TAC §102.1021

The Texas Education Agency (TEA) proposes new §102.1021, concerning the rural pathway excellence partnership (R-PEP) program. The proposed new rule would implement House Bill (HB) 2209, 88th Texas Legislature, Regular Session, 2023, by establishing the R-PEP program.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 2209, 88th Texas Legislature, Regular Session, 2023, established the R-PEP program and created an allotment and outcomes bonus under the Foundation School Program (FSP) to support the program.

Proposed new §102.1021 would implement HB 2209 by defining the requirements of the R-PEP program.

New subsection (a) would specify the applicability of the new section.

New subsection (b) would establish a school district's eligibility for R-PEP benefits.

New subsection (c) would define key words and concepts related to R-PEP.

New subsection (d) would outline the requirements of the performance agreement required to be approved by the school boards of each participating district and the proposed R-PEP coordinating entity in order to be designated by TEA as an R-PEP.

New subsection (e) would outline the application process the coordinating entity must follow in order to be designated by TEA. This process would include submitting a letter of intent; a description of the pathways offered by the partnership that align with high-wage, high-demand careers in the region; the approved performance agreement between districts and coordinating entity; letters of support from relevant organizations; and scoring criteria TEA will use to make designation decisions.

New subsection (f) would outline the performance standards for R-PEP renewal and revocation, including the timeline for TEA to make renewal and revocation decisions, the content of the renewal application package, and the criteria by which TEA will make renewal or revocation decisions.

New subsection (g) would outline the process by which TEA will award R-PEP planning and implementation grants as funds are available.

FISCAL IMPACT: Kelvey Oeser, deputy commissioner for educator support, has determined that for the first five-year period the proposal is in effect, there would be fiscal implications for state and local government. The estimated cost to the state was $3,321,147 in fiscal year (FY) 2023 and is $5 million each year for FYs 2024-2028. The R-PEP program will allocate funding to rural school districts in three ways through the FSP: an additional average daily attendance allocation, an R-PEP outcomes bonus, and an R-PEP planning and implementation grant. There is an annual cap of $5 million on all FSP payments related to the R-PEP program.

The estimated cost to local government is $950,000 each year for FYs 2025-2028. School districts choosing to participate in the R-PEP program may have costs associated with planning, implementing, and sustaining the R-PEP program outside of the life of grant funds. Small, rural school districts would receive additional FSP funding for their participation in college and career pathway partnerships.

TEA assumes that the cost to the FSP would include decreases in Recapture Payments - Attendance Credits of $950,000 each fiscal year. The decrease in recapture is reflected as a savings because recapture is appropriated as a method of finance for the FSP in the General Appropriations Act.

LOCAL EMPLOYMENT IMPACT: The proposal would have an effect on local economy; therefore, TEA completed a local employment impact statement as required under Texas Government Code, §2001.022. The R-PEP program is designed to increase the readiness of students to attain a high-wage, high-demand career in their region. As of FY 2024, an estimated 322 students are participating in an R-PEP program. Assuming a 10% growth year over year, the number could reach 472 students in FY 2028. According to the U.S. Bureau of Labor Statistics, individuals under the age of 25 with some college or an associate degree, as an R-PEP would have, have an average unemployment rate of 3.8%. Using that as a baseline, assuming that 3.8% of R-PEP graduates will not attain employment, the estimated numbers reflect the number of students that might attain local employment due to the R-PEP program for each year for FYs 2024-2028.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required. Given the anticipated increase in students achieving credentials in high-

wage, high-demand careers, the economic impact to rural communities is likely to be positive.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation by establishing the R-PEP program created by HB 2209, 88th Texas Legislature, Regular Session, 2023.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Oeser has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing school districts with incentives to expand access to high-wage, high-demand college and career programming. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have data and reporting implications. TEA will collect the following new data from local education agencies: campuses participating in the R-PEP program through a new designation process; student attendance with a new instructional program type in the Texas Student Data System Public Education Information Management System (TSDS PEIMS); and the number of contact hours for participating students in R-PEP programs.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins April 12, 2024, and ends May 13, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 12, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §29.912, as added by House Bill (HB) 2209, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish and administer the R-PEP program to incentivize and support multi-district, cross-sector, rural college and career pathway partnerships that expand opportunities for underserved students to succeed in school and life while promoting economic development in rural areas; TEC, §29.912(k), which requires the commissioner to adopt rules as necessary to implement the program; and TEC, §48.118, as added by HB 2209, 88th Texas Legislature, Regular Session, 2023, which establishes an additional average daily attendance allotment, an outcomes bonus, and a grant program to support R-PEPs.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §29.912 and §48.118, as added by House Bill 2209, 88th Texas Legislature, Regular Session, 2023.

§102.1021. Rural Pathway Excellence Partnership Program.

(a) Applicability. This section applies only to an eligible school district that intends to establish a rural pathway excellence partnership (R-PEP) under Texas Education Code (TEC), §29.912.

(b) Eligibility for R-PEP benefits. A school district is eligible for R-PEP program benefits if it has fewer than 1,600 students in average daily attendance and enters into a partnership with at least one other school district, irrespective of the number of students in average daily attendance in the other district, located within a distance of 100 miles.

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

(1) Coordinating entity--An entity that has the capacity to effectively coordinate a multi-district partnership that includes at least one district eligible for benefits under subsection (b) of this section, has entered into a performance agreement approved by the board of trustees of each partnering school district, is an eligible entity as defined by TEC, §12.101(a), and has a governing or advisory board that meets all membership requirements defined in TEC, §29.912.

(2) Institution of higher education--An institution of higher education has the meaning assigned by TEC, §61.003.

(3) Pathway--A program of study or endorsement described by TEC, §28.025(c-1), that:

(A) aligns with regional labor market projections for high-wage, high-demand careers with advancement opportunities; and

(B) incorporates:

(i) Texas Education Agency (TEA)-approved career and technical education programs of study, as defined in TEC, §48.106, and/or Texas College and Career Readiness School Models, including Pathways in Technology Early College High School (P-TECH) and Early College High School (ECHS);

(ii) college and career advising; and

(iii) a continuum of work-based learning experiences that allow students to reflect on and apply what they have learned.

(4) Performance agreement--A legally binding agreement between the board of trustees of each partnering school district and the coordinating entity that confers specific authority to the coordinating entity over the R-PEP pathways as defined in TEC, §29.912.

(5) School district--For the purposes of this section, a reference to a school district includes an open-enrollment charter school.

(d) Performance agreement. To contract with the coordinating entity to operate under TEC, §29.912, the board of trustees of each

partnering school district must approve a legally binding agreement with the coordinating entity. The R-PEP performance agreement must:

(1) confer to the coordinating entity the same authority with respect to pathways offered under the partnership provided to an entity that contracts to operate a district campus under TEC, §11.174. The coordinating entity must have:

(A) authority to employ and manage the staff member responsible for the pathways at each partner campus, including initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment;

(B) authority over the employees in each pathway, including initial and final non-delegable authority for the operating partner to employ and/or manage all of the operating partner's own administrators, educators, contractors, or other staff. Such authority includes the authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment;

(C) initial, final, and sole authority to supervise, manage, evaluate, and rescind the assignment of any district employee or district contractor from the pathway. If the coordinating entity rescinds the assignment of any district employee or district contractor, the district must grant the request within 20 working days;

(D) authority to and must directly manage the staff member responsible for the pathways at each partner campus, including having the sole responsibility for evaluating their performance;

(E) initial, final, and sole authority over educational programs within each pathway for specific, identified student groups, such as gifted and talented students, emergent bilingual students, students at risk of dropping out of school, special education students, and other statutorily defined populations;

(F) initial, final, and sole authority to set the school calendar and the daily schedule; and

(G) authority to develop and exercise final approval of pathway budgets, which must include at least 80% of the state and local funding to which each partnering school district is entitled under TEC, §§48.106, 48.110, and 48.118, for each student participating in a pathway;

(2) include ambitious and measurable performance goals and progress measures tied to current college, career, and military readiness outcomes bonus standards and longitudinal postsecondary completion and employment-related outcomes;

(3) allocate responsibilities for accessing and managing progress and outcome information and annually publishing that information on the Internet website of each partnering district and the coordinating entity;

(4) authorize the coordinating entity to optimize the value of each college and career pathway offered through the partnership by:

(A) determining scheduling;

(B) adding or removing a pathway;

(C) selecting and assigning pathway-specific personnel;

(D) developing and exercising final approval of pathway budgets, which must include at least 80% of the state and local funding to which each partnering school district is entitled under TEC, §§48.106, 48.110, and 48.118, for each student participating in a pathway; and

(E) determining any other matter critical to the efficacy of the pathways; and

(5) provide that any eligible student enrolled in a partnering school district may participate in a college or career pathway offered through the partnership.

(e) Applying for designation of an R-PEP.

(1) Applicant eligibility. A coordinating entity must submit a single application on behalf of each district and campus it requests to designate as eligible for R-PEP benefits.

(2) Types of applications. A coordinating entity may submit an application to start a new R-PEP or an application to expand a previously designated R-PEP in good standing with all applicable R-PEP requirements.

(3) Application contents. The following provisions apply to an R-PEP application submitted to the commissioner of education.

(A) A coordinating entity must submit a letter of intent to prior to applying for an R-PEP or an expansion of an existing R-PEP, in accordance with the procedures determined by the commissioner.

(B) The application package shall contain, but is not limited to, any of the following:

(i) an application form;

(ii) a description of R-PEP pathways, including a list of pathways offered at each R-PEP district and evidence that the college and career pathways offered align with regional labor market projections for high-wage, high-demand careers;

(iii) a description of the R-PEP organizational structure, including a staffing plan that outlines roles and responsibilities related to operating and coordinating the R-PEP pathways and includes at least two full-time equivalent roles that:

(I) are under the control of the coordinating entity to the extent required to fulfill responsibilities related to R-PEP;

(II) may be distributed among more than two employees or contractors, including employees or contractors of the district with time allocated for duties managed by the coordinating entity; and

(III) will be engaged and begin fulfillment of their roles within 30 days of approval by the commissioner;

(iv) a proposed budget demonstrating the use of funds allocated to the coordinating entity from the partner districts and ensuring that the coordinating entity exercises final approval over least 80% of the state and local funding to which each partnering school district is entitled under TEC, §§48.106, 48.110, and 48.118;

(v) an approved performance agreement in alignment with subsection (d) of this section; and

(vi) letters of support from relevant organizations, including institutions of higher education, workforce development organizations, and school districts in the region.

(C) TEA shall review application packages submitted under this section. If TEA determines that an application package is not complete and/or the applicant does not meet the eligibility criteria in TEC, §29.912, TEA shall notify the applicant and allow 10 business days for the applicant to submit any missing or explanatory documents.

(i) If, after giving the applicant the opportunity to provide supplementary documents, TEA determines that the eligibility approval request remains incomplete and/or the eligibility require-

ments of TEC, §29.912, have not been met, the eligibility approval request will be denied.

(ii) If the documents are not timely submitted, TEA shall remove the eligibility approval request without further processing. TEA shall establish procedures and schedules for returning eligibility approval requests without further processing.

(iii) Failure of TEA to identify any deficiency or notify an applicant thereof does not constitute a waiver of the requirement and does not bind the commissioner.

(D) Upon written notice to TEA, an applicant may withdraw an application package.

(4) Application review.

(A) Applicants with complete application packages satisfying the requirements in paragraph (3) of this subsection will be reviewed by a panel selected by the commissioner.

(B) The panel may include TEA staff or external stakeholders. The panel shall review application packages in accordance with the procedures and criteria established in the application package and guidance form. Review panel members shall not discuss eligibility approval requests with anyone except TEA staff.

(C) TEA may perform additional due diligence on R-PEP applicants, including, but not limited to:

(i) interviewing applicants, including individuals from the district, coordinating entity, and institutions of higher education, and requiring the submission of additional information and documentation prior to and after the interview;

(ii) interviewing other entities that have contracted with the proposed coordinating entity to assist TEA in determining the past success of a coordinating entity in meeting program-aligned goals; and

(iii) collecting additional data and information not submitted in the application that demonstrates the likelihood of success in meeting R-PEP program goals.

(D) TEA will notify each applicant of its selection or non-selection for R-PEP designation no later than the 60th day after the date the commissioner receives all R-PEP application or expansion materials.

(E) In order to qualify for ongoing benefits subsequent to initial eligibility validation or approval, the eligible partnership campus must comply with all information requests deemed necessary by TEA staff to determine the ongoing eligibility of the R-PEP program.

(F) To receive benefits under TEC, §48.118, the district must continuously meet the requirements in this subsection and subsection (d) of this section.

(f) Performance standards for R-PEP renewal.

(1) No less than three years after an R-PEP designation is approved or renewed, each R-PEP coordinating entity must submit for TEA review a renewal package to determine continued eligibility for R-PEP allocations.

(2) The renewal package may contain, but is not limited to, any of the following:

(A) a renewal form;

(B) assurance from the R-PEP coordinating entity and school board of trustees for each participating R-PEP district that the performance agreement continues to meet TEA criteria and is being implemented in accordance with TEC, §29.912, and this section;

(C) budgets for the R-PEP demonstrating alignment with TEC, §29.912, and this section; and

(D) outcomes measures as evidenced by progress reports and program data.

(3) The commissioner may deny renewal of the authorization of a designated R-PEP program based on any or all of the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to meet performance standards specified in the application and/or R-PEP performance contract; and

(D) failure to provide accurate, timely, and complete information as required by TEA to evaluate the effectiveness of the R-PEP program.

(g) R-PEP grants.

(1) TEA will announce and execute an open application for R-PEP planning and implementation grants pursuant to TEC, §48.118, to assist school districts and coordinating entities in planning, development, establishment, or expansion of partnerships as funds are available.

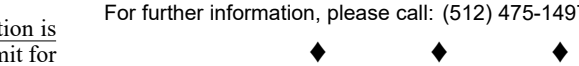
(2) TEA will make publicly available the R-PEP grant application, eligibility criteria, and scoring rubric. Priority will be given to coordinating entities that have entered into a performance agreement or, if in the planning stage, have entered into a memorandum of understanding to enter into a performance agreement, unless the source of funds does not permit a grant to the coordinating entity, in which case the grant shall be made to a participating school district acting as fiscal agent.

(3) Submitted applications will be scored according to the published scoring rubric, and grants will be awarded by TEA to the applicants whose applications are scored highest under the rubric.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 1, 2024.

TRD-202401325
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 12, 2024
For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.83

The Texas Department of Licensing and Regulation (Department), on behalf of the Texas Board of Veterinary Medical Examiners (TBVME), proposes a new rule at 22 Texas Administrative Code (TAC), Chapter 573, Subchapter G, §573.83, regarding the Rules of Professional Conduct. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 TAC, Chapter 573, implement Texas Occupations, Chapter 801, Veterinarians.

The proposed rules add §573.83 to Subchapter G, Other Provisions. The proposed rules are necessary to implement House Bill (HB) 4069, 88th Legislature, Regular Session (2023), which requires the adoption of rules for a veterinarian to disclose to an owner or caretaker of an ill or injured animal the description and estimated price of a proposed emergency treatment before providing the treatment.

The proposed rules ensure transparency for the public when receiving emergency veterinary care.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the State Board of Veterinary Medical Examiners (Board) at its meeting on January 23, 2024. The Board did not make any changes to the proposed rules. The Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules add §573.83, Price Transparency for Emergency Care. The proposed rules define "emergency care" for purposes of the section. The proposed rules require a veterinarian to disclose to the owner or caretaker of an animal that the animal requires emergency treatment. The proposed rules enumerate the requirements of the disclosure required in subsection (b). The proposed rules also require a veterinarian to update the disclosures if the animal's medical condition changes. Lastly, subsection (e) states that the person presenting the animal for emergency treatment is presumed to be its owner or caretaker.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be allowing animal owners and caretakers to know in advance what treatment options are being proposed for an animal in need of emergency care, as well as the estimated price of any proposed treatment.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do create a new regulation.

The proposed rules create a new regulation by requiring a veterinarian who provides necessary immediate medical treatment to an ill or injured animal to disclose to the animal's owner or caretaker that the animal requires emergency care and treatment and requiring the type of information the veterinarian must disclose, such as price.

6. The proposed rules do not expand, limit, or repeal an existing regulation.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to

his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted by email to *TBVME.Comments@tdlr.texas.gov*; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY

The proposed rules are proposed under the authority of Texas Occupations Code, Chapters 51 and 801, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 801. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 4069, 88th Legislature, Regular Session (2023).

§573.83. Price Transparency for Emergency Care.

(a) For purposes of this section, "emergency care" means medical care rendered to an ill or injured animal that, in the reasoned opinion of the veterinarian, has a life-threatening condition and immediate medical treatment is necessary to sustain life or alleviate or end suffering.

(b) After a reasonable opportunity to assess an animal's medical condition and before providing medical treatment, a veterinarian must disclose to the owner or caretaker that the animal requires emergency care and treatment.

(c) The disclosure required by subsection (b) of this section must contain:

(1) a description of the proposed treatment(s), with reasonable options, if any; and

(2) the estimated price of the proposed treatment option(s).

(d) If the animal's medical condition changes, before continuing treatment, a veterinarian must update the disclosures required by subsection (c) of this section.

(e) The person presenting an animal to the veterinarian for emergency care and treatment is presumed to be the owner or caretaker of that animal.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2024.

TRD-202401311

Doug Jennings
General Counsel
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: May 12, 2024
For further information, please call: (512) 475-4879

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.143

The Texas Behavioral Health Executive Council, on behalf of the Texas State Board of Examiners of Marriage and Family Therapists, proposes amendments to §801.143, relating to Supervisor Requirements.

Overview and Explanation of the Proposed Rule. The proposed amendments are intended to set equitable requirements for achieving supervisor status; to standardize provisions concerning automatic revocation of supervisor status after a disciplinary order imposes a probated suspension, suspension, or revocation of a license; and makes typographical updates.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the

Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html. The deadline for receipt of comments is 5:00 p.m., Central Time, on May 12, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§801.143. Supervisor Requirements.

(a) To apply for supervisor status, an LMFT must be in good standing and submit:

(1) an application and applicable fee;

(2) documentation of the completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and

(3) documentation of one of following:

(A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution;

(B) a 40-hour continuing education course in clinical supervision; or

(C) successful completion of an American Association for Marriage and Family Therapy (AAMFT) approved Fundamentals of Supervision course.

~~[(a) To apply for supervisor status, an LMFT in good standing must submit an application and applicable fee as well as documentation of the of following:]~~

~~[(1) completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and]~~

~~[(A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution; or]~~

~~[(B) a 40-hour continuing education course in clinical supervision; or]~~

~~[(2) designation as an approved supervisor or supervisor candidate by the American Association for Marriage and Family Therapy (AAMFT).]~~

(b) A supervisor may not be employed by the person he or she is supervising.

(c) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(d) Within 60 days of the initiation of supervision, a supervisor must process and maintain a complete supervision file on the LMFT Associate. The supervision file must include:

(1) a photocopy of the submitted Supervisory Agreement Form;

(2) proof of council approval of the Supervisory Agreement Form;

(3) a record of all locations at which the LMFT Associate will practice;

(4) a dated and signed record of each supervision conference with the LMFT Associate's total number of hours of supervised experience, direct client contact hours, and direct client contact hours with couples or families accumulated up to the date of the conference;

(5) an established plan for the custody and control of the records of supervision for each LMFT Associate in the event of the supervisor's death or incapacity, or the termination of the supervisor's practice; and

(6) a copy of any written plan for remediation of the LMFT Associate.

(e) Within 30 days of the termination of supervision, a supervisor must submit written notification to the council.

(f) Both the LMFT Associate and the council-approved supervisor are fully responsible for the marriage and family therapy activities of the LMFT Associate.

(1) The supervisor must ensure the LMFT Associate knows and adheres to all statutes and rules that govern the practice of marriage and family therapy.

(2) A supervisor must maintain objective, professional judgment; a dual relationship between the supervisor and the LMFT Associate is prohibited.

(3) A supervisor may only supervise the number of individuals for which the supervisor can provide adequate supervision.

(4) If a supervisor determines the LMFT Associate may not have the therapeutic skills or competence to practice marriage and family therapy under an LMFT license, the supervisor must develop and implement a written plan for remediation of the LMFT Associate.

(5) A supervisor must timely submit accurate documentation of supervised experience.

(g) Supervisor status expires with the LMFT license.

(h) A supervisor who fails to meet all requirements for licensure renewal may not advertise or represent himself or herself as a supervisor in any manner.

(i) A supervisor whose license status is other than "current, active" is no longer an approved supervisor. Supervised clinical experience hours accumulated under that person's supervision after the date his or her license status changed from "current, active" or after removal of the supervisor designation will not count as acceptable hours unless approved by the council.

(j) Upon execution of a Council order for probated suspension, suspension, or revocation of the LMFT license with supervisor status, the supervisor status is revoked. A licensee whose supervisor status is revoked must: [~~A supervisor who becomes subject to a council disciplinary order is no longer an approved supervisor. The person must:~~]

(1) inform each LMFT Associate of the council disciplinary order;

(2) refund all supervisory fees received after date the council disciplinary order was ratified to the LMFT Associate who paid the fees; and

(3) assist each LMFT Associate in finding alternate supervision.

(k) Supervision of an LMFT Associate without being currently approved as a supervisor is grounds for disciplinary action.

(l) The LMFT Associate may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(m) At a minimum, the 40-hour continuing education course in clinical supervision, referenced in subsection (a)(3)(B) [~~(a)(1)(B)~~] of this rule, must meet each of the following requirements:

(1) the course must be taught by a graduate-level licensee holding supervisor status issued by the Council;

(2) all related coursework and assignments must be completed over a time period not to exceed 90 days; and

(3) the 40-hour supervision training must include at least:

(A) three (3) hours for defining and conceptualizing supervision and models of supervision;

(B) three (3) hours for supervisory relationship and marriage and family therapist development;

(C) twelve (12) hours for supervision methods and techniques, covering roles, focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (race, ethnic, and gender issues), and evaluation methods;

(D) twelve (12) hours for supervision and standards of practice, codes of ethics, and legal and professional issues; and

(E) three (3) hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

(n) Subsection (m) of this rule is effective May 1, 2023.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 1, 2024.

TRD-202401320
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: May 12, 2024
For further information, please call: (512) 305-7706

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22 TAC §801.261

The Texas Behavioral Health Executive Council, on behalf of the Texas State Board of Examiners of Marriage and Family Therapists, proposes amendments to §801.261, relating to Requirements for Continuing Education.

Overview and Explanation of the Proposed Rule. The proposed amendments will require licensees to complete one hour of continuing education in crisis management in order to renew their license. This one hour requirement is proposed to be included in

the currently required 30 hours of continuing education needed for the renewal of a license. Crisis management can include, but is not limited to, suicidal ideation, homicidal ideation, abuse or neglect, domestic violence, crisis prevention, and crisis or disaster response.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html. The deadline for receipt of comments is 5:00 p.m., Central Time, on May 12, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§801.261. Requirements for Continuing Education.

(a) Minimum Continuing Education Hours Required

(1) An LMFT must complete 30 hours of continuing education during each renewal period that they hold a license. The 30 hours of continuing education must include 6 hours in ethics and 3 hours in cultural diversity or competency. Additionally, effective September 1, 2024, the 30 hours of continuing education must also include 1 hour of continuing education in crisis management.

(2) A licensee may carry forward to the next renewal period, a maximum of 10 hours accrued during the current renewal period if those hours are not needed for renewal.

(b) Special Continuing Education Requirements. The special continuing education requirements set out in this subsection may be counted toward the minimum continuing education hours required under subsection (a) of this section.

(1) A licensee with supervisory status must complete 6 hours of continuing education in supervision.

(2) A licensee with supervisory status must take and pass the jurisprudence examination. One hour of continuing education in ethics may be claimed for passing the jurisprudence examination.

(3) A licensee who provides telehealth services must complete 2 hours of continuing education in technology-assisted services.

(c) Acceptable ethics hours include, but are not limited to continuing education on:

(1) state or federal laws, including agency rules, relevant to the practice of marriage and family therapy;

(2) practice guidelines established by local, regional, state, national, or international professional organizations;

(3) training or education designed to demonstrate or affirm the ideals and responsibilities of the profession; and

(4) training or education intended to assist licensees in determining appropriate decision-making and behavior, improve consistency in or enhance the professional delivery of services, and provide a minimum acceptable level of practice.

(d) Acceptable cultural diversity or competency and crisis management activities. [~~hours include, but are not limited to continuing education regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.~~]

(1) Cultural diversity or competency hours include, but are not limited to continuing education regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.

(2) Crisis management hours include, but are not limited to continuing education regarding suicidal ideation, homicidal ideation, abuse or neglect, domestic violence, crisis prevention, and crisis or disaster response.

(e) Acceptable Continuing Education Activities.

(1) All continuing education hours must have been received during the renewal period unless allowed under subsection (a)(3) of this section, and be directly related to the practice of marriage and family therapy;

(2) The Council shall make the determination as to whether the activity claimed by the licensee is directly related to the practice of marriage and family therapy;

(3) Except for hours claimed under subsection (h) of this section, all continuing education hours obtained must be designated by the provider in a letter, email, certificate, or transcript that displays the licensee's name, topic covered, date(s) of training, and hours of credit earned.

(4) Multiple instances or occurrences of a continuing education activity may not be claimed for the same renewal period.

(f) Licensees must obtain at least fifty percent of their continuing education hours from one or more of the following providers:

(1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals;

(2) public school districts, charter schools, or education service centers;

(3) city, county, state, or federal governmental entities;

(4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education;

(5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals;

(6) a [~~A~~] graduate-level licensee with supervisor status;

(7) a hospital or hospital system, including any clinic, division, or department within a hospital or hospital system; or

(8) any provider approved or endorsed by a provider listed herein.

(g) Licensees shall receive credit for continuing education activities according to the number of hours designated by the provider, or if no such designation, on a one-for-one basis with one credit hour for each hour spent in the continuing education activity.

(h) Notwithstanding subsection (f) above, licensees may claim continuing education credit for each of the following activities:

(1) Passage of the jurisprudence examination. Licensees who pass the jurisprudence examination may claim 1 hour of continuing education in ethics.

(2) Preparing and giving a presentation at a continuing education activity. The maximum number of hours that may be claimed for this activity is 5 hours.

(3) Authoring a book or peer reviewed article. The maximum number of hours that may be claimed for this activity is 5 hours.

(4) Teaching or attending a graduate level course. The maximum number of hours that may be claimed for this activity is 5 hours.

(5) Self-study. The maximum number of hours that may be claimed for this activity is 1 hour. Self-study is credit that is obtained from any type of activity that is performed by an individual licensee acting alone. Such activities include, but are not limited to, reading materials directly related to the practice of marriage and family therapy. Time spent individually viewing or listening to audio, video, digital, or print media as part of an organized continuing education activity, program, or offering from a third-party is not subject to this self-study limitation and may count as acceptable education under other parts of this rule.

(6) Successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code. Licensees who complete this training may claim 1 hour of continuing education credit.

(i) The Council does not pre-evaluate or pre-approve continuing education providers or hours.

(j) Licensees shall maintain proof of continuing education compliance for a minimum of 3 years after the applicable renewal period.

(k) Subsection (f) of this rule is effective January 1, 2024.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2024.

TRD-202401284
Darrell D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: May 12, 2024
For further information, please call: (512) 305-7706

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PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER A. LICENSE APPLICATIONS

22 TAC §882.2

The Texas Behavioral Health Executive Council proposes amendments to §882.2, relating to General Application File Requirements.

Overview and Explanation of the Proposed Rule. The proposed rule amendments are intended to clarify what information Council staff can rely upon when verifying an applicant's out-of-state licensure.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html. The deadline for receipt of comments is 5:00 p.m., Central Time, on May 12, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules nec-

essary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

§882.2. General Application File Requirements.

(a) To be complete, an application file must contain all information needed to determine an applicant's eligibility to sit for the required examinations, or the information and examination results needed to determine an applicant's eligibility for licensure. At a minimum, all applications for licensure must contain:

(1) An application in the form prescribed by the Council based on member board rules and corresponding fee(s);

(2) An official transcript from a properly accredited institution indicating the date the degree required for licensure was awarded or conferred. Transcripts must be received by the Council directly from the awarding institution, a transcript or credential delivery service, or a credentials bank that utilizes primary source verification;

(3) A fingerprint based criminal history record check through the Texas Department of Public Safety and the Federal Bureau of Investigation;

(4) A self-query report from the National Practitioner Data Bank (NPDB) reflecting any disciplinary history or legal actions taken against the applicant. A self-query report must be submitted to the agency as a PDF that ensures the self-query is exactly as it was issued by the NPDB (i.e., a digitally certified self-query response) or in the sealed envelope in which it was received from the NPDB;

(5) Verification of the citizenship and immigration status information of non-citizen, naturalized, or derived U.S. citizen applicants through the DHS-USCIS Systematic Alien Verification for Entitlements Program (SAVE). Applicants must submit the documentation and information required by the SAVE program to the Council;

(6) Examination results for any required examinations taken prior to applying for licensure;

(7) Documentation of any required supervised experience, supervision plans, and agreements with supervisors; and

(8) Any other information or supportive documentation deemed relevant by the Council and specified in its application materials.

(b) The Council will accept examination results and other documentation required or requested as part of the application process from a credentials bank that utilizes primary source verification.

(c) The Council may rely upon the following when verifying information from another jurisdiction: official written verification received directly from the other jurisdiction; a government website reflecting the information (e.g., active licensure and good standing); or verbal or email verification directly from the other jurisdiction.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2024.

TRD-202401281

Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: May 12, 2024
For further information, please call: (512) 305-7706

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety (the department) proposes amendments to §4.1, concerning Transportation of Hazardous Materials. The proposed amendment updates adoption of the federal hazardous materials regulations as amended through December 1, 2023.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule is maximum efficiency of the Motor Carrier Safety Assistance Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or

decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, May 6, 2024, at 10:00 a.m. at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to §4.1, concerning Transportation of Hazardous Materials, proposed for adoption under the authority of Texas Transportation Code, §644.051, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of his or her intent to attend the hearing and to submit a written copy of his or her comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Transportation Code, Section 644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Transportation Code, Section 644.051 is affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, 179 (Subpart E), and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through December 1, 2023 [~~September 1, 2022~~]. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through December 1, 2023 [~~September 1, 2022~~].

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will have the following meanings, unless the context clearly indicates otherwise.

(A) Motor carrier--Has the meaning assigned by Texas Transportation Code, §643.001(6).

(B) Hazardous material shipper--A consignor, consignee, or beneficial owner of a shipment of hazardous materials.

(C) Interstate or foreign commerce--All movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state.

(D) Department--The Texas Department of Public Safety.

(E) Federal Motor Carrier Safety Administration (FMCSA) field administrator--The director of the Texas Department of Public Safety or the designee of the director for vehicles operating in intrastate commerce.

(F) Farm vehicle--Any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch.

(G) Private carrier--Any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

(2) All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, 179 (Subpart E), and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(3) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non-specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, §173.315(m).

(4) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway is adopted by the department.

(5) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non-specification cargo tanks by motor carriers for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, §173.8.

(6) Regulations and exceptions adopted herein are applicable to all drivers and vehicles transporting hazardous materials in interstate, foreign, or intrastate commerce.

(7) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(8) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and §4.16 of this title (relating to

Administrative Penalties, Payment, Collection, and Settlement of Penalties).

(9) A peace officer certified, in accordance with §4.13 of this title (relating to Authority to Enforce, Training and Certificate Requirements), to enforce the Federal Hazardous Material Regulations, as adopted in this section, may declare a vehicle out-of-service using the North American Standard Hazardous Materials Out-of-Service Criteria as a guideline.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 27, 2024.

TRD-202401290
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: May 12, 2024
For further information, please call: (512) 424-5848

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SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.15

The Texas Department of Public Safety (the department) proposes amendments to §4.15, concerning Compliance Review and Safety Audit Programs. The proposed amendment adds as an imminent hazard to the public a motor carrier's refusal to submit to an inspection and the practice of employing unqualified drivers with fraudulent foreign commercial driver licenses. It also specifies the documentation and retention requirements for a motor carrier that employs foreign commercial driver license personnel consistent with House Bill 4337, 88th Leg., R.S. (2023).

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule is enhanced public safety by improving the investigative efficiencies of the Department's Compliance Review and Safety Audit Programs.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, May 6, 2024, at 10:00 a.m. at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to §4.15, concerning Compliance Review and Safety Audit Programs, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of his or her intent to attend the hearing and to submit a written copy of his or her comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Transportation Code, Section 644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Transportation Code, Sections 644.051 and Section 644.155 are affected by this proposal.

§4.15. Compliance Review and Safety Audit Programs.

(a) The rules in this subsection, as authorized by Texas Transportation Code, §644.155, establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial actions when necessary, assess administrative penalties when required, and prohibit motor carriers receiving a safety rating of "unsatisfactory"

from operating a commercial motor vehicle. The department will use compliance reviews to determine the safety fitness of motor carriers and to assign safety ratings. The safety fitness determination will be assessed on intrastate motor carriers and the intrastate operations of interstate motor carriers based in Texas. Safety audits will be used to assess the safety management of interstate motor carriers that are part of the New Entrant Safety Assurance Program under Title 49, Code of Federal Regulation, Part 385, Subpart D. Definitions specific to the compliance review and safety audit programs shall have the following meanings unless the context shall clearly indicate otherwise.

(1) Compliance review--An examination of motor carrier operations to determine whether a motor carrier meets the safety fitness standard.

(2) Culpability--An evaluation of the blame worthiness of the violator's conduct or actions.

(3) Imminent hazard--Any condition of vehicle, employees, or commercial vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

(4) Safety audit--An examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the Federal Motor Carrier Safety Regulations [~~FMCSRs~~] and applicable Hazardous Materials Regulations [~~HMRs~~] and to gather critical safety data needed to assess [~~make an assessment of~~] the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

(5) Satisfactory safety rating--A motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Title 49, Code of Federal Regulation, §385.5 and the state equivalents contained in Texas Transportation Code, Chapter 522 and Chapter 644, and 37 TAC Chapter 4. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(6) Conditional safety rating--A motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in Title 49, Code of Federal Regulations, §385.5(a) through (k) and the state equivalents contained in Texas Transportation Code, Chapter 522 and Chapter 644, and 37 TAC Chapter 4.

(7) Unsatisfactory safety rating--A motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a) through (k) and the state equivalents contained in Texas Transportation Code, Chapter 522 and Chapter 644, and 37 TAC Chapter 4.

(8) For the purposes of safety ratings, Final Departmental Decision is defined as:

(A) the letter notifying the carrier of a satisfactory safety rating, issued under subsection (b)(3)(D) of this section;

(B) the letter notifying the motor carrier of a conditional safety rating on the expiration of the time period in subsection (b)(3)(D)(ii) of this section, unless this changed earlier as a result of the department granting a request to change the safety rating or a departmental review;

(C) the letter notifying the motor carrier of a final unsatisfactory safety rating issued under subsection (b)(3)(D)(iii) of this section; or

(D) the letter notifying the motor carrier of a decision on a safety rating as a result of a request for a change of the safety rating or a departmental review.

(b) Compliance Reviews.

(1) Inspection of Premises.

(A) An officer or a non-commissioned employee of the department who has been certified by the director may enter a motor carrier's premises to inspect lands, buildings, and equipment and copy or verify the correctness of any records, reports, or other documents required to be kept or made pursuant to the regulations adopted by the director in accordance with Texas Transportation Code, §644.155.

(B) The officer or employee of the department may conduct the inspection:

(i) at a reasonable time;

(ii) on stating the purpose of the inspection; and

(iii) by presenting to the motor carrier:

(I) appropriate credentials; and

(II) a written statement from the department to the motor carrier indicating the officer's or employee's authority to inspect.

(C) Civil and Criminal Penalties for Refusal to Allow Inspection.

(i) A person who does not permit an inspection authorized under Texas Transportation Code, §644.104, is liable to the state for a civil penalty not to exceed $1,000. The director may request that the attorney general sue to collect the penalty in the county in which the violation is alleged to have occurred or in Travis County.

(ii) The civil penalty is in addition to the criminal penalty provided by Texas Transportation Code, §644.151.

(iii) Each day a person refuses to permit an inspection constitutes a separate violation for purposes of imposing a penalty.

(iv) Refusal to permit an inspection under Texas Transportation Code, §644.104 may be treated as an imminent hazard under subsection (d) of this section. The department may issue an order to cease the motor carrier's commercial vehicle operations under subsection (d), which will remain in effect until an inspection is permitted.

(2) A compliance review will be conducted based upon:

(A) unsatisfactory safety assessment factor evaluations;

(B) written complaints concerning unsafe operation of commercial motor vehicles which are substantiated by documentation. Complaints for the purpose of this criterion include involvement in a fatality accident or the receipt of a 24-hour out-of-service notification based on violation(s) of Title 49, Code of Federal Regulations, §392.4 or §392.5 or Texas Transportation Code, §522.101;

(C) follow-up investigations of motor carriers that have been the subject of an enforcement action, an administrative penalty, or the assessment of an unsatisfactory safety rating from the immediately previous compliance review;

(D) requests from the legislature and state or federal agencies;

(E) request for a safety rating determination or a change to a safety rating determination; or

(F) a hazardous material incident as described in §4.1(b)(4) of this title (relating to Transportation of Hazardous Materials).

(3) Safety Fitness Rating.

(A) A safety fitness rating is based on the degree of compliance with the safety fitness standard for motor carriers.

(B) A safety rating will be determined following a compliance review using the factors prescribed in Title 49, Code of Federal Regulations, §385.7. The safety ratings detailed in subparagraph (B)(i) - (iii) of this paragraph will be assigned:

(i) satisfactory safety rating;

(ii) conditional safety rating; or

(iii) unsatisfactory safety rating.

(C) The provisions of Title 49, Code of Federal Regulations, §385.13 relating to "unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts" is hereby adopted by the department and is applicable to intrastate motor carriers except that intrastate motor carriers transporting more than 15 passengers or hazardous materials are prohibited from operation on the 46th calendar day after notice of the proposed unsatisfactory safety rating; all other intrastate motor carriers are prohibited from operation on the 61st calendar day after notice of the proposed unsatisfactory safety rating.

(D) The department will provide written notification to the motor carrier of the assigned safety rating within 30 business days of the close-out date of the compliance review.

(i) Notice of a satisfactory safety rating will be sent by regular U.S. Mail or personal delivery and is final upon receipt or mailing.

(ii) Notice of a proposed conditional safety rating shall be sent by certified mail, registered mail, personal delivery, or another manner of delivery that records the receipt of the notice by the person responsible [,] and will include a list of those items for which immediate corrective action must be taken. Unless changed by the department following a request for a change of safety rating or a department review, the conditional safety rating will become final without further notice on the 46th calendar day after notice of the proposed conditional safety rating for motor carriers transporting more than 15 passengers or hazardous materials requiring placarding under Part 172, Subpart F, of Title 49, Code of Federal Regulations, and on the 61st calendar day after notice of the proposed conditional rating for all other motor carriers. If the motor carrier requests a change of safety rating or a departmental review more than 15 days after the notice of proposed conditional safety rating, the conditional safety rating may become final before the department can complete its review.

(iii) Notice of a proposed unsatisfactory safety rating shall be sent by certified mail, registered mail, personal delivery, or another manner of delivery to the motor carrier's last known location, address, electronic mail address, or facsimile number and will include a list of those items for which immediate corrective action must be taken. Within five (5) business days of the expiration of the time periods set out in paragraph (3)(C) of this subsection, the department will provide written notification of the final unsatisfactory safety rating and an order to cease all intrastate transportation, as provided in Title 49, Code of Federal Regulations, §385.13, by certified mail, registered mail, personal delivery, or another manner of delivery to the motor carrier's last known location, address, electronic mail address, or facsimile number. Electronic mail may be used for safety rating correspondence. If the motor carrier requests a change of safety rating or a departmental review more than 15 days after the notice of proposed unsatisfactory safety rating, the unsatisfactory safety rating may become final before the department can complete its review.

(iv) A final unsatisfactory safety rating and order to cease all intrastate transportation, described in clause (iii) of this subparagraph, will become effective on the date specified in the notice of proposed safety rating unless extended by the department, in writing, under subparagraph (G)(v) or (vi) of this paragraph. The department will make and document reasonable efforts to provide a copy of the written final unsatisfactory safety rating and order to cease intrastate transportation to the carrier. However, if the notice of proposed safety rating was received by the motor carrier and adequately describes the effective date and consequences of failure to improve the motor carrier's safety rating, failure of the department to serve the final unsatisfactory safety rating and order to cease intrastate transportation will not delay its effective date.

(E) In addition to any criminal penalties provided by statute, a motor carrier assessed an unsatisfactory safety rating who continues to operate in violation of the notifications to cease operations under Title 49, Code of Federal Regulations, §385.13 will be subject to a civil suit filed by the attorney general from a request from the director of the Texas Department of Public Safety. Each day of operation constitutes a separate violation.

(F) A request for a change in or a departmental review of a safety rating must be submitted in writing to: Texas Department of Public Safety, Manager-Motor Carrier Bureau, P.O. Box 4087, Austin, Texas 78773-0521. Such request(s) must meet the requirements provided for in this subsection.

(G) A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request a rating change at any time.

(i) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standards and factors specified in Title 49 Code of Federal Regulations, §385.5 and §385.7, and equivalent state regulations contained in Texas Transportation Code, Chapter 522 and Chapter 644, and 37 TAC Chapter 4. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the department to consider.

(ii) The department will make a final determination on the request for change based upon the documentation the motor carrier submits, a follow-up compliance review, and any additional relevant information. The review will be conducted by the director's designee(s); the follow-up compliance review will be conducted by a field compliance review investigator.

(iii) The department will perform reviews of requests made by motor carriers with a proposed "unsatisfactory" or "conditional" safety rating in the following time periods after receipt of the motor carrier's request: within 30 calendar days for motor carriers transporting passengers in commercial motor vehicles or placardable quantities of hazardous materials, or within 45 calendar days for all other motor carriers.

(iv) When a request for a change to a safety rating, based on corrective actions, is filed before a "conditional" or "unsatisfactory" safety rating has been final for six (6) months or less, the timeline in subsection (b)(3)(G)(iii) of this section is applicable for conducting a follow-up compliance review. All other requests for a change to a safety rating will be scheduled on a priority basis; however, the abbreviated timeline for completion as specified in subsection (b)(3)(G)(iii) is no longer applicable.

(v) The filing of a request for a change to a proposed or final safety rating under this section does not stay the 45 calendar day period specified in this subsection for motor carriers transporting passengers or hazardous materials. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to the Federal Motor Carrier Safety Regulations and state regulations and the department cannot make a final determination within the 45 calendar day period, the period before the proposed safety rating becomes final may be extended for up to 30 calendar days at the discretion of the department.

(vi) The department may allow a motor carrier with a proposed rating of "unsatisfactory" (except those transporting passengers in commercial motor vehicles or placardable quantities of hazardous materials) to continue to operate in intrastate commerce for up to 60 calendar days beyond the 60 calendar days specified in the proposed rating, if the department determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 61st day after the date of the notice of the proposed "unsatisfactory" rating.

(vii) If the department determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in Title 49, Code of Federal Regulations, §385.5 and §385.7, and equivalent state regulations contained in Texas Transportation Code, Chapter 522 and Chapter 644, and 37 TAC Chapter 4, the department will notify the motor carrier in writing of its upgraded safety rating. An upgraded safety rating is final upon notification.

(viii) If the department determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standard and factors specified in Title 49, Code of Federal Regulations, §385.5 and §385.7, and equivalent state regulations contained in Texas Transportation Code, Chapter 522 and Chapter 644, and 37 TAC Chapter 4, the department will notify the motor carrier in writing. Any extension of the time period before an unsatisfactory safety rating becomes effective under paragraph (3)(G)(iv) or (v) of this subsection will expire upon receipt of this notice.

(ix) Any motor carrier whose request for change to a safety rating is denied in accordance with this subsection may request a departmental review under the procedures of paragraph (3)(H) of this subsection. The motor carrier must make the request within 90 calendar days of the denial of the request for a rating change. If the proposed rating has become final, it shall remain in effect during the period of any departmental review.

(H) A motor carrier may request the department to conduct a departmental review if it believes the department has committed an error in assigning its proposed safety rating in accordance with Title 49, Code of Federal Regulations, §385.15(c), Texas Transportation Code, Chapter 644, or 37 TAC Chapter 4 or its final safety rating in accordance with Title 49, Code of Federal Regulations, §385.11(b), Texas Transportation Code, Chapter 644, or 37 TAC Chapter 4.

(i) The motor carrier's request must explain the error it believes the department committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(ii) If a motor carrier has received a notice of a proposed conditional or unsatisfactory safety rating, it should submit its request within 15 business days from the date of the notice. This time frame will allow the department to issue a written decision before the safety rating becomes final and any prohibitions outlined in paragraph (3)(C) of this subsection take effect. Failure to request within this 15 business day period may prevent the department from issuing a final decision before such prohibitions take effect.

(iii) The motor carrier must make a request for a departmental review within 90 calendar days of either the proposed or final safety rating issued in accordance with this subsection, or within 90 calendar days after denial of a request for a change in a safety rating in accordance with paragraph (3)(G) of this subsection.

(iv) The department may ask the motor carrier to submit additional data and attend a conference in Austin, Texas to discuss the safety rating. If the motor carrier does not provide the information requested or does not attend the conference, the department may dismiss its request for review. The review will be conducted by the director's designee(s).

(v) The department will notify the motor carrier in writing of its decision following the departmental review. The department will complete the review within 30 calendar days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final "unsatisfactory" or "conditional" safety rating; or within 45 calendar days after receiving a request from any other motor carrier that has received a proposed or final "unsatisfactory" or "conditional" safety rating.

(I) A final safety rating constitutes a final agency decision. Any review of such decision is subject to Texas Government Code, Chapter 2001. Judicial review is subject to the substantial evidence rule under Texas Government Code, §2001.174.

(c) Safety Audits.

(1) The department may perform safety audits on interstate motor carriers domiciled in Texas that are part of the New Entrant Safety Assurance Program under Title 49, Code of Federal Regulations, Part 385, Subpart D. The department will comply with all requirements of Title 49, Code of Federal Regulations, Part 385, Subpart D when carrying out safety audits.

(2) Safety audits will be conducted by an individual who is certified to conduct new entrant safety audits. Safety audits may be conducted at the carrier's premises or at an off-site location chosen by the department.

(3) Motor carriers that are part of the New Entrant Safety Assurance Program will make records and documents required for a safety audit available for inspection upon the request of an individual certified to perform safety audits.

(A) The department will report to the Federal Motor Carrier Safety Administration any motor carriers who:

(i) fail to respond to attempts by the department to make contact to initiate a safety audit,

(ii) refuse to meet with the department to conduct the safety audit, and/or

(iii) refuse to provide records and documents required for the safety audit.

(B) Motor carriers who do not complete a required safety audit may have their interstate operating authority revoked by the Federal Motor Carrier Safety Administration.

(4) Safety audits will review a motor carrier's safety management systems and practices to determine compliance with federal safety regulations. The safety audit will also be used to educate the motor carrier on safety compliance. The reviewer's findings will be reported to the Federal Motor Carrier Safety Administration. Safety au-

dits will have a pass or fail determination and will not assign a safety rating to a motor carrier.

(5) In the course of a safety audit, if it is discovered that the motor carrier has committed any of the actions listed in Title 49, Code of Federal Regulation, Part 385.308(a), the department may schedule a compliance review to carry out a more thorough examination of the motor carrier's safety management.

(d) Imminent Hazard.

(1) Regardless of whether an unsatisfactory safety rating has become final under subsection (b)(3)(C) of this section, if the manager of the Motor Carrier Bureau or their designee determines that a motor carrier's operations constitute an imminent hazard, the manager or their designee shall issue an order to cease all or part of the motor carrier's commercial motor vehicle operations.

(2) In making any such order, no restrictions shall be imposed on any employee or employer beyond that required to abate the hazard.

(3) Opportunity for review of any such order shall be in the manner described in §4.18 of this title (relating to Intrastate Operating Authority Out-of-Service Review).

(4) For purposes of all enforcement the department is authorized to take, any operations in violation of an imminent hazard determination will be treated as operating with a final unsatisfactory rating issued under subsection (b)(3)(D)(iii) of this section.

(5) The practice of a motor carrier employing unqualified drivers with a fraudulent foreign commercial driver license is an imminent hazard to the public. The manager of the Motor Carrier Bureau or their designee shall issue an order to cease the motor carrier's commercial motor vehicle operations, which will remain in effect until the motor carrier submits proof of corrective action and all current drivers are verified to be properly qualified to operate commercial motor vehicles requiring a commercial driver license. Approval of the submitted corrective action and removal of the order to cease will be made by the manager of the Motor Carrier Bureau or their designee.

(e) Release of Safety Rating Information.

(1) The safety rating assigned to a motor carrier will be made available to the public upon request.

(2) Requests should be addressed to the Texas Department of Public Safety, Motor Carrier Bureau, P.O. Box 4087, Austin, Texas 78773-0521. All requests for disclosure of safety rating must be made in writing and will be processed under the Texas Public Information Act.

(f) Foreign Commercial Driver License Holder Requirements.

(1) Motor carriers that employ drivers who possess a valid foreign jurisdiction commercial driver license (CDL) or commercial driver license permit (CLP) shall retain a legible copy of the following items:

(A) the commercial driver license or commercial driver license permit, front and back if applicable, and

(B) the Work Authorization Card (Work Visa), front and back if applicable.

(2) These documents may be kept in printed or digital format at the motor carrier's principal place of business (PPOB) or where the motor carrier's driver qualification files are maintained.

(3) A motor carrier must maintain the documents specified by this section for the duration of the driver's employment and then for one year after the driver is no longer employed.

(4) A motor carrier must make all records and information in this file available to an officer or non-commissioned employee of the department upon request and as part of any investigation or safety audit within the timeframe specified by the requesting representative.

(5) A motor carrier that employs foreign CDL or CLP drivers who only operate in counties bordering the United Mexican States is not required to adhere to the rules of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 27, 2024.

TRD-202401291
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: May 12, 2024
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §1.2

The Texas Department of Transportation (department) proposes the amendments to §1.2 concerning Organization and Responsibilities.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill 3444, 88th Legislature, Regular Session, 2023, requires the Texas Transportation Commission (commission), by rule, to prescribe criteria for the classification of each district as metropolitan, urban, or rural and requires that a district with a population of more than one million be classified as metropolitan.

Amendments to §1.2, Texas Department of Transportation, adds subsection (d)(4), District Classification. The subsection defines a population-based classification of department districts. A district with a population of more than one million is classified as metropolitan. A district with a population between one million to 400,000 is classified as urban. A district with a population less than 400,000 is classified as rural. A district's population is determined using the most recent population information provided to the department by the Texas Demographic Center. After population data from each federal decennial census is released, the department will review the classification of the districts and recommend to the commission any changes to classification criteria that the department considers to be necessary. If the commission determines that changes are necessary, it will amend its rules to reflect those changes.

Additionally, as a housekeeping measure, the amendments delete the references to department offices in subsection (c) of the section because the department no longer uses the term "office" for the classification of headquarters operation groups.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Humberto Gonzalez, Jr., P.E., M.B.A., Director, Transportation Planning and Programing Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Gonzalez has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be clarity on the criteria for the definition of the various classes of department districts.

COSTS ON REGULATED PERSONS

Mr. Gonzalez has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Gonzalez has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Mr. Gonzalez has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §1.2 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "District Classification Definitions." The deadline for receipt of comments is 5:00 p.m. on May 13, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.105(h), which requires the commission to prescribe criteria for the classification of each of the department's district as metropolitan, urban, or rural.

The authority for the proposed amendments is provided by H.B. 3444, 88th Regular Session, 2023. The primary author and the primary sponsor of that bill are Rep. Canales and Sen. Hinojosa, respectively.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §201.105, Transportation Code.

§1.2. Texas Department of Transportation.

(a) Executive director.

(1) The commission will elect an executive director for the department who shall be skilled in transportation planning and development and in organizational management. The executive director, as the chief executive officer of the department, is authorized to administer the day-to-day operations of the department. The executive director may hold that position until removed by the commission.

(2) To assist in discharging the duties and responsibilities of the executive director, the executive director may organize, appoint, and retain such administrative staff as he or she deems appropriate, including the chief financial officer of the department.

(3) The executive director shall:

(A) serve the commission in an advisory capacity, without vote;

(B) submit quarterly, annually, and biennially to the commission detailed reports of the progress of public road construction, public and mass transportation development, and detailed statement of expenditures;

(C) hire, promote, assign, re-assign, transfer, and, consistent with applicable law and policy, terminate staff necessary to accomplish the roles and missions of the department;

(D) notify the chair of grounds for removal of a commissioner if the executive director knows that a potential ground for removal exists, or, if the potential ground for removal relates to the chair, notify another commissioner;

(E) under the direction and with the approval of the commission, prepare a comprehensive plan providing a system of state highways; and

(F) perform other responsibilities as required by law or assigned by the commission.

(4) The executive director may, consistent with applicable law, delegate one or more of the functions listed under paragraph (3)(B) - (F) of this subsection to the staff of the department.

(b) Department staff. The staff of the Texas Department of Transportation, under the direction of the executive director, is responsible for:

(1) implementing the policies and programs of the commission by:

(A) formulating and applying operating procedures; and

(B) prescribing such other operating policies and procedures as may be consistent with and in furtherance of the roles and missions of the department;

(2) providing the chair and commissioners administrative support necessary to perform their respective duties and responsibilities, including:

(A) assigning staff to assist commissioners;

(B) providing necessary office space and equipment;

(C) furnishing in-house legal counsel;

(D) providing all information and documents necessary for the commission to effectively perform its responsibilities; and

(E) preparing an agenda under the direction of the chair, providing notice, and transcribing commission meetings and hearings as required by the Texas Open Meetings Act, Government Code, Chapter 551; and

(3) performing all other duties as prescribed by law or as assigned by the commission.

(c) Divisions. Consistent with commission direction provided under §1.1(b)(1)(Q) of this subchapter, the executive director shall organize the department into headquarters operating divisions [~~and offices~~] reflecting the various functions and duties assigned to the department, and shall designate a division [~~or office~~] director who shall administer each division [~~or office~~].

(d) Districts.

(1) District office. The department is divided into geographical districts, each containing one district office. Each district is administered by a district engineer who is a registered professional engineer and is appointed by the executive director.

(2) Area office. A district contains one or more area offices, each of which is responsible for carrying out the department's primary functions at the local level for a designated geographical area. Each area office is normally administered by an area engineer who shall be a registered professional engineer.

(3) Project office. A district may contain one or more project offices, which is normally responsible for a specific project within an area.

(4) District Classification. Each district of the department is classified as metropolitan, urban, or rural, according to the population within the district's boundaries. A district's population is determined using the most recent population information provided to the department by the Texas Demographic Center and after the publication of the data from each federal decennial census, the department will review the population levels and recommend to the commission any adjustments to the classification criteria that it considers necessary. A district is classified as:

(A) metropolitan if it has a population of more than 1 million;

(B) urban if it has a population of not less than 400,000 and not more than 1 million; or

(C) rural if it has a population of less than 400,000.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2024.

TRD-202401313
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: May 12, 2024
For further information, please call: (512) 463-8630

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CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) proposes the repeal of §§21.143 - 21.145, 21.150, 21.152 - 21.164, 21.166 - 21.193, 21.195, and 21.197 - 21.206, relating to regulation of signs along Interstate and primary highways, and §§21.414, 21.420, 21.421, and 21.431, relating to the control of signs along rural roads; amendments to §21.142, Definitions, and §§21.409, 21.417, 21.423 - 21.426, 21.435, 21.448, 21.450, 21.452, 21.453 and 21.457, relating to the control of signs along rural roads; and new §§21.143 - 21.200, relating to the regulation of signs along Interstate and primary highways.

EXPLANATION OF PROPOSED REPEALS, AMENDMENTS, AND NEW SECTIONS

The department is required to implement amendments made by the legislature to Transportation Code, Chapters 391 and 394 that relate to the Commercial Signs Regulatory Program. To streamline current rules and provide for a clearer understanding of the rules, this rulemaking provides a new organizational structure that reorganizes the new rules to logically follow the sign permitting process. This rulemaking repeals most of the rules in Chapter 21, Subchapter I, relating to the existing regulatory program and provides new rules that in large part do not change the substance of the existing rules. Changes to Subchapter K provide consistency between Subchapters I and K for Commercial Signs and Off-Premise Outdoor Advertising.

The department has made substantive revisions to address four specific areas: the license and permit renewal process, the reorganization of the current rules, enforcement actions related to damage or destroyed sign structures, and the relocation of acquired sign structures. The department requested input from interested parties to help formulate these new rules and specif-

ically on these four issues. Several comments were received and used in drafting these revisions.

Amendments to §21.142, Definitions, make changes to clarify existing definitions and remove unnecessary definitions. The definitions for "interchange," "intersection," "military service member," "military spouse," "military veteran," "processing area," "public space," and "rest area" have been moved to separate sections because they provide substantive language to the specific rule in which such a term is used. The definition for "stacked sign" has been deleted because the term is not used. The deletion of the term does not prohibit the use of that configuration type.

New §21.143, License Required, contains the substance of existing §21.144.

New §21.144, License Application, contains the substance of existing §21.152.

New §21.145, License Issuance; Amendment, contains the substance of existing §21.153.

New §21.146, License Not Transferable, contains the substance of existing §21.154.

New §21.147, License Renewals, changes the license renewal process to base the annual license renewal fee on the amount of business done within the state as reflected by the number of commercial signs owned by the licensee. This new license renewal process allows the department to delete the requirement to renew permits annually, eliminating the need to track individual annual permit renewal dates dispersed throughout the year, which reduces the administrative cost to both the department and sign operators. Annual permit renewal is a significant problem for operators because permits can expire unintentionally due to operators overlooking the renewal of one or more of their permits, resulting in late penalties or the loss of the sign.

Additionally, tracking individual permit renewals is a difficult task for the department and regulated persons. The new approach will reduce 15,000 permit renewals to one license renewal per regulated person.

Subsections (b) - (e) describe the annual process in a step-by-step method for each invoiced year. The department will calculate the annual renewal fee based on the number of active permits maintained under each license on December 15th of the preceding year and will provide notice to the license holder of the annual amount due on or before January 1st. Quarterly, the department will issue reminder notices to all licensees maintaining any unpaid balance. The department must receive the total annual fee in full on or before November 1st of the invoiced year. Failure to pay timely results in the expiration of the license. An expired license can be reinstated so long as renewal is filed before December 15th and the full amount with late penalty (as described in new §21.147(d)) is received.

New §21.148, License Fees, changes the license renewal schedule to a graduated schedule based on the number of commercial sign permits held by the licensee under Chapter 21, Subchapter I and the number of off-premise sign permits held by the licensee under Subchapter K, Control Of Signs Along Rural Roads. The per-permit cost of renewal remains the same at $75. The section changes the late renewal fee from $100 per permit or license to one percent of the total annual renewal fee, potentially resulting in lower late renewal fees. Additional changes clarify that the renewal fee will need to be paid online. The changes align with Transportation Code, §391.063 and will reduce administrative work for the industry and the department and reduce late fees assessed on renewals.

New §21.149, Notice of Removal, requires the regulated persons to provide notice to the department on removal of a permitted sign structure. The section ensures that the regulated persons are not overbilled.

New §21.150, Notice of Surety Bond Cancellation, contains the substance of existing §21.157.

New §21.151, Suspension of License, provides the consequences of failure provide the required bond.

New §21.152, License Revocation, contains the substance of existing §21.158 and adds language clarifying current understanding that enforcement action is final when a minute order is affirmed by the Texas Transportation Commission (commission) or on the date on which the time for any further review of the action or proceeding expires.

New §21.153, Permit Required, contains the substance of existing §21.143 and clarifies when a sign outside of a city is regulated as when the content of a sign face is visible to a regulated road. The subjective language in the existing rule caused unnecessary permit denial appeals.

New §21.154, Permit Application, contains the substance of existing §21.159 and removes language requiring the department to review city ordinances to determine if the city government allows electronic signs. The change will reduce conflict between the department and city governments regarding the intent for electronic signs and will eliminate numerous permit denial appeals on this topic. The change benefits the department, city government commerce, and sign operators and landowners.

New §21.155, Applicant's Identification of New Commercial Sign's Proposed Site, contains the substance of existing §21.160.

New §21.156, Site Owner's Consent, contains the substance of existing §21.161.

New §21.157, Permit Application for Certain Preexisting Commercial Signs, contains the substance of existing §21.162. Changes were made to unify terminology concerning when a sign becomes subject to regulation (a term used throughout the chapter). The addition of a list describing signs that are ineligible for a nonconforming permit is proposed to delineate for the regulated persons situations in which signs may not be permitted due to violations of other laws. The amended language implements a standard departmental practice formerly handled under the general term "legally erected".

New §21.158, Permit Application Review, contains the substance of existing §21.163.

New §21.159, Decision on Application, contains the substance of existing §21.164 and changes terminology concerning "permit" to comport with changes in amended §21.142. The section describes the document that is created when a person first requests a permit and exists through the initial authorization to erect a sign. At the one-year anniversary of the location approval, the department will inspect the approved location to ensure that a sign structure is built and complies with the regulations. A permit will be issued pending the results of the inspection. The language is amended to model common building permit procedures.

New §21.160, Commercial Sign Location Requirements, contains the substance of existing §21.166 and clarifies an existing rule regarding the denial of new permits or amendments surrounding the environmental clearance for new projects. The rule was originally written to prevent the issuance of a permit, and subsequent erection of a sign, while right of way acquisition was underway for a transportation project. The revised language specifies that the department may refuse to issue a new or amended permit when the location is within a parcel identified for acquisition. This narrows the department's discretion to minimize impact on the regulated persons.

New §21.161, Zoned Commercial or Industrial Area, fundamentally changes how zoned areas are treated for regulatory purposes. This section describes the zoned area as a regulatory box centered on the proposed sign location, measured 800 feet in each direction, and on the same side of the highway along the highway right of way, to a depth of 660 feet. This allows for determinations regarding land use and zoning to use a defined area that remains the same size from sign to sign, providing consistency.

The section requires one commercial or industrial activity, as defined under §21.163, Commercial or Industrial Activity, within the zoned area for the area to be considered commercial or industrial in actual land use. This clarifies existing language that led to confusion and frequent appeals of permit denials.

New §21.162, Unzoned Commercial or Industrial Area, use the same regulatory box as zoned commercial or industrial area in new §21.161 for measuring unzoned commercial and industrial areas, providing consistency within the rules. This change greatly simplifies the process used to describe the unzoned area for the department and the regulated persons.

The section eliminates the requirement that the two commercial or industrial activities required to qualify an area be within 50 feet of each other. The department found that requirement to be ineffective in determining the commercial or industrial nature of an area as evidenced by being one of the most appealed reasons for new permit application denials. The original purpose for the 50-foot adjacency requirement was to ensure a sufficient density of commercial activities in the area, however the requirement of 50 feet is arbitrary and does not effectively ensure commercial density. The proposed method is far less complex and is easily applied by potential applicants, allowing for a more accurate prediction of qualification for the regulated persons.

Historically, single large industrial activities have not been sufficient to qualify an unzoned area as commercial or industrial because of the requirement that there be two activities. An additional option allows for one sufficiently large activity that occupies the entire unzoned area to qualify the area as commercial or industrial without need for a second activity. Requiring one activity comports with federal requirements and continues to ensure actual land use; similarly, by having the single activity completely fill the unzoned area, the rule ensures that the visual nature of the roadway in that location is primarily commercial or industrial in nature.

Many provisions in existing §21.179 concerning the activities themselves were moved to new §21.163, Commercial or Industrial Activity, to reduce redundancy and increase readability and accessibility by the public.

Finally, this rulemaking does not contain a provision similar to the provision of existing §21.179(h) because it is no longer necessary. The conformity of signs built before July 1, 2011, will not be affected by this new section.

New §21.163, Commercial or Industrial Activity, reduces the burden on small businesses. Previously, activities were required to have specific requirements to determine legitimacy and permanency of the activity. This section removes the requirements to inspect interior floor space, indoor restrooms, running water, functioning electrical connections, length of time of operation, number of employees, and a minimum of 400 feet of floor space, which were invasive of business activities that may have no financial interest in the sign, difficult to establish for licensees, and time-consuming for the department as well as the regulated persons.

The list of requirements in existing rules was intended to prevent the establishment of fraudulent businesses for the purposes of erecting a commercial sign; however, because many of the requirements are outdated, they no longer achieve their original purpose. The current rules tend to exclude modern small businesses, which are wholly legitimate commercial enterprises.

The new rules create two lists of requirements: a list of mandatory requirements ensures that the proposed business activities meet state and federal requirements for permanent buildings, actual commercial or industrial land use, regular operation, and distance to and visibility from the highway. A second list of requirements, of which an activity must meet any four of five, contains common indicators of actual commercial or industrial activity. By having activities meet any four of five requirements, it is possible to have specific requirements that do not unreasonably exclude activities that would typically be considered permanent, legitimate, commercial or industrial activities by a member of the traveling public.

Subsection (c) lists specific activities that are not considered commercial or industrial activities, irrespective of whether they meet the requirements of subsection (a) as required by the *Texas Federal-State Agreement on Outdoor Advertising.*

Finally, this rulemaking does not contain a provision similar to existing §21.180(e), as the specified exemptions for signs built before July 1, 2011, are no longer present in the rules.

New §21.164, Erection and Maintenance of Commercial Sign from Private Property, contains the substance in existing §21.167 and adds language to clarify department requirements for legal access to a sign site. The section proactively ensures compliance with Transportation Code, Chapter 393. The changes will reduce administrative burden on regulated persons, department, and the Office of the Attorney General litigating access issues.

New §21.165, Conversion of Certain Authorization to Permit, contains the substance in existing §21.167.

New §21.166, Notice of Commercial Sign Becoming Subject Regulation, contains the substance in existing §21.169 and adds the term "unlawful" sign to align with new §21.191 (Unlawful Sign).

New §21.167, Appeal Process for Application Denials, contains the substance in existing §21.170 and increases the number of days from 60 to 90 days for the department to render a decision on an appeal. The additional days are needed to address the increase in volume of permit applications and appeals.

New §21.168, Continuance of Nonconforming Commercial Signs, contains the substance in existing §21.150 with modifications to align with new §21.173, Void Permit.

New §21.169, Transfer of Permit, contains the substance in existing §21.173.

New §21.170, Amended Permit, contains the substance in existing §21.174 with changes to outline the amendment process of a permit and to increase the number of days from 60 to 90 days for the department to render a decision on an application due to an increase in amended permit requests.

New §21.171, Permit Application Fee, contains the substance in existing §21.174 with changes to remove all references to permit renewals as permits are no longer individually renewable; operators now maintain their permits directly under the license (see §21.148, License Fees). Further changes specify a $10 fee for permit applications made by a non-profit entity as described under §21.172 (Fees for Certain Nonprofit Organizations), which is a requirement of Transportation Code, §391.070. Subsection (b)(2) of existing §21.174 has been removed to prevent redundancy.

New §21.172, Fees for Certain Nonprofit Organizations, tracks the language of Transportation Code §391.070, which reduces fees for licensing and permitting for non-profit organizations.

New §21.173, Void Permit, uses the term "void" to specify certain situations in which a license ceases to be effective. Current rules allow a permit holder to voluntarily cancel a permit when the permit holder removes a sign; however, the use of the term "cancel" is misleading and often misconstrued by regulated persons to mean an administrative action by the department. Additionally, a permit holder's voluntary voiding a license ensures an accurate count of signs and the invoicing of fees under §21.148, License Fee.

New §21.174, Cancellation of Permit, contains the substance in existing §21.176 with changes to more clearly delineate actions that will result in a cancellation.

Subsection (c) is added to provide ability for the department to cancel a permit that was issued in conflict with the regulations. This addition will provide due process for the permit holder to appeal the department's cancellation.

Subsection (e) is added to ensure that the department meets its obligation to maintain effective control under the Highway Beautification Act of 1965 (23 U.S.C. §131). Added language provides the ability for the department to amend and include additional noncompliance issues found after the original enforcement notice and petition are sent. This ensures the department will provide an amended notice to the sign owner.

Subsections (h) and (i) establish the process and criteria by which sign owners may cure violations listed in this section. Language added in subsection (h) also establishes that penalties and cancellation will be rescinded if the violation is cured within 90 days.

New §21.175, Abandonment of Sign, contains the substance in existing §21.181.

New §21.176, Commercial Sign Face Size and Positioning, contains the substance in existing §21.182.

New §21.177, Prohibited Sign Locations, contains the substance in existing §§21.145 and 21.183 and removes language that allows signs to be built in publicly owned railroad, utility, or road right of way that is owned by the state or a political subdivision. The section complies with Transportation Code, §393.002, which prohibits a person placing a sign on the right-of-way of a public road or state highway system.

Changes address the creation of a scenic byways program in compliance with Transportation Code, §391.256. New language ensures that the department continues to provide effective control on any highways added under the new statute.

New §§21.178, Location of Commercial Signs Near Public Spaces, contains the substance in existing §21.184.

New §21.179, Location of Commercial Signs Near Certain Highway Facilities, contains the substance in existing §21.185 and §21.186 and implement published guidance concerning the 1,000-foot prohibition on the erection of signs near interchanges, intersection, rest areas, ramps, and highway acceleration or deceleration lanes. The section extends this prohibition to include these same facilities when located along non-freeway primary highways, as those features inherently increase the danger of driver distraction. This increased danger requires increased space to 1000 feet near the listed features.

The section increases the set-back distance from the right of way line for signs erected after the adoption of these amendments to 10 feet to comply with Health & Safety Code, §§752.004 and 752.005, concerning the distance of structures and people from overhead powerlines. This provision also helps reduce the impact of future transportation projects by creating a larger buffer between the current right of way and sign structures.

Added subsection (h) provides definitions for "interchange," "intersection," "physical gore," "rest area," and "theoretical gore."

New §21.180, Spacing of Commercial Signs, contains the substance in existing §21.187.

New §21.181, Commercial Sign Height Restrictions, contains the substance in existing §21.189 and implements the provisions of Transportation Code, §391.038 by changing the maximum allowable height for signs erected after March 1, 2017, from 42½ feet to 60 feet. Previously, the rule also included provisions for the adjustment of height to 85 feet absent of any action of the legislature on the subject. As Transportation Code, §391.038 addresses the height of commercial signs, this subsection is no longer relevant and has been removed. Transportation Code, §391.038(a) provides a maximum height of 60 feet for all commercial signs erected after March 1, 2017. Section 391.038(b) provides a maximum height of 85 feet for all commercial signs erected on or before March 1, 2017.

New §21.182, Effect of Sign Height Violations on Certain Persons, establishes procedures for implementing the new Transportation Code, §391.0381, which requires that if a sign owner with 100 or more signs violates the height requirement, the commission may prevent the issuance of future permits or the renewal of current permits held by the sign owner. If the department determines that the maximum height allowed for a sign is exceeded, the department will abate any application for a new sign permit filed by the sign owner after the date notice of the receipt of the violation until the violation is timely corrected, as described in §21.174 (relating to Cancellation of Permit), until the sign is removed in accordance with §21.190 (relating to Unlawful Sign), or until the date a final order is issued and the commission has ordered the suspension of the license. The sign owner will be provided notice and will have an opportunity to request a hearing before the commission to review the administrative

record regarding the height violation. After the commission issues the denial order, the applications held in abatement for new sign permits will be rejected. The rules provide that if the sign owner complies with the removal notice prior to the denial by the commission, the abatement will be lifted and the sign applications processed.

New §21.183, Lighting of and Movement on Commercial Signs, contains the substance in existing §21.190.

New §21.184, Repair and Maintenance of Commercial Signs, contains the substance in existing §21.191. This new section is organized so that actions are split into two categories: customary maintenance and substantial changes, subsections (a) and (c), respectively. Previously, the rules listed activities that were intended to be exhaustive, but in practice were not.

Subsection (c) no longer lists any actions, and instead clarifies that any activity not specified in subsection (a) is considered a substantial change and requires the approval of an amended permit prior to the initiation of such activity. The section establishes when customary maintenance ceases and substantial changes begin, in accordance with 23 CFR §750.707(d)(5) (Nonconforming Signs).

New §21.185, Damage to or Destruction of Commercial Signs, specifies that an amended permit is required before the initiation of any activity taken to repair a sign that has sustained damage. The section clarifies circumstances in which the department may deny an amended permit to conduct repair activities.

New §21.186, Determination That Sign is Destroyed, outlines when the department considers a sign to be destroyed. Subsection (b) provides the procedure by which operators can refute the department's determination of a sign's destruction, by providing a certification by a licensed professional engineer that a damaged pole is considered safe and has structural integrity as defined in the International Building Code, Appendix H (Signs). This requirement creates an objective standard for determining destruction, as the previous method relied on subjective cost estimates.

New §21.187, Authority to Rebuild a Commercial Sign, establishes that an amended permit is not required to rebuild a conforming sign. The section establishes a timeline to obtain written confirmation to rebuild from the department before initiating any activity.

New §21.188, Destruction of Vegetation and Access from the Right of Way Prohibited, contains the substance in existing §21.199.

New §21.189, Fraudulent Activity, establishes procedures for the investigation of fraud and actions taken on the finding of fraud committed by a licensed commercial sign operator.

New §21.190, Unlawful Sign, contains the substance in existing §21.198 and establishes a transparent process by which the department notifies the owner of an unlawful sign of the owner's violations and the time to cure them. The section sets a 45-day window (Transportation Code, §391.031) by which the owner of an unlawful sign must either remove the structure or obtain a permit, if possible, or will be assessed penalties in accordance with that section.

To ensure compliance with state and federal requirements that unlawful signs be ultimately removed, this section still provides a mechanism by which the department can request injunctive relief for an unlawful sign if a violation has been confirmed by a final order.

New §21.191, Administrative Penalties for Commercial Signs, is aligned with Transportation Code, §391.0355 (Administrative Penalties). The section ensures that the department imposes the penalties provided in Transportation Code, §391.0355 appropriately, fairly, and consistently. Additionally, the charge of the penalty per day is consistent with the statute and the 2009 Sunset recommendations to the department to update enforcement practices using standard administrative penalties. Penalties apply only after the notice is sent and not from the date the violation is first discovered, to comply with Government Code, §2006.003. The section provides a penalty-free window to resolve violations.

New §21.192, Local Control of Commercial Signs, contains the substance in existing §21.200.

New §21.193, Fees Nonrefundable, contains the substance in existing §21.201.

New §21.194, Property Right Not Created, contains the substance in existing §21.202.

New §21.195, Compliant Procedures, contains the substance in existing §21.203.

New §21.196, Requirements for an Electronic Sign, contains the substance in existing §21.206.

New §21.197, Previously Relocated Commercial Signs, ensures that commercial signs issued permits under the old relocation rules will not lose their conforming status.

New §21.198, Credit for Acquired Commercial Sign, outlines the required process for an active sign permit holder to follow to be granted eligibility to apply for an acquired sign permit under less stringent regulations. The credit for an acquired sign is a benefit to the permit holder when the department is performing highway facility improvements and the permitted sign is required to be removed for the construction work.

New §21.199, Permit Issued with Credit for Acquired Commercial Sign, contains the substance in existing §21.193.

New §21.200, Acquired Commercial Sign within Certified Cities, contains the substance in existing §21.195.

Amendments to various sections in Chapter 21, Subchapter K, as set out below, update the references to the new sections that are being added to Subchapter I of that chapter.

Amendments to §21.409, Permit Application, update the submission process for an application by using electronic means.

Amendments to §21.417, Erection and Maintenance from Private Property, add language to clarify the requirements for legal access to a sign site. The section proactively ensures compliance with Transportation Code, Chapter 393. The changes will reduce the administrative burden on regulated persons and the department.

Amendments to §21.423, Amended Permit, remove language referencing §21.421 because that section is being repealed.

Amendments to §21.424, Permit Fees, remove all references to permit renewals as permits are no longer individually renewable; operators now maintain their permits directly under the license (see §21.148 and §21.453). Further changes specify a $10 fee for permit applications made by a non-profit entity as described under §21.457, which is a requirement of Transportation

Code, §391.070. The license renewal process will base the annual license renewal fee on the amount of business done within the state as reflected by the number of commercial signs and off-premise signs owned by the licensee. This new license renewal process allows the department to delete the requirement to renew permits annually, eliminating the need to track individual annual permit renewal dates dispersed throughout the year, which reduces the administrative cost to both the department and sign operators. Annual permit renewal is a significant problem for operators because permits can expire unintentionally due to operators overlooking the renewal of one or more of their permits, resulting in late penalties or the loss of the sign.

Additionally, tracking individual permit renewals is a difficult task for the department and regulated persons. The new approach will reduce 15,000 permit renewals to one license renewal per regulated person.

Amendments to §21.425, Cancellation of Permit, clarify the situations in which the department will cancel a sign permit. The amendments delete the reference to §21.414 because that section is being repealed.

Amendments to §21.426. Administrative Penalties, align the section with Transportation Code, §394.081 (Administrative Penalties). The section ensures that the department imposes the penalties under Transportation Code, §391.081 appropriately, fairly, and consistently. Additionally, the examples of what violation receives a specific amount for the penalty is misleading and not in line with the language in Transportation Code, §391.081, therefore the examples are being repealed. Penalties apply only after the notice is sent and not from the date the violation is first discovered, to comply with Government Code, §2006.003. The section provides a penalty-free window to resolve violations.

Amendments to §21.435, Permit for Relocation of Sign, delete the reference to §21.421 because that section is being repealed. Additionally, the amendments correct an error in the existing section.

Amendments to §21.448, License Required, clarify the timeframe that a license is valid after its renewal.

Amendments to §21.450, License Issuance, clarify the process for amending a license. Language removed requiring an entity obtaining a license with TxDOT that wishes to operate sign permits in the state, would no longer need to be registered with the Secretary of State to do business in Texas, as the entity is required to have a surety bond from a Texas licensed insurance company.

Amendments to §21.452, License Renewals, change the license renewal process to base the annual license renewal fee on the amount of business done within the state, as reflected by the number of off-premise signs owned by the license holder. This new license renewal process allows the department to delete the requirement to renew permits annually, eliminating the need to track individual annual permit renewal dates dispersed throughout the year, which reduces the administrative cost to both the department and sign operators. Annual permit renewal is a significant problem for operators because permits can expire due to operators overlooking the renewal of one or more of their permits, resulting in late penalties or the loss of the sign.

Additionally, tracking individual permit renewals is a difficult task for the department and regulated persons. The new approach will reduce 15,000 permit renewals to one license renewal per regulated person.

Subsections (b) - (d) describe the annual process in a step-by-step method for each invoiced year. The department will calculate the annual renewal fee based on the number of active permits maintained under each license on December 15th of the preceding year and will provide notice to the license holder of the annual amount due on or before January 1st. Quarterly, the department will issue reminder notices to all licensees maintaining any unpaid balance. The department must receive the total annual fee in full on or before November 1st of the invoiced year. Failure to pay timely results in the expiration of the license. An expired license can be reinstated so long as renewal is filed before December 15th and the full amount with late penalty, as described in new §21.147(d), is received.

Amendments to §21.453, License Fees, change the license renewal schedule to a graduated schedule based on the number of commercial sign permits held by the license holder under Chapter 21, Subchapter I and the number of off-premise sign permits held by the licensee under Subchapter K. The per-permit cost of renewal remains the same at $75. The section changes the late renewal fee from $100 per permit or license to one percent of the total annual renewal fee, potentially resulting in lower late renewal fees. Additional changes clarify that the renewal fee will need to be paid online. The changes align with Transportation Code, §394.0203, and will reduce administrative work for the industry and the department and reduce late fees assessed on renewals.

Amendments to §21.457, Nonprofit Sign Permit, change the references to the new section number and title in Subchapter I.

This rulemaking will take effect September 1, 2024.

FISCAL NOTE

Stephen Stewart, the department's Chief Financial Officer, has determined that for each of the first five years the proposed amendments, repeals, and new sections are in effect, there will be no fiscal implications for state or local governments due to enforcing or administering the amendments, repeals, and new sections.

LOCAL EMPLOYMENT IMPACT STATEMENT

Kyle Madsen, Director, Right of Way Division, has determined that there will be no significant impact on local economies or overall employment due to enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Madsen has also determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be compliance with the *Highway Beautification Act of 1965* (HBA) and Transportation Code, Chapter 391, as well as reduction in administrative complexity. The proposed amendments implement substantive changes to address three specific areas: compliance with recent statutory changes; compliance with existing state and federal law; and methods to effect required enforcement.

COSTS ON REGULATED PERSONS

Mr. Madsen has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there

are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

The changes do not create a cost for a municipality that participates as a certified city. Federal and state laws allow a municipality to regulate outdoor advertisement within its jurisdictional boundaries if it meets minimal requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small business, micro-business, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002. The proposed license renewal method reduces licensees' administrative overhead, as licensees will no longer need to keep track of a growing list of disparate renewals scattered throughout the year at the risk of losing the permit or paying a late fee, because all renewals will be on one invoice. The proposed amendments do not increase fee amounts.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Madsen has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Mr. Madsen has determined that a written takings impact assessment is not required under Government Code, §2007.043.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on May 3, 2024, in the Duro Canyon Lecture Hall, First Floor, Stassney Headquarters, 6230 East Stassney Lane, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the General Counsel Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8630 at least five working days before the date of the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on repeal of §§21.143 - 21.145, 21.150, 21.152 - 21.164, 21.166 - 21.193, 21.195, 21.197 - 21.206, 21.414, 21.420, 21.421, and 21.431, amendments to §§21.142, 21.409, 21.417, 21.423 - 21.426, 21.435, 21.448, 21.450, 21.452, 21.453 and 21.457 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Commercial Signs Proposed Rules." The deadline for receipt of comments is 5:00 p.m. on May 13, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND PRIMARY HIGHWAYS

43 TAC §§21.142 - 21.200

STATUTORY AUTHORITY

The amendments and new rules are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically: Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of commercial signs on primary roads; Transportation Code, §391.0355, which provides authority for the commission to set fees for administrative penalties in association with violation of commercial sign regulations; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of commercial sign licenses; Transportation Code, §391.068, which provides authority for the commission to prescribe permit requirements and set fees for commercial sign permits; Transportation Code, §394.004, which provides authority to establish rules to regulate the orderly and effective display of Outdoor Signs on rural roads; and Transportation Code, §394.0205, which provides authority to establish rules to standardize forms and regulate the issuance of off-premise sign permits and licenses.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.142. Definitions.

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

(1) Commercial sign--A sign that is:

(A) at any time intended to be leased, or for which payment of any type is intended to be or is received, for the display of any good, service, brand, slogan, message, product, or company, except that the term does not include a sign that is leased to a business entity and located on the same property on which the business is located; or

(B) located on property owned or leased for the primary economic purpose of displaying a sign.

(2) Commission--The Texas Transportation Commission.

(3) Conforming sign--A sign lawfully [~~legally~~] erected and maintained in compliance [~~accordance~~] with state and federal law, including rules and regulations.

(4) Department--The Texas Department of Transportation.

(5) Electronic sign--A commercial sign that changes its message or copy by programmable electronic or mechanical processes.

(6) Erect--To construct, build, raise, assemble, place, affix, attach, embed, create, paint, draw, or in any other way bring into being or establish.

(7) Freeway--A divided, controlled access highway for through traffic. The term includes a toll road.

(8) Highway--The width between the boundary lines of either a publicly maintained way any part of which is open to the public for vehicular travel or roadway project for which the commission has authorized the purchase of right-of-way.

[~~(9) Interchange--A junction of two or more roadways, including frontage roads with on and off ramps, in conjunction with one or more grade separations that provides for the uninterrupted movement of traffic between two or more roadways or highways on different levels without the crossing of traffic streams.~~]

[~~(10) Intersection--The common area at the junction of two highways that are on the primary system. The common area includes the area within the lateral boundary lines of the roadways.~~]

(9) [~~(11)~~] Interstate highway system--Highways designated officially by the commission and approved pursuant to 23 United States Code §103 as part of the national system of interstate and defense highways.

(10) [~~(12)~~] Lawfully erected--Erected before January 1, 1968 or if erected after January 1, 1968, erected in compliance with law, including rules, in effect at the time of erection or as later allowed by law.

(11) [~~(13)~~] License--A commercial sign license issued by the department.

(12) [~~(14)~~] Main-traveled way--The traveled way of a highway that carries through traffic. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

[~~(15) Military Service Member--A person who is currently serving in the Armed Forces of the United States, in a reserve component of the United States, including the National Guard, or in the state military service of any service.~~]

[~~(16) Military spouse--A person who is married to a military service member who is currently on active duty.~~]

[~~(17) Military veteran--A person who has served in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or in an auxiliary service of one of those branches of the armed forces.~~]

(13) [~~(18)~~] National Highway System--Highways designated officially by the commission and approved pursuant to 23 United States Code §103 as part of the national highway system.

(14) [~~(19)~~] Nonconforming sign--A sign that was lawfully erected but does not meet all of the current requirements of state and federal law, including rules and regulations [~~that no longer complies with a law or rule because of changed conditions or because the law or rule was amended after the sign was erected or that fails to comply with a law enacted or rule adopted after the sign was erected. Examples of changed conditions are discontinuance of a commercial or industrial activity, decrease in the limits of an incorporated area, reclassification of a roadway, decertification of certified city, and amendment of a comprehensive local zoning ordinance from commercial to residential~~].

(15) [~~(20)~~] Permit--Written authorization to erect or maintain [~~granted for the erection of~~] a commercial sign structure at a specified location [~~, subject to this subchapter and Transportation Code, Chapter 391~~].

(16) [~~(21)~~] Person--An individual, association, partnership, limited partnership, trust, corporation, political subdivision, or other legal entity.

(17) [~~(22)~~] Primary system--Highways designated by the commission as the federal-aid primary system and any highway on the National Highway System. The term includes all roads designated as part of the National Highway System as of 1991.

[~~(23) Processing Area--An area where actions or operations are accomplished that contribute directly to a particular commercial or industrial purpose and are performed during established activity hours.~~]

[~~(24) Public space--Publicly-owned land that is designated by a governmental entity as a park, forest, playground, scenic area, recreation area, wildlife or waterfowl refuge, historic site, or similar public space.~~]

(18) [~~(25)~~] Regulated highway--A highway on the interstate highway system or primary system.

[~~(26) Rest area--An area of public land designated by the department as a rest area, comfort station, picnic area, or roadside park.~~]

(19) [~~(27)~~] Roadway--That portion of a road used for vehicular travel, exclusive of the sidewalk, berm, or shoulder.

(20) [~~(28)~~] Sign--A structure, display, light, device, figure, painting, drawing, message, plaque, placard, poster, billboard, logo, or symbol that is designed, [~~intended,~~] or used to advertise or inform.

(21) [~~(29)~~] Sign face---The part of the sign that is designed to contain information and is distinguished from other parts of the sign, including another sign face, by borders or decorative trim. The term does not include a lighting fixture, apron, or catwalk unless it displays a part of the information contents of the sign.

(22) [~~(30)~~] Sign structure--All of the interrelated parts and materials that are used, designed to be used, or intended to be used

to support or display information contents. The term includes, at a minimum, beams, poles, braces, apron, frame, catwalk, stringers, and a sign face.

[(31) Stacked sign--A sign with two faces placed one above another on a single structure.]

(23) [(32)] Visible--Capable of being seen, whether or not legible, or identified without visual aid by a person operating a motor vehicle on the highways of this state.

§21.143. License Required.

(a) Except as provided by this subchapter, a person may not obtain a permit for a commercial sign under this subchapter unless the person holds a valid license issued under §21.145 of this subchapter (relating to License Issuance; Amendment) or under §21.450 of this chapter (relating to License Issuance) applicable to the county in which the sign is to be erected or maintained.

(b) A license is valid for one year beginning on the date of its issuance or most recent renewal.

(c) Each license holder shall notify the department not later than the 30th day after the date of a change in the mailing address, telephone number, or email address of the license holder.

§21.144. License Application.

(a) To apply for a license under this subchapter, a person must file with the department an electronic application through the department's website, www.txdot.gov. The application must include, at a minimum:

(1) the complete legal name, mailing address, email address, and telephone number of the applicant; and

(2) designation of each county in which the applicant's signs are to be erected or maintained.

(b) The application must be accompanied by:

(1) an executed commercial sign surety bond that satisfies the requirements of this section;

(2) a certified power of attorney from the surety company authorizing the surety company's representative to execute the bond on the effective date of the bond;

(3) the license fee prescribed by §21.148 of this subchapter (relating to License Fees); and

(4) if applicable, an indication that the applicant is a military service member, military spouse, or military veteran, as those terms are defined in Occupations Code, §55.001.

(c) A commercial sign surety bond must be:

(1) in the amount of $2,500 for each county designated under subsection (a)(2) of this section, not to exceed a total amount of $10,000;

(2) payable to the department to reimburse the department for removal costs of a sign that the person unlawfully erects or maintains; and

(3) in a form prescribed by the department and executed by a surety company authorized to transact business in this state.

§21.145. License Issuance; Amendment.

(a) The department will issue a license if:

(1) the requirements of §21.144 of this subchapter (relating to License Application) are satisfied; and

(2) the surety bond company is authorized to conduct business in this state.

(b) To amend a license, the license holder must file an amended application in a form prescribed by the department and accompanied by a valid rider to the surety bond.

§21.146. License Not Transferable.

A license issued under this subchapter is not transferable.

§21.147. License Renewals.

(a) To renew a license, the license holder must submit through the department's website, www.txdot.gov, before November 1 of the year for which the license renewal fee is due:

(1) an electronic application;

(2) the applicable renewal fee prescribed by §21.148 of this subchapter (relating to License Fees); and

(3) proof of current surety bond coverage.

(b) The department will provide electronically to the license holder a notification of the amount due on or before January 1 of the year for which the license renewal fee is due. The department will send quarterly reminder notices to any license holder who maintains an unpaid balance and will provide notice to the license holder of the opportunity to file a late renewal.

(c) An expired license may be reinstated if the department receives a reinstatement request, accompanied by proof of current surety bond and the appropriate fee under §21.148 of this subchapter (relating to License Fees), not later than December 15 of the year in which the license expired. If reinstated, the license is considered to be renewed on the date of its reinstatement.

(d) An expired license that is not reinstated under this section is terminated on December 15 of the year in which the license expired and may not be renewed. Each permit that was maintained under such a license becomes void under §21.173 of this subchapter (relating to Void Permit).

§21.148. License Fees.

(a) The amount of the fee for the license application under this subchapter is $125.

(b) The amount of the annual license renewal fee for a calendar year is equal to:

(1) $75; plus

(2) the amount computed by multiplying $75 by the total number of eligible permits that are held under the license and issued under this subchapter or Subchapter K of this chapter.

(c) To reinstate an expired license under §21.147 of this subchapter (relating to License Renewals), the license holder must pay an additional late fee of one percent of the annual renewal fee under this section in addition to the annual renewal fee.

(d) A license fee is payable online by credit card or electronic check. If payment is dishonored on presentment, the license is voidable.

§21.149. Notice of Removal.

To provide information for the department to accurately calculate a license holder's license renewal fee, a license holder must provide to the department, in the manner prescribed by the department, notice of the removal of any sign of the license holder not later than the 90th day after the date of the removal.

§21.150. Notice of Surety Bond Cancellation.

If the department is notified by a surety company that a bond is being canceled, the department will notify the license holder by certified mail that the license holder must obtain a new bond and file it with the department not later than the 30th day after the bond cancellation date or the license will be suspended under §21.151 of this subchapter (relating to Suspension of License).

§21.151. Suspension of License.

(a) The department will suspend a license if the license holder does not file a new bond under §21.150 of this subchapter (relating to Notice of Surety Bond Cancellation).

(b) If the department suspends a license under this section, the department will not issue permits, or transfer existing permits, held under the license.

§21.152. License Revocation.

(a) The department will revoke a license if:

(1) the license holder does not file a new surety bond with the department not later than the 30th day after the date the license is suspended under §21.151 of this subchapter (relating to Suspension of License);

(2) the total number of final enforcement actions initiated by the department against the license holder under §21.174 of this subchapter (relating to Cancellation of Permit), §21.190 of this subchapter (relating to Unlawful Sign), §21.191 of this subchapter (relating to Administrative Penalties for Commercial Signs), §21.425 of this subchapter (relating to Cancellation of Permit), §21.426 of this subchapter (relating to Administrative Penalties), or §21.440 of this subchapter (relating to Order of Removal), or Transportation Code, Chapter 391 or 394 that result in the cancellation of the license holder's sign permit, payment of an amended penalty by the license holder, or the removal of the license holder's sign that equal or exceed:

(A) 10 percent of the number of valid permits held by the license holder if the license holder holds 1,000 or more sign permits;

(B) 20 percent of the number of valid permits held by the license holder if the license holder holds at least 500 but fewer than 1,000 sign permits;

(C) 25 percent of the number of valid permits held by the license holder if the license holder holds at least 100 but fewer than 500 sign permits; or

(D) 30 percent of the number of valid permits held by the license holder if the license holder holds fewer than 100 sign permits; or

(3) the license holder has not complied with previous final administrative enforcement actions relating to the license or a permit held under the license.

(b) The department may revoke a license under §21.189 of this subchapter (relating to Fraudulent Activity) on a finding of fraud.

(c) If the department revokes a license under this section, the department will not issue permits, or transfer existing permits, held under the license.

(d) The department will send notice of the revocation of a license under this section by certified mail to the address of record provided by the license holder.

(e) The notice under subsection (d) of this section will clearly state:

(1) the reasons for the action;

(2) the effective date of the action;

(3) the right of the license holder to request an administrative hearing; and

(4) the procedure for requesting a hearing, including the period in which the request must be made.

(f) A license holder may request an administrative hearing on the revocation of a license under this section. The request must be made in writing to the department not later than the 90th day after the date that the notice of revocation is sent.

(g) If timely requested, an administrative hearing will be conducted in compliance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case).

(h) For the purposes of this section, an enforcement action is final on the later of the date on which the action is affirmed by order of the commission or on which the time for any further review of the action or proceeding related to the action expires.

§21.153. Permit Required.

Except as provided by this chapter, unless a person holds a permit issued under §21.159 of this subchapter (relating to Decision on Application) or §21.192 of this subchapter (relating to Local Control of Commercial Signs), the person may not erect or maintain a commercial sign that is:

(1) within 660 feet of the nearest edge of the right of way of a regulated highway if any part of the sign's information content is visible from any place on the main-traveled way of the highway; or

(2) outside of the jurisdiction of a municipality and more than 660 feet from the nearest edge of the right of way of a regulated highway if any part of the commercial sign face content is visible from any place on the main-traveled way of a regulated highway.

§21.154. Permit Application.

(a) To obtain a permit for a commercial sign, a license holder must file an electronic application through the department's website, www.txdot.gov. The application must include, at a minimum:

(1) the complete name and address of the license holder;

(2) the complete name and address of the authorized agent of the license holder if an agent is used;

(3) the proposed location and description of the sign;

(4) the complete legal name, email address, and telephone number of the owner of the designated site;

(5) the appraisal district property tax identification number of the designated site;

(6) if the sign is to be located within a municipality, the municipality's current zoning of the location where the sign is to be located; and

(7) additional information the department considers necessary to determine eligibility.

(b) If the sign is to be located within the extraterritorial jurisdiction of a municipality with a population greater than 1.9 million that is exercising its statutory authority to regulate commercial signs, as authorized under §21.192 of this subchapter (relating to Local Control of Commercial Signs), a certified copy of the permit issued by the municipality within the preceding twelve months must be submitted with the application.

(c) The application must be accompanied by the fee prescribed by §21.171 of this subchapter (relating to Permit Application Fee).

(d) To facilitate a site's location during the initial inspection process, the application must identify the sign site marking in compliance with §21.155 of this subchapter (relating to Applicant's Identification of New Commercial Sign's Proposed Site) by:

(1) GPS coordinates in latitude and longitude, accurate within 50 feet; or

(2) a sketch or aerial map depicting distances to nearby landmarks.

(e) An application for a permit for an electronic sign must include, in addition to the other requirements of this section, contact information for a person who is available to be contacted at any time and who is able to turn off the electronic sign promptly if a malfunction occurs or is able to accommodate an emergency notification request from a local authority under §21.196 of this subchapter (relating to Requirements for an Electronic Sign).

(f) If the only issue preventing the issuance of a permit is a spacing conflict with another permitted sign owned by the applicant, the department will send a notice to the applicant informing the applicant of the conflicting sign. The department will deny the application unless the applicant, before the 30th day after the date that the department sends notice under this subsection, to provide the department with proof of the removal of the conflicting sign.

§21.155. Applicant's Identification of New Commercial Sign's Proposed Site.

(a) An applicant for a new permit must identify the proposed site of the sign on the parcel number indicated in the application by setting a stake or marking the concrete at the proposed location of the center pole of the sign structure.

(b) At least two feet of the stake must be visible above the ground. The stake or the mark must be distinguished from any other stake or mark at the location.

(c) A stake or mark on the concrete may not be moved or removed until the application is denied or if approved, until the sign has been erected.

§21.156. Site Owner's Consent.

A site owner's consent to the erection and maintenance of a commercial sign and access to the site by the license holder and the department or its agent must be provided with the filing of a permit application under §21.154 of this subchapter (relating to Permit Application). The consent operates for the life of the permit.

§21.157. Permit Application for Certain Preexisting Commercial Signs.

(a) If a sign is in place when the roadway on which it is located first becomes subject to Transportation Code, Chapter 391, the owner of the sign must comply with §21.166 of this subchapter (relating to Notice of Commercial Sign Becoming Subject to Regulation).

(b) The department may issue a permit with a non-conforming status if the sign was lawfully erected and maintained before the roadway became subject to regulation and the conditions of the sign or location do not meet current requirements.

(c) The department may not issue a permit under subsection (b) for:

(1) a sign that is prohibited under §21.177 of this subchapter (relating to Prohibited Sign Locations);

(2) a sign that is erected, repaired, or maintained in violation of §21.188 of this subchapter (relating to Destruction of Vegetation and Access from Right of Way Prohibited); or

(3) a sign erected or maintained in violation of any other law of the state or a court order.

§21.158. Permit Application Review.

(a) The department will consider permit applications in the order of the receipt of completed applications.

(b) If an application is rejected because it is not complete, lacks documentation, or has incorrect information, the application loses its priority position. The department will notify the applicant of the reasons the application was rejected.

(c) The department will hold an application for a site that is the same as or conflicts with the site of an application that the department previously received until the department makes a final decision on the previously received application. The department will notify the applicant that the applicant's application is being held because an application for the same or a conflicting site was previously received. For the purposes of this subsection, the date of a final decision on an application is:

(1) the date the application is approved; or

(2) if the application is denied:

(A) the date of the final decision on an appeal under §21.167 of this subchapter (relating to Appeal Process for Application Denials); or

(B) if an appeal is not filed within the period provided by §21.167 of this subchapter (relating to Appeal Process for Application Denials), on the 91st day after the date the denial notice was sent under §21.159 of this subchapter (relating to Decision on Application.

(d) The department will review the permit application for completeness, correctness, and compliance with all requirements of this subchapter. Measurements will be taken at the site to determine if the sign placement meets the spacing and location requirements.

§21.159. Decision on Application.

(a) The department will make a decision on a permit application not later than the 90th day after the date of receipt of the application. If the decision cannot be made within the 90-day period, the department will notify the applicant of the delay, provide the reason for the delay, and provide an estimate for when the decision will be made.

(b) If an application filed under §21.154 of this subchapter (relating to Permit Application) is approved, the department will notify the applicant of the approval and the applicant must construct the sign at the approved location before the first anniversary of the date that it receives the notice of location approval. After the anniversary date, the department will inspect the sign location and sign structure for compliance with applicable state and federal law, including rules and regulations, and will issue a permit for the sign if the sign is lawfully erected at the time of the inspection and the department confirms that there is private access to the sign location. The department will document the configuration, location, and conforming status of the sign, as built, and provide a copy of the permit to the applicant. That permit establishes the sign's permitted configuration and location.

(c) If a permit application filed under §21.157 of this subchapter (relating to Permit Application for Certain Preexisting Commercial Signs) is approved, the department will issue a permit for the sign using the inspection performed under §21.158(d) of this subchapter (relating to Permit Application Review) to establish the sign's permitted configuration and permitted location.

(d) If an application is not approved, the department will send the applicant a notice that states the reason for the denial.

§21.160. Commercial Sign Location Requirements.

(a) The department will not issue a permit under this subchapter unless the sign for which application is made is located along a roadway to which Transportation Code, Chapter 391, applies and is in:

(1) an unzoned commercial, governmental, or industrial area; or

(2) a zoned commercial or industrial area.

(b) Subsection (a) of this section does not apply to a commercial sign that was lawfully in existence when it became subject to Transportation Code, Chapter 391.

(c) The department may refuse to issue a permit or approve an application for an amended permit if the location of the sign is:

(1) within a parcel that when the application was received had been identified for acquisition on a schematic or plan as part of a transportation project; or

(2) within the prohibited spacing distance of planned facilities, as determined under §21.178 of this subchapter (relating to Location of Commercial Signs Near Public Spaces).

(d) An electronic sign may be located or upgraded only along a regulated highway and within the corporate limits or extraterritorial jurisdiction of a municipality.

(e) An electronic sign may not be located within 1,500 feet of another electronic sign on the same highway if facing the same direction of travel except as provided by this subsection. If the sign will be located in a political subdivision that is authorized to exercise control under §21.192 of this subchapter (relating to Local Control of Commercial Signs), the sign spacing must comply with the Texas Federal and State Agreement on Highway Beautification.

§21.161. Zoned Commercial or Industrial Area.

(a) Subject to this section, a zoned commercial or industrial area is an area that:

(1) is centered on the location of a sign and measured 800 feet in each direction along the highway right of way and on the same side of the highway as the sign, to a depth of 660 feet, and that:

(2) is designated, through a comprehensive zoning action, for general commercial or industrial use by a political subdivision with legal authority to zone regardless of the specific label used by the zoning authority; and

(3) contains any portion of a commercial or industrial activity, as defined in §21.163 of this subchapter (relating to Commercial or Industrial Activity).

(b) An area where commercial or industrial activities are allowed but are incidental to another primary land use is considered to not be a zoned commercial or industrial area.

(c) A zoned area that is not a part of comprehensive zoning action and is created primarily to permit commercial sign structures is not recognized as zoning for commercial sign control purposes.

§21.162. Unzoned Commercial or Industrial Area.

(a) An unzoned commercial or industrial area is an area that is centered on the proposed sign location and measured 800 feet in each direction of and on the same side of the highway along the highway right of way, to a depth of 660 feet, that is not predominantly used for residential purposes, and that:

(1) contains any portion of a regularly used area of two recognized governmental, commercial, or industrial activities, as defined by §21.163 of this subchapter (relating to Commercial or Industrial Activity); or

(2) is entirely occupied by one recognized governmental, commercial, or industrial activity, as defined in §21.163 of this subchapter (relating to Commercial or Industrial Activity).

(b) To determine whether an area is not predominantly used for residential purposes under subsection (a) of this section, if not more than 50 percent of the area, considered as a whole, is used for residential purposes, the area is not predominantly used for residential purposes. A road or street is considered to be used for residential purposes only if residential property is located on both of its sides.

(c) A regularly used area is land that contains buildings, permanent parking lots, or storage or processing facilities that are essential to and regularly used for an existing commercial, industrial, or governmental activity.

§21.163. Commercial or Industrial Activity.

(a) For the purposes of this subchapter, a governmental, commercial, or industrial activity is an activity:

(1) that is customarily allowed only in a zoned commercial or industrial area;

(2) that is conducted in a permanent building or structure that:

(A) is permanently affixed to real property that has a regularly used area, as described by §21.162 of this subchapter (relating to Unzoned Commercial or Industrial Area), and is located within 200 feet of the right of way of the regulated highway;

(B) is visible from the traffic lanes of the main-traveled way;

(C) is not predominantly used as a residence; and

(D) is open and conducting business at the site.

(3) to which at least four of the following apply:

(A) the activity has available to it associated permanent parking;

(B) the activity has available to it permanent functioning utilities that are typically associated with a commercial or industrial activity;

(C) the activity has available to it directly related equipment, supplies, or services;

(D) the activity requires a business license, certificate, or permit by the state or other governmental entity; or

(E) the activity is subject to a sales tax levied by the state or other governmental entity.

(b) For the purposes of this section, a building or structure is permanently affixed if:

(1) it has an attached septic field, is attached to a sewer system, or is considered to be real property by the county appraisal district; or

(2) it has anchoring straps or cables affixed to the ground using pier footing and it has no attached wheels or towing device, such as hitch or tongue.

(c) The following are not commercial or industrial activities:

(1) agricultural, forestry, ranching, grazing, farming, and related activities, including the operation of a temporary wayside fresh produce stand;

(2) an activity that is conducted only seasonally;

(3) the operation or maintenance of:

(A) a commercial sign;

(B) an apartment house or residential condominium; or

(C) a public or private school, other than a trade school or corporate training campus;

(D) a cemetery; or

(E) a place that is primarily used for worship;

(4) an activity that is conducted on a railroad right of way; or

(5) an activity that is created primarily or exclusively to qualify an area as a commercial or industrial area.

(d) For the purposes of this section, a building is not predominantly used as a residence if more than 50 percent of the building's square footage is used solely for a business activity.

§21.164. Erection and Maintenance of Commercial Sign from Private Property.

(a) The department will not issue a permit for a commercial sign unless it can be erected and maintained from private property that the license holder accesses by:

(1) a permitted driveway on a state-maintained roadway;

(2) a roadway that is not state maintained; or

(3) documented legal access through adjoining private property.

(b) If, after a permit is issued, the department finds evidence that the license holder accessed private property on which the sign is located by means other than one listed in subsection (a) of this section, the department will cancel the permit under §21.174 of this subchapter (relating to Cancellation of Permit). This section does not apply to the maintenance of a sign that is on railroad right of way and to which §21.168(a) of this subchapter (relating to Continuance of Nonconforming Signs) applies if:

(1) crossing the state's right of way line is the only available access to the sign; and

(2) the permit holder notifies and obtains approval of the department before accessing the sign for maintenance.

§21.165. Conversion of Certain Authorization to Permit.

(a) The department will convert a commercial sign registration issued under §21.409 of this chapter (relating to Permit Application) or a permit issued under §21.407 of this chapter (relating to Existing Off-Premise Signs) to a commercial sign permit under this subchapter if a highway previously regulated under Transportation Code, Chapter 394, becomes subject to Transportation Code, Chapter 391.

(b) A holder of a permit or registration converted under this section is not required to pay an original permit fee under §21.171 of this subchapter (relating to Permit Application Fee).

(c) If a commercial sign owner has prepaid registration fees under §21.407 of this chapter (relating to Existing Off-Premise Signs), the outstanding balance will be credited to the sign owner's annual license renewal fee.

§21.166. Notice of Commercial Sign Becoming Subject to Regulation.

(a) The department will send notice by certified mail to the owner of a commercial sign that becomes subject to Transportation Code, Chapter 391. If the owner of the sign cannot be identified from the information on file with the department, the department will give notice to the landowner of record of the land on which the sign is located.

(b) If the owner of a commercial sign described by subsection (a) of this section does not hold a license issued under §21.145 of this subchapter (relating to License Issuance; Amendment) or §21.450 of this chapter (relating to License Issuance), the owner must obtain the license not later than the 90th day after the date that the department sends notice under subsection (a) of this section.

(c) The sign owner must apply for a permit in compliance with §21.154 of this subchapter (relating to Permit Application) not later than the 90th day after the later of the date of receipt of the notice under subsection (a) of this section or the date of the issuance of the license in compliance with subsection (b) of this section.

(d) If the sign owner fails to obtain a permit as required by the department or if the sign owner cannot be determined or located, the department will issue an unlawful sign notice under §21.190 of this subchapter (relating to Unlawful Sign).

§21.167. Appeal Process for Application Denials.

(a) If a commercial sign application is denied, the applicant may file a request for an appeal with the executive director through the Right of Way Division.

(b) The request for appeal must be submitted electronically at ROW_outdooradvertising@txdot.gov.

(c) The request must:

(1) contain a statement of why the denial is believed to be in error;

(2) provide evidence that supports the issuance of the application approval, such as documents, drawings, surveys, or photographs; and

(3) be received not later than the 90th day after the date the notice of denial is sent.

(d) The executive director or the executive director's designee, who is not below the level of assistant executive director, will make a final determination on the appeal not later than the 90th day after the date that the executive director receives the request for appeal.

(e) If the final determination under subsection (d) of this section is that the application is denied, the executive director or the executive director's designee will send the final determination to the applicant stating the reason for denial. If the determination is that the application be approved, the department will issue the approval in compliance with §21.159 of this subchapter (relating to Decision on Application).

§21.168. Continuance of Nonconforming Commercial Signs.

(a) A sign that was lawfully erected before March 3, 1986, in a railroad, utility, or road right of way may be maintained as a nonconforming sign if all other requirements of this subchapter are met.

(b) A sign that was lawfully erected at a location that later became subject to this chapter may be maintained at that location as a nonconforming sign if the sign satisfies all other requirements of this subchapter.

(c) A nonconforming sign may not be:

(1) removed and rebuilt for any reason, except as provided by §21.187 of this subchapter (relating to Authority to Rebuild a Commercial Sign); or

(2) substantially changed, as described by §21.184 of this subchapter (relating to Repair and Maintenance of Commercial Signs).

(d) If the permit for a sign is void under §21.173 of this subchapter (relating to Void Permit) or cancelled under §21.174 of this subchapter (relating to Cancellation of Permit), the department will not issue a permit for that sign as a nonconforming sign.

§21.169. Transfer of Permit.

(a) A sign permit may be transferred only with the written approval of the department.

(b) At the time of the transfer, both the transferor and the transferee must hold a valid license issued under §21.145 of this subchapter (relating to License Issuance; Amendment) or §21.450 of this chapter (relating to License Issuance), except as provided by this section.

(c) The permit holder must send to the department a request through the department's website, www.txdot.gov to transfer a sign permit in a manner prescribed by the department accompanied by the applicable fees prescribed by §21.171 of this subchapter (relating to Permit Application Fee).

(d) After a request under subsection (c) of this section is received by the department, the department will send the request to the transferor for affirmation. If affirmed by transferor, the department will notify the transferee to submit applicable fees required under subsection (c) of this section. After the fee is received, the department will confirm the completed permit transfer to the transferor and transferee electronically.

(e) The department may approve the transfer of one or more commercial sign permits from a transferor to a transferee, with or without the signature of the transferor, if the transferee provides to the department:

(1) documents showing the sign has been sold;

(2) documents that indicate that the transferor is deceased or cannot be located; or

(3) a court order demonstrating the new ownership of the sign permit.

(f) The department will not approve the transfer if cancellation of the permit is pending or if cancellation has been abated awaiting the outcome of an administrative hearing.

(g) The department will approve a transfer only if the permit is valid.

(h) The documentation and fees required under this section must be submitted to the department electronically through the department's website, www.txdot.gov.

§21.170. Amended Permit.

(a) To obtain an amended permit, the permit holder must submit to the department an electronic application through the department's website, www.txdot.gov. The application must provide the information required under §21.154 of this subchapter (relating to Permit Application) that is applicable to an amended permit and indicates the change from the information in the sign permit. The application must be accompanied by the permit fee prescribed by §21.171 of this subchapter (relating to Permit Application Fee).

(b) The department will approve or deny an amended permit application not later than the 90th day after the date of the receipt of the amended permit application. If the decision cannot be made within the 90-day period the department will notify the applicant of the delay, provide the reason for the delay and provide an estimate of when the decision will be made.

(c) The department will not approve an amended permit application to change the location of a permitted sign structure.

(d) If an amended permit application is denied, the applicant may file a request for an appeal with the executive director using the process provided by §21.167 of this subchapter (relating to Appeal Process for Application Denials).

(e) An amended permit is valid for one year after the date of the department's approval of the amended permit application. The date of the department's approval of the amended permit application is considered to be the amended permit's date of issuance.

(f) If any of the changes approved in the amended permit application are not completed within one year after the date of the department's approval, the license holder must reapply to make those changes and must pay the prescribed fee. The provisions of this subchapter relating to a permit apply to the amended permit.

§21.171. Permit Application Fee.

(a) The amounts of the fees related to permits under this subchapter are:

(1) $100 for a new or amended permit application for a sign;

(2) $25 for the transfer of a permit; and

(3) $10 for a new or amended permit application for a nonprofit sign.

(b) A fee prescribed by this section is payable by credit card or electronic check. If payment is dishonored upon presentment, the permit, amended permit, or transfer is void.

§21.172. Fees for Certain Nonprofit Organizations.

(a) Notwithstanding the amounts of the fees set by §21.148 of this subchapter (relating to License Fees) and §21.171 of this subchapter (relating to Permit Application Fee), the combined license and permit application fees may not exceed $10 for a commercial sign that is erected and maintained by a nonprofit organization in a municipality or a municipality's extraterritorial jurisdiction and that only relates to that municipality or a political subdivision that is wholly or partly concurrent in that municipality.

(b) The nonprofit organization is not required to file a surety bond under §21.144 of this subchapter (relating to License Application) with an application for a sign described by subsection (a) of this section.

§21.173. Void Permit.

(a) A permit does not expire, but it becomes void on the date that the license under which it is maintained is terminated under §21.147 of this subchapter (relating to License Renewals) or is revoked by the department under §21.152 of this subchapter (relating to License Revocation).

(b) A permit holder may voluntarily void a permit by submitting a request in writing to the department after the sign that is subject to the permit has been removed.

§21.174. Cancellation of Permit.

(a) The department will cancel a permit for a commercial sign if the sign:

(1) is not maintained in compliance with this subchapter or Transportation Code, Chapter 391;

(2) is destroyed, as determined under §21.185 of this subchapter (relating to Damage to or Destruction of a Commercial Sign);

(3) is abandoned, as determined under §21.175 of this subchapter (relating to Abandonment of Sign);

(4) is erected, maintained, or substantially changed in violation of this subchapter, including under §21.164 of this subchapter (relating to Erection and Maintenance of Commercial Sign from Private Property), §21.170 of this subchapter (relating to Amended Permit), or §21.188 of this subchapter (relating to Destruction of Vegetation and Access from Right of Way Prohibited), or in violation of Transportation Code, Chapter 391;

(5) is erected by an applicant who provides false or misleading information in the permit application;

(6) is located in an unzoned commercial or industrial area in which the activity supporting the area's recognition as an unzoned commercial or industrial area was created primarily or exclusively to qualify the area as an unzoned commercial or industrial area; or

(7) is located in violation of §21.177 of this subchapter (relating to Prohibited Sign Locations).

(b) The department will cancel a permit for a commercial sign if the sign owner fails to pay an administrative penalty imposed under §21.191 of this subchapter, (relating to Administrative Penalties for Commercial Signs).

(c) The department will cancel a permit for a commercial sign immediately on the discovery that the department had erroneously issued a permit for a sign that violates Transportation Code, Chapter 391, or this subchapter.

(d) On the determination that a permit should be canceled, the department will send by certified mail the notice of cancellation to the address of the record permit holder. The notice must state:

(1) the reason for the cancellation;

(2) the effective date of the cancellation;

(3) the right of the permit holder to request an administrative hearing on the cancellation; and

(4) the procedure for requesting a hearing and the period for filing the request.

(e) If after sending a notice of cancellation under subsection (d) of this section the department finds additional reasons for the permit's cancellation, the department may send an amended notice of cancellation that includes those additional reasons.

(f) A permit holder may request an administrative hearing on the cancellation of a permit under this section. The request must be in writing and received by the department not later than the 90th day after the date that the notice of cancellation is sent.

(g) If timely requested, an administrative hearing will be conducted in compliance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case) and the cancellation is abated until the cancellation is affirmed by order of the commission.

(h) If the basis for the cancellation of a permit is cured not later than the 90th day after the date on which the permit holder sent the notice of cancellation, the department will rescind the cancellation and penalties if:

(1) the permit is for a conforming sign; or

(2) the permit is for a nonconforming sign that was cancelled under §21.164(b) of this subchapter (relating to Erection and Maintenance of Commercial Sign from Private Property) or under §21.175(a)(1) of this subchapter (relating to Abandonment of Sign).

(i) To show that the basis for cancellation has been cured, a permit holder must provide to the department evidence that the sign meets all requirements of this subchapter and that, if required, the license holder has obtained an amended permit for the sign under §21.170 of this subchapter (relating to Amended Permit) to make changes or to register unauthorized changes.

§21.175. Abandonment of Sign.

The department may consider a sign abandoned and cancel the sign's permit if:

(1) all sign faces are blank or without legible content;

(2) the sign structure requires more than customary maintenance to be repaired; or

(3) the sign structure is overgrown by trees or other vegetation.

§21.176. Commercial Sign Face Size and Positioning.

(a) A sign face may not exceed:

(1) 672 square feet in area;

(2) 25 feet in height; and

(3) 60 feet in length.

(b) For the purposes of this subsection (a) of this section, border and trim are included as part of the sign face, and the base, apron, supports, and other structural members, are excluded as part of the sign face.

(c) Notwithstanding the area limitation provided by subsection (a)(1) of this section, one or more temporary protrusions may be added to a sign, provided that the sign face, including the protrusions, meets the height and length limitations of subsection (a) of this section and:

(1) the area of a protrusion is located exclusively inside of the sign face border and trim; or

(2) the area of the protrusion is outside of the sign face border and trim, as indicated on the sign permit, and does not exceed 10 percent of the permitted area.

(d) Except as provided in subsection (g) of this section, a sign may have two or more sign faces that are placed back-to-back, side-by-side, stacked, or in "V" type construction with not more than two faces visible in each direction. Two sign faces which together exceed 700 square feet in area may not face in the same direction.

(e) Two sign faces that face in the same direction may be presented as one face by covering both faces and the area between the faces with an advertisement, as long as the size limitations of subsection (a) of this section are not exceeded.

(f) A sign may not have a moveable protrusion.

(g) Two electronic sign faces may be located on the same sign structure if each sign face is visible only from a different direction of travel.

(h) To change the sign face of an existing permitted sign to an electronic sign under this subchapter, a permit holder must obtain an amended permit under §21.170 of this subchapter (relating to Amended Permit).

§21.177. Prohibited Sign Locations.

(a) A sign may not be erected or maintained on the real property of another without the property owner's permission.

(b) A sign may not be erected or maintained within the right of way of a public roadway, as prohibited by Transportation Code, §393.002, or an area that would be within the right of way if the right of way boundary lines were projected across an area of railroad right of way, utility right of way, or road right of way that is not owned by the state or a political subdivision.

(c) A sign may not be erected or maintained on a highway or part of a highway designated under Transportation Code, §391.252.

(d) A sign may not be located in a place that creates a safety hazard, including a location that:

(1) causes a driver to be unduly distracted;

(2) obscures or interferes with the effectiveness of an official traffic sign, signal, or device; or

(3) obscures or interferes with the driver's view of approaching, merging, or intersecting traffic.

(e) A sign may not be erected or maintained in a location that violates Health and Safety Code, Chapter 752.

§21.178. Location of Commercial Signs Near Public Spaces.

(a) The center of a sign may not be located within 250 feet of the nearest point of the boundary of a public space.

(b) This subsection applies only if a public space boundary abuts the right of way of a regulated highway. A sign may not be located within 1,500 feet of the boundary of the public space, as measured along the right of way line from the nearest common point of the space's boundary and the right of way. This limitation applies:

(1) on both sides of a highway that is on a nonfreeway primary system; and

(2) on the side of a highway on which the public space is located if the highway is on an interstate or freeway primary system.

(c) In this section, "public space" means publicly owned land that is designated by a governmental entity as a park, forest, playground, scenic area, recreation area, wildlife or waterfowl refuge, historic site, or similar public space.

§21.179. Location of Commercial Signs Near Certain Highway Facilities.

(a) A sign may not be erected along a regulated highway that is outside an incorporated municipality in an area that is adjacent to or within 1,000 feet of:

(1) an interchange or intersection; or

(2) a rest area, ramp, or the highway's acceleration or deceleration lanes.

(b) The distance from a ramp or acceleration or deceleration lane is measured from the theoretical gore at the beginning of the entrance or exit ramp and from the theoretical gore at the conclusion of the entrance or exit ramp. If a theoretical gore is not present, the physical gore is used for the measurement.

(c) The distance from a rest area is measured along the right of way line from the outer edges of the rest area boundary abutting the right of way.

(d) An area is adjacent to a rest area or a highway's acceleration or deceleration lane if the area is between the two points of measurement listed in subsection (b) or (c), as appropriate.

(e) For a sign erected before September 1, 2024, the part of the sign face nearest a highway may not be within five feet of the highway's right of way line.

(f) For a sign erected after September 1, 2024, the part of the sign face nearest a highway may not be within either:

(1) 5 feet of the highway's right of way line; or

(2) 10 feet of overhead transmission or distribution lines.

(g) All measurements related to the right of way are taken from a point perpendicular to the highway and along the highway right of way.

(h) In this section the following words have the associated meanings:

(1) Interchange--A junction of two or more roadways, including frontage roads with on and off ramps, in conjunction with one or more grade separations that provides for the uninterrupted movement of traffic between two or more roadways or highways on different levels without the crossing of traffic streams.

(2) Intersection--The common area at the junction of two highways that are on the primary system. The common area includes the area within the lateral boundary lines of the roadways.

(3) Physical gore--The point at which the pavement of the ramp separates from or joins with the pavement of the roadway.

(4) Rest area--An area of public land designated by the department as a rest area, comfort station, picnic area, or roadside park.

(5) Theoretical gore--The point at which the painted lane line of the ramp separates from or joins with the painted lane line of the roadway.

§21.180. Spacing of Commercial Signs.

(a) Permitted signs on the same side of a regulated freeway, including freeway frontage roads, may not be erected closer than 1,500 feet apart.

(b) For a highway on a non-freeway primary system and outside the incorporated boundaries of a municipality, permitted signs on the same side of the highway may not be erected closer than 750 feet apart.

(c) For a highway on a non-freeway primary system highway and within the incorporated boundaries of a municipality, permitted signs on the same side of the highway may not be erected closer than 300 feet apart.

(d) A permitted sign that is located within the incorporated boundaries of a certified city on a highway on a freeway primary system may not be erected closer than:

(1) 1,500 feet to another sign that is on the same side of the highway and outside the incorporated boundaries of a municipality; or

(2) 500 feet to another sign that is on the same side of the highway and inside the incorporated boundaries of a municipality.

(e) A permitted sign that is located within the incorporated boundaries of a municipality on a highway that is on a non-freeway primary system may not be erected closer than 750 feet to another sign that is on the same side of the highway and outside the incorporated boundaries of a municipality.

(f) For the purposes of this section, the space between commercial signs is measured between points along the right of way of the highway perpendicular to the center of the signs.

(g) For the purposes of this section, a municipality's extraterritorial jurisdiction is not considered to be included within the boundaries of the municipality.

(h) The spacing requirements of this section do not apply to commercial signs separated by buildings, natural surroundings, or other obstructions in a manner that causes only one of the signs to be visible within the specified spacing area.

(i) A permitted sign that is being displaced by a highway construction project will not be considered in determining the spacing for a new sign application.

§21.181. Commercial Sign Height Restrictions.

(a) Except as provided by this section, a commercial sign may not be erected or maintained that exceeds an overall height of 60 feet.

(b) A roof sign that has a solid sign face surface may not at any point exceed 24 feet above the roof level.

(c) A roof sign that has an open sign face in which the uniform open area between individual letter or shapes is not less than 40 percent of the total gross area of the sign face may not at any point exceed 40 feet above the roof level.

(d) The lowest point of a projecting roof sign or a wall sign must be at least 14 feet above grade.

(e) For the purposes of this section, height is measured from the department's determination of grade level of the centerline of the main-traveled way closest to the sign face, at a point perpendicular to the sign location. A frontage road of a controlled access highway or freeway is not considered the main-traveled way for purposes of this subsection. In the event that the main-traveled way that is perpendicular to the sign structure is below grade, sign height will be measured from the base of the sign structure.

(f) The height measurement does not include any renewable energy device such as solar panels or wind turbines that are attached to the sign structure above the sign face to improve the energy efficiency of the sign structure.

(g) This subsection applies only to a sign lawfully erected before and existing on March 1, 2017. The height of the sign, excluding a cutout that extends above the rectangular border of the sign, may not exceed the height of the sign on March 1, 2017, or 85 feet. After a new or amended permit is obtained from the department, the sign may be rebuilt, at the location where the sign existed on March 1, 2017, and at a height that does not exceed the maximum height specified in this subsection for the sign on that date. A sign structure described by this subsection must otherwise comply with this subchapter.

§21.182. Effect of Sign Height Violations on Certain Persons.

(a) This section applies only to a license holder that has 100 or more permitted signs.

(b) If a permit of the license holder has been cancelled under §21.174 of this subchapter (relating to Cancellation of Permit) for a violation of §21.181 of this subchapter (relating to Commercial Sign Height Restrictions) and the cancellation was not contested or was affirmed under §21.174(g) of this subchapter (relating to Cancellation of Permit),the department will forward to the commission all permit applications received from the license holder under §21.154 of this subchapter (relating to Permit Application) or §21.170 of this subchapter (relating to Amended Permit) after the date of the cancellation or order affirming the cancellation, as appropriate, and until all signs for which the license holder has a permit comply with §21.181 of this subchapter (relating to Commercial Sign Height Restrictions).

(c) The commission, after notice and a hearing in compliance with Transportation Code, §391.0381, may deny an application forwarded to it under this section.

§21.183. Lighting of and Movement on Commercial Signs.

(a) A sign may not contain or be illuminated by flashing, intermittent, or moving lights, including any type of screen using animated or scrolling displays, unless the permit for the sign specifies that the sign is an electronic sign.

(b) A conforming sign may be illuminated. The illumination must be by upward or downward lighting of no more than 4 luminaires per direction of the sign face or faces of the structure.

(c) Lights that are a part of or illuminate a sign:

(1) must be shielded, directed, and positioned to prevent beams or rays of light from being directed at any portion of the traveled ways of a regulated highway;

(2) may not be of an intensity or brilliance that causes vision impairment of a driver of any motor vehicle on a regulated highway or otherwise interferes with such a driver's operation of a motor vehicle; and

(3) may not obscure or interfere with the effectiveness of an official traffic sign, device, or signal.

(d) A temporary protrusion may not be illuminated by flashing or moving lights or enhanced by reflective material that creates the illusion of flashing or moving lights.

(e) Reflective paint or reflective disks may be used on a sign face only if the paint or disks do not:

(1) create the illusion of flashing or moving lights; or

(2) cause an undue distraction to the traveling public.

(f) A neon light may be used on a sign face only if:

(1) the light does not flash;

(2) the light does not cause an undue distraction to the traveling public; and

(3) the permit for the sign specifies that the sign is an illuminated sign.

(g) A sign, including an electronic sign, may contain a temporary protrusion area of the sign face that displays only numerical characters and that satisfies this subsection and the requirements of §21.176 of this subchapter (relating to Commercial Sign Face Size and Positioning). The display on the temporary protrusion may be a digital or other electronic display, but if so:

(1) it must consist of a stationary image;

(2) it may not change more frequently than four times in any 24-hour period; and

(3) the process of any change of display must be completed within two minutes.

(h) If the department finds that an electronic sign causes glare or otherwise impairs the vision of the driver of a motor vehicle or otherwise interferes with the operation of a motor vehicle, the owner of the sign, within 12 hours of a request by the department, shall reduce the intensity of the sign to a level acceptable to the department.

§21.184. Repair and Maintenance of Commercial Signs.

(a) The following maintenance activities do not require an amended permit:

(1) the replacement of nuts and bolts;

(2) nailing, riveting, or welding;

(3) cleaning and painting;

(4) manipulation of the sign structure to level or plumb it;

(5) changing of the advertising message;

(6) upgrading existing lighting for an energy efficient lighting system; and

(7) replacing components of the structure, other than poles, with like materials.

(b) The following are considered to be customary maintenance activities that may be made but require an amended permit under §21.170 of this subchapter (related to Amended Permit) before the initiation of such an activity:

(1) replacement of poles, but only if not more than one-half of the total number of poles of the sign structure are replaced in any 12-month period and the replacement pole is made of the same material as the pole being replaced; and

(2) adding a catwalk that meets Occupational Safety and Health Administration guidelines to the sign structure.

(c) An activity that is not described by subsection (a) or (b) of this section is a substantial change that may be made only if the sign is a conforming sign and the license holder obtains an amended permit before the initiation of the activity.

(d) The holder of a permit for a nonconforming sign may apply for an amended permit to:

(1) perform eligible customary maintenance under subsection (b) of this section; or

(2) conform the sign structure to both applicable location and structure requirements.

§21.185. Damage to or Destruction of Commercial Sign.

(a) If a sign is damaged and an activity to be used for its repair requires an amended permit under §21.184 of this subchapter (relating to Repair and Maintenance of Commercial Signs), the license holder must obtain the amended permit under §21.170 of this subchapter (related to Amended Permit) before beginning the repair.

(b) The department will deny the application for an amended permit to repair a sign if the department determines that the sign has been destroyed under §21.186 of this subchapter (relating to Determination that Sign is Destroyed).

§21.186. Determination That Sign is Destroyed.

(a) The department will determine that a damaged sign has been destroyed if:

(1) one-half or more of the total number of poles of the sign structure require repair or replacement; or

(2) the pole of a monopole structure is bent or broken, its support is twisted, or its footing is damaged.

(b) To dispute the department's determination that a sign has been destroyed, the sign owner must file with the department documentation before the 90th day after the date that the notice of the determination was sent. Documentation provided by a person licensed to practice engineering in this state that demonstrates that the sign meets the requirements of the International Building Code, Appendix H, §H105, Design and Construction.

(c) If a permit is canceled under §21.174(a)(2) of this subchapter (relating to Cancellation of Permit), the remaining sign structure must be dismantled and removed without cost to the state.

(d) If a decision to cancel a permit is appealed, the sign may not be rebuilt or repaired during the appeal process.

(e) If a sign is rebuilt or repaired in violation of this section, the department may take one or more of the following actions:

(1) cancel the sign's permit;

(2) require removal of the sign; or

(3) impose penalties on the license holder.

§21.187. Authority to Rebuild a Commercial Sign.

(a) Unless the department determines under §21.186 of this subchapter (relating to Determination That Sign is Destroyed) that a damaged sign has been destroyed, an amended permit is not required to rebuild a conforming sign that has been damaged by a motor vehicle collision or an act of God, including wind or a natural disaster.

(b) Before a permit holder may begin rebuilding a sign under subsection (a) of this section, the permit holder must obtain from the department, within one year after the date that the damage to the sign occurred, written confirmation that the sign qualifies for the exception provided by that subsection.

(c) In this section, "rebuild" means to re-erect a sign at its permitted location without any changes from the sign as it existed before being damaged.

§21.188. Destruction of Vegetation and Access from Right of Way Prohibited.

(a) A person may not:

(1) trim or destroy a tree or other vegetation on the right of way for any purpose related to this subchapter; or

(2) erect or maintain a sign from the right of way.

(b) The department will deny a permit application or cancel an existing permit under §21.174 of this subchapter (relating to Cancellation of Permit) if the permit holder, or someone acting on behalf of the permit holder, violates this section.

(c) Subsection (a)(2) of this section does not apply to the maintenance of a sign if:

(1) the state right of way is the only available access for a sign on railroad right of way to which §21.168(b) of this subchapter (relating to Continuance of Nonconforming Commercial Signs) applies; and

(2) the sign owner notifies the department and obtains approval of the department before accessing the sign for maintenance.

(d) It is not a violation to trim the portion of the tree or vegetation that encroaches onto private property at the private property line as long as the trimming occurs from the private property.

§21.189. Fraudulent Activity.

(a) If the department believes that a person has performed an act involving fraud to obtain or amend a permit, to obtain or renew a license, or to cure a violation under this subchapter, the department will request an investigation by the department's Compliance Division for a determination.

(b) If the investigation under subsection (a) of this section results in a finding of fraud, the department will, as appropriate:

(1) immediately cancel the permit;

(2) immediately cancel any approved changes to a sign resulting from an amended permit application;

(3) resume any enforcement actions related to the permit or sign; or

(4) immediately revoke the license under §21.152 of this subchapter (relating to License Revocation).

(c) In addition to an action under subsection (b) of this section and any other penalties assessed under this subchapter, the department will impose an administrative penalty under Transportation Code,

§391.0355, in the amount of $1,000 on a person that the investigation under subsection (b) of this section finds submitted a fraudulent document to the department. The penalty imposition will be added to any ongoing contested case involving the fraud claim or if there is not a contested case, the department will impose the administrative penalties under the procedure set out in §21.191(d)-(f) of this subchapter (relating to Administrative Penalties for Commercial Signs).

§21.190. Unlawful Sign.

(a) An unlawful sign is a commercial sign that:

(1) is erected or maintained without obtaining a permit required under §21.153 of this subchapter (relating to Permit Required);

(2) is not removed after its permit is canceled under §21.173 of this subchapter (relating to Void Permit) or §21.174 of this subchapter (relating to Cancellation of a Permit); or

(3) is not erected in compliance with §21.159 of this subchapter (relating to Decision on Application).

(b) The department will issue a notice by certified mail to the person that the department identifies as being responsible for an unlawful sign. The notice will state:

(1) the reason the sign has been determined to be unlawful; and

(2) the date by which the person is required to obtain a permit for or remove the sign if it is not eligible for a permit.

(c) If the person responsible for the sign does not obtain a permit or remove the sign before the date specified under subsection (b)(2) of this section, the department will:

(1) demand the sign's removal at no cost to the state; and

(2) impose administrative penalties under §21.191 of this subchapter (relating to Administrative Penalties for Commercial Signs).

(d) If the sign is not removed before the 46th day after the date that the demand is sent under this subsection (c)(1) of this section, the department will seek an injunction for the sign to be removed. The department will rescind the removal demand if the department determines the demand was issued incorrectly.

§21.191. Administrative Penalties for Commercial Signs.

(a) The department will impose administrative penalties, as authorized under Transportation Code, §391.0355, against a person who violates Transportation Code, Chapter 391 or this subchapter. Penalties accrue beginning on the day that the notice of administrative penalty is sent to a person.

(b) The amount of the administrative penalty may not exceed $1,000 for each violation. A separate penalty may be collected for each day a continuing violation occurs.

(c) In addition to the penalties assessed under subsection (b) of this section, the department may seek to recover the cost of repairing any damage to the right of way done by the sign owner or on the sign owner's behalf.

(d) On the determination to seek administrative penalties, the department will mail a notice of the administrative penalties to the last known address of the person. The notice will clearly state:

(1) the reasons for the administrative penalty;

(2) the amount of the administrative penalty; and

(3) the right of the holder of the permit to request an administrative hearing.

(e) A request for an administrative hearing under this section must be made in writing and received by the department not later than the 90th day after the date the notice of administrative penalties is sent.

(f) If timely requested, an administrative hearing will be conducted in compliance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case).

§21.192. Local Control of Commercial Signs.

(a) The department may authorize a political subdivision, as a certified city, to exercise control over commercial signs in its jurisdiction. If the political subdivision receives approval under this section, it will be listed as a certified city and a permit issued by that political subdivision is acceptable instead of a permit issued by the department within the approved area.

(b) To be considered for authorization under this section, the political subdivision must submit to the department:

(1) a copy of its sign regulations;

(2) a copy of its zoning regulations;

(3) information about the number of personnel who will be dedicated to the program and what type of records will be maintained, including whether the political subdivision maintains an inventory of signs that can be provided to the department in an electronic format that is acceptable to the department; and

(4) an enforcement plan that includes the removal of unlawful signs.

(c) The department, after consulting with the Federal Highway Administration, will determine whether a political subdivision has established and will enforce within its corporate limits standards that are consistent with the purposes of the Highway Beautification Act of 1965, 23 United States Code §131, federal regulations adopted under that act, and the Texas Federal-State Agreement on Outdoor Advertising, including the federal requirements for size, lighting, and spacing. The authorization under this section does not include the area in a municipality's extraterritorial jurisdiction.

(d) The department may meet with a political subdivision to ensure that it is enforcing the standards and criteria in compliance with subsection (c) of this section.

(e) After approval under this section, the political subdivision shall:

(1) provide to the department:

(A) a copy of each amendment to its sign and zoning regulations when the amendment is proposed and adopted; and

(B) a copy of any change to its corporate limits and its extraterritorial jurisdiction, if covered by the approval;

(2) annually provide to the department:

(A) an electronic copy of the sign inventory; and

(B) report of the number of sign permits issued and the status of all pending enforcement actions; and

(3) participate in at least one video conference or teleconference sponsored by the department each year.

(f) The political subdivision may:

(1) set and retain the fees for issuing a sign permit; and

(2) establish the period for which a sign permit is effective.

(g) The department may conduct an on-site compliance monitoring review every two years.

(h) The department may withdraw the approval of a political subdivision given under this section if the department determines that the political subdivision does not have an effective sign control program. The department will consider whether:

(1) the standards and criteria of the political subdivision's sign regulations continue to meet the requirements of subsection (c) of this section;

(2) the political subdivision maintains an accurate sign inventory and annually provides the inventory to the department in an electronic format; and

(3) the political subdivision enforces the sign regulations and annually reports enforcement actions as required.

(i) The department may reinstate a political subdivision's authority on the showing of a new plan that meets the requirements of subsection (c) of this section.

§21.193. Fees Nonrefundable.

A fee paid to the department under this subchapter is nonrefundable.

§21.194. Property Right Not Created.

Issuance of a permit or license under this subchapter does not create a contract or property right in the permit or license.

§21.195. Complaint Procedures.

(a) The department will accept and investigate all written complaints on a specific sign structure, sign company, or any other issue under the jurisdiction of the highway beautification program.

(b) The complaints can be filed through the department's website, www.txdot.gov. or by mail sent to: Texas Department of Transportation, Commercial Signs Regulatory Program Section, Right of Way Division, P.O. Box 5075, Austin, Texas 78763-5075.

(c) If the complaint involves a sign structure or a sign company, the department will notify the owner of the sign structure or sign company of the complaint and the pending investigation not later than the 15th day after the date of receipt of the complaint. The notification will include a copy of the complaint and the complaint investigation procedures.

(d) If the complaint included contact information, the department will provide the complainant with a copy of the complaint procedures not later than the 15th day after the date of the receipt of the complaint.

(e) If the complaint involves fewer than 10 sign structures, the department will investigate the complaint and make a finding not later than the 30th day after the date of the receipt of the complaint. If the complaint involves 10 or more sign structures or is an investigation of a sign company or any other sign matter, the department will make a finding not later than the 90th day after the date of the receipt of the complaint.

(f) If the department is unable to meet the deadlines provided by subsection (e) of this section, the department will notify the complainant, the sign owner, or sign company of the delay and will provide a date for the completion of the investigation.

(g) After the investigation is completed, the department will provide the complainant, sign owner, or sign company the findings of the investigation and a statement of whether the department will initiate administrative enforcement actions.

§21.196. Requirements For an Electronic Sign.

(a) Each message on an electronic sign must be displayed for at least eight seconds. A change of message must be accomplished within two seconds and must occur simultaneously on the entire sign face.

(b) An electronic sign must:

(1) contain a default mechanism that freezes the sign in one position if a malfunction occurs; and

(2) automatically adjust the intensity of its display according to natural ambient light conditions.

(c) The owner of an electronic sign shall coordinate with state and local authorities to display, when appropriate, emergency information important to the traveling public, such as Amber Alerts or alerts concerning terrorist attacks or natural disasters. Emergency information messages must remain in the advertising rotation according to the protocols of the agency that issues the information.

(d) The department will share the contact information required by §21.154(e) of this subchapter (relating to Permit Application) with the appropriate local authority that has jurisdiction over the location of the electronic sign.

§21.197. Previously Relocated Commercial Signs.

If a commercial sign was relocated under a permit that authorized the relocation and was issued before September 1, 2024, and the sign met all of the location requirements applicable on that date, the sign is considered to remain a conforming sign as long as the location of the sign is unchanged and the sign satisfies all other applicable requirements of this subchapter.

§21.198. Credit for Acquired Commercial Sign.

(a) A commercial sign that has been timely removed from a department construction project site may be erected in compliance under §21.199 of this subchapter (relating to Permit Issued with Credit for Acquired Commercial Sign) and §21.200 of this subchapter (relating to Acquired Commercial Sign within Certified Cities) if the sign is legally erected and maintained and will be within the highway right of way as a result of a highway construction project or, under exceptional circumstances as determined by the executive director or the executive director's deputy if the sign is legally erected and maintained and the relocation will further the intended purposes of the Highway Beautification Act of 1965 (23 U.S.C. §§131, 136, 319).

(1) To establish timely removal, the permit holder must do the following:

(A) Verify ownership of the commercial sign structure. If the sign structure is not the property of the fee owner, verify ownership of the sign structure by providing a Disclaimer of Interest signed by the fee owner, or a copy of the permit holder's lease or easement that states all ownership in the structure is vested in the permit holder;

(B) Negotiate for the sale of and convey the commercial sign structure to the State of Texas prior to the date of a special commissioners' hearing in a proceeding brought to acquire the commercial sign through eminent domain, in exchange for a purchase price agreed to by the permit holder and the department, minus a retention/salvage value;

(C) Agree in the conveyance document to retain possession of and title to the commercial sign structure and its associated credit;

(D) Agree in the conveyance document to remove the commercial sign structure by the deadline provided by the department in a Notice to Vacate; and

(E) Remove the entire commercial sign structure by the deadline provided in the Notice to Vacate.

(2) In the event the permit holder fails to retain and remove the commercial sign structure within the time prescribed in the Notice to Vacate, the permit holder will not be eligible for an acquired credit.

(3) A sign is eligible for a credit only if the structure has remained in its present location from the time the owner received notice of eminent domain proceedings until the above-ground portion of the structure is removed entirely from the property pursuant to the Notice to Vacate or earlier upon written approval by the department. A sign that is moved to the acquired parcel's remainder in not eligible for an acquired sign credit.

§21.199. Permit Issued with Credit for Acquired Commercial Sign.

(a) To obtain a permit using a credit issued under §21.198 of this subchapter (relating to Credit for Acquired Commercial Sign), the license holder must submit a new sign permit application under §21.154 of this subchapter (relating to Permit Application) and indicate that the permit application is using an acquired sign credit. The location of the sign for which a permit is issued under this section must be within a zoned commercial or industrial area under §21.161 of this subchapter (relating to Zoned Commercial or Industrial Area) or an unzoned commercial or industrial area, under §21.162 of this subchapter (relating to Unzoned Commercial or Industrial Area).

(b) The department will issue a permit under this section for a sign under §21.179 of this subchapter (relating to Location of Commercial Signs Near Certain Highway Facilities) except as provided by this subsection.

(1) A sign may not be erected along a regulated highway that is outside an incorporated municipality in an area that is adjacent to or no less than 500 feet from:

(A) an interchange or intersection; or

(B) a rest area, ramp, or the highway's acceleration or deceleration lanes.

(2) A sign may be located not less than 500 feet from a public space that is adjacent to a regulated highway:

(A) on either side of a regulated highway that is on a nonfreeway primary system; or

(B) on the side of the highway adjacent to the public space if the regulated highway is on an interstate or freeway primary system;

(3) for a highway on the interstate or freeway primary system, not closer than 500 feet to another permitted sign on the same side of the highway;

(4) for a highway on the nonfreeway primary system and outside of a municipality, no closer than 300 feet to another permitted sign on the same side of the highway;

(5) for a highway on the nonfreeway primary system and within the incorporated boundaries of a municipality, no closer than 100 feet to another permitted sign on the same side of the highway.

(c) The department will not issue a permit under this section for a sign to be located on a rural road regulated by Subchapter K of this chapter (relating to Control of Signs along Rural Roads).

(d) A sign for which a permit is issued under this section must meet all other requirements of this subchapter that do not conflict with this section.

§21.200. Acquired Commercial Sign within Certified Cities

If an existing sign is located within the incorporated boundaries of a municipality that is approved by the department to control commercial signs under §21.192 of this subchapter (relating to Local Control of Commercial Signs) and the sign will be relocated within the incorporated boundaries of the same municipality, permission to erect the sign must be obtained only from the municipality in accordance with the municipality's sign and zoning ordinances, and the department will not issue a permit to erect a sign unless the permit owner provides an official document from the city stating that relocation within the city is not allowed.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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43 TAC §§21.143 - 21.145, 21.150, 21.152 - 21.164, 21.166 - 21.193, 21.195, 21.197 - 21.206

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically: Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of commercial signs on primary roads; Transportation Code, §391.0355, which provides authority for the commission to set fees for administrative penalties in association with violation of commercial sign regulations; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of commercial sign licenses; Transportation Code, §391.068, which provides authority for the commission to prescribe permit requirements and set fees for commercial sign permits; Transportation Code, §394.004, which provides authority to establish rules to regulate the orderly and effective display of Outdoor Signs on rural roads; and Transportation Code, §394.0205, which provides authority to establish rules to standardize forms and regulate the issuance of off-premise sign permits and licenses.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.143. Permit Required.
§21.144. License Required.
§21.145. Prohibited Signs.
§21.150. Continuance of Nonconforming Commercial Signs.
§21.152. License Application.
§21.153. License Issuance.
§21.154. License Not Transferable.
§21.155. License Renewals.
§21.156. License Fees.
§21.157. Temporary Suspension of License.
§21.158. License Revocation.
§21.159. Permit Application.
§21.160. Applicant's Identification of New Commercial Sign's Proposed Site.

§21.161. Site Owner's Consent; Withdrawal.

§21.162. Permit Application for Certain Preexisting Commercial Signs.

§21.163. Permit Application Review.

§21.164. Decision on Application.

§21.166. Commercial Sign Location Requirements.

§21.167. Erection and Maintenance from Private Property.

§21.168. Conversion of Certain Authorization to Permit.

§21.169. Notice of Commercial Sign Becoming Subject to Regulation.

§21.170. Appeal Process for Permit Denials.

§21.171. Permit Expiration.

§21.172. Permit Renewals.

§21.173. Transfer of Permit.

§21.174. Amended Permit.

§21.175. Permit Fees.

§21.176. Cancellation of Permit.

§21.177. Commercial or Industrial Area.

§21.178. Zoned Commercial or Industrial Area.

§21.179. Unzoned Commercial or Industrial Area.

§21.180. Commercial or Industrial Activity.

§21.181. Abandonment of Sign.

§21.182. Commercial Sign Face Size and Positioning.

§21.183. Signs Prohibited at Certain Locations.

§21.184. Location of Commercial Signs Near Public Spaces.

§21.185. Location of Commercial Signs Near Certain Facilities.

§21.186. Location of Commercial Signs Near Right of Way.

§21.187. Spacing of Commercial Signs.

§21.188. Wind Load Pressure.

§21.189. Commercial Sign Height Restrictions.

§21.190. Lighting of and Movement on Commercial Signs.

§21.191. Repair and Maintenance of Commercial Signs.

§21.192. Permit for Relocation of Commercial Sign.

§21.193. Location of Relocated Commercial Sign.

§21.195. Relocation of Commercial Sign within Certified Cities.

§21.197. Discontinuance of Nonconforming Commercial Sign Due to Destruction.

§21.198. Order of Removal.

§21.199. Destruction of Vegetation and Access from Right of Way Prohibited.

§21.200. Local Control of Commercial Signs.

§21.201. Fees Nonrefundable.

§21.202. Property Right Not Created.

§21.203. Complaint Procedures.

§21.204. Administrative Penalties for Commercial Signs.

§21.205. Curable Commercial Sign Permit Violations.

§21.206. Requirements for an Electronic Sign.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

43 TAC §§21.409, 21.417, 21.423 - 21.426, 21.435, 21.448, 21.450, 21.452, 21.453, 21.457

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically: Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of commercial signs on primary roads; Transportation Code, §391.0355, which provides authority for the commission to set fees for administrative penalties in association with violation of commercial sign regulations; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of commercial sign licenses; Transportation Code, §391.068, which provides authority for the commission to prescribe permit requirements and set fees for commercial sign permits; Transportation Code, §394.004, which provides authority to establish rules to regulate the orderly and effective display of Outdoor Signs on rural roads; and Transportation Code, §394.0205, which provides authority to establish rules to standardize forms and regulate the issuance of off-premise sign permits and licenses.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.409. Permit Application.

(a) To obtain a permit for a sign, a person must file an electronic application through the department's website, www.txdot.gov [~~in a form prescribed by the department~~]. The application, at a minimum, must include:

(1) the complete name and address of the license holder [~~applicant~~];

(2) the complete name and address of the authorized agent of the license holder, if an agent is used [~~original signature of the applicant~~];

(3) the proposed location and description of the sign;

(4) the complete legal name, email [~~and~~] address, and telephone number of the owner of the designated site;

(5) the appraisal district property tax identification number of the designated site;

(6) the original signature of the site owner or the site owner's authorized representative, with appropriate documentation from the site owner authorizing the person to act as the site owner's representative on the application demonstrating:

(A) consent to the erection and maintenance of the sign; and

(B) right of entry onto the property of the sign location by the department or its agents;

(7) information that details how and the location from which the sign will be erected and maintained; and

(8) additional information the department considers necessary to determine eligibility.

(b) The application must be accompanied by the fee prescribed by §21.424 of this subchapter (relating to Permit Fees). [:]

[(1) notarized;]

[(2) sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043; and]

[(3) accompanied by the fee prescribed by §21.424 of this subchapter (relating to Permit Fees).]

(c) To facilitate a site's location during the initial inspection process, the application must identify the sign site by:

(1) GPS coordinates in latitude and longitude, accurate within 50 feet; or

(2) a sketch or aerial map depicting distances to nearby landmarks.

§21.417. Erection and Maintenance from Private Property.

(a) The department will not issue a permit for a sign unless it can be erected and [or] maintained from private property that the license holder accesses by: [.]

(1) a permitted driveway on a state-maintained roadway;

(2) a roadway that is not state maintained; or

(3) documented legal access through adjoining private property.

(b) If, after a permit is issued, the department finds [sufficient] evidence that the license holder accessed private property on which the sign is located by means other than one listed in subsection (a) of this section, the department will cancel the permit under §21.425 of this subchapter (relating of Cancellation of Permit). [licensee destroyed vegetation on the right of way for a proposed sign site, the permit application will be denied.]

(c) This section does not apply to the maintenance of a sign that is on railroad right of way and to which §21.408(a) of this subchapter (relating to Continuance of Nonconforming Signs) applies if:

(1) crossing the state's right of way line is the only available access to the sign; and

(2) the permit holder notifies and obtains approval of the department before accessing the sign for maintenance.

§21.423. Amended Permit.

(a) To perform customary maintenance or to make substantial changes to the sign or sign structure under §21.434 of this subchapter (relating to Repair and Maintenance) a permit holder must obtain an amended permit before initiating any action to the sign structure.

(b) To obtain an amended permit, the permit holder must submit an amended permit application on a form prescribed by the department. The amended permit application must provide the information required under §21.409 of this subchapter (relating to Permit Application) applicable to an amended permit and indicates the change from the information in the original application for the sign permit. The amended application is not required to obtain the signature of the land owner.

(c) The new sign face size, configuration, height, lighting, or location must meet all applicable requirements of this subchapter.

(d) The holder of a permit for a nonconforming sign may apply for an amended permit to perform eligible customary maintenance under §21.434 of this subchapter. An amended permit will not be issued for a substantial change, as described by §21.434(c) of this subchapter, to a nonconforming sign.

(e) Making a change to a sign, except as provided by subsection (h) of this section, without first obtaining an amended permit is a violation of this subchapter and will result in an administrative enforcement action.

(f) The department will make a decision on an amended permit application within 60 days of the date receipt of the amended permit application. If the decision cannot be made within the 60 day period the department will notify the applicant of the delay, provide the reason for the delay, and provide an estimate for when the decision will be made.

(g) If an amended permit application is denied, the applicant may file a request with the executive director for an appeal using the same procedures found in §21.167 [§21.170] of this chapter (relating to Appeal Process for Application [Permit] Denials).

(h) In the event of a natural disaster the department may waive the requirement that a required amended permit be issued prior to the repair of a conforming sign. If the department waives this requirement the amended permit must be submitted within 60 days of the completion of the repairs. If the repairs are in violation of these rules or the permit holder fails to submit the amended permit application the sign is subject to enforcement and removal actions.

(i) An amended permit is valid for one year after the date of the department's approval of the amended permit application. [The provisions of this subchapter relating to a permit, including §21.421(g) of this subchapter (relating to Permit Renewals), apply to the amended permit.] The date of the department's approval of the amended permit application is considered to be the amended permit's date of issuance.

(j) The documentation and fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

(k) If a sign is built with a smaller face than the size shown on the permit application or if the face is reduced in size after it is built, an amended permit will be required to increase the size of the face.

§21.424. Permit Fees.

(a) The amounts of the fees related to permits under this subchapter are:

(1) $100 for a new [an original] or amended permit application for a sign;

[(2) $75 for the renewal of a permit;]

(2) [(3)] $25 for the transfer of a permit; and

(3) [(4)] $10 [$25] for a new or amended permit application for a nonprofit sign [replacement sign permit plate].

[(b) In addition to the $75 annual renewal fee, an additional late fee of $100 is required for a renewal of a permit that is received before the 46th day after the permit expiration date.]

(b) [(c)] A fee prescribed by this section is payable by credit card or electronic check[, cashier's check, or money order]. If payment

[~~a check or money order~~] is dishonored upon presentment, the permit, amended permit [~~renewal~~], or transfer is void.

§21.425. Cancellation of Permit.

(a) The department will cancel a permit for a sign if the sign:

(1) is removed, unless the sign is removed and re-erected at the request of a condemning authority;

(2) is not maintained in accordance with this subchapter or Transportation Code, Chapter 394;

(3) is damaged beyond repair, as determined under §21.439 of this subchapter (relating to Discontinuance of Sign Due to Destruction);

(4) is abandoned, as determined under §21.427 of this subchapter (relating to Abandonment of Sign);

(5) has substantial changes made to a non-conforming sign in violation of this subchapter or Transportation Code, Chapter 394;

(6) is built by an applicant who uses false information on a material issue of the permit application;

(7) is erected, repaired, substantially changed, or maintained in violation of this subchapter, including under §21.417 of this subchapter (relating to Erection and Maintenance from Private Property), §21.423 of this subchapter (relating to Amended Permit), or §21.441 of this subchapter (relating to Destruction of Vegetation and Access from Right of Way Prohibited), or in violation of Transportation Code, Chapter 394;

(8) has been made more visible by the permit holder clearing vegetation from the highway right of way in violation of §21.441 of this subchapter;

(9) is in an unzoned commercial or industrial area and the department has evidence that an activity supporting the unzoned commercial or industrial area was created primarily or exclusively to qualify the area as an unzoned commercial or industrial area, and that no activity has been conducted at the site within one year; or

(10) site cannot be accessed from private property.

(b) The department may cancel a permit for a sign if the sign:

(1) is erected after the effective date of this section and is more than twenty feet from the location described in the permit application, or is built within twenty feet of the location described in the permit application but at a location that does not meet all spacing requirements of this chapter or other assertions contained in the permit application;

(2) has customary repairs made to a non-conforming sign, or substantial changes made to a conforming sign without obtaining a required amended permit under §21.423 of this subchapter (relating to Amended Permit); or

(3) is erected, repaired, or maintained from the right of way. [~~;~~]

[~~(4) does not have the permit plate properly attached under §21.414 of this subchapter (relating to Sign Permit Plate).~~]

(c) Before initiating an enforcement action under this section, the department will notify a sign owner in writing of a violation of subsection (b) of this section and will give the sign owner 60 days to correct the violation, provide proof of the correction, and if required, obtain an amended permit from the department.

(d) Upon determination that a permit should be canceled, the department will mail a notice of cancellation to the address of the record license holder. The notice must state:

(1) the reason for the cancellation;

(2) the effective date of the cancellation;

(3) the right of the permit holder to request an administrative hearing on the cancellation; and

(4) the procedure for requesting a hearing and the period for filing the request.

(e) A request for an administrative hearing under this section must be in writing and delivered to the department within 45 days after the date that the notice of cancellation is received.

(f) If timely requested, an administrative hearing will be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case) and the cancellation will be abated until the cancellation is affirmed by order of the commission.

(g) A permit holder may voluntarily cancel a permit by submitting a request in writing after the sign for which the permit was issued has been removed. Subsections (d) - (f) of this section do not apply to a permit voluntarily canceled under this subsection.

(h) The department will notify the landowner identified on the permit application of a cancellation enforcement action. The notice is for informational purposes only, and does not convey any rights to the landowner. The landowner may not appeal the cancellation unless the landowner is also the permit holder.

§21.426. Administrative Penalties.

(a) The department may impose administrative penalties against a person who intentionally violates Transportation Code, Chapter 394 or this subchapter.

(b) The amount of the administrative penalty may not exceed the maximum amount of a civil penalty that may be imposed under Transportation Code, §394.081. [~~and will based on the following:~~

[~~(1) $150 for a violation of a permit plate requirement under §21.414 of this subchapter (relating to Sign Permit Plate);~~]

[~~(2) $250 for a violation of:~~]

[~~(A) a registration requirement of §21.407 of this subchapter (relating to Existing Off-Premise Signs); or~~]

[~~(B) erecting the sign at the location other than the location specified on the application, except that if the actual sign location does not conform to all other requirements the department will seek cancellation of the permit;~~]

[~~(3) $500 for:~~]

[~~(A) maintaining or repairing the sign from the state right of way; or~~]

[~~(B) performing customary maintenance on any sign or substantial maintenance on a conforming sign without first obtaining an amended permit; or~~]

[~~(4) $1000 for erecting a sign from the right of way.~~]

(c) In addition to the penalties assessed under subsection (b) of this section, the department may seek to recover the cost of repairing any damage to the right of way done by the sign owner or on the sign owner's behalf.

(d) Before initiating an enforcement action under this section, the department will notify the sign owner in writing of a violation of

subsection (b)(1) or (2)(B) of this section and will give the sign owner 60 days to correct the violation and provide proof of the correction to the department.

(e) Upon determination to seek administrative penalties the department will mail a notice of the administrative penalties to the last known address of the permit holder. The notice must clearly state:

(1) the reasons for the administrative penalties;

(2) the amount of the administrative penalty; and

(3) the right of the holder of the permit to request an administrative hearing.

(f) A request for an administrative hearing under this section must be made in writing and delivered to the department within 45 days after the date of the receipt of the notice.

(g) If timely requested, an administrative hearing shall be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case), and the imposition of administrative penalties will be abated unless and until that action is affirmed by order of the commission.

§21.435. Permit for Relocation of Sign.

(a) A sign may be relocated in accordance with this section, §21.436 of this subchapter (relating to Location of Relocated Sign), and §21.437 of this subchapter (relating to Construction and Appearance of Relocated Sign) if the sign is legally erected and maintained and will be within the highway right of way as a result of a construction project or, under exceptional circumstances as determined by the executive director or the executive director's deputy if the sign is legally erected and maintained and the relocation will further the intended purposes of the Transportation Code, Title 6, Subtitle H, "Highway Beautification."

(b) To relocate a sign under this section, the permit holder must obtain a new permit under §21.409 of this subchapter (relating to Permit Application), but the permit fee is waived.

(c) To receive a new permit to relocate a sign, the permit holder must submit a new permit application that identifies that the application is for the relocation of an existing sign due to a highway construction project. The new location must meet all local codes, ordinances, and applicable laws.

(d) If the permit holder of a sign that must be relocated due to a highway construction project desires to amend the sign structure by following the §21.423 of this subchapter (relating to Amended Permit), they must apply and receive the approved relocation permit from the department before filing for an amended permit.

(e) Notwithstanding other provisions of this section, if only a part of a sign will be located within the highway right of way as a result of the construction project, the sign owner may apply to amend an existing permit for the sign to authorize:

(1) the adjustment of the sign face on a monopole sign that would overhang the proposed right of way and the required five foot setback from that location to the land on which the sign's pole is located, including adding a second pole if required to support the adjustment for a legal non-conforming monopole sign;

(2) the relocation of the poles and sign face of a multiple pole sign structure that is located in the proposed right of way from the proposed right of way and the required five foot setback to the land on which the other poles of the sign structure are located; or

(3) a reduction in the size of a sign structure that is located partially in the proposed right of way and the required five foot setback so that the sign structure and sign face are removed from the proposed right of way and the required five foot setback.

(f) A permit for the relocation of a sign must be submitted within 48 [~~36~~] months from the earlier of the date the original sign was removed or the date the original sign was required to move. The sign owner is required to continue to renew the sign permit and pay the permit renewal fee for the sign to remain eligible for relocation. [~~The relocation permit issued must be maintained in accordance with §21.421 of this subchapter (relating to Permit Renewals).~~]

(g) To replace an issued and active relocation permit, an operator first must cancel the permit, then must reapply, pay the fee prescribed by §21.424 of this subchapter (relating to Permit Fees), and obtain approval for the new permit in accordance with subsection (a) of this section. The relocation process must be completed within the time requirements of subsection (f) of this section.

§21.448. License Required.

(a) Except as provided by this subchapter, a person may not obtain a permit for a sign under this subchapter unless the person holds a currently valid license issued under §21.145 [~~§21.153~~] of this chapter (relating to License Issuance; Amendment), or under §21.450 of this subchapter (relating to License Issuance), applicable to the county in which the sign is to be erected or maintained.

(b) A license is valid for one year beginning on the [~~after its~~] date of its issuance or most recent renewal.

§21.450. License Issuance.

(a) The department will issue a license if the requirements of §21.144 [~~§21.152~~] of this chapter (relating to License Application), or if the requirements of §21.449 of this subchapter (relating to License Application), are satisfied.

(b) To amend a license, the license holder must file an amended application in a form prescribed by the department and accompanied by a valid rider to its surety bond [~~The department will not issue a license to an entity that is not authorized to conduct business in this state~~].

§21.452. License Renewals.

(a) To renew [~~continue~~] a license [~~in effect~~], the license holder must submit through the department's website, www.txdot.gov, before November 1 of the year for which the license renewal fee is due: [~~be renewed.~~]

(1) an electronic application;

(2) the applicable renewal fee prescribed by §21.453 of this subchapter (relating to License Fees); and

(3) proof of current surety bond coverage.

(b) The department will provide electronically to the license holder a notification of the amount due on or before January 1 of the year for which the license renewal fee is due. The department will send quarterly reminder notices to any license holder who maintains an unpaid balance and will provide notice to the license holder of the opportunity to file a late renewal. [~~To renew a license, the license holder must file a written application in a form prescribed by the department accompanied by each applicable license fee prescribed by the subchapter under which the license was issued. The application must be received by the department before the 46th day after the date of the license's expiration and must include at a minimum:~~]

[~~(1) the complete legal name, mailing address, and telephone number of the license holder;~~]

[~~(2) the number of the license being renewed;~~]

[(3) proof of current surety bond coverage; and]

[(4) the signature of the license holder or person signing on behalf of the business entity.]

(c) An expired license may be reinstated if the department receives a reinstatement request, accompanied by proof of current surety bond and the appropriate fee under §21.453 of this subchapter (relating to License Fees), not later than December 15 of the year in which the license expired. If reinstated, the license is considered to be renewed on the date of its reinstatement [A license is not eligible for renewal if the license holder is not authorized to conduct business in this state].

(d) An expired license that is not reinstated under this section is terminated on December 15 of the year in which the license expired and may not be renewed. A license is not eligible for renewal unless the license holder has complied with the permit requirements of this subchapter, Subchapter I of this chapter (relating to Regulation of Signs Along Interstate and Primary Highways), or Transportation Code, Chapters 391 and 394.

§21.453. License Fees.

(a) The amount of the fee for [the issuance of] a license application under this subchapter is $125.

(b) The amount of the annual license renewal fee for a calendar year is equal to:

(1) $75; plus

(2) the amount computed by multiplying $75 by the total number of eligible permits held under the license of this chapter.

(c) To reinstate an expired license under §21.147 of this subchapter (relating to License Renewals), the license holder must pay an additional late fee of one percent of the annual renewal fee under this section in addition to the annual renewal fee [In addition to the $75 annual renewal fee, an additional late fee of $100 is required for a renewal license application that is received before the 45th day after the expiration date of the license].

(d) A license fee is payable online by credit card, or electronic check[, cashier's check, or money order made payable to the state highway fund, and must be submitted with the application]. If payment [the check or money order] is dishonored on [upon] presentment, the license is voidable.

[(e) The department will provide a renewal notification to the license holder at least 45 days before the date of the license expiration and if the license is not renewed before it expires, the department within 20 days after the date of expiration will provide notification to the license holder of the opportunity to file a late renewal application.]

§21.457. Nonprofit Sign Permit.

(a) A nonprofit service club, charitable association, religious organization, chamber of commerce, economic development council, nonprofit museum, or governmental entity may obtain a permit under this section to erect or maintain a nonprofit sign.

(b) To qualify as a nonprofit sign, the sign must:

(1) advertise or promote:

(A) a political subdivision in whose jurisdiction the sign is located or a political subdivision that is adjacent to such a political subdivision; or

(B) the entity that will hold the permit, but may only give information about the meetings, services, events, or location of the entity or provide a message that relates to promotion of all or a part of the political subdivision but that does not include identification of individual merchants; and

(2) comply with each sign requirement under this subchapter from which it is not expressly exempted.

(c) An application for a permit under this section must be in a form prescribed by the department and must include, in detail, the content of the message to be displayed on the sign.

(d) After a permit is issued, the permit holder must obtain approval from the department to change the message of the sign. The department may issue an order of removal of the sign if the permit holder fails to obtain that approval.

(e) If a sign ceases to qualify as a nonprofit sign, the permit for the sign is subject to cancellation under §21.425 of this subchapter (relating to Cancellation of Permit).

(f) If the holder of a permit issued under this section loses its nonprofit status or wishes to change the sign so that it no longer qualifies as a nonprofit sign the permit holder must:

(1) obtain a license under §21.145 [§21.153] of this chapter (relating to License Issuance; Amendment) or §21.450 of this subchapter (relating to License Issuance); and

(2) convert the sign permit to a permit for a sign other than a nonprofit sign and pay the original permit and renewal fees provided by §21.424 of this subchapter (relating to Permit Fees).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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43 TAC §§21.414, 21.420, 21.421, 21.431

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically: Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of commercial signs on primary roads; Transportation Code, §391.0355, which provides authority for the commission to set fees for administrative penalties in association with violation of commercial sign regulations; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of commercial sign licenses; Transportation Code, §391.068, which provides authority for the commission to prescribe permit requirements and set fees for commercial sign permits; Transportation Code, §394.004, which provides authority to establish rules to regulate the orderly and effective display of Outdoor Signs on rural roads; and Transportation Code, §394.0205, which provides authority to establish rules to standardize forms and regulate the issuance of off-premise sign permits and licenses.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.414. Sign Permit Plate.

§21.420. Permit Expiration.

§21.421. Permit Renewals.

§21.431. Wind Load Pressure.

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