Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER D. GREYHOUND RACETRACKS

DIVISION 2. OPERATIONS

16 TAC §309.361

The Texas Racing Commission (TXRC) adopts Texas Administrative Code, Title 16, Part 8, Chapter 309, Subchapter D, Greyhound Racetracks, §309.361, Operations, concerning administration of the Greyhound purse funds. Amended Chapter 309, Subchapter D, §309.361 is adopted with changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1816) and will be republished.

EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT

The purpose of this rule amendment is to provide the Commission full oversight on the administration of all funds derived from pari-mutuel wagering based on the industry transition and the cessation of all live greyhound racing in February 2020 in Texas.

PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended April 21, 2024. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1816). TXRC received comments from the Texas Greyhound Association (TGA). The TGA opposed the amendments to Texas Racing Commission Rule 309.361. The TGA argued that the amendment was poorly drafted, exceeded the Commission's powers, and conflicted with the Racing Act. They asserted that the proposed changes would reduce regulatory oversight of funds held by greyhound racetrack associations, negatively impacting TGA's legal rights. Additionally, the TGA criticized the procedural process, stating it lacked proper consultation and transparency. They requested the Commission to reconsider and collaborate with stakeholders to develop better regulations. Following the comment period, at the request of the TGA, a Public Hearing was held at Retama Park on May 16, 2024. Public comments were received during that hearing and were considered in the development of this rule change proposal.

The TXRC edited the rule changes to address the TGA concern regarding continued audits of funds. The TXRC disagrees with the assertion that the rule exceeds the Commission's powers or conflicts with the Racing Act. We find no conflicting statutes or limits to rulemaking relevant here. The TXRC continues to believe that the rule changes are necessary to prevent further disbursement of funds by the TGA in conflict with the Texas Racing Act. Where the TGA had discretion to distribute funds, that discretion will reside with the TXRC following the adoption of this rule.

COMMISSION ACTION

At its meeting on June 12, 2024, the Commission adopted the proposed rule as recommended by the Commission at the December 13, 2023, meeting and the Rules Committee, which held a public hearing on May 16, 2024.

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

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

STATUTORY AUTHORITY

The rule amendment is adopted under Texas Occupations Code §§2027; 2028 which authorize TXRC to adopt rule amendments concerning administration of pari-mutuel wagering funds.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code §§2027; 2028.

§309.361. Authority.

(a) Greyhound Purse Account

(1) All money required to be set aside for purses, whether from wagering on live races or simulcast races, are trust funds.

(2) The funds derived from a simulcast race for purses shall be distributed only with the approval of the Texas Racing Commission.

(b) Kennel Account. An association shall maintain a separate bank account known as the "kennel account". The association shall maintain in the account at all times a sufficient amount to pay all money owed to kennel owners for purses, stakes, rewards, and deposits unless otherwise directed by the Commission.

(c) If an association fails to run live races during any calendar year, all money in the greyhound purse account may be distributed as directed by the Texas Racing Commission.

(d) If an association ceases a live race meet before completion of the live race dates granted by the commission, the funds in and due the greyhound purse account shall be distributed as directed by the Texas Racing Commission.

(e) Administration of Accounts. An association shall employ a bookkeeper to maintain records of the greyhound purse account and the kennel account.

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

Filed with the Office of the Secretary of State on July 30, 2024.

TRD-202403499
Amy F. Cook
Executive Director
Texas Racing Commission
Effective date: August 19, 2024
Proposal publication date: March 22, 2024
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

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

19 TAC §61.1028

The Texas Education Agency (TEA) adopts an amendment to §61.1028, concerning bus accident reporting. The amendment is adopted without changes to the proposed text as published in the May 17, 2024 issue of the *Texas Register* (49 TexReg 3463) and will not be republished. The adopted amendment more closely aligns existing definitions with statute and, in accordance with House Bill (HB) 2190, 88th Texas Legislature, Regular Session, 2023, changes the word "accident" to "collision" throughout the rule.

REASONED JUSTIFICATION: Section 61.1028 requires that school districts and open-enrollment charter schools report accidents in which the district's or charter school's buses are involved, in accordance with Texas Education Code (TEC), §34.015.

HB 2190, 88th Texas Legislature, Regular Session, 2023, modified TEC, §34.015, by updating the term "accident" to "collision." The adopted amendment to §61.1028 implements HB 2190 by using the term "collision" throughout the rule.

In addition, the adopted amendment to §61.1028(a) redefines the term "motor bus" in alignment with definitions in both TEC, §34.003, and Texas Transportation Code, §502.001.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 17, 2024, and ended June 17, 2024. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §34.015, as amended by House Bill 2190, 88th Texas Legislature, Regular Session, 2023, which requires school districts to annually report to the Texas Education Agency the number of collisions in which the district's buses are involved. The agency is required to adopt rules determining the information to be reported.

CROSS REFERENCE TO STATUTE. Texas Education Code, §34.015, as amended by House Bill 2190, 88th Texas Legislature, Regular Session, 2023.

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

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

TRD-202403547
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 21, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-1497

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CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

The Texas Education Agency (TEA) adopts amendments to §§89.1001, 89.1005, 89.1075, 89.1076, 89.1085, 89.1090, 89.1092, and 89.1094, concerning special education general provisions and clarification of provisions in federal regulations and state law. Sections 89.1001, 89.1005, 89.1090, 89.1092, and 89.1094 are adopted with changes to the proposed text as published in the May 3, 2024 issue of the *Texas Register* (49 TexReg 2910) and will be republished. Sections 89.1075, 89.1076, and 89.1085 are adopted without changes to the proposed text as published in the May 3, 2024 issue of the *Texas Register* (49 TexReg 2910) and will not be republished. The adopted amendments clarify current program practices and requirements, including clarifying existing statutory obligations for school districts to extend their Child Find activities to residential facilities when those facilities are located in the district's boundaries; reflect the qualifications that instructional arrangements and settings listed in Texas Education Code (TEC), §48.102, must meet in order to be funded through the state special education allotment; add an existing federal requirement for school districts to develop policies and procedures that implement the established state policies and procedures and an existing statutory requirement reminding transition and employment designees to complete required training; specify interventions and sanctions that the Texas Education Agency (TEA) may, or is required to, implement under state and federal law when noncompliance is identified; clarify when a school district or an open-enrollment charter school is considered the resident school district for purposes of §89.1085 and §89.1090 and referrals to the Texas School for the Blind and Visually Impaired (TSBVI) and the Texas School for the Deaf (TSD); address transportation to and from TSBVI and TSD when students are expected to leave the residential campus setting; provide clarity and align with current expectations and nonpublic residential placement guidance; and clarify the phrases "off-campus program" and "off-home campus."

REASONED JUSTIFICATION: Section 89.1001 references the scope and applicability of commissioner rules associated with special education and related services. The adopted amendment to subsection (a) aligns with current terminology and practices of federal law and adds a reference to the State Board for Educator Certification.

The adopted amendment to §89.1001(c) clarifies existing statutory obligations for school districts to extend their Child Find activities to residential facilities when those facilities are located in the district's boundaries. Based on public comment, subsection (c) has been modified at adoption to remove specific reference to the Texas Juvenile Justice Department and Texas Department of Criminal Justice and to clarify that educational services are special education and related services.

Section 89.1005 reflects the qualifications that instructional arrangements and settings listed in TEC, §48.102, must meet in order to be funded through the state special education allotment.

Adopted new §89.1005(a) identifies definitions for terms used in the rule to provide clarity.

The adopted amendment to re-lettered §89.1005(c) aligns with the wording in §89.1075, which is referenced in the subsection. At adoption, subsection (c) was modified to correct a technical error that cross referenced subsection (e) rather than subsection (f) and to clarify that modifications to an instructional day can only be made by a student's admission, review, and dismissal (ARD) committee when determined necessary for the child.

Adopted new §89.1005(d) clarifies the alignment between the rule and the Student Attendance Accounting Handbook adopted by reference in 19 TAC §129.1025.

Re-lettered §89.1005(e) has been amended to revise the descriptions of the instructional arrangements/settings listed in the rule. Following is a summary of the adopted changes to those descriptions.

Terminology in the mainstream description is updated to the term "general education," which is more commonly used than "regular education." A statement is also added that only monitoring a student's progress does not equate to a special education service.

The homebound description is revised to adjust for more current circumstances in which homebound instruction might be required, and clarification is added about the instances when children ages three through five could be classified under this setting. Information about serving infants and toddlers who have a visual impairment (VI), who are deaf or hard of hearing (DHH), or who are deafblind (DB) has been deleted and added to re-lettered subsection (f). At adoption, subsection (e)(2)(A) was modified to clarify that a student's ARD committee determines whether homebound placement is necessary for the provision of a free appropriate public education (FAPE).

The hospital class setting is revised for clarity based on questions received from stakeholders.

The speech therapy setting is modified to clarify the current structures laid out in the Student Attendance Accounting Handbook.

Both resource room/services and self-contained are aligned to reflect the differentiation in codes that the current Student Attendance Accounting Handbook uses.

Based on numerous questions from stakeholders, clarification has been added about when an instructional arrangement would be considered the off-home campus setting. Based on public comment, at adoption the wording regarding integrated employment has been updated to refer to it as "competitive integrated employment."

The nonpublic day school instructional arrangement/setting has been clarified to reference the alignment with §89.1094.

The vocational adjustment class description has been amended to better align with current practices.

Clarification about the residential care and treatment facility setting has been added based on requests from stakeholders.

As proposed, subsection (e)(11) would have been amended to replace the term "state-supported living center" with "state school" to align with the terminology used in the TEC. Based on public comment, the term "state-supported living center" was reinstated with a note that the term "state school" is used in TEC, §48.102.

Re-lettered subsection (f) has been amended to clarify instances when a child from birth through age two who has a VI, is DHH, or is DB is entitled to enrollment in school districts and funding through the state special education allotment.

Additional edits were made throughout §89.1005 to align with current terminology and for conciseness.

Section 89.1075 references general program requirements and local district procedures. The adopted changes add an existing federal requirement for school districts to develop policies and procedures that implement the established state policies and procedures, a provision about prior written notice that is currently located in 19 TAC §89.1050, and an existing statutory requirement reminding transition and employment designees to complete required training. Additional revisions were made for clarity and alignment with current law.

Section 89.1076 is related to interventions and sanctions that TEA may, or is required to, implement under state and federal law when noncompliance is identified. The adopted amendment aligns terminology throughout the rule and adds a federally required intervention to place specific conditions on funds or redirect funds.

Section 89.1085 addresses referrals to TSBVI and TSD. The adopted amendment clarifies that if a student is enrolled in an open-enrollment charter school and the student's ARD committee places a student in TSBVI or TSD, that school becomes the resident school district for purposes of §89.1085 and §89.1090.

Section 89.1090 references transportation to and from TSBVI and TSD when students are expected to leave the residential campus setting. The adopted amendment clarifies when a resident district would be required to cover transportation costs for a student placed at TSBVI or TSD. Based on public comment, proposed language about when transportation must be provided has been removed, and existing language proposed for deletion has been reinstated. TEA plans to engage in ongoing discussions with the affected parties regarding any potential future amendments. Transportation costs for students in other residential settings when placed by a student's ARD committee would likely be covered in those contracts for services. The section title has been modified to clarify that the rule pertains only to placements at TSBVI and TSD.

Section 89.1092 describes the requirements when a school district places a student in a residential placement for the provision of FAPE to a student. The adopted amendment provides clarity and aligns with current expectations and nonpublic residential placement guidance. In addition, the adopted changes include adding definitions for school district, nonpublic residential program, and nonpublic residential program provider; list-

ing the requirements related to any nonpublic residential placement, including school district responsibilities prior to placement and during such placement; clarifying language related to notification; and expanding information on the approval process. The section title has also been modified to clarify the purpose of the rule. Based on public comment, subsection (b)(3)(C)(iv) has been modified at adoption to reference prohibited aversive techniques and to remove a requirement that a school district create the program provider's policies, procedures, and operating guidelines in conjunction with the program provider.

Section 89.1094 refers to placement in off-campus programs. Based on requests for clarification from stakeholders related to the phrases "off-campus program" and "off-home campus" as described in §89.1005, the section title has been modified to clarify these types of placements. The new title is "Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of a Free Appropriate Public Education (FAPE)," which aligns with the wording in §89.1092 regarding nonpublic residential placement.

The adopted amendment to §89.1094(a) addresses placements at nonpublic day schools; a county system operating under former TEC, §11.301; a regional education service center; or any other public or private entity with which a school district enters a contract for the provision of special education services in a facility not operated by a school district.

The placement requirements listed in §89.1094(b) are amended for clarity and to reference criminal background checks and the requirement for the provider to develop policies, procedures, and operating guidelines to ensure the student maintains the same rights as other public-school students while in this placement. Based on public comment, subsection (b)(3)(C)(iv) has been modified at adoption to reference prohibited aversive techniques and to remove a requirement that a school district create the program provider's policies, procedures, and operating guidelines in conjunction with the program provider.

The adopted amendment to §89.1094(c), regarding notification, provides clarity and alignment.

Adopted new §89.1094(d), regarding the approval process for a nonpublic residential program, clarifies TEA's authority to place conditions on a program provider, not reapprove an approval, or withdraw an approval from a program provider.

The adopted amendment to §89.1094(e), related to funding procedures, provides clarity and reflects that contracts must not begin prior to August 1 and must not extend past July 31 of the following year.

Based on public comment, changes were made to the rules that modify the government growth impact and the public benefit of the rules. The following assessments have been updated since published as proposed.

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 expand existing regulations by increasing the required number of times a school district must contact residential facilities within the district's boundaries to conduct Child Find activities. It would also modify instructional arrangement descriptions and add specific descriptions for instructional arrangements associated with children from birth through age two. In addition, it would add that open-enrollment charter schools can be considered a resident district for purposes of placement and transportation to the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, and a change to transportation responsibilities would require a resident district to cover transportation at the beginning and end of school terms and for regularly scheduled school holidays when all students are expected to leave the residential campus. Likewise, proposed amendments would explicitly clarify requirements regarding the approval, contracting, and compliance monitoring processes when students with disabilities require a nonpublic day or residential placement, including requirements regarding criminal background checks, onsite visits, written verification that certain health and safety standards are met, and the requirement for the provider to develop policies, procedures, and operating guidelines to ensure the student maintains the same rights as other public school students with disabilities while in this placement. It would also add a contract length requirement for these placements.

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 create a new regulation; would not 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.

The proposed amendment to §89.1001 would align with current terminology and practices of federal law. It would clarify existing statutory obligations for school districts to extend their Child Find activities to residential facilities when those facilities are in the district's boundaries.

The proposed amendment to §89.1005 would modify qualifications that instructional arrangements and settings listed in TEC, §48.102, must meet to be funded through the state special education allotment. The proposed amendment would also include term changes to provide clarity and alignment between this rule and the Student Attendance Accounting Handbook and incorporate current practices based on requests from stakeholders.

The proposed amendment to §89.1075 would include for practical reference the addition of an existing requirement that school districts develop policies and procedures that implement the established state policies and procedures and the statutory requirements for a district's transition and employment designee. The proposed amendment would also add a provision about prior written notice that is currently located in 19 TAC §89.1050 to this more appropriate rule and make revisions for clarity and alignment with current law.

The proposed amendment to §89.1076 would revise the criteria for interventions and sanctions that TEA is required to implement under state and federal law when noncompliance is identified. The criteria include steps related to the appointment of a monitor and a conservator/management team and adds reference to the possibility of a federally required intervention to place specific conditions on funds.

The proposed amendment to §89.1085 would provide clarification that if a student is enrolled in an open-enrollment charter school and the student's ARD committee places a student in TSBVI or TSD, that school becomes the resident school district for purposes of §89.1085 and §89.1090.

The proposed amendment to §89.1090 would provide clarification as to when a resident district would be required to cover transportation costs for a student placed at TSBVI or TSD.

The proposed amendment to §89.1092 would clarify and align the rule with current expectations, outline nonpublic residential placement guidance, and better describe the rule's purpose.

The proposed amendment to §89.1094 would clarify longstanding requests from stakeholders to differentiate the phrase "off-campus program" from "off-home campus" as described in §89.1005. A proposed title change would align with the wording in the nonresidential placement rule in §89.1092.

There is no anticipated economic cost to persons who are required to comply with the proposal.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 3, 2024, and ended June 3, 2024, and included public hearings on May 15 and 16, 2024. Following is a summary of public comments received and agency responses.

§89.1001, Scope and Applicability

Comment: Windham School District requested removing the phrase "or Texas Department of Criminal Justice" (TDCJ) from proposed subsection (c) to reduce the chance of duplicated Child Find efforts.

Response: The agency agrees that the proposed wording to include the Texas Juvenile Justice Department (TJJD) and TDCJ may be confusing and potentially result in duplicated efforts. At adoption, the agency has removed references to both of these agencies in subsection (c). However, a district's Child Find efforts would apply to the extent that TJJD or TDCJ would not oversee a residential facility under their jurisdictions in the district's boundaries.

Comment: Texas Parent to Parent (TxP2P) and Texans for Special Education Reform (TxSER) requested that TEA add FAPE and a cross reference to obligations of noneducational public agencies for the provision of FAPE in place of "educational services" in subsection (c).

Response: The agency agrees that clarification is needed. At adoption, subsection (c) was modified to change the term "educational services" to "special education and related services."

Comment: The Texas Council of Administrators of Special Education (TCASE) requested maintaining the requirement to annually conduct Child Find activities and offer service to students in residential facilities to use personnel resources more efficiently.

Response: The agency disagrees. Proactive outreach is important to reach as many eligible students as possible.

Comment: TCASE requested that an amendment to subsection (c) include a documentation requirement for situations in which the residential facility denies entry to school personnel.

Response: The agency disagrees. The denial of entry is not addressed in the Individuals with Disabilities Education Act or other state or federal law. If situations in which school personnel are being denied entry to residential facilities occur, a change to the memorandum of understanding promulgated in 19 TAC §89.1115 may need to be updated to provide for resolution of these occurrences.

§89.1005, Instructional Arrangements and Settings

Comment: Disability Rights Texas (DRTx), Autism Speaks, TxP2P, and TxSER requested that TEA add a requirement to subsection (c) for providing a justification and projected date of return if the ARD committee determines a shortened instructional day is necessary for a student with a disability.

Response: The agency disagrees with adding this specific statement. Since the ARD committee would have to agree with a shortened day, these discussions would likely be included in that decision-making process. However, at adoption, the agency has reworded subsection (c) to make it clear that the ARD committee can only modify an instructional day when it is determined necessary for the child.

Comment: TxP2P and TxSER requested an additional provision in subsection (c) to add the requirement that a local education agency hold a due process hearing in instances where parents disagree with the ARD committee decision to shorten the school day.

Response: The agency disagrees, as this would already be an ARD committee decision where dispute resolution processes would apply. However, at adoption, the agency has reworded subsection (c) to make it clear that the ARD committee can only modify an instructional day when it is determined necessary for the child.

Comment: TCASE requested maintaining the word "confined" for clarity in subsection (e)(2)(A).

Response: The agency disagrees that a change is necessary to the proposed language, as confinement to the home is still included as a consideration of the ARD committee when determining whether homebound placement will be approved.

Comment: TCASE commented in support of not guaranteeing the placement of a student in homebound settings through physician documentation.

Response: The agency agrees but, based on other stakeholder comments, cautions school districts that they cannot disregard physician documentation and must consider the documentation in light of the eligibility requirements for homebound instruction funding.

Comment: TxP2P and TxSER commented in disagreement with the idea that an ARD committee can disregard documentation from a licensed physician in determining homebound placement and recommended the addition of an expedited due process hearing by a local education agency in these instances. The commenters also recommended that an ARD meeting invitation be given to the student's medical provider regarding any homebound determination.

Response: The agency disagrees. Physician documentation of the need for homebound services has never been a guaranteed right for purposes of funding. An ARD committee must consider the physician's documentation in light of the requirements for a student to be eligible for state funding under the homebound instructional arrangement.

Comment: DRTx, TxP2P, and TxSER requested clarification in subsection (e)(3)(A) by including "other medical facilities" only if the student is actively receiving noneducational treatment and care.

Response: The agency disagrees. This rule is concerned with providing special education and related services to students, so it is not necessary to mention the reason for which a student is receiving these services at a medical facility.

Comment: TCASE requested clarification for when weeks of homebound instruction are not consecutive to preserve staff resources for students who are confined in serious conditions.

Response: The agency disagrees that clarification is necessary. The ARD committee will determine the need for homebound instruction based on documentation from a physician and any other relevant information.

Comment: DRTx, TxP2P, and TxSER requested replacing "integrated employment" with "competitive integrated employment" in subsection (e)(7)(C) and (D) to align with the state's official Employment First policy.

Response: The agency agrees and has modified subsection (e)(7)(C) and (D) at adoption to use the phrase "competitive integrated employment."

Comment: DRTx, TxP2P, Autism Speaks, and TxSER commented in disagreement with the name change from "state-supported living center" to "state school."

Response: The agency agrees that clarification would be appropriate. The intent of the proposed change was to align with the instructional arrangements described in TEC, §48.102, which uses the term "state schools." Therefore, at adoption, the term "state-supported living center" was reinstated with a note that the term "state school" is used in TEC, §48.102.

§89.1075, General Program Requirements and Local District Procedures

Comment: TCASE requested clarification on the addition of the term "supporting data" in subsection (a), as the section already references supporting data.

Response: The agency provides the following clarification. The first use of the term "supporting data" is associated with evaluation reports, and the second use is associated with a student's individualized education programs.

Comment: TxP2P and TxSER requested the addition of a provision in subsection (c) to include requirements for the ARD committee to provide justification for the determination of a shortened instructional day and for the local education agency to hold a due process hearing justifying the determination when parents disagree.

Response: The agency disagrees. A shortened day is a decision of the ARD committee, and justification would be a natural discussion included in such a decision. Because parents are part of the ARD committee, dispute resolution procedures already apply.

§89.1076 Interventions and Sanctions

Comment: TCASE requested removing the phrase "but not limited to" in paragraph (3) or clarifying expectations for a local education agency in the event of a corrective action plan.

Response: The agency disagrees. The U.S. Department of Education Office of Special Education Programs (OSEP) requires TEA to engage in different types of corrective actions with school districts.

Comment: TCASE commented in disagreement with the additions in paragraph (10) allowing TEA to place conditions on grant funds or require redirection of funds as an intervention or sanction.

Response: The agency disagrees. OSEP is clear that TEA placing conditions on grant funds or requiring redirection of funds as an intervention or sanction are supervision and monitoring requirements of state education agencies.

Comment: DRTx, TxP2P, and TxSER requested that clarification on the redirection of funds be added to paragraph (10).

Response: The agency disagrees that clarification is necessary. The purpose of any intervention or sanction is to ensure program effectiveness and compliance with federal and state requirements for special education and related services.

§89.1090, Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf

Comment: TCASE requested that, due to bus driver shortages statewide, TEA reconsider the change to subsection (a) that would require transportation be provided every weekend and instead propose alternatives that recognize available resources for families, TSBVI and TSD, and resident school districts.

Response: The agency agrees that further discussion into alternative transportation options is necessary. At adoption, the agency has removed proposed language about when transportation must be provided and has reinstated existing language proposed for deletion. The agency will engage in further dialogue with TSBVI, TSD, and resident school districts.

§89.1092, Contracting for Residential Educational Placements for Students with Disabilities

Comment: DRTx, Autism Speaks, TxSER, and TxP2P requested that language be added in subsections (b) and (e) to prohibit any residential placement or nonpublic day school from allowing aversive techniques as defined by TEC, §37.0023.

Response: The agency agrees in part. At adoption, subsection (b)(3)(C)(iv) has been revised to include the requirement that the program provider's policies, procedures, and operating guidelines must ensure the prohibition of aversive techniques, and additional text has been added to provide clarification. The agency disagrees that adding a reference to this at subsection (e)(1)(F) is necessary.

Comment: DRTx, TxP2P, and TxSER requested that TEA add provisions in subsections (b) and (e) to include considerations regarding proximity of a facility in relation to a student's home prior to determination and approval for placement in a nonpublic residential program.

Response: The agency disagrees, as considerations such as proximity to facilities would already be part of discussions about adhering to the least restrictive environment.

Comment: DRTx, TxP2P, and TxSER requested that TEA add provisions in subsections (b) and (e) to include clarification regarding adhesion to the criteria for returning a student to his or her local school program and avoiding the facility if it has a history of failing to return students to their home campus.

Response: The agency disagrees with adding these criteria to the rule but will consider this comment when providing technical assistance to school districts.

Comment: DRTx, TxP2P, and TSER requested that TEA add provisions in subsections (b) and (e) to clarify that a facility is not on a placement hold by a state agency for a substantive reason.

Response: The agency disagrees. This would be a part of the process in determining if the facility holds all applicable local and state accreditation and permit requirements.

Comment: DRTx, TxP2P, and TxSER requested that TEA add provisions in subsections (b) and (e) to ensure that the program provider's staff and contractors who work with students are not included in the Registry of Persons Ineligible for Employment in Public Schools.

Response: The agency disagrees with including the commenter's suggestion in rule. Criminal background checks applicable to public school employees are also required for staff who work with students assigned to these programs.

§89.1094, Students Receiving Special Education and Related Services in an Off-Campus Program

Comment: DRTx and Autism Speaks requested that TEA add a statement to subsection (b)(3)(C)(iv) that prohibits any residential placement or nonpublic day school from using aversive techniques as defined by TEC, §37.0023.

Response: The agency agrees. At adoption, subsection (b)(3)(C)(iv) has been revised to include the requirement that the program provider's policies, procedures, and operating guidelines must ensure the prohibition of aversive techniques, and additional text has been added to provide clarification.

Comment: TCASE requested that TEA move the requirements in §89.1094(b)(3)(C)(iv) under TEA responsibility to align with federal regulations and increase efficiency.

Response: The agency disagrees. However, at adoption, the agency has removed the requirement that the provider's policies, procedures, and operating guidelines be developed in conjunction with the school district so that it is more of a verification step for a school district. A similar change has been made to §89.1092.

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 1. GENERAL PROVISIONS

19 TAC §89.1001, §89.1005

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §29.008, which establishes contracts for services for residential placement; TEC, §29.010, which requires the agency to develop and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.012, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; TEC, §29.013, which requires the agency to establish procedures and criteria for the distribution of funds to school districts for noneducational community-based support services to certain students with disabilities to ensure they receive a free appropriate education in the least restrictive environment; TEC, §29.014, which establishes criteria for school districts that provide education solely to students confined to or educated in hospitals; TEC, §30.002, which requires the agency to develop and administer a statewide plan for the education of children with visual impairments; TEC, §30.003, which establishes requirements for support of students enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf; TEC, §30.005, which establishes a memorandum of understanding between the Texas Education Agency and the Texas School for the Blind and Visually Impaired; TEC, §30.021, which establishes a school for the blind and visually impaired in Texas; TEC, §30.051, which establishes the purpose for Texas School for the Deaf; TEC, §30.057, which establishes admission criteria for eligible students with disabilities to the Texas School for the Deaf; TEC, §30.083, which requires the development of a statewide plan for educational services for students who are deaf or hard of hearing; TEC, §30.087, which establishes criteria for funding the cost of educating students who are deaf or hard of hearing; TEC, §39A.001, which establishes grounds for commissioner action; TEC, §39A.002, which establishes actions that the commissioner of education is authorized to take if a school district is subject to action under §39A.001; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; 34 Code of Federal Regulations (CFR), §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.101, which defines the requirement for all children residing in the state between ages of 3-21 to have a free appropriate public education available; 34 CFR, §300.111, which defines the requirement of the state to have policies and procedures in place regarding child find; 34 CFR, §300.114, which defines least restrictive environment requirements; 34 CFR §300.115, which establishes criteria for a continuum of alternative placements; 34 CFR §300.116, which establishes criteria for determining the educational placement of a child with a disability; 34 CFR, §300.121, which establishes the requirement for a state to have procedural safeguards; 34 CFR, §300.124, which establishes the requirement of the state to have policies and procedures in place regarding the transfer of children from the Part C program to the preschool program; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.147, which establishes the criteria for the state education agency when implementing the responsibilities each must ensure for a child with a disability who is placed in or referred to a private school or facility by a public agency; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.201, which establishes the requirement for local education agencies to have policies, procedures, and programs that are consistent with the state policies and procedures; 34 CFR, §300.500, which establishes the responsibility of a state education agency and other public agencies to ensure the establishment, maintenance, and implementation of procedural safeguards; and 34 CFR, §300.600, which establishes requirements for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, 29.003, 29.005, 29.008, 29.010, 29.012, 29.013, 29.014, 30.002, 30.003, 30.005, 30.021, 30.051, 30.057, 30.083, 30.087, 39A.001, 39A.002, and 48.102, and 34 Code of Federal Regulations, §§300.8, 300.101, 300.111, 300.114, 300.115, 300.116, 300.121, 300.124, 300.129, 300.147, 300.149, 300.201, 300.500, and 300.600.

§89.1001. Scope and Applicability.

(a) Special education and related services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education, State

Board for Educator Certification, and commissioner of education, and the Individuals with Disabilities Education Act (IDEA).

(b) Education programs under the direction and control of the Texas Juvenile Justice Department, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice shall comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students and shall be monitored by the Texas Education Agency in accordance with the requirements identified in subsection (a) of this section.

(c) Residential facility refers to a facility defined by Texas Education Code, §5.001(8), which includes any person, facility, or entity that provides 24-hour custody or care of a person residing in the facility for detention, treatment, foster care, or any noneducational purpose. A school district must initiate Child Find outreach activities to locate, evaluate, and identify eligible students in any residential facility within its boundaries. If a student is eligible, a school district must provide the required special education and related services to the student unless, after contacting the facility to offer those services to eligible students with disabilities, the facility can demonstrate that the services are provided by another educational program provider, such as a charter school, approved nonpublic school, or a facility operated private school. However, the district shall, at minimum, contact the facility at least twice per year to conduct Child Find activities and to offer services to eligible students with disabilities.

§89.1005. Instructional Arrangements and Settings.

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

(1) Instructional arrangement/setting. Instructional arrangement/setting refers to the arrangement listed in Texas Education Code (TEC), §48.102, and the weight assigned to it that is used to generate funds from the state special education allotment.

(2) Instructional day. Instructional day has the meaning assigned to it in §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).

(b) Each school district must provide special education and related services to eligible students with disabilities in order to meet the unique needs of those students in accordance with 34 Code of Federal Regulations, §§300.114-300.118, and state law.

(c) Subject to §89.1075(f) of this title (relating to General Program Requirements and Local District Procedures), for the purpose of determining the student's instructional arrangement/setting, a student receiving special education and related services must have available an instructional day commensurate with that of students who are not receiving special education and related services and only modify the instructional day when determined necessary by the admission, review, and dismissal (ARD) committee. A student's ARD committee shall determine the student's instructional arrangement/setting based on the percentage of the student's instructional day that the student receives special education and related services in a setting other than general education.

(d) While this section uses the names of the instructional arrangements/settings as they are described in TEC, §48.102, there may be additional instructional arrangement/setting codes that are created by the Texas Education Agency (TEA) within the student attendance accounting requirements defined in §129.1025 of this title. While the codes may be titled differently, each will align to an arrangement/setting as described in this section and in TEC, §48.102.

(e) Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education and related services and shall include the following.

(1) Mainstream. This instructional arrangement/setting is for providing special education and related services to a student in the general education classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect, and/or support services to the student and/or the student's general education classroom teacher(s) necessary to enrich the general education classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, educational aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her general education classroom teacher(s) regarding the student's progress in general education classes, staff development, and reduction of ratio of students to instructional staff. Monitoring student progress in and of itself is not a special education service; this cannot be listed as the only specially designed instruction documented in a student's IEP.

(2) Homebound. This instructional arrangement/setting, also referred to as home-based instruction, is for providing special education and related services to students who are served at their home for the following reasons.

(A) Medical reasons. Homebound instruction is used for a student whose ARD committee has received medical documentation from a physician licensed to practice in the United States that the student is expected to incur full-day absences from school for a minimum of four weeks for medical reasons, which could include psychological disorders, and the ARD committee has determined that this is the most appropriate placement for the student. The weeks do not have to be consecutive. For the ARD committee to approve this placement, the committee will review documentation related to anticipated periods of student confinement to the home, as well as whether the student is determined to be chronically ill or any other unique medical circumstances that would require this placement in order to provide a free appropriate public education (FAPE) to the student. Documentation by a physician does not guarantee the placement of a student in this instructional arrangement/setting, as the student's ARD committee shall determine whether the placement is necessary for the provision of FAPE, and, if so, will determine the amount of services to be provided to the student at home in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (c) of this section.

(B) Children ages three through five years of age. Home-based instruction may be used for children ages three through five when determined appropriate by the child's ARD committee and as documented in the student's IEP. While this setting would generate the same weight as the homebound instructional arrangement/setting, the data on this setting may be collected differently than the medical homebound arrangement/setting.

(C) Students confined to or educated in hospitals. This instructional arrangement/setting also applies to school districts described in TEC, §29.014.

(3) Hospital class. This instructional arrangement/setting is for providing special education and related services by school district personnel:

(A) at a hospital or other medical facility; or

(B) at a residential care and treatment facility not operated by the school district. If a student residing in the facility is provided special education and related services at a school district campus but the student's parent is not a school district resident, the student is considered to be in the residential care and treatment facility instructional arrangement/setting. If a student residing in the facility is provided special education and related services at a school district campus and the parent, including a surrogate parent, is a school district resident, the student's instructional arrangement/setting would be assigned based on the services that are provided at the campus on the same basis as a resident student residing with his or her parents.

(4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a general education classroom or in a setting other than a general education classroom.

(A) When the only special education service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement. If a student's IEP indicates that a special education teacher is involved in the implementation of the student's IEP but there is no indication of how that teacher provides a special education service, the student is in the speech therapy instructional arrangement/setting.

(B) When a student receives speech therapy and a related service but no other special education service, the student is in the speech therapy instructional arrangement/setting.

(5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than general education for less than 50% of the regular school day. For funding purposes, this will be differentiated between the provision of special education and related services to a student in a setting other than general education for less than 21% of the instructional day and special education and related services provided to a student in a setting other than general education for at least 21% of the instructional day but less than 50% of the instructional day.

(6) Self-contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a setting other than general education for 50% or more of the regular school day on a regular school campus. For funding purposes, mild/moderate will be considered at least 50% but no more than 60% of the student's instructional day, and severe will be considered more than 60% of the student's instructional day.

(7) Off-home campus. This instructional arrangement/setting is for providing special education and related services to the following:

(A) a student at South Texas Independent School District or Windham School District;

(B) a student who is one of a group of students from one or more school districts served in a single location in another school district when a FAPE is not available in the sending district;

(C) a student in a community setting, facility, or environment operated by a school district that prepares the student for postsecondary education/training, competitive integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives;

(D) a student in a community setting or environment not operated by a school district that prepares the student for postsecondary education/training, competitive integrated employment, and/or independent living in coordination with the student's individual transition goals, with regularly scheduled instruction or direct involvement provided by school district personnel;

(E) a student in a facility not operated by a school district with instruction provided by school district personnel; or

(F) a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.

(8) Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school when the school district is unable to provide a FAPE for the student. This instructional arrangement/setting includes the providers listed in §89.1094 of this title (relating to Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of FAPE).

(9) Vocational adjustment class. Although referred to as a class, this instructional arrangement/setting is a support program for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's transition plan, as documented in the student's IEP, and may include special education services received in career and technical education work-based learning programs.

(10) Residential care and treatment facility (not school district resident). For purposes of this section, residential care and treatment facility refers to a facility at which a student with a disability currently resides, who was not placed at the facility by the student's ARD committee, and whose parent or guardian does not reside in the district providing educational services to the student. This instructional arrangement/setting is for providing special education and related services to a student on a school district campus who resides in a residential care and treatment facility and whose parents do not reside within the boundaries of the school district that is providing educational services to the student. If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement, or if the student resides at a state-supported living center, the instructional arrangement will be considered the state school arrangement/setting. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.

(11) State-supported living center (referred to as state school in TEC, §48.102). This instructional arrangement/setting is for providing special education and related services to a student who resides at a state-supported living center when the services are provided at the state-supported living center location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.

(f) Children from birth through the age of two with visual impairments (VI), who are deaf or hard of hearing (DHH), or who are deaf blind (DB) must be enrolled at the parent's request by a school district when the district becomes aware of a child needing services. The appropriate instructional arrangement for students from birth through the age of two with VI, DHH, or DB shall be determined in accordance with the individualized family services plan, current attendance guidelines, and the agreement memorandum between TEA and Texas Health and Human Services Commission Early Childhood Intervention (ECI) Services. However, the following guidelines shall apply.

(1) A home-based instructional arrangement/setting is used when the child receives services at home. This arrangement/setting would generate the same weight as the homebound instructional arrangement/setting, and average daily attendance (ADA) funding will depend on the number of hours served per week.

(2) A center-based instructional arrangement/setting is used when the child receives services in a day care center, rehabilitation center, or other school/facility contracted with the Health and Human Services Commission (HHSC) as an ECI provider/program. This arrangement/setting would generate the same weight as the self-contained, severe instructional arrangement/setting, and ADA funding will depend on the number of hours served per week.

(3) Funding may only be claimed if the district is involved in the provision of the ECI and other support services for the child. Otherwise, the child would be enrolled and indicated as not in membership for purposes of funding. If the district is contracted with HHSC as an ECI provider, funding would be generated under that contract.

(g) For nonpublic day and residential placements, the school district must comply with the requirements under §89.1092 of this title (relating to Contracting for Nonpublic Residential Placements for the Provision of a Free Appropriate Public Education (FAPE)) or §89.1094 of this title, as appropriate.

(h) Other program options that may be considered for the delivery of special education and related services to a student may include the following:

(1) contracts with other school districts; and

(2) other program options as approved by TEA.

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

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DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS

19 TAC §§89.1075, 89.1076, 89.1085, 89.1090, 89.1092, 89.1094

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §29.008, which establishes contracts for services for residential placement; TEC, §29.010, which requires the agency to develop and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.012, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; TEC, §29.013, which requires the agency to establish procedures and criteria for the distribution of funds to school districts for noneducational community-based support services to certain students with disabilities to ensure they receive a free appropriate education in the least restrictive environment; TEC, §29.014, which establishes criteria for school districts that provide education solely to students confined to or educated in hospitals; TEC, §30.002, which requires the agency to develop and administer a statewide plan for the education of children with visual impairments; TEC, §30.003, which establishes requirements for support of students enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf; TEC, §30.005, which establishes a memorandum of understanding between the Texas Education Agency and the Texas School for the Blind and Visually Impaired; TEC, §30.021, which establishes a school for the blind and visually impaired in Texas; TEC, §30.051, which establishes the purpose for Texas School for the Deaf; TEC, §30.057, which establishes admission criteria for eligible students with disabilities to the Texas School for the Deaf; TEC, §30.083, which requires the development of a statewide plan for educational services for students who are deaf or hard of hearing; TEC, §30.087, which establishes criteria for funding the cost of educating students who are deaf or hard of hearing; TEC, §39A.001, which establishes grounds for commissioner action; TEC, §39A.002, which establishes actions that the commissioner of education is authorized to take if a school district is subject to action under §39A.001; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; 34 Code of Federal Regulations (CFR), §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.101, which defines the requirement for all children residing in the state between ages of 3-21 to have a free appropriate public education available; 34 CFR, §300.111, which defines the requirement of the state to have policies and procedures in place regarding child find; 34 CFR, §300.114, which defines least restrictive environment requirements; 34 CFR §300.115, which establishes criteria for a continuum of alternative placements; 34 CFR §300.116, which establishes criteria for determining the educational placement of a child with a disability; 34 CFR, §300.121, which establishes the requirement for a state to have procedural safeguards; 34 CFR, §300.124, which establishes the requirement of the state to have policies and procedures in place regarding the transfer of children from the Part C program to the preschool program; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.147, which establishes the criteria for the state education agency when implementing the responsibilities each must ensure for a child with a disability who is placed in or referred to a private school or facility by a public agency; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.201, which establishes the requirement for local education agencies to have policies, procedures, and programs that are consistent with the state policies and procedures; 34 CFR, §300.500, which establishes the responsibility of a state education agency and other public agencies to ensure the establishment, maintenance, and implementation of procedural safeguards; and 34 CFR, §300.600, which establishes requirements for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, 29.003, 29.005, 29.008, 29.010, 29.012, 29.013, 29.014, 30.002, 30.003, 30.005, 30.021, 30.051, 30.057, 30.083, 30.087, 39A.001, 39A.002, and 48.102, and 34 Code of Federal Regulations, §§300.8, 300.101, 300.111, 300.114, 300.115, 300.116, 300.121, 300.124, 300.129, 300.147, 300.149, 300.201, 300.500, and 300.600.

§89.1090. Transportation of Students Placed in the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

(a) For each student placed by the student's admission, review, and dismissal (ARD) committee in the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf that includes placement at the residential campus, the resident school district, as defined in §89.1085 of this title (relating to Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services), shall be responsible for transportation from the campus as well as the return to campus at the beginning and end of school terms and for regularly scheduled school holidays when all students are expected to leave the residential campus.

(b) The resident school district is not responsible for transportation costs for students placed in these settings by their parents.

(c) Transportation costs shall not exceed state approved per diem and mileage rates unless excess costs can be justified and documented. Transportation shall be arranged by the school using the most cost efficient means.

(d) When it is necessary for the safety of the student, as determined by the ARD committee and as documented in the student's individualized education program, for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided.

(e) The resident school district and the school shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

§89.1092. Contracting for Nonpublic Residential Placements for the Provision of a Free Appropriate Public Education (FAPE).

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

(1) School district--The definition of a school district includes independent school districts established under Texas Education Code (TEC), Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

(2) Nonpublic residential program--A nonpublic residential program includes the provision of special education and related services to one or more Texas public school students by someone other than school district personnel at a facility not operated by a school district. A student placed in this program has been determined by his or her admission, review, and dismissal (ARD) committee to require a residential placement in order to facilitate the student's attainment of reasonable educational progress and to provide the student a free appropriate public education (FAPE). It is not a placement intended primarily for the provision of medical care and treatment.

(3) Nonpublic residential program provider--A nonpublic residential program provider is a public or private entity with one or more facilities that contracts with a school district for the provision of some or all of a student's special education and related services when the school district is unable to provide those services and maintains current and valid licensure by the Texas Department of Family and Protective Services, the Texas Health and Human Services Commission, or another appropriate state agency. A provider that a school district contracts with only for the provision of related services is not subject to the requirements of this section.

(b) Nonpublic residential program requirements. A school district may contract with a nonpublic residential program provider when the student's ARD committee determines that a residential placement is necessary in order for the student to receive a FAPE in accordance with the requirements of this section.

(1) Before a student's ARD committee places a student with a disability in, or refers a student to, a nonpublic residential program, the ARD committee shall initiate and conduct a meeting to develop an individualized education program (IEP) for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner of education rules in this chapter'.

(2) Before a student's ARD committee places a student with a disability in, or refers a student with a disability to, a nonpublic residential program, the district shall initiate and conduct an in-person, onsite review of the program provider's facility and program to ensure that the program is appropriate for meeting the student's educational needs.

(3) The appropriateness of the placement and the facility shall be documented in the IEP annually. The student's ARD committee may only recommend a nonpublic residential program if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the school district.

(A) The student's IEP must list which services the school district is unable to provide and which services the nonpublic residential program will provide.

(B) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date for the student's return to the school district and document this information in the IEP.

(C) The school district shall make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by the Texas Education Agency (TEA), to:

(i) verify that the program provider can and will provide the services listed in the student's IEP that the provider has agreed to provide to the student;

(ii) obtain written verification that the facility meets minimum standards for health and safety and holds all applicable local and state accreditation and permit requirements;

(iii) verify that the program provider's staff who work with the student have been subject to criminal background checks (to include fingerprinting) that meet the standards applicable to public school employees;

(iv) verify that the program provider has developed written policies, procedures, and operating guidelines that set forth necessary standards and steps to be followed to ensure the student maintains the same rights as other public school students with disabilities, including when the student is subject to emergency behavioral interventions or disciplinary actions, as well as to ensure the prohibition of aversive techniques as defined by TEC, §37.0023; and

(v) verify that the educational program provided at the facility is appropriate and the placement is the least restrictive environment for the student.

(4) The placement of more than one student in the same facility may be considered in the same onsite visit to the facility. However, the IEP of each student must be individually reviewed and a determination of appropriateness of placement and service must be made for each student.

(5) When a student who is placed by a school district in a nonpublic residential program changes his or her residence to another Texas school district and the student continues in the contracted placement, the school district that negotiated the contract shall be responsible for the residential contract for the remainder of the school year.

(c) Notification. Within 30 calendar days from an ARD committee's decision to place or continue the placement of a student in a nonpublic residential program, a school district must electronically submit to TEA notice of, and information regarding, the placement in accordance with submission procedures specified by TEA.

(1) If the nonpublic residential program provider is on the commissioner's list of approved providers, TEA will review the student's IEP and placement as required by 34 CFR, §300.120, and, in the case of a placement in or referral to a private school or facility, 34 CFR, §300.146. After review, TEA will notify the school district whether federal or state funds for the program placement are approved. If TEA does not approve the use of funds, it will notify the school district of the basis for the non-approval.

(2) If the nonpublic residential program provider is not on the commissioner's list of approved providers, TEA will begin the approval procedures described in subsection (d) of this section. School districts must ensure there is no delay in implementing a child's IEP in accordance with 34 CFR, §300.103(c).

(3) If a nonpublic residential program placement is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify TEA of the order within 30 calendar days. The program provider serving the student is not required to go through the approval procedures described in subsection (d) of this section for the ordered placement. If, however, the school district or other school districts intend to place other students in the program, the program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers.

(d) Approval of a nonpublic residential program. Nonpublic residential program providers must have their educational programs approved for contracting purposes by the commissioner. Approvals and reapprovals will only be considered for those providers that have a contract already in place with a school district for the placement of one or more students or that have a pending request from a school district. Reapproval can be for one, two, or three years, at the discretion of TEA.

(1) For a program provider to be approved or reapproved, the school district must electronically submit to TEA notice of, and information regarding, the placement in accordance with submission procedures specified by TEA. TEA shall begin approval procedures and conduct an onsite visit to the provider's facility within 30 calendar days after TEA has been notified by the school district and has received the required submissions as outlined by TEA. Initial approval of the provider shall be for one calendar year.

(2) The program provider may be approved or reapproved only after, at minimum, a programmatic evaluation and a review of personnel qualifications, adequacy of physical plant and equipment, and curriculum content.

(3) TEA may place conditions on the provider to ensure the provision of a FAPE for students who have been placed in a nonpublic residential program during the provider's approval period or during a reapproval process.

(4) If TEA does not approve, does not reapprove, or withdraws an approval from a program provider, a school district must take steps to remove any students currently placed at the provider's facility, or cancel a student's planned placement, as expeditiously as possible.

(5) TEA may conduct announced or unannounced onsite visits at a program provider's facility that is serving one or more Texas public school students in accordance with this section and will monitor the program provider's compliance with the requirements of this section.

(e) Criteria for approval. Requests for approval of state and federal funding for nonpublic residential program placements shall be negotiated on an individual student basis through a residential application submitted by the school district to TEA.

(1) A residential application may be submitted for educational purposes only. The residential application shall not be approved if the application indicates that the:

(A) placement is due primarily to the student's medical problems;

(B) placement is due primarily to problems in the student's home;

(C) district does not have a plan, including criteria and a projected date, for the student's return to the local school program;

(D) district did not attempt to implement lesser restrictive placements prior to residential placement (except in emergency situations as documented by the student's ARD committee);

(E) placement is not cost effective when compared with other alternative placements; or

(F) residential facility provides unfundable or unapprovable services.

(2) The placement, if approved by TEA, shall be funded as follows:

(A) the education cost of nonpublic residential program contracts shall be funded with state funds on the same basis as nonpublic day program contract costs according to TEC, §48.102;

(B) related services and residential costs for nonpublic residential program contracts shall be funded from a combination of fund sources. After expending any other available funds, the district must expend its local tax share per average daily attendance and 25% of its Individuals with Disabilities Education Act, Part B (IDEA-B), formula base planning amount (or an equivalent amount of state and/or local funds) for related services and residential costs. If this is not sufficient to cover all costs of the placement, the district through the residential application process may receive IDEA-B discretionary residential funds to pay the balance of the nonpublic residential contract placement(s) costs; and

(C) funds generated by the formula for residential costs described in subparagraph (B) of this paragraph shall not exceed the daily rate recommended by the Texas Department of Family and Protective Services for the general residential operation intense service level of care.

(3) Contracts between school districts and approved nonpublic residential program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31.

(4) Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change in placement or services.

(f) Contract for out-of-state nonpublic residential programs. School districts that contract for out-of-state nonpublic residential programs shall do so in accordance with the rules in this section, except that the program provider must be approved by the appropriate agency in the state in which the facility is located rather than by TEA.

§89.1094. Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of a Free Appropriate Public Education (FAPE).

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

(1) Nonpublic or non-district operated day program--A nonpublic or non-district operated day program includes the provision of special education and related services to one or more Texas public school students during school hours by someone other than school district personnel in a facility not operated by a school district. A student placed in this program has been determined by his or her admission, review, and dismissal (ARD) committee to require a day placement in order to facilitate the student's attainment of reasonable educational progress and to provide the student a free appropriate public education (FAPE).

(2) Nonpublic or non-district operated day program provider--A nonpublic or non-district operated day program provider is an entity with one or more facilities that contracts with a school district for the provision of some or all of a student's special education and related services when the school district is unable to provide these services. These providers include:

(A) a county system operating under application of former law as provided in Texas Education Code (TEC), §11.301;

(B) a regional education service center established under TEC, Chapter 8;

(C) a nonpublic day school; or

(D) any other public or private entity with which a school district enters into a contract under TEC, §11.157(a), for the provision of special education services in a facility not operated by a school district.

(3) School district--The definition of a school district includes independent school districts established under TEC, Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

(b) Nonpublic or non-district operated day program requirements. A school district may contract with a nonpublic or non-district operated day program provider in accordance with the requirements in this section.

(1) Before a student's ARD committee places a student with a disability in, or refers a student to, a nonpublic or non-district operated day program, the ARD committee shall initiate and conduct a meeting to develop an individualized education program (IEP) for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner of education rules in this chapter.

(2) Before a student's ARD committee places a student with a disability in, or refers a student to, a nonpublic or non-district operated day program, the district shall initiate and conduct an onsite, in-person review of the program provider's facility to ensure that the program is appropriate for meeting the student's educational needs.

(3) The appropriateness of the placement and the facility shall be documented in the IEP annually. The student's ARD committee may only recommend a nonpublic or non-district operated day program if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the school district.

(A) The student's IEP must list which services the school district is unable to provide and which services the program will provide.

(B) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date for the student's return to the school district and document this information in the IEP.

(C) The school district shall make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by TEA, to:

(i) verify that the program provider can, and will, provide the services listed in the student's IEP that the provider has agreed to provide to the student;

(ii) obtain written verification that the facility meets minimum standards for health and safety and holds all applicable local and state accreditation and permit requirements;

(iii) verify that the program provider's staff who work with the student have been subject to criminal background checks (to include fingerprinting) that meet the standards applicable to public school employees;

(iv) verify that the program provider has developed written policies, procedures, and operating guidelines that set forth necessary standards and steps to be followed to ensure the student maintains the same rights as other public school students with disabilities, including when the student is subject to emergency behavioral interventions or disciplinary actions, as well as to ensure the prohibition of aversive techniques as defined by TEC, §37.0023; and

(v) verify that the educational program provided at the facility is the least restrictive environment for the student.

(4) The placement of more than one student in the same facility may be considered in the same onsite visit to the facility. However, the IEP of each student must be individually reviewed, and a determination of appropriateness of placement and services must be made for each student.

(c) Notification. Within 30 calendar days from an ARD committee's decision to place or continue the placement of a student in a nonpublic or non-district operated day program, a school district must electronically submit to the Texas Education Agency (TEA) notice of, and information regarding, the placement in accordance with submission procedures specified by TEA.

(1) If the nonpublic or non-district operated day program provider is on the commissioner's list of approved providers, TEA will review the student's IEP and placement as required by 34 CFR, §300.120, and, in the case of a placement in or referral to a private school or facility, 34 CFR, §300.146. After review, TEA will notify the school district whether federal or state funds for the program placement are approved. If TEA does not approve the use of funds, it will notify the school district of the basis for the non-approval.

(2) If the nonpublic or non-district day program provider is not on the commissioner's list of approved providers, TEA will begin the approval procedures described in subsection (d) of this section. School districts must ensure there is no delay in implementing a child's IEP in accordance with 34 CFR, §300.103(c).

(3) If a nonpublic or non-district operated day program placement is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify TEA of the order within 30 calendar days. The program provider serving the student is not required to go through the approval procedures described in subsection (d) of this section for the ordered placement. If, however, the school district or other school districts intend to place other students in the program, the program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers.

(d) Approval of the nonpublic or non-district operated day program. Nonpublic or non-district operated day program providers must have their educational programs approved for contracting purposes by the commissioner. Approvals and reapprovals will only be considered for those providers that have a contract already in place with a school district for the placement of one or more students or that have a pending request from a school district. Reapproval can be for one, two, or three years, at the discretion of TEA.

(1) For a program provider to be approved or reapproved, the school district must electronically submit to TEA notice of, and information regarding, the placement in accordance with submission procedures specified by TEA. TEA shall begin approval procedures and conduct an onsite visit to the provider's facility within 30 calendar days after TEA has been notified by the school district and has received the required submissions as outlined by TEA. Initial approval of the provider shall be for one calendar year.

(2) The program provider may be approved or reapproved only after, at minimum, a programmatic evaluation and a review of personnel qualifications, adequacy of physical plant and equipment, and curriculum content.

(3) TEA may place conditions on the provider to ensure the provision of a FAPE for students who have been placed in a nonpublic or non-district operated day program during the provider's approval period or during a reapproval process.

(4) If TEA does not approve, does not reapprove, or withdraws an approval from a program provider, a school district must take steps to remove any students currently placed at the provider's facility, or cancel a student's planned placement, as expeditiously as possible.

(5) TEA may conduct announced or unannounced onsite visits at a program provider's facility that is serving one or more Texas public school students in accordance with this section and will monitor the program provider's compliance with the requirements of this section.

(e) Funding procedures and other requirements. The cost of nonpublic or non-district operated day program placements will be funded according to TEC, §48.102 (Special Education); §89.1005(e) of this title (relating to Instructional Arrangements and Settings); and §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).

(1) Contracts between school districts and approved nonpublic or non-district operated day program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31.

(2) Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change in placement or services.

(3) If a student who is placed in a nonpublic or non-district operated day program by a school district changes his or her residence to another Texas school district during the school year, the school district must notify TEA within 10 calendar days of the date on which the school district ceased contracting with the program provider for the student's placement. The student's new school district must meet the requirements of 34 CFR, §300.323(e), by providing comparable services to those described in the student's IEP from the previous school district until the new school district either adopts the student's IEP from the previous school district or develops, adopts, and implements a new IEP. The new school district must comply with all procedures described in this section for continued or new program placement.

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

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Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

CHAPTER 102. EDUCATIONAL PROGRAMS

The Texas Education Agency adopts the repeal of §§102.1091, 102.1093, and 102.1095 and new §102.1091, concerning college and career readiness school models. The repeal of §§102.1091, 102.1093, and 102.1095 is adopted without changes to the proposed text as published in the April 26, 2024 issue of the *Texas Register* (49 TexReg 2607) and will not be republished. New §102.1091 is adopted with changes to the proposed text as published in the April 26, 2024 issue of the *Texas Register* (49 TexReg 2607) and will be republished. The adopted revisions repeal provisions related to Texas Science, Technology, Engineering, and Mathematics (T-STEM) Academies as a result of the sunset of T-STEM programs in June 2023 and consolidate information related to Early College High School (ECHS) and Pathways in Technology Early College High School (P-TECH) into one new section. The adopted new section updates ECHS programmatic requirements to align with the requirements of Senate Bill (SB) 1887, 88th Texas Legislature, Regular Session, 2023.

REASONED JUSTIFICATION: Section 102.1091 defines early college terms and establishes requirements related to the application, operation, notification, evaluation, and authority of early college programs. Section 102.1095 defines P-TECH terms and provides requirements related to the application, operation, grants, incentives, evaluation, and authority of the P-TECH program.

The adopted revisions repeal §102.1091 and §102.1095 and consolidate the definitions and programmatic requirements of ECHS and P-TECH programs into new §102.1091, College and Career Readiness School Models. The new rule reflects revised ECHS and P-TECH programmatic blueprints released in June 2023. The revised blueprints align ECHS and P-TECH definitions and requirements, provide updated evaluation data indicators, and introduce a needs-improvement process. Specifically, the following provisions are addressed.

Subsection (a) includes definitions related to ECHS and P-TECH programs as a result of new terms included in the ECHS and P-TECH revised blueprints. In response to public comment, the definition of ECHS in subsection (a)(7) was revised to include the requirement that associate degrees earned by ECHS students are associate degrees with a completed field of study curriculum as defined by Texas Education Code (TEC), §61.823, that are transferrable at one or more general academic teaching institutions, as defined by TEC, §61.003.

Subsections (b)(2)-(4) describes the different application processes for ECHS and P-TECH campuses based on the campus designation status.

Subsection (c) establishes the Needs Improvement campus designation status and needs-improvement processes for ECHS and P-TECH campuses.

Subsection (d) includes the notification process for P-TECH programs and adds further detail on the notification processes for the new designation campus status as established in the ECHS and P-TECH 2023 blueprints.

Subsection (e) adds the program operation conditions for P-TECH programs and adds further detail on ECHS and P-TECH operation requirements as outlined in the revised blueprints. Based on public comment, the conditions of ECHS were revised in subsection (e)(1)(B) to include the requirement that associate degrees earned by ECHS students are associate degrees with a completed field of study curriculum as defined by TEC, §61.823.

Subsection (f) describes programs available to P-TECH campuses, including the P-TECH Year 5 and 6 programs.

Subsection (g) adds the evaluation criteria for P-TECH programs and updates the evaluation criteria to be based upon ECHS and P-TECH outcomes-based measures, as established by the updated ECHS and P-TECH blueprints.

Subsection (h) adds P-TECH to factors resulting in the revocation of authority to operate a program.

In addition, the early college definitions are updated to align with SB 1887, 88th Texas Legislature, Regular Session, 2023, which updated early college program requirements in TEC, §29.908.

Section 102.1093 provides definitions and programmatic requirements of the T-STEM program. The proposed revisions repeal §102.1093 following the sunset of the T-STEM program in June 2023.

Finally, the subchapter title is changed to Commissioner's Rules Concerning Postsecondary Preparation Programs.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 26, 2024, and ended May 27, 2024. Following is a summary of public comments received and agency responses.

Comment: The Commit Partnership and five supporting organizations, including the Texas Business Leadership Council, The Education Trust, the Longview Chamber of Commerce, Texas 2036, and Teach Plus, noted that the ECHS definition in the proposed rule is not in alignment with the revised definition of ECHS resulting from SB 1887, 88th Texas Legislature, Regular Session, 2023; specifically, the ECHS requirement for a completed field of study curriculum developed under TEC, §61.823. The Commit Partnership and the supporting organizations asked the agency to revise the definition of ECHS to include the field of study curriculum requirement to ensure alignment with SB 1887 and to promote degree transferability.

Response: The agency agrees that the definition should align with statute. At adoption, the definition of ECHS in §102.1091(a)(7) and conditions of ECHS program operation listed in §102.1091(e)(1)(B) were revised to include the requirement that students must have the opportunity to earn an academic associate degree with a completed field of study curriculum, as defined by TEC, §61.823.

SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING COLLEGE AND CAREER READINESS SCHOOL MODELS

19 TAC §§102.1091, 102.1093, 102.1095

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §29.553, which requires the commissioner of education to establish and administer the Pathways in Technology Early College High School (P-TECH) program; TEC, §29.908, as amended by Senate Bill 1887, 88th Texas Legislature, Regular Session, 2023, which establishes the Early College High School (ECHS) program; and TEC, §29.908(g), which permits the commissioner to adopt rules as necessary to administer the program.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §29.553 and §29.908, as amended by Senate Bill 1887, 88th Texas Legislature, Regular Session, 2023.

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

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SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING POSTSECONDARY PREPARATION PROGRAMS

19 TAC §102.1091

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §29.553, which requires the commissioner of education to establish and administer the Pathways in Technology Early College High School (P-TECH) program; TEC, §29.908, as amended by Senate Bill 1887, 88th Texas Legislature, Regular Session, 2023, which establishes the Early College High School (ECHS) program; and TEC, §29.908(g), which permits the commissioner to adopt rules as necessary to administer the program.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §29.553 and §29.908, as

amended by Senate Bill 1887, 88th Texas Legislature, Regular Session, 2023.

§102.1091. College and Career Readiness School Models.

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

(1) Benchmarks--The standards for program implementation that are included in the blueprints.

(2) Blueprint--The document that outlines the College and Career Readiness School Models (CCRSM) requirements, including benchmarks, design elements, artifacts, and outcomes-based measures.

(3) Business or industry partner--Employers who enter into a formal agreement with a Pathways in Technology Early College High School (P-TECH) to support work-based learning (WBL).

(4) Design elements--The processes, structures, or services within each benchmark that a CCRSM campus must fulfill.

(5) Designated campus--A CCRSM campus with six or more years of implementation that has met outcomes-based measures (OBMs) necessary for designation.

(6) Designated with Distinction campus--A CCRSM campus with seven or more years of implementation that has met Designated with Distinction OBMs.

(7) Early College High School (ECHS)--A school established under Texas Education Code (TEC), §29.908, that enables a student in Grade 9, 10, 11, or 12 who is at risk of dropping out of school, as defined by TEC, §29.081, or who wishes to accelerate completion of high school to combine high school courses and college-level courses. An ECHS program must provide for a course of study that, on or before the fifth anniversary of a student's first day of high school, enables a participating student to receive both a high school diploma and either an applied or academic associate degree, with a completed field of study curriculum, as defined by TEC, §61.823, that is transferable toward a baccalaureate degree at one or more general academic teaching institutions, as defined by TEC, §61.003.

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

(9) Needs improvement campus--A CCRSM campus with six or more years of implementation that has not met OBMs necessary for designation.

(10) Optional Flexible School Day Program (OFSDP)--A program approved by the commissioner of education to provide flexible hours and days of attendance for eligible students in Grades 9-12, as defined in §129.1027 of this title (relating to Optional Flexible School Day Program).

(11) Outcomes-based measures--The data indicators related to access, achievement, and attainment that a CCRSM campus is required to meet to achieve a status of Designated or Designated with Distinction.

(12) Pathways in Technology Early College High School--A school established under TEC, §29.553, that enables a student in Grades 9, 10, 11, or 12 who is at risk of dropping out of school, as defined by TEC, §29.081, or who wishes to accelerate completion of high school to combine high school and postsecondary courses. A P-TECH program must be open enrollment and provide for a course of study that, on or before the sixth anniversary of a student's first day of high school, enables a participating student to receive both a high school diploma and an associate degree, a two-year postsecondary certificate, or an industry certification, and must include a work-based education program.

(13) Planning campus--A CCRSM campus with zero years of implementation.

(14) Provisional campus--A CCRSM campus with one to five years of implementation.

(15) School district--For the purposes of this section, the definition of school district includes an open- enrollment charter school.

(16) Work-based education program--Practical, hands-on activities or experiences through which a learner interacts with industry professionals in a workplace that may be an in-person, virtual, or simulated setting. Learners prepare for employment or advancement along a career pathway by completing purposeful tasks that develop academic, technical, and employability skills. A work-based education program is also known as work-based learning.

(b) Conditions for approval of CCRSM status.

(1) Conditions for approval of a Planning campus.

(A) Applicant eligibility. Any school district may submit a separate application on behalf of each campus it requests to be considered as a Planning campus.

(B) Application process. A school district must submit each application in accordance with the program application cycle (PAC) procedures determined by the commissioner.

(C) Planning campus timeline. A planning campus shall be eligible to apply for Provisional campus status after the mandatory planning year.

(2) Conditions for approval of a Provisional campus.

(A) Applicant eligibility. Any Planning campus or approved provisional campus may submit an application to be considered as a Provisional campus.

(B) Application process. Any Planning campus or approved Provisional campus must submit each application in accordance with the PAC procedures determined by the commissioner.

(C) Provisional campus timeline. A Provisional campus shall be eligible to apply to renew its status as a Provisional campus yearly for up to five years.

(3) Conditions for approval of a Designated campus.

(A) Applicant eligibility. A Provisional campus entering its fifth year of operation may submit an application on behalf of the campus it requests to be considered as a Designated campus.

(B) Application process. A prospective Designated campus must submit each application in accordance with the PAC procedures determined by the commissioner. Campuses must meet access, achievement, and attainment OBM criteria and implement all design elements in order to receive CCRSM Designated status.

(C) Designated campus timeline. A Designated campus shall be eligible to apply to renew its status as a Designated campus yearly.

(4) Conditions for approval of a Designated with Distinction campus.

(A) Applicant eligibility. A Designated campus may qualify for Designated with Distinction status in one or more of the following OBM distinction criteria areas beginning in its seventh year of operation:

(i) access;

(ii) achievement; and

(iii) attainment.

(B) Application process. A prospective Designated with Distinction campus must submit each application in accordance with the PAC procedures determined by the commissioner. The campus application in the PAC will serve as the Designated with Distinction application. Campuses must meet access, achievement, and attainment designated with distinction OBM criteria and implement all design elements in order to receive CCRSM Designated with Distinction status.

(C) Designated with Distinction campus timeline. A Designated with Distinction campus shall qualify to renew its status as a Designated with Distinction campus yearly.

(c) Needs Improvement and revocation of CCRSM status.

(1) Determination of CCRSM Needs Improvement status. If the conditions of approval for CCRSM Designated status are not met, including failure to meet the required OBM designated criteria, the CCRSM campus will be classified as a CCRSM Needs Improvement campus.

(2) Needs Improvement campus timeline. A Needs Improvement campus is required to remain in the Needs Improvement status for a period of three school years following campus notification of the Needs Improvement status. During the three years of Needs Improvement status, the campus is required to complete the PAC for Needs Improvement progress reports.

(3) Needs Improvement progress monitoring. During the three years of Needs Improvement status, the campus will receive targeted technical assistance at no cost to the CCRSM to improve OBMs.

(4) Fulfillment of CCRSM Needs Improvement requirements. Following completion of the three-year Needs Improvement period and upon successfully meeting the OBM designation criteria, the CCRSM will move out of the Needs Improvement status and into the Designated or Designated with Distinction status.

(5) Revocation of CCRSM status. Following completion of the mandatory three years of Needs Improvement status, if a CCRSM does not successfully meet the OBM designation criteria, the authorization of the campus as a CCRSM will be revoked and the campus will be removed from the CCRSM network.

(d) Notification timeline. TEA will notify each applicant of its selection or non-selection as a CCRSM Planning, Provisional, Designated, Designated with Distinction, or Needs Improvement campus. The designation notification will be sent no later than the summer following the submission of the campus application in the PAC. Campuses selected for Planning, Provisional, Designated, and Designated with Distinction status will be publicly identified on TEA's website and will be identified as such in designation status notification to the district and to the IHE partner listed in the CCRSM PAC. Campuses in Needs Improvement status will not be publicly identified but will be identified as Needs Improvement in the designation status notification sent to the district and to the IHE partner listed in the CCRSM PAC.

(e) Conditions of CCRSM program operation.

(1) As established under TEC, §29.908, an ECHS must:

(A) enable a student in Grade 9, 10, 11, or 12 who is at risk of dropping out of school, as defined by TEC, §29.081, or who wishes to accelerate completion of high school to provide for a course of study that enables a participating student to combine high school courses and college-level courses;

(B) allow participating students to complete high school and enroll in a program at an IHE that will enable a student to, on or before the fifth anniversary of a student's first day of high school, receive a high school diploma and either an applied or academic associate degree, with a completed field of study curriculum, as defined by TEC, §61.823, that is transferable toward a baccalaureate degree at one or more general academic teaching institutions, as defined by TEC, §61.003;

(C) include articulation agreements with colleges, universities, and technical schools in Texas to provide a participating student access to postsecondary educational and training opportunities at a college, university, or technical school; and

(D) provide a participating student flexibility in class scheduling and academic mentoring.

(2) As established under TEC, §29.553, a P-TECH must:

(A) be open enrollment and enable a student in Grade 9, 10, 11, or 12 who is at risk of dropping out of school, as defined by TEC, §29.081, or who wishes to accelerate completion of high school to combine high school courses and postsecondary courses;

(B) provide for a course of study that, on or before the sixth anniversary of a student's first day of high school, enables a participating student to receive both a high school diploma and an associate degree, a two-year postsecondary certificate, or an industry certification and complete work-based training;

(C) include articulation agreements with colleges, universities, and technical schools in Texas to provide a participating student access to postsecondary educational and training opportunities at a college, university, or technical school;

(D) include a memorandum of understanding with regional business or industry partners to provide a participating student access to work-based training;

(E) include in each memorandum of understanding with a regional business or industry partner an agreement that the regional business or industry partner will give to a student who receives work-based training from the partner under the P-TECH program first priority in interviewing for any jobs for which the student is qualified that are available on the students' completion of the program; and

(F) provide a participating student flexibility in class scheduling and academic mentoring.

(3) The CCRSM must comply with all the requirements outlined in the CCRSM blueprints. If a CCRSM chooses to discontinue CCRSM operations, the CCRSM must ensure previously enrolled CCRSM students will have the opportunity to complete their course of study. The CCRSM must notify TEA of its decision to discontinue operations and submit an official letter from the district superintendent with the district decision.

(4) A school district operating a CCRSM program must comply with all assurances included in the program application submitted through the PAC. If the CCRSM changes the location of the CCRSM, the CCRSM model, or the IHE partner outside of the PAC, the CCRSM must notify TEA of the change.

(5) CCRSM approval is valid for a maximum of one school year.

(6) The CCRSM program must be provided at no cost to CCRSM students. A student enrolled in a CCRSM program may not be

required to pay for tuition, fees, or required textbooks for any coursework. The school district in which the student is enrolled shall pay for tuition, fees, and required textbooks, to the extent those charges are not waived by the IHE.

(7) P-TECH Year 5 and 6 students are not counted for accountability purposes.

(f) Programs available to an approved CCRSM.

(1) Approval as a CCRSM will allow a campus to access programs available to CCRSM programs.

(2) An approved CCRSM campus may access the OFSDP defined in §129.1027 of this title. An approved CCRSM campus is eligible for OFSDP but must apply separately in accordance with TEC, §29.0822, and procedures established by the commissioner.

(3) Approval as a P-TECH will allow a campus to access programs available to the P-TECH, including participation in a Year 5 and Year 6 P-TECH program.

(4) P-TECH Year 5 and 6 students are not counted for accountability purposes.

(g) Evaluation of a CCRSM program. Evaluation of the CCRSM program will occur through the PAC and using self-reported data provided by the campus to generate OBM data. Progress monitoring will also occur at the campus level through campus coaching provided through state-appointed technical assistance.

(h) Revocation of authority.

(1) The commissioner may deny renewal or revoke the authorization of a CCRSM program based on 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 OBM data;

(C) failure to meet performance standards specified in the application and/or CCRSM blueprints; or

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

(2) A decision by the commissioner to deny renewal as or revoke authorization of a CCRSM is final and may not be appealed.

(3) The commissioner may impose sanctions on a school district as authorized by TEC, Chapters 39 and 39A, for failure to comply with the requirements of this section.

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

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19 TAC §102.1097

The Texas Education Agency adopts new §102.1097, concerning postsecondary preparation programs. The new section is adopted with changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2611) and will be republished. The adopted new section implements House Bill (HB) 8, 88th Texas Legislature, Regular Session, 2023, by establishing provisions for the Financial Aid for Swift Transfer (FAST) program.

REASONED JUSTIFICATION: HB 8, 88th Texas Legislature, Regular Session, 2023, established the FAST program to allow eligible students to enroll, at no cost to the student, in dual credit courses at participating institutions of higher education.

New §102.1097 implements HB 8 by defining the requirements a school district must meet each school year to report educationally disadvantaged students for the purposes of the FAST program.

New subsection (a) identifies the purpose of the FAST program, and new subsection (b) includes relevant definitions.

New subsections (c) and (d) clarify the methods school districts and open-enrollment charter schools may use to determine student eligibility for the FAST program. Based on public comment, the definition of student eligibility in subsection (c) was revised to specify that a student who is educationally disadvantaged at any time during the four school years preceding the students' enrollment in a dual credit class is eligible for the FAST program.

New subsection (e) explains the relationship between the Community Eligibility Provision and determining individual student eligibility status.

New subsection (f) establishes the responsibility of school districts to obtain appropriate data needed from families to determine eligibility, verify information, and retain records.

New subsection (g) states that the commissioner has the discretion to conduct an audit of data as it relates to the FAST program.

New subsection (h) clarifies that the eligibility of students participating in the FAST program will be based on Texas Student Data System Public Education Information Management System (TSDS PEIMS) data submissions.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 26, 2024, and ended May 27, 2024. Following is a summary of public comments received and agency responses.

Comment: The Commit Partnership and seven supporting organizations, including the Texas Business Leadership Council, The Education Trust, the Longview Chamber of Commerce, Texas 2036, Teach Plus, the Greater Houston Partnership, and Educate Texas, noted that the proposed rule does not provide the full criteria for FAST student eligibility as defined in HB 8, 88th Texas Legislature, Regular Session, 2023; specifically, the criterion that a student who is educationally disadvantaged at any time during the four school years preceding the students' enrollment in the dual credit course is eligible for FAST. The Commit Partnership and the supporting organizations asked the agency to revise the criteria for FAST student eligibility to include the four-year lookback to ensure every student who is eligible for FAST receives funding.

Response: The agency agrees that the rule should align with statute. At adoption, the definition of student eligibility for FAST listed in §102.1097(c) was revised to specify that a student who is educationally disadvantaged at any time during the four school

years preceding the students' enrollment in a dual credit class is eligible for the FAST program.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §28.0095(b), as added by House Bill 8, 88th Texas Legislature, Regular Session, 2023, which requires the Texas Education Agency and the Texas Higher Education Coordinating Board (THECB) to jointly establish the Financial Aid for Swift Transfer (FAST) program to allow eligible students to enroll, at no cost to the student, in dual credit courses at participating institutions of higher education. TEC, §28.0095(j), requires the commissioner and THECB to adopt rules as necessary to implement the FAST program.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §28.0095(b) and (j), as added by House Bill 8, 88th Texas Legislature, Regular Session, 2023.

§102.1097. Financial Aid for Swift Transfer Program.

(a) Purpose. The Financial Aid for Swift Transfer (FAST) program is established to allow eligible students to enroll, at no cost to the student, in dual credit courses at participating institutions of higher education.

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

(1) Dual credit course--A course offered for joint high school and junior college credit under Texas Education Code (TEC), §130.008, or another course offered by an institution of higher education for which a high school student may earn credit toward satisfaction of:

(A) a requirement necessary to obtain an industry-recognized credential or certificate or an associate degree;

(B) a foreign language requirement at an institution of higher education;

(C) a requirement in the core curriculum, as that term is defined by TEC, §61.821, at an institution of higher education; or

(D) a requirement in a field of study curriculum developed by the Texas Higher Education Coordinating Board under TEC, §61.823.

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

(c) Student eligibility. A student who is educationally disadvantaged at any time during the four school years preceding the students' enrollment in a dual credit course is eligible for the FAST program. To be considered educationally disadvantaged, a student must meet the income requirements for eligibility under the National School Lunch Program (NSLP), authorized by 42 United States Code, §§1751, et seq. School districts and open-enrollment charter schools may use the following approved methods for determining student eligibility for the FAST program:

(1) parent certification, where the parent or guardian asserts meeting the income requirements for eligibility under this subsection;

(2) direct certification, where eligible children are certified for free meals without the need for a household application based on household participation in one or more federal assistance programs; or

(3) direct verification, where public records are used to verify a student's eligibility for free or reduced-price meals when verification of student eligibility is required.

(d) Student eligibility under an alternative method. School districts and open-enrollment charter schools with one or more campuses not participating in the NSLP may derive an eligible student count by an alternative method as determined by the Texas Education Agency (TEA).

(e) Community Eligibility Provision (CEP). School districts and open-enrollment charter schools with one or more campuses using the CEP must still determine each student's individual eligibility status under the income guidelines for the NSLP for purposes of the FAST program.

(f) Recordkeeping. School districts and open-enrollment charter schools that participate in the FAST program pursuant to this section are responsible for obtaining the appropriate data from families of potentially eligible students, verifying that information, and retaining records.

(g) Auditing procedures. TEA will conduct an audit of data submitted by school districts and open-enrollment charter schools that participate in the FAST program pursuant to this section at the discretion of the commissioner of education.

(h) Data source. The FAST program will be based on each eligible student submitted by school districts and open-enrollment charter schools in the Texas Student Data System Public Education Information Management System fall submission. An indicator must be submitted for every educationally disadvantaged student and each student coded with average daily attendance (ADA) eligibility, except those students who are homeless, not enrolled, or otherwise ineligible for ADA or who reside in a residential facility and whose parents live outside the district.

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

Filed with the Office of the Secretary of State on August 2, 2024.

TRD-202403566
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 22, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 475-1497

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS
SUBCHAPTER A. INVESTIGATIONAL TREATMENTS FOR PATIENTS WITH SEVERE CHRONIC DISEASES

25 TAC §§1.1 - 1.4

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new Subchapter A, §§1.1 - 1.4, concerning Investigational Treatments for Patients with Severe Chronic Diseases. The new rules are adopted without

changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2923). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption implements Senate Bill 773, 88th Legislature, Regular Session, 2023, which added Chapter 490 to the Texas Health and Safety Code allowing access to investigational treatments for patients with severe chronic disease. Texas Health and Safety Code §490.002 requires DSHS to designate medical conditions considered to be severe chronic diseases. Texas Health and Safety Code §490.052 states that DSHS may prescribe a form for the informed consent required by the new subchapter.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, DSHS did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The new rules are adopted under Texas Health and Safety Code Chapter 490. The new rules are also adopted under Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

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

Filed with the Office of the Secretary of State on July 30, 2024.

TRD-202403506
Cynthia Hernandez
General Counsel
Department of State Health and Services
Effective date: August 19, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 939-7575

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CHAPTER 133. HOSPITAL LICENSING
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.46

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §133.46, concerning Billing Requirements.

The amendment to §133.46 is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2612). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The amendment is necessary to add information regarding these itemized-bill requirements.

COMMENTS

The 31-day comment period ended May 28, 2024.

During this period, HHSC received a comment regarding the proposed rule from the Texas Hospital Association (THA). A summary of the comment relating to the rule and HHSC's response follows.

Comment: THA stated they do not object to HHSC's proposed amendments to §133.46(a) and that they appreciate HHSC's citation of the relevant portions of the HSC, which already provides detailed information on itemized billing requirements. THA added that if the statute were to change, HHSC would not be required to enact new rules to carry it out and that THA appreciated this flexibility.

Response: HHSC acknowledges this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403485
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 834-4591

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CHAPTER 135. AMBULATORY SURGICAL CENTERS
SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §135.4

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §135.4, concerning Ambulatory Surgical Center (ASC) Operation.

The amendment to §135.4 is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2614). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The amendment is necessary to add information regarding these itemized-bill requirements.

COMMENTS

The 31-day comment period ended May 28, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §243.009, which requires HHSC to adopt rules for licensing of ASCs; and HSC §243.010, which requires those rules to include minimum standards applicable to ASCs.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403482
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 834-4591

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CHAPTER 137. BIRTHING CENTERS
SUBCHAPTER D. OPERATIONAL AND CLINICAL STANDARDS FOR THE PROVISION AND COORDINATION OF TREATMENT AND SERVICES

25 TAC §137.39

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §137.39, concerning General Requirements for the Provision and Coordination of Treatment and Services.

The amendment to §137.39 is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2616). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The amendment is necessary to add information regarding these itemized-bill requirements.

COMMENTS

The 31-day comment period ended May 28, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §244.009, which requires HHSC to adopt rules for licensing of birthing centers; and HSC §244.010, which requires those rules to include minimum standards applicable to birthing centers.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403484
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 834-4591

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CHAPTER 139. ABORTION FACILITY REPORTING AND LICENSING
SUBCHAPTER D. MINIMUM STANDARDS FOR LICENSED ABORTION FACILITIES

25 TAC §139.60

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §139.60, concerning Other State and Federal Compliance Requirements.

The amendment to §139.60 is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2618). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The amendment is necessary to add information regarding these itemized-bill requirements.

COMMENTS

The 31-day comment period ended May 28, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §245.009, which requires HHSC to adopt rules for licensing of abortion facilities; and HSC §245.010, which requires those rules to include minimum standards to protect the health and safety of a patient of an abortion facility and comply with HSC Chapter 171.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403486
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 834-4591

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CHAPTER 229. FOOD AND DRUG
SUBCHAPTER J. MINIMUM STANDARDS FOR NARCOTIC TREATMENT PROGRAMS
25 TAC §229.144

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §229.144, concerning State and Federal Statutes and Regulations.

The amendment to §229.144 is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2620). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The amendment is necessary to add information regarding these itemized-bill requirements.

COMMENTS

The 31-day comment period ended May 28, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §466.004, which authorizes HHSC to administer and enforce rules to ensure the proper use of approved narcotic drugs in the treatment of persons with a narcotic drug dependency.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403483
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 834-4591

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TITLE 26. HEALTH AND HUMAN SERVICES
PART 1. HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 506. SPECIAL CARE FACILITIES
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §506.37

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §506.37, concerning Billing Requirements.

The amendment to §506.37 is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2621). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The amendment is necessary to add information regarding these itemized-bill requirements.

COMMENTS

The 31-day comment period ended May 28, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §248.006, which requires HHSC to adopt rules establishing minimum standards for special care facilities.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403481
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: August 18, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 834-4591

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CHAPTER 507. END STAGE RENAL DISEASE FACILITIES

SUBCHAPTER D. OPERATIONAL REQUIREMENTS FOR PATIENT CARE AND TREATMENT

26 TAC §507.50

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §507.50, concerning Billing Requirements.

The amendment to §507.50 is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2623). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The amendment is necessary to add information regarding these itemized-bill requirements.

COMMENTS

The 31-day comment period ended May 28, 2024.

During this period, HHSC received comments regarding the proposed rule from DaVita Inc. A summary of their comments relating to the rule and HHSC's responses follow.

Comment: DaVita Inc. stated listing each individual item and its associated amount to draft an itemized bill would be a significant departure from current billing requirements and processes and noted end stage renal disease (ESRD) facilities bill for services and supplies using bundled codes as required under federal law and the Medicare policy. DaVita Inc. further stated ESRD facilities receive one payment per session or per day, depending on the treatment modality, for all items and services provided when treating ESRD.

DaVita Inc. stated an itemized bill would not be an accurate representation of a dialysis provider's billing computation because the sum of the individual charges would not necessarily equal the total bundled amount charged, given that there are efficiencies built into the dialysis bundled rate. DaVita Inc. stated they are concerned that their patients would not understand the concept of a bundled or composite payment rate and how each individual item does not equate to the full bundled payment amount.

Response: HHSC declines to revise §507.50 because a provider that submits billing codes for bundled services to a third party for reimbursement may meet the itemized billing requirements by including all bundle codes and the amounts billed for each bundle code in the itemized bill instead of listing the name and cost of each item and service provided.

Comment: DaVita Inc. stated that while the proposed rule provides a definition for "healthcare service," there is no definition for "supply," and recommended HHSC add a definition defining the term as "any and all medically necessary items used or furnished related to the provision of renal dialysis services in a sterile environment."

Response: HHSC declines to revise §507.50 because the rule is consistent with HSC Chapter 185, which does not define the term "supply."

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility; and HSC §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an ESRD facility.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403480
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: August 18, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 834-4591

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CHAPTER 509. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §509.67

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §509.67, concerning Billing Requirements.

The amendment to §509.67 is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2624). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The amendment is necessary to add information regarding these itemized-bill requirements.

COMMENTS

The 31-day comment period ended May 28, 2024.

During this period, HHSC received a comment regarding the proposed rule from Hollowbeck Solutions, LLC. A summary of the comment relating to the rule and HHSC's response follows.

Comment: Hollowbeck Solutions, LLC stated that HHSC seems more concerned about billing than patient care. Hollowbeck Solutions, LLC also stated HHSC does not hold urgent cares or medical spas accountable and stated freestanding emergency medical care facilities should be subject to the same standards as hospitals when regulating similar issues.

Response: HHSC acknowledges this comment and declines to revise §509.67. HHSC notes that while HHSC is committed to ensuring patient safety, HHSC does not have the statutory authority to regulate urgent care centers or medical spas. Furthermore, HHSC notes that the hospital rule at §133.46, which was proposed elsewhere in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2612), also contains the same language as the Freestanding Emergency Medical Care (FEMC) facility rule requiring compliance with HSC Chapter 185.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HSC §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403479
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: August 18, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 834-4591

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CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §510.45

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §510.45, concerning Billing Requirements.

The amendment to §510.45 is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2626). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The amendment is necessary to add information regarding these itemized-bill requirements.

COMMENTS

The 31-day comment period ended May 28, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403478
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: August 18, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 834-4591

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CHAPTER 511. LIMITED SERVICES RURAL HOSPITALS
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §511.75

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §511.75, concerning Billing Requirements.

The amendment to §511.75 is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2627). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The amendment is necessary to add information regarding these itemized-bill requirements.

COMMENTS

The 31-day comment period ended May 28, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §241.302(b), which provides that the Executive Commissioner of HHSC shall adopt rules to implement that section and establish minimum standards for limited services rural hospitals.

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

Filed with the Office of the Secretary of State on July 29, 2024.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 834-4591

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CHAPTER 564. CHEMICAL DEPENDENCY TREATMENT FACILITIES
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §564.28

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §564.28, concerning Billing Requirements.

The amendment to §564.28 is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2629). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written,

itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The amendment is necessary to add information regarding these itemized-bill requirements.

COMMENTS

The 31-day comment period ended May 28, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §464.009, which authorizes the Executive Commissioner to adopt rules governing organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed chemical dependency treatment facilities.

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

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Karen Ray
Chief Counsel
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CHAPTER 571. VOLUNTARY RECOVERY HOUSING ACCREDITATION

The Texas Health and Human Services Commission (HHSC) adopts new Chapter 571, concerning Voluntary Recovery Housing Accreditation. The new chapter consists of §571.1, concerning Purpose; §571.2, concerning Definitions; §571.3, concerning Approved Accrediting Organizations; §571.4, concerning Accreditation Not Required; §571.5, concerning Places Ineligible for Accreditation as a Recovery House; §571.11, concerning Standards for Accreditation; §571.21, concerning Accrediting Organization Requirements; §571.31, concerning Soliciting; §571.32, concerning Advertising Restrictions; and §571.41, concerning Accrediting Organization Enforcement Actions.

New §571.21 and §571.32 are adopted with changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2950). These rules will be republished.

New §§571.1-571.5, 571.11, 571.31, and 571.41 are adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2950). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new rules are necessary to implement House Bill (H.B.) 299, 88th Legislature, Regular Session, 2023.

H.B. 299 added new Texas Health and Safety Code (THSC) Chapter 469 to establish a voluntary accreditation program for recovery housing programs. THSC Chapter 469, in part, requires HHSC to adopt minimum standards for a voluntary recovery housing accreditation process. THSC §469.002(b) requires HHSC to approve only the National Alliance for Recovery Residences (NARR) or the Oxford House Incorporated to serve as an accrediting organization that provides accreditation to qualifying recovery houses.

THSC Chapter 469 also defines several key terms, outlines the responsibilities of the accreditation organizations, clarifies certain places are ineligible for accreditation as a recovery house, requires certain recovery houses to designate a responsible party, requires HHSC to prepare an annual report, prohibits soliciting and certain advertising, outlines enforcement procedures for accreditation organizations, and clarifies effective September 1, 2025, a recovery house must be accredited by an accrediting organization under this chapter to receive state money.

The new rules are necessary to establish and adopt the minimum standards for recovery housing accreditation required by THSC §469.002.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, HHSC received comments regarding the proposed rules from seven commenters: the Association of Substance Abuse Programs (ASAP), Clean Cause Foundation (CCF), the Hogg Foundation for Mental Health, La Hacienda Treatment Center, Recovery People, Stages of Recovery, and Texas Coalition for Healthy Minds (TCHM). A summary of the comments and HHSC's responses follow.

Comment: CCF, the Hogg Foundation for Mental Health, La Hacienda Treatment Center, Recovery People, and TCHM commented on paragraph three of the Government Growth Impact statement in the proposed preamble, which states, "implementation of the proposed rules will result in no assumed change in future legislative appropriations" and requested NARR to receive dedicated funding since the Oxford House has received funding for 10 years from the state and only provides Level I care. These commenters stated by contrast, NARR provides Level II and III recovery housing services and will need assistance in dealing with startup costs.

Response: HHSC acknowledges this comment and notes paragraph three of the Government Growth Impact statement reflects the impact of the proposed rules on future legislative appropriations and does not limit the Legislature's ability to appropriate funds. HHSC also notes that funding decisions are determined by the Legislature, and the HHSC does not have authority or influence over these appropriations.

Comment: Stages of Recovery requested HHSC offer additional training and resources, such as workshops, online courses, or training materials for designated responsible parties and staff.

Response: HHSC acknowledges this comment and declines to revise the rules in response because this request is beyond the scope of this rule project.

Comment: Stages of Recovery requested HHSC create a formal method for accredited recovery houses to provide feedback directly to HHSC so HHSC can make necessary adjustments and improvements to the program.

Response: HHSC acknowledges this comment and declines to revise the rules in response because this request is beyond the scope of this rule project.

Comment: Stages of Recovery requested HHSC maintain regular communication with accredited recovery houses regarding any potential updates or changes to standards or procedures to ensure providers are informed and prepared.

Response: HHSC acknowledges this comment and notes that HHSC communicates with providers via various methods, including email and GovDelivery. Additionally, any future proposed rule changes or updates will be posted for public comment in the *Texas Register* in accordance with the Administrative Procedure Act.

Comment: Stages of Recovery requested HHSC coordinate with existing state and local programs for substance use recovery to streamline support for recovery houses and avoid duplicative efforts.

Response: HHSC acknowledges this comment and declines to revise the rules in response because this request is beyond the scope of this rule project.

Comment: Stages of Recovery requested HHSC add detailed guidelines on the accreditation standards in §571.11 and any additional requirements beyond those of the NARR.

Response: HHSC declines to revise §571.11 as suggested because the language is consistent with THSC §469.002(a).

Comment: ASAP requested HHSC revise §571.11 to remove the specific publication dates for the Oxford House manual and NARR's Recovery Residence Quality Standards and recommended updating the section to adopt by reference the most current version of those standards.

Response: HHSC declines to revise §571.11 as suggested because it has determined the specific versions of the organizations' publications align with HHSC's priorities in implementing S.B. 299. If those organizations amend their standards, HHSC will consider revising this rule accordingly, based on the content of any amendments.

Comment: ASAP requested HHSC revise §571.21(a)(5) to "more clearly state when providing treatment services would make a recovery home ineligible for accreditation."

Response: HHSC declines to revise §571.21(a)(5) as suggested because the language is consistent with THSC Chapter 464, THSC §462.001(10), and THSC §469.003(7).

Comment: CCF, the Hogg Foundation for Mental Health, La Hacienda Treatment Center, Recovery People, and TCHM requested HHSC clarify in §571.21(a)(5) that recovery houses who provide chemical dependency treatment services are not eligible for accreditation under 26 TAC Chapter 571 when they provide those services "at the site of the recovery house."

Response: HHSC revises §571.21(a)(5) by removing the last sentence in the paragraph clarifying a recovery house that offers chemical dependency treatment services is not eligible for accreditation under 26 TAC Chapter 571 to further align §571.21(a)(5) with THSC Chapter 469.

Comment: ASAP requested HHSC revise §571.32 to clarify the rule only applies to accredited recovery houses or consider whether the rule is necessary to enact THSC §469.007.

CCF, the Hogg Foundation for Mental Health, Recovery People, and TCHM requested HHSC either remove §571.32 or clarify the rule only applies to accredited recovery houses.

Response: HHSC revises §571.32 to clarify accreditation organizations are required to ensure a recovery house accredited by that organization complies with §571.32.

HHSC made minor editorial changes to §571.21(a)(5) to ensure consistency with HHSC rulemaking guidelines regarding referencing the titles of statutes and rule chapters and to update references to current rules.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §§571.1 - 571.5

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and THSC §469.002, which requires HHSC establish minimum standards for accreditation as a recovery house.

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

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Karen Ray
Chief Counsel
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SUBCHAPTER B. MINIMUM STANDARDS FOR ACCREDITATION

26 TAC §571.11

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and THSC §469.002, which requires HHSC establish minimum standards for accreditation as a recovery house.

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

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For further information, please call: (512) 834-4591

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SUBCHAPTER C. ACCREDITING ORGANIZATION REQUIREMENTS

26 TAC §571.21

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and THSC §469.002, which requires HHSC establish minimum standards for accreditation as a recovery house.

§571.21. Accrediting Organization Requirements.

(a) An accrediting organization shall:

(1) develop procedures to:

(A) provide an easily accessible method for a recovery house seeking accreditation to find, complete, and submit an accreditation application;

(B) before accrediting an applicant or reaccrediting a recovery house, ensure the applicant or accredited recovery house at a minimum meets:

(i) the accrediting organization's standards in §571.11(a) of this chapter (relating to Standards for Accreditation) adopted by HHSC by reference; and

(ii) the additional standards in §571.11(b) of this chapter;

(C) determine the accreditation and reaccreditation period;

(D) require an accredited recovery house to submit all required reaccreditation information before the recovery house's accreditation period expires;

(E) require an applicant or accredited recovery house to adjust its practices to meet the standards for accreditation or reaccreditation;

(F) take an adverse action under §571.41 of this chapter (relating to Accrediting Organization Enforcement Actions) when a recovery house fails to meet the standards described in paragraph (2) of this subsection; and

(G) assess application accreditation and reaccreditation fees;

(2) provide training to recovery house staff concerning the accreditation standards in §571.11 of this chapter;

(3) develop a code of ethics;

(4) annually provide the following information to HHSC:

(A) the total number of accredited recovery houses;

(B) the number of recovery houses accredited during the preceding year;

(C) any issues concerning the accreditation or reaccreditation process;

(D) the number of accredited recovery houses that had an accreditation revoked during the preceding year; and

(E) the reasons for the revocation; and

(5) ensure a recovery house does not offer or claim to offer chemical dependency treatment services as outlined in THSC §464.001(4) and Title 26 Texas Administrative Code (26 TAC) Chapter 564 (relating to Chemical Dependency Treatment Facilities) at the site of the recovery house without a chemical dependency treatment facility license issued under 26 TAC Chapter 564.

(b) In addition to the requirements in subsection (a) of this section, the National Alliance for Recovery Residences shall:

(1) require an applicant or accredited recovery house to designate at least one individual to serve as the recovery house's responsible party, in accordance with THSC §469.004;

(2) require the responsible party to:

(A) satisfactorily complete training the accrediting organization provides concerning the accreditation standards in §571.11 of this chapter and the accrediting organization's accreditation and reaccreditation requirements; and

(B) be responsible for administering the recovery house in accordance with the accreditation standards in this chapter and the accrediting organization's accreditation and reaccreditation requirements; and

(3) require an accredited recovery house to notify the accrediting organization before the 30th business day after the date of any change to the recovery house's designated responsible party.

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

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SUBCHAPTER D. PROHIBITED ACTIONS

26 TAC §571.31, §571.32

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and THSC §469.002, which requires HHSC establish minimum standards for accreditation as a recovery house.

§571.32. Advertising Restrictions.

Pursuant to THSC §469.007, an accrediting organization shall ensure a recovery house accredited by that organization:

(1) does not advertise or otherwise communicate that the recovery house is accredited by an accrediting organization unless the recovery house is accredited by an accrediting organization in accordance with THSC Chapter 469 and this chapter; and

(2) does not advertise or cause to be advertised in any manner any false, misleading, or deceptive information about the recovery house.

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

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Karen Ray
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SUBCHAPTER E. ENFORCEMENT

26 TAC §571.41

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and THSC §469.002, which requires HHSC establish minimum standards for accreditation as a recovery house.

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

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Karen Ray
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CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §744.405, concerning What telephone numbers and other contact information must I post and where must I post this information; §744.501, concerning What written operational policies must I have; and §744.2801, concerning To whom may I release a child; and new §744.521, concerning What rights does a parent of a child in care of my child-care operation have.

New §744.521 and amended §744.501 and §744.2801 are adopted with changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2383). These rules will be republished.

Amended §744.405 is adopted without changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2383). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments and new section are necessary to comply with Senate Bill (S.B.) 1098, 88th Legislature, Regular Session, 2023. S.B. 1098 amended Texas Human Resources Code (HRC), Chapter 42, by adding §42.04271 to establish specific rights of the parent or guardian of a child enrolled in a licensed or registered child day care operation. Accordingly, HHSC Child Care Regulation (CCR) is adopting rules in Chapter 744 that will (1) establish new requirements related to parent rights, and (2) update and clarify current requirements that are related to parent rights.

COMMENTS

The 31-day comment period ended May 20, 2024. During this period, HHSC did not receive any comments regarding the proposed rules.

HHSC did receive comments on parallel rules in Chapter 746, Minimum Standards for Child-Care Centers, published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2386) and Chapter 747, Minimum Standards for Child-Care Homes, published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2391). HHSC is amending the proposed text related to complying with court orders that prevent a parent from picking up a child from the child-care operation in new §744.521 and amended §744.2801 to ensure the minimum standards remain congruent throughout Chapters 744, 746, and 747. For a more detailed description of comments received for Chapters 746 and 747, and the HHSC response, please see the preambles for Chapters 746 and 747, which are published elsewhere in this issue of the *Texas Register.*

HHSC is also amending §744.501 to correct punctuation in the rule.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

26 TAC §744.405

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3269

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DIVISION 4. OPERATIONAL POLICIES

26 TAC §744.501

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§744.501. What written operational policies must I have?

You must develop written operational policies and procedures that at a minimum address each of the following:

(1) Hours, days, and months of operation;

(2) Procedures for the release of children;

(3) Illness and exclusion criteria;

(4) Procedures for dispensing medication or a statement that medication is not dispensed;

(5) Procedures for handling medical emergencies;

(6) Procedures for parental notifications;

(7) Discipline and guidance that is consistent with Subchapter G of this chapter (relating to Discipline and Guidance). A copy of Subchapter G may be used for your discipline and guidance policy, unless you use disciplinary and training measures specific to a skills-based program, as specified in §744.2109 of this chapter (relating to May I use disciplinary measures that are fundamental to teaching a skill, talent, ability, expertise, or proficiency?);

(8) Suspension and expulsion of children;

(9) Meals and food service practices;

(10) Immunization requirements for children, including tuberculosis screening and testing if required by your regional Texas Department of State Health Services or local health authority;

(11) Enrollment procedures, including how and when parents will be notified of policy changes;

(12) Transportation, if applicable;

(13) Water activities, if applicable;

(14) Field trips, if applicable;

(15) Animals, if applicable;

(16) Procedures for providing and applying, as needed, insect repellent and sunscreen, including what types will be used, if applicable;

(17) Parent rights that are consistent with the rules in Division 5 of this subchapter (relating to Parent Rights);

(18) Procedures for parents to review and discuss with the director any questions or concerns about the policies and procedures of the operation;

(19) Procedures for parents to participate in the operation's activities;

(20) Instructions on how a parent may access the:

(A) Minimum standards online;

(B) Texas Abuse and Neglect Hotline; and

(C) HHSC website.

(21) Emergency preparedness plan;

(22) Procedures for conducting health checks, if applicable;

(23) Information on vaccine-preventable diseases for employees, unless your operation is in the home of the permit holder, the director, or a caregiver. The policy must address the requirements outlined in §744.2581 of this chapter (relating to What must a policy for protecting children from vaccine-preventable diseases include?);

(24) If your operation maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, policies for maintenance, administration, and disposal of unassigned epinephrine auto-injectors that comply with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in Texas Administrative Code, Title 25, Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and Texas Health and Safety Code §773.0145; and

(25) Procedures for supporting inclusive services to children with special care needs. The policy must address the requirements outlined in §744.2009 of this chapter (relating to What are my responsibilities when planning activities for a child in care with special care needs?).

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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DIVISION 5. PARENT RIGHTS

26 TAC §744.521

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Exec-

utive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§744.521. What rights does a parent of a child in care of my child-care operation have?

A parent of a child in care has the right to:

(1) Enter and examine your operation during its hours of operation without advance notice;

(2) File a complaint against your operation;

(3) Review your operation's publicly accessible records;

(4) Review your operation's written records concerning the parent's child, as outlined in §744.601 of this chapter (relating to Who has the right to access children's records?);

(5) Receive from your operation:

(A) HHSC's inspection reports for your operation; and

(B) Information regarding how to access your operation's compliance history online;

(6) Have your operation comply with a valid court order signed by a judge that prevents another parent from visiting or removing the parent's child from your operation, as outlined in §744.2801 of this chapter (relating to To whom may I release a child?);

(7) Be provided with contact information for Child Care Regulation, including the department's name, address, and telephone number;

(8) View any video recordings of an alleged incident of abuse or neglect involving the parent's child maintained by your operation as long as:

(A) Video recordings of the alleged incident are available;

(B) The parent is not allowed to retain any portion of the video depicting a child who is not the parent's child; and

(C) Your operation notifies in writing the parent of any other child captured in the video recording, before allowing the parent to inspect the video recording;

(9) Obtain a copy of your operation's policies and procedures, as outlined in §744.503 of this subchapter (relating to Must I provide parents with a copy of my operational policies?);

(10) Review, upon request of the parent, your:

(A) Staff training records; and

(B) In-house training curriculum, if any; and

(11) Be free from any retaliatory action by your operation for exercising any of the parent's rights.

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

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Chief Counsel
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SUBCHAPTER L. SAFETY PRACTICES DIVISION 5. RELEASE OF CHILDREN

26 TAC §744.2801

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§744.2801. To whom may I release a child?

(a) You must release a child only to a parent or a person designated by the parent.

(b) Upon receipt of a valid court order signed by a judge that prohibits a parent from removing the named child or children from the child-care operation, the child-care operation must:

(1) Comply with the court order immediately and until:

(A) Receipt of a subsequent court order that revokes the primary order; or

(B) The court order expires as defined in the document; and

(2) Maintain a copy of the court order in the child's file.

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

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §746.405, concerning What telephone numbers and other contact information must I post and where must I post this information; §746.501, concerning What written operational policies must I have; §746.1317, concerning Must the training for my caregivers and the director meet certain crite-

ria; and §746.4101, concerning To whom may I release a child; and new §746.521, concerning What rights does a parent of a child in care of my child-care center have.

New §746.521 and amended §746.501 and §746.4101 are adopted with changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2386) These rules will be republished.

Amended §746.405 and §746.1317 are adopted without changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2386). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments and new section are necessary to comply with Senate Bill (S.B.) 1098 and S.B. 1242, 88th Legislature, Regular Session, 2023. S.B. 1098 amended Texas Human Resources Code (HRC), Chapter 42, by adding §42.04271 to establish specific rights of the parent or guardian of a child enrolled in a licensed or registered child day care operation. S.B. 1242 amended HRC §42.0421 by adding Subsection (g-1) to allow a child-care center director to provide training to center staff if the individual was not the director of the child-care center at the time HHSC imposed an administrative penalty on the operation. Accordingly, HHSC Child Care Regulation (CCR) is adopting rules in Chapter 746 that will (1) establish new requirements related to parent rights, (2) update and clarify current requirements that are related to parent rights, and (3) update a requirement related to the criteria a child-care center director must meet to provide training to the director's staff.

COMMENTS

The 31-day comment period ended May 20, 2024. During this period, HHSC received comments regarding the proposed rules from eight commenters representing licensed child-care centers, including Toy Town PreSchool, Immanuel Baptist Church Child Development Center, Giorgi's Child Care, Legacy Kids Academy, Countryside Montessori, Jewel's Learning Center, Barnyard Kids Learning Center, and Wonderland Montessori. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Regarding §746.521, one commenter stated that while parents have rights and transparency in a child-care center is important, offering parents more rights and freedom to inspect a child-care center opens the center to lawsuits and closure. The commenter stated that it is becoming increasingly difficult to be a center director due to current staff issues and shortages, regulation requirements, administrative duties, and the parents with which the centers deal. The commenter added that child-care centers no longer feel protected.

Response: HHSC disagrees with the comment and declines to revise the rule. The Texas legislature already created the parent rights in HRC §42.04271. HHSC must align the rule with the statutory requirements.

Comment: Regarding §746.521(1), one commenter stated that while parents must have some rights when it comes to child-care and the care of their children, they should not be allowed to come to the center without advance notice as they could pose a safety concern. The commenter stated that the policies of the commenter's center require parents to provide advance notice before visiting the center.

Response: HHSC disagrees with the comment and declines to revise the rule. HHSC must align the rule with the statutory requirements related to parent rights in HRC §42.04271. Moreover, prior to the creation of §42.04271, HRC §42.0427 already required that all areas of a licensed facility, which includes a child-care center, must be accessible to a parent of a child in the operation's care if the parent visits the child during the facility's hours of operation. Because of that statute, the requirement to allow a parent to visit the center without securing approval is not new. HHSC has moved the requirement from its current location at §746.501(b)(1) to §746.521(1). §746.501(b)(1) currently requires a child-care center to allow parents to visit the child-care center at any time during the center's hours of operation to observe the parents' child, program activities, building, premises, and equipment without having to secure prior approval.

Comment: Regarding §746.521(4), one commenter stated that parents should not be allowed to review written records about their child unless the parent has provided the record to the center or in circumstances where the parent has signed an injury or incident report. The commenter stated that other records concerning the child may have confidential information that a parent may never need to see.

Response: HHSC disagrees with the comment and declines to revise the rule. The Texas legislature already created the parent rights in HRC §42.04271. HHSC must align the rule with the statutory requirements. Moreover, the requirement to allow parents to review written records about their child is not new. Section 746.521(4) references the current requirement at §746.601(b), which allows parents to access their child's records during a parent conference with the caregiver or child-care center director.

Comment: Regarding §746.521(5)(A), one commenter asked if the rule will include guidance for how child-care centers should provide inspection reports to parents and whether posting the inspection reports per §746.401 was still the expected way for parents to receive inspection reports.

Response: HHSC disagrees that any change is necessary based on this comment. There is no single required method for a child-care center to provide parents with inspection reports. However, HHSC has provided child-care centers with recommended options in the Technical Assistance (TA) box that follows the rule in the minimum standards courtesy publication.

Comment: Regarding §746.521(6), one commenter stated the commenter's child-care center does its best to comply with court orders but will not put themselves in harm's way if a parent does not willingly comply with the order. The commenter stated that the most the center can do is call the police or custodial parent.

Response: HHSC agrees that a child-care center may encounter sensitive situations when complying with a court order but declines to revise the rule in response to the comment. HHSC must align the rule with the statutory requirements related to parent rights in HRC §42.04271. However, to aid child-care providers in managing sensitive custody issues in relation to court orders, HHSC will create a TA document with resources and tips for child-care providers that will be available to all child-care providers via the CCR TA Library.

Comment: Regarding §746.521(6) and §746.4101(b), one commenter asked if HHSC has discussed, outside of trainings, how to handle a parent who becomes upset when not allowed to pick up a child. The commenter also asked whether HHSC has dis-

cussed child-care providers who get caught in the middle of a custody situation.

Another commenter stated that the wording of the new rule places liability on child-care centers to enforce court orders relating to custody agreements that most police departments will not enforce, citing it as a civil matter. The commenter stated that the most a center can do in these situations is lock the non-custodial parent out of the center and call the custodial parent and the police, the latter of which will typically allow the non-custodial parent to pick up the child once they obtain identification verifying the individual is the child's parent. The commenter stated this rule places an unfair burden on centers who should not be placed in the middle of custody issues.

Response: HHSC agrees that a child-care center may encounter sensitive situations when complying with a court order. However, HHSC declines to revise the rules in response to the comment. HHSC must align the rule with the statutory requirements related to parent rights in HRC §42.04271. However, to aid child-care providers in managing sensitive custody issues as they related to court orders, HHSC will create a TA document with resources and tips for child-care providers that will be available to all child-care providers via the CCR TA Library.

Comment: Regarding §746.521(8), one commenter stated that she considered removing video cameras from her child-care center in response to this rule. The commenter stated parents can misinterpret information in a video and turn it into something "out of hand" or file a lawsuit against the center. The commenter recommended HHSC remove poor performing child-care providers from the child-care industry rather than imposing this rule that puts undue stress on centers trying to provide the highest quality care to children.

Response: HHSC disagrees with the comment and declines to revise the rule. The Texas legislature already created the parent rights in HRC §42.04271. HHSC must align the rule with the statutory requirements. In addition, the rule limits parental access to video recordings to specific instances only, specifically when a parent's child is involved in an alleged incident of abuse or neglect.

Comment: Regarding §746.521(8), one commenter asked HHSC to re-evaluate the requirements related to video recordings. The commenter stated that many insurance companies stress that a child-care center not let anyone outside of Child Care Regulation (CCR) watch any video without a subpoena. The commenter also stated that insurance is getting harder for child-care centers to obtain due to child care being a "high risk" business, and the rule will not help this area of the center's daily business.

Response: HHSC agrees that a child-care center may have to consider insurance requirements when operating as a business. However, HHSC declines to revise the rule in response to the comment. The Texas legislature already created the parent rights in HRC §42.04271. HHSC must align the rule with the statutory requirements. In addition, the rule limits parental access to video recordings to specific instances only, specifically when a parent's child is involved in an alleged incident of abuse or neglect.

Comment: Regarding §746.521(10), two commenters stated that parents do not need to have access to staff training records or training curriculum. One commenter stated that CCR looks at the records and will hold the center accountable for any discrepancies with state requirements. The commenter also stated that parents do not know what to look for in assessing a training record or curriculum. The other commenter stated that training records are not the parents' business. The commenter stated it is the director's job to ensure staff are well trained.

Response: HHSC disagrees with the comments and declines to revise the rule. The Texas legislature already created the parent rights in HRC §42.04271. HHSC must align the rule with the statutory requirements.

Comment: Regarding §746.521(11), one commenter stated that providers at child-care centers have feelings, and when parents make false allegations, they will likely do so again. The commenter stated that she will not continue to serve a disgruntled family.

Response: HHSC disagrees with the comment and declines to revise the rule. The Texas legislature already created the parent rights in HRC §42.04271. HHSC must align the rule with the statutory requirements. Regarding the commenter's concern about serving a disgruntled family, there is currently TA following §746.501 in the minimum standards courtesy publication and in the CCR TA library that addresses expulsion policies in a child-care center's operational policies.

Comment: Regarding §746.1317(6)(C), one commenter stated that the amount of changes that have been submitted within the past few years are becoming excessive. The commenter also stated that most child-care centers are already providing their staff over 30 hours of training a year, and there are limited resources for these. The commenter recommended that if HHSC is going to continue to make changes to training requirements, HHSC needs to provide more resources to access these at reasonable hours (holidays and weekends), so that staff can continue to attend work and provide care. The commenter added that a lot of the current resources are very mismanaged, and daycare centers feel left behind. The commenter stated that at this rate they are all going to be out of business within the next decade.

Response: HHSC disagrees with the comment and declines to revise the rule. HHSC must align the rule with the statutory requirements in HRC §42.0421(g-1). In addition, the rule amendment does not require additional training, but expands the circumstances under which a director of a child-care center may train the director's own staff. This amendment allows a child-care center more flexibility to provide training.

Comment: Regarding §746.4101(b), one commenter stated that section (b) is peculiarly phrased, suggesting that the parents' desires take precedence over the court order when a court order is a crucial legal document that must be strictly adhered to in childcare operations. The commenter stated that regardless of the parent's request, child-care operations are bound to follow the court order, even if the custodial parent requests the restricted parent be granted authorization for pick up. The court order takes precedence, and the named individual in the document is prohibited from picking up the child. The commenter stated that the act of the parent wielding the court order's presentation automatically supports section (a) as their indication of who is and is not authorized to pick up a child. The commenter recommended HHSC update the rule language and suggested specific language to clarify the intent of the rule.

Response: HHSC agrees with the comment and revised the rule to reflect that a child-care center must follow a valid court order, once received, until a subsequent order revokes the primary order or the court order expires, regardless of parental request

Comment: Regarding §746.4101(b), one commenter asked if the rule will include guidelines for documenting or having court orders. The commenter also asked if court order requirements will be added to §746.603 as a record a child-care center must keep on file.

Response: HHSC agrees with the comment and revised the rule to require a child-care center to maintain a copy of the court order in the child's file. HHSC has not revised §746.603 because the rule was not proposed for amendment in this project.

Comment: Regarding the rules in general, one commenter issued a statement of support for the rule amendments and new rules in the project. The commenter stated that all the changes look to be logical and reasonable, some of which are in place and have been for quite some time. The commenter added that the remaining changes can be easily inserted into existing policies and procedures.

Response: HHSC appreciates support of the rules.

In addition, HHSC received comments on parallel rules in Chapter 747, Minimum Standards for Child-Care Homes, published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2391). HHSC is amending the proposed text related to a parent's right for the child-care center to comply with a court order that prevents a parent from picking up a child from the child-care operation in new §746.521 to ensure the minimum standards remain congruent throughout Chapters 746 and 747. For a more detailed description of comments received for Chapter 747, and the HHSC response, please see the preamble for Chapter 747, which is published elsewhere in this issue of the *Texas Register*.

HHSC is also amending §746.501 to correct punctuation in the rule.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

26 TAC §746.405

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

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Karen Ray
Chief Counsel
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DIVISION 4. OPERATIONAL POLICIES

26 TAC §746.501

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§746.501. What written operational policies must I have?

(a) You must develop written operational policies and procedures that at a minimum address each of the following:

(1) Hours, days, and months of operation;

(2) Procedures for the release of children;

(3) Illness and exclusion criteria;

(4) Procedures for dispensing medication or a statement that medication is not dispensed;

(5) Procedures for handling medical emergencies;

(6) Procedures for parental notifications;

(7) Discipline and guidance that is consistent with Subchapter L of this chapter (relating to Discipline and Guidance). A copy of Subchapter L may be used for your discipline and guidance policy;

(8) Suspension and expulsion of children;

(9) Safe sleep policy for infants from birth through 12 months old that is consistent with the rules in Subchapter H of this chapter (relating to Basic Requirements for Infants) that relate to sleep requirements and restrictions, including sleep positioning, and crib requirements and restrictions, including mattresses, bedding, blankets, toys, and restrictive devices;

(10) Meals and food service practices;

(11) Immunization requirements for children, including tuberculosis screening and testing if required by your regional Texas Department of State Health Services or local health authority;

(12) Hearing and vision screening requirements;

(13) Enrollment procedures, including how and when parents will be notified of policy changes;

(14) Transportation, if applicable;

(15) Water activities, if applicable;

(16) Field trips, if applicable;

(17) Animals, if applicable;

(18) Promotion of indoor and outdoor physical activity that is consistent with Subchapter F of this chapter (relating to Developmental Activities and Activity Plan); your policies must include:

(A) The benefits of physical activity and outdoor play;

(B) The duration of physical activity at your operation, both indoor and outdoor;

(C) The type of physical activity (structured and unstructured) that children may engage in at your operation;

(D) Each setting in which your physical activity program will take place;

(E) The recommended clothing and footwear that will allow a child to participate freely and safely in physical activities;

(F) The criteria you will use to determine when extreme weather conditions pose a significant health risk that prohibits or limits outdoor play; and

(G) A plan to ensure physical activity occurs on days when extreme weather conditions prohibit or limit outdoor play.

(19) Procedures for providing and applying, as needed, insect repellent and sunscreen, including what types will be used, if applicable;

(20) Parent rights that are consistent with the rules in Division 5 of this subchapter (relating to Parent Rights);

(21) Procedures for parents to review and discuss with the child-care center director any questions or concerns about the policies and procedures of the child-care center;

(22) Procedures for parents to participate in the child-care center's operation and activities;

(23) Instructions on how a parent may access the:

(A) Minimum standards online;

(B) Texas Abuse and Neglect Hotline; and

(C) HHSC website.

(24) Your emergency preparedness plan;

(25) Your provisions to provide a comfortable place with an adult sized seat in your center or within a classroom that enables a mother to breastfeed her child. In addition, your policies must inform parents that they have the right to breastfeed or provide breast milk for their child while in care;

(26) Preventing and responding to abuse and neglect of children, including:

(A) Required annual training for employees;

(B) Methods for increasing employee and parent awareness of issues regarding child abuse and neglect, including warning signs that a child may be a victim of abuse or neglect and factors indicating a child is at risk for abuse or neglect;

(C) Methods for increasing employee and parent awareness of prevention techniques for child abuse and neglect;

(D) Strategies for coordination between the center and appropriate community organizations; and

(E) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention, including procedures for reporting child abuse or neglect;

(27) Procedures for conducting health checks, if applicable;

(28) Information on vaccine-preventable diseases for employees, unless your center is in the home of the permit holder. The policy must address the requirements outlined in §746.3611 of this chapter (relating to What must a policy for protecting children from vaccine-preventable diseases include?);

(29) If your operation maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, policies for maintenance, administration, and disposal of unassigned epinephrine auto-injectors that comply with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in Texas Administrative Code, Title 25, Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and in Texas Health and Safety Code §773.0145; and

(30) Procedures for supporting inclusive services to children with special care needs. The policy must address the requirements outlined in §746.2202 of this chapter (relating to What are my responsibilities when planning activities for a child in care with special care needs?).

(b) You must also inform the parents that any area within 1,000 feet of a child-care center is a gang-free zone, where criminal offenses related to organized criminal activity are subject to a harsher penalty under the Texas Penal Code. You may inform the parents by:

(1) Providing this information in the operational policies;

(2) Distributing the information in writing to the parents; or

(3) Informing the parents verbally as part of an individual or group parent orientation.

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

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Karen Ray
Chief Counsel
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DIVISION 5. PARENT RIGHTS

26 TAC §746.521

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§746.521. What rights does a parent of a child in care of my child-care center have?

A parent of a child in care has the right to:

(1) Enter and examine your center during its hours of operation without advance notice;

(2) File a complaint against your center;

(3) Review your center's publicly accessible records;

(4) Review your center's written records concerning the parent's child, as outlined in §746.601 of this chapter (relating to Who has the right to access children's records?);

(5) Receive from your center:

(A) HHSC's inspection reports for your center; and

(B) Information regarding how to access your center's compliance history online;

(6) Have your center comply with a valid court order signed by a judge that prevents another parent from visiting or removing the parent's child from your center, as outlined in §746.4101 of this chapter (relating to To whom may I release a child?);

(7) Be provided with contact information for Child Care Regulation, including the department's name, address, and telephone number;

(8) View any video recordings of an alleged incident of abuse or neglect involving the parent's child maintained by your center as long as:

(A) Video recordings of the alleged incident are available;

(B) The parent is not allowed to retain any portion of the video depicting a child who is not the parent's child; and

(C) Your center notifies in writing the parent of any other child captured in the video recording, before allowing the parent to inspect the video recording;

(9) Obtain a copy of your center's policies and procedures, as outlined in §746.503 of this subchapter (relating to Must I provide parents with a copy of my operational policies?);

(10) Review, upon request of the parent, your:

(A) Staff training records; and

(B) In-house training curriculum, if any; and

(11) Be free from any retaliatory action by your center for exercising any of the parent's rights.

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

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SUBCHAPTER D. PERSONNEL
DIVISION 4. PROFESSIONAL DEVELOPMENT

26 TAC §746.1317

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

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SUBCHAPTER S. SAFETY PRACTICES
DIVISION 5. RELEASE OF CHILDREN

26 TAC §746.4101

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§746.4101. To whom may I release a child?

(a) You must release a child only to a parent or a person designated by the parent.

(b) Upon receipt of a valid court order signed by a judge that prohibits a parent from removing the named child or children from the child-care center, the child-care center must:

(1) Comply with the court order immediately and until:

(A) Receipt of a subsequent court order that revokes the primary order; or

(B) The court order expires as defined in the document; and

(2) Maintain a copy of the court order in the child's file.

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

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Karen Ray
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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §747.403, concerning What telephone numbers and other contact information must I post and where must I post this information; §747.501, concerning What written operational policies must I have; and §747.3901, concerning To whom may I release a child; and new §747.521, concerning What rights does a parent of a child in care of my child-care home have.

New §747.521 and amended §747.3901 are adopted with changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2391). These rules will be republished.

Amended §747.403 and §747.501 are adopted without changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2391). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments and new sections are necessary to comply with Senate Bill (S.B.) 1098, 88th Legislature, Regular Session, 2023. S.B. 1098 amended Texas Human Resources Code (HRC), Chapter 42, by adding §42.04271 to establish specific rights of the parent or guardian of a child enrolled in a licensed or registered child day care operation. Accordingly, HHSC Child Care Regulation (CCR) is adopting rules in Chapter 747 that will (1) establish new requirements related to parent rights; and (2) update and clarify current requirements that are related to parent rights.

COMMENTS

The 31-day comment period ended May 20, 2024. During this period, HHSC received a comment regarding the proposed rules from one commenter representing a licensed child-care home. A summary of the comment relating to the rules and HHSC's responses follows.

Comment: Regarding §747.521(6), one commenter requested HHSC change the rule language to clarify that a valid court order must include the signature of a judge.

Response: HHSC agrees with the comment and revised the rule to specify that a valid court order must include the signature of a judge.

In addition, HHSC received comments on parallel rules in Chapter 746, Minimum Standards for Child-Care Centers, published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2386). HHSC is amending the proposed text related to complying with court orders that prevent a parent from picking up a child from the child-care operation in amended §747.3901 to ensure the minimum standards remain congruent throughout Chapters 746 and 747. For a more detailed description of comments received for Chapter 746, and the HHSC response, please see the preamble for Chapter 746, which is published elsewhere in this issue of the *Texas Register.*

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

26 TAC §747.403

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

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Karen Ray
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DIVISION 4. OPERATIONAL POLICIES

26 TAC §747.501

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

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DIVISION 5. PARENT RIGHTS

26 TAC §747.521

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§747.521. What rights does a parent of a child in care of my child-care home have?

A parent of a child in care has the right to:

(1) Enter and examine your child-care home during its hours of operation without advance notice;

(2) File a complaint against your child-care home;

(3) Review your child-care home's publicly accessible records;

(4) Review your child-care home's written records concerning the parent's child, as outlined in §747.601 of this chapter (relating to Who has the right to access children's records?);

(5) Receive from your child-care home:

(A) HHSC's inspection reports for your child-care home; and

(B) Information regarding how to access your child-care home's compliance history online;

(6) Have your child-care home comply with a valid court order signed by a judge that prevents another parent from visiting or removing the parent's child from your child-care home, as outlined in §747.3901 of this chapter (relating to To whom may I release a child?);

(7) Be provided with contact information for Child Care Regulation, including the department's name, address, and telephone number;

(8) View any video recordings of an alleged incident of abuse or neglect involving the parent's child maintained by your child-care home as long as:

(A) Video recordings of the alleged incident are available;

(B) The parent is not allowed to retain any portion of the video depicting a child who is not the parent's child; and

(C) Your child-care home notifies in writing the parent of any other child captured in the video recording, before allowing the parent to inspect the video recording;

(9) Obtain a copy of your child-care home's policies and procedures, as outlined in §747.503 of this subchapter (relating to Must I provide parents with a copy of my operational policies?);

(10) Review, upon request of the parent, your:

(A) Staff training records; and

(B) In-house training curriculum, if any; and

(11) Be free from any retaliatory action by your child-care home for exercising any of the parent's rights.

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

Filed with the Office of the Secretary of State on July 30, 2024.

TRD-202403525
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: August 19, 2024
Proposal publication date: April 19, 2024
For further information, please call: (512) 438-3269

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SUBCHAPTER S. SAFETY PRACTICES
DIVISION 5. RELEASE OF CHILDREN

26 TAC §747.3901

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC duties under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§747.3901. To whom may I release a child?

(a) You may release a child only to a parent or a person designated by the parent.

(b) Upon receipt of a valid court order signed by a judge that prohibits a parent from removing the named child or children from the child-care home, the child-care home must:

(1) Comply with the court order immediately and until:

(A) Receipt of a subsequent court order that revokes the primary order; or

(B) The court order expires as defined in the document; and

(2) Maintain a copy of the court order in the child's file.

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

Filed with the Office of the Secretary of State on July 30, 2024.

TRD-202403526

Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3269

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 9. EXPLORATION AND LEASING OF STATE OIL AND GAS

SUBCHAPTER D. PAYING ROYALTY TO THE STATE

31 TAC §9.51

BACKGROUND AND ANALYSIS

On behalf of the School Land Board ("SLB"), the General Land Office ("GLO") adopts an amendment to 31 TAC §9.51 (relating to Royalty and Reporting Obligations to the State) amending §9.51(b)(3)(E)(iv), regarding requested reductions of penalty and/or interest assessments, with one change to the proposed text as published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4021). The amendment will be republished

The adopted amendment clarifies the delegation by the SLB to the Land Commissioner of certain de minimis reductions of interest charged or penalties assessed under Texas Natural Resources Code §52.131 or any other interest or penalties assessed by the Land Commissioner relating to unpaid or delinquent royalties, or unfiled or delinquent reports.

The change to the text as published (being deletion of the word "unreduced") further clarifies the intent of the delegation to the Land Commissioner for reductions of penalty and/or interest where the total amount to be reduced is below a de minimis threshold established by the SLB from time to time.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

This amendment to 31 TAC §9.51 is adopted pursuant to the authority set out in Texas Natural Resources Code (1) §52.131(j), which states that the SLB may provide procedures and standards for reduction of interest charged or penalties assessed under Texas Natural Resources Code §52.131 or any other interest or penalties assessed by the Land Commissioner relating to unpaid or delinquent royalties, and (2) §52.131(h), which states that the Land Commissioner may establish by rule a reasonable penalty for late filing of reports or any other instrument to be filed pursuant to Texas Natural Resources Code, Chapter 52.

STATUTES AFFECTED

Texas Natural Resources Code Chapter 52 is affected by this proposed rule.

§9.51. Royalty and Reporting Obligations to the State.

(a) In-kind royalties and reports. Producers meeting their royalty obligations by delivering the state's royalty in-kind shall contact the General Land Office (GLO) for specific instructions for making and reporting in-kind royalties. Purchasers of the state's oil or gas in-kind must make the payment for this oil or gas separately from any payment of monetary royalty.

(b) Monetary royalties and reports

(1) Basis for computing royalties.

(A) Gross proceeds. Lessees shall compute and pay oil and gas royalties due under each lease on the gross proceeds received by the seller, including amounts collected to reimburse the seller for severance taxes and production-related costs. Lessees shall not deduct production or severance taxes, or the cost of producing, processing, transporting, and otherwise making the oil, gas, and other products produced from the premises ready for sale or use.

(B) Volume subject to royalty.

(i) General. Royalties are due and payable by all lessees on 100% of each lease's gross production of oil and gas unless the lease contains language expressly exempting certain dispositions of oil and/or gas from state royalties.

(ii) Oil sales and stocks. As a matter of convenience, during periods of regular sales, the GLO will permit lessees to pay monthly oil royalties based on the number of barrels sold (or otherwise disposed of) in a given month rather than on the gross production as may be required by the lease. Unless the lessee is otherwise notified by the GLO, no royalties are payable on lease stocks until such stocks are disposed of either by sale or otherwise. The GLO reserves the right to require at any time, or from time to time, that lessees pay royalties on gross production rather than on barrels sold. The GLO requires that lessees pay royalties on existing stocks when there have been no sales from such stocks for several months.

(C) Plant products. Lessees shall calculate the volume and value of plant products subject to state royalty in accordance with the lease under which the gas is produced and processed and this volume and value shall never be less than the minimum percentage specified in the lease. In cases where the lease does not specify the manner in which lessees are to calculate plant product royalties, then the volume and value of plant products subject to state royalty shall be that volume and value for which settlement is being made to the producer, under a gas contract prudently negotiated between the producer and processor. When gas is processed for the recovery of liquid hydrocarbons or other products, lessees shall pay royalties on residue gas and plant products in an amount not less than the royalties which would have been due had the gas not been processed.

(D) Market value. Nothing in this subsection shall limit or waive the right of the state to receive its royalties based on market value of the oil and gas produced, if authorized by the lease, unit agreement, judgment, or other contract authorized by law.

(E) Determination of market value.

(i) For the purpose of computing and paying royalties to the state based on market value, the market value shall be presumed to be the gross proceeds received pursuant to a bona fide contract entered into at arm's length between nonaffiliated parties of adverse economic interests.

(ii) If a contract is not negotiated at arm's length, or was between affiliated parties, the presumption that market value is equal to gross proceeds shall not apply. In this situation, the lessee has the burden to establish that royalties paid to the state are based on market value.

(iii) The commissioner may overcome the presumption established under clause (i) of this subparagraph and assess additional royalties due by establishing a different price based on other sales in the general area which are comparable in time, quality, volume, and legal characteristics. If some of this information is not available to the commissioner, an assessment will be based on the best information available.

(iv) A lessee may challenge an assessment of additional royalties due by submitting information which establishes the prices used for comparison by the commissioner involve products of significantly different quality; were based on contracts to deliver significantly different volumes or for different terms; were not from a relevant market; were derived from an area in which deliverability is significantly different; or by presenting any other information which could establish a more accurate market price. However, under no circumstances will the state's royalty be computed on less than gross proceeds received, including reimbursements received for severance taxes and production-related costs.

(v) Parties are affiliated under this subsection if they are related by blood, marriage, or common business enterprise, are members of a corporate affiliated group, or where one party owns a 10% or greater interest in the other.

(vi) The term "general area," as used in this subsection, means the smallest geographical area which contains sufficient data to establish a market price. Examples include a unit, a field, a county, or the applicable RRC district.

(vii) For the purpose of computing and paying oil royalties to the state based upon a market value determined by the highest posted price, that phrase is defined as the greater of:

(I) the highest price available to the producer; or

(II) the gross price posted by the purchaser of the oil, less a reasonable transportation allowance after sale and delivery if the price bulletin reflects on its face that the purchaser will deduct a marketing or transportation allowance, and a transportation allowance is actually deducted by the purchaser from its gross price.

(viii) For the purposes of clause (vii)(I) of this subparagraph, a price will be presumed to be available to the producer if it is offered in the field where the lease is located at the time of sale. A producer may overcome the presumption by submitting evidence that the price is not actually available to the producer. The terms "available" and "actually available," as used in this subsection, mean that a price is being offered to nonaffiliated parties by posting, contract listing or amendment, or otherwise and that if a producer presented a barrel of oil to an entity offering said price, assuming all quality specifications for the price were met, that producer would, in fact, receive that offered price.

(ix) Clause (vii) of this subparagraph shall not be construed to allow the lessee, when calculating royalties to the state, to make any deductions for the cost of producing, processing, or transporting the oil prior to its sale and delivery.

(2) Royalty payments and reports.

(A) Mode of payment. Except as provided in subsection (a) of this section, relating to payments made in-kind, and subject to clauses (i) - (vi) of this subparagraph, relating to mandatory electronic funds transfer, lessees may pay royalties and other monies due by cash or check, money order, or sight draft made payable to the commissioner. Lessees may also pay by electronic funds transfer or in any manner that may be lawfully made to the state comptroller. Information regarding alternative payment methods may be obtained from the GLO Royalty Management Division. Payors are required to make payments by electronic funds transfer in compliance with 34 Texas Administrative Code Chapter 15 in the circumstances outlined:

(i) For leases executed or amended after May 11, 1989, but before September 1, 1991, payors that have made over $500,000 in a category of payments, defined in clause (iv) below, to the GLO during the preceding state fiscal year shall make payments of $10,000 or more in the current fiscal year for those leases and in that category by electronic funds transfer.

(ii) For leases executed or amended after August 30, 1991, but before June 9, 1995, payors that have made over $250,000 in a category of payments, defined in clause (iv) below, to the GLO during the preceding state fiscal year shall make payments of $10,000 or more in the current fiscal year for those leases and in that category by electronic funds transfer.

(iii) For leases executed or amended on or after June 9, 1995, payors that have made over $25,000 in a category of payments, defined in clause (iv) below, to the GLO during the preceding state fiscal year shall make all payments in the current fiscal year for those leases and in that category by electronic funds transfer.

(iv) For purposes of clauses (i) - (iii) of this subparagraph, each of the following is a separate category of payments:

(I) royalties (including shut-in and minimum royalties);

(II) penalties;

(III) other payments to the state agency, excluding interest and extraordinary payments such as payments made in settlement of litigation.

(v) The GLO anticipates that those payors that have exceeded the threshold sums set out in clauses (i) - (iii) of this subparagraph in the preceding state fiscal year will also exceed those sums in the current state fiscal year. The application of clauses (i) - (iii) to a specific payor may be waived at the commissioner's discretion to the extent allowed by law, upon a showing that a payor will not exceed the threshold sums set out in clauses (i) - (iii) in the current fiscal year, or for other good cause.

(vi) The GLO will notify each payor to whom this subparagraph applies in compliance with 34 Texas Administrative Code Chapter 15.

(B) Information required with royalty payments. Lessees shall submit all royalty payments in a manner which identifies the assigned GLO lease number, the annual submission certification number, if any, and the amount of oil and gas royalty being paid. Royalty payments not identified by the lease number and the annual submission certification number, if any, shall be considered delinquent and shall be subject to the delinquency provisions of paragraph (3) of this subsection.

(C) Required reports. Lessees shall provide, in the form and manner prescribed by the GLO, production/royalty reports (Form GLO-1 for oil and condensate and Form GLO-2 for gas), other required reporting documents for gas or oil and condensate, and other supporting documents required by GLO to verify gross production, disposition, and market value of the oil and condensate, gas, and other products produced therefrom. Reporters for leases which the GLO has approved for annual royalty payments may submit such reports on an annual basis as well after receipt of an annual royalty certification number. Parties approved for annual reporting or payment shall notify the GLO in writing within ten business days of a complete release, forfeiture, termination, assignment, or change of operator or payor of a lease approved for an-

nual reporting and payment. Failure to comply with the statutes and the reporting requirements of this chapter may subject a lease to forfeiture, delinquency penalties, or both.

(D) Timely receipt of royalty payments and reports.

(i) For the purpose of this subsection, the GLO will consider a report timely received if the report:

(I) arrives postpaid and properly addressed; and

(II) is deposited with the United States Postal Service or any parcel delivery service at least one day before it is due and such deposit is evidenced by a postmark, a postal meter stamp, or a receipt.

(ii) For the purpose of this subsection, the GLO will consider a royalty payment timely made if:

(I) the payment is received by electronic funds transfer, it is received on or before the date it is due (please be advised that delivery of payment to the state comptroller's office does not satisfy this requirement. Due to the time required by the comptroller's office to process a payment and forward it to the GLO, payors are strongly encouraged to submit payments to the comptroller's office before 6:00 p.m. CST on the business day preceding the business day on which the payment is due).

(II) the payment is not made by electronic funds transfer, it arrives postpaid and properly addressed and it is deposited with the United States Postal Service or any parcel delivery service at least one day before it is due and such deposit is evidenced by a postmark, a postal meter stamp, or a receipt.

(iii) If a royalty payment or report is due on a Sunday or a legal state or federal holiday, then lessees shall ensure that such payment or report is either received by the GLO on the next calendar day which is not a Sunday or a holiday, or postmarked or stamped prior to the next calendar day which is not a Sunday or a holiday.

(E) Oil and condensate royalties--due date.

(i) Lessees shall ensure that all oil and condensate royalties, except royalties approved by GLO to be paid on an annual basis, are timely received by the GLO on or before the fifth day of the second month following the month of production.

(ii) Upon application to and written approval by the GLO, future royalties attributable to leases for which oil, condensate, and gas royalty due for the immediately preceding September 1 to August 31 period equaled $3,000 or less may be paid on an annual, rather than monthly, basis. A party who is both a payor and a reporter for a lease shall submit both payments and reports on a monthly or, if the GLO grants approval, an annual, basis.

(I) The applicant shall designate the payor who will submit the annual royalty payments and, if there are multiple payors for a lease, the share of royalty the designated payors will submit. Upon approval, GLO staff will assign an annual submission certification number to the designated payor and the GLO will authorize the designated payor to submit the designated share of royalty payments on an annual basis. The applicant shall notify the GLO in writing of any change in the payor designation within ten business days of its effective date.

(II) Payors, after approval, shall pay annual royalties for the following January 1 to December 31 annual production periods.

(III) Payors, after approval, shall continue to make payments on a monthly basis until the commencement of the next annual production period.

(IV) Each year, payors shall ensure that all annual oil and condensate royalties are timely received by the GLO on or before the fifth day of February following each annual production period. Each year, payors shall ensure that all annual gas royalties are timely received by the GLO on or before the 15th day of February following each annual production period.

(V) After the payor receives GLO approval for annual royalty payments, if the total annual oil, condensate, and gas royalty due under a lease exceeds $3,000 for any annual production period, payors shall resume making monthly royalty payments starting with the January production month immediately following that annual production period.

(VI) For any royalty approved to be paid on an annual basis, payors shall ensure that the total royalties that have accrued as of the date of a complete lease forfeiture, release, termination, assignment, or any change of designated payor, are timely received by the GLO on or before 75 calendar days after that date. If a change of payor occurs for a lease with multiple payors, only the changing payor shall pay the accrued royalties for which he is designated as being responsible on or before 75 calendar days after the change.

(VII) Any forfeiture, release, termination, assignment, or change of operator or payor, does not affect the approved annual royalty payment status, subject to subclause (VI) of this clause. However, as provided in §9.93(l) of this title (relating to Assignment), an assignee or successor in interest is liable for all unsatisfied royalty requirements of the assignor or predecessor in interest.

(VIII) The GLO may prescribe further specific forms and instructions applicable to this subparagraph.

(IX) The GLO has the sole discretion to approve annual royalty payments. Approval does not affect the state's right to take its royalty in-kind, nor does it constitute a finding that a lease has been maintained in force and effect or otherwise ratify or revive any lease. GLO approval does not abrogate the lessee's responsibility to submit timely royalty payments and reports to the GLO as provided in subparagraphs (L) and (M) of this paragraph.

(X) Determination of royalty due for purposes of clause (ii) of this subparagraph is not an official GLO determination of royalty due under a lease. The GLO may audit any lease to determine if royalty was properly paid and may pursue its rights and remedies through an administrative hearing or litigation.

(F) Gas royalties--due date.

(i) Lessee shall ensure that all gas royalties, except royalties approved by GLO to be paid on an annual basis, are timely received by the GLO on or before the 15th day of the second month following the month of production.

(ii) The provisions of subparagraph (E)(ii)(I) - (X) of this paragraph apply to the payment of gas royalties.

(G) Required reports--due date.

(i) Lessees shall ensure that all required production/royalty reports and other required documents (hereafter "reports" in subparagraph (G) of this paragraph), in whatever format submitted, for gas or oil and condensate are timely received by the GLO on or before the due date of the corresponding monthly royalty payment.

(ii) Upon application to and written approval by the GLO, future reports for leases for which oil, condensate, and gas roy-

alty due for the immediately preceding September 1 to August 31 period equaled $3,000 or less may be submitted on an annual, rather than monthly, basis. A party who is both a payor and a reporter for a lease shall submit both payments and reports on a monthly or, if the GLO grants approval, an annual, basis.

(I) The applicant shall designate the reporter who will submit the annual reports and, if there are multiple reporters for a lease, the information the designated reporter will submit. Upon approval, GLO staff will assign an annual submission certification number to the designated reporter and the GLO will authorize the designated reporter to submit the designated reports on an annual basis. The applicant shall notify GLO in writing of any change in the reporter designation within ten business days of its effective date.

(II) Reporters, after approval, shall submit annual reports for the following January 1 to December 31 annual production periods.

(III) Reporters, after approval, shall continue to submit reports on a monthly basis until the commencement of the next annual production period. Unless the GLO expressly approves otherwise in writing, reporters shall submit unit production/royalty reports on a monthly basis regardless of the annual reporting status of individual leases within the unit.

(IV) Each year, reporters shall ensure that all annual reports concerning oil and condensate are timely received by the GLO on or before the fifth day of February following each annual production period. Each year, reporters shall ensure that all annual reports concerning gas are timely received by the GLO on or before the 15th day of February following each annual production period.

(V) After the reporter receives GLO approval for annual reporting, if the total annual oil, condensate, and gas royalty due under a lease exceeds $3,000 for any annual production period, reporters shall resume making monthly reports starting with the January production month immediately following that annual production period.

(VI) Reporters shall ensure that all reports approved by the GLO for submission on an annual basis are timely received by the GLO on or before 75 calendar days after a complete lease forfeiture, release, termination, assignment, or any change of designated reporter. If a change of reporter occurs for a lease with multiple reporters, only the changing reporter shall submit the reports for which he is designated as being responsible on or before 75 calendar days after the change.

(VII) Any forfeiture, release, termination, assignment, or change of operator or reporter does not affect the approved annual reporting status, subject to subclause (VI) of this clause. However, as provided in §9.93(l) of this title (relating to Assignment), an assignee or successor in interest is liable for all unsatisfied reporting requirements of the assignor or predecessor in interest.

(VIII) The GLO may prescribe further specific forms and instructions applicable to this subparagraph.

(IX) The GLO has the sole discretion to approve annual reporting. Approval does not affect the state's right to take its royalty in-kind, nor does it constitute a finding that a lease has been maintained in force and effect or otherwise ratify or revive any lease. GLO approval does not abrogate the lessee's responsibility to submit timely royalty payments and reports to the GLO as provided in subparagraphs (L) and (M) of this paragraph.

(X) Determination of royalty due for purposes of clause (ii) of this subparagraph is not an official GLO determination of royalty due under a lease. The GLO may audit any lease to determine if royalty was properly paid and may pursue its rights and remedies through an administrative hearing or litigation.

(iii) Lessees shall identify the relevant GLO lease numbers and annual submission certification numbers, if any, on all required reports. Reports that fail to identify these numbers shall be considered delinquent and shall be subject to the delinquency provisions of subsection (b)(3) of this section.

(H) Gas contracts. Lessees shall file with the GLO a copy of all contracts under which gas is sold or processed and all subsequent agreements or amendments to such contracts within 30 days of entering into or making such contracts, agreements, or amendments. Such contracts, agreements, and amendments, when received by the GLO will be held in confidence by the GLO unless otherwise authorized by lessee.

(I) Gas contract brief (Form GLO-5).

(i) Each gas contract, agreement, or contract amendment must be accompanied by a gas contract brief (Form GLO-5) completed in the form and manner prescribed by GLO. The GLO-5 must be submitted even if GLO is taking its royalty in-kind from the leases subject to the contract or agreement. The GLO-5 shall be submitted to the GLO within 30 days of executing a contract, agreement, or contract amendment. While the lessee is responsible for the preparation and filing of the GLO-5 and supplements, the lessee is not required to submit the GLO-5 or supplements for royalty volumes which the state is taking in kind. Rather, the lessee must submit the GLO-5 and supplements for other volumes produced from the lease or leases.

(ii) A gas contract brief supplement (GLO-5(s)) may be filed for sales of gas on the spot or other markets in which price changes occur monthly. A GLO-5(s) should be submitted to the GLO within 30 days of the completion of each six-month period of sales. A GLO-5 does not have to be submitted as long as other contract provisions remain unchanged.

(iii) For spot or similar sales situations in which supplements will be submitted, the GLO-5 is due within 30 days of the completion of the first six-month sales period.

(iv) Gas contract briefs and supplements should be directed to: General Land Office, Energy Resources Division, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701-1465, Attention: Gas Contracts Administrator.

(J) Settlements and judgments. Lessee shall file with the GLO a copy of each settlement reached or judgment rendered in a dispute between the lessee and a purchaser regarding production from, and/or contracts relating to, state lands. Lessee shall file these documents with the GLO within 30 days of entering into any such settlement or within 30 days of the rendering of such judgment.

(K) Other records. At any time, or from time to time, the GLO may require any additional records relating to any aspect of lease operations and accounting.

(L) Responsibility of lessee to file royalty payments and required reports. Parties other than the lessee may remit royalties to the state on the lessee's behalf. This practice does not relieve the lessee of any statutory or contractual obligation to pay royalty or file reports and supporting documents. The lessee bears full responsibility for paying royalties and for filing reports and supporting documents as required in this chapter.

(M) Cooperation of operators, purchasers, payors, reporters, and lessees. The GLO recognizes that lessees may often delegate various lease obligations to third parties. However, such a dele-

gation does not relieve a lessee of these obligations. Lessees must be aware that the acts and omissions of these third parties regarding these obligations may subject a lease to a delinquency penalty or forfeiture. Therefore, these parties must cooperate to responsibly discharge their obligations to each other and to the state.

(N) State's lien. The state has a statutory first lien on all oil and gas produced from the leased area to secure the payment of all unpaid royalty or other sums of money that may become due. Acceptance of an oil and gas lease from the state grants to the state a contractual first lien on and security interest in all oil and gas extracted from the lease area, all proceeds that may accrue to the lessee, and all fixtures on and improvements to the area covered by the lease that may be used in the production or processing of oil and gas.

(O) Certification of sufficient royalties. The GLO will not be responsible for certifying, prior to the rental anniversary date, that sufficient royalty has been received to obviate the necessity of paying rentals or minimum royalties as may be required by lease. Lessees should maintain adequate records relating to lease royalty and rental status to determine if additional liability exists. If there is uncertainty concerning whether or not rental or minimum royalties are due, a lessee may maintain a lease in effect by remitting the annual amount required under each lease. The GLO will refund or grant credit to lessees for payments received in this manner that are later found to have not been due.

(P) Partial payments. The GLO will apply a lessee's partial payment of amounts assessed (delinquent royalties, penalty, and interest) first to unpaid penalty and interest and then to delinquent royalties. Penalty and interest will continue to accrue until the delinquent royalties are fully paid.

(3) Penalties and interest.

(A) Penalties on delinquencies. Any royalty not paid when due, or any required report or document not submitted when due, is delinquent and penalties as provided in this subsection shall be added. Royalty payments or any required reports or documents that do not identify GLO lease numbers and annual submission certification numbers, if any, and any royalty payments not accompanied by any required reports or documents are also delinquent. The penalties on delinquent royalties specified in this subsection shall not be assessed in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as the market value of the production.

(i) For royalties and reports due on or after September 1, 1985, including those for oil and gas produced since July 1, 1985, the GLO shall add:

(I) a penalty of 5.0% of the delinquent amount or $25, whichever is greater, to any royalty which is delinquent 30 days or less;

(II) a penalty of 10% of the delinquent amount or $25, whichever is greater, to any royalty which is more than 30 days delinquent;

(III) at its discretion, a penalty of $10 per document for each 30-day period that each report, affidavit, or other document is delinquent. The GLO shall impose this penalty of $10 per document only after the commissioner or a designated representative has notified the lessee in writing that reports, affidavits, or documents are not being filed correctly and that the GLO will assess the penalty on subsequent reporting errors.

(ii) For royalties and reports due before September 1, 1985, including those for oil and gas produced prior to July 1, 1985, the GLO shall add:

(I) a penalty of 1.0% of the delinquent amount or $5.00, whichever is greater, for each 30-day period that any royalty is delinquent;

(II) a penalty of $5.00 per document for each 30-day period that each report, affidavit, or other document is delinquent.

(iii) For royalties and reports due before September 1, 1975, including those for oil and gas produced prior to August 1, 1975, the GLO shall impose no penalty for delinquent royalties or delinquent reports.

(B) Interest on delinquencies. Any royalty not paid when due is delinquent and shall accrue interest as provided in this subsection.

(i) For royalties due on or after September 1, 1985, including those for oil and gas produced since July 1, 1985:

(I) interest shall accrue on all delinquent royalties at the rate of 12% per year (simple interest) pursuant to the Texas Natural Resources Code, §52.131(g);

(II) interest shall begin to accrue 60 days after the due date.

(ii) For royalties due before September 1, 1985, including those for oil and gas produced prior to July 1, 1985:

(I) interest shall accrue on all delinquent royalties at the rate of 6.0% per year compounded daily pursuant to Texas Civil Statutes, Article 5069-1.03;

(II) interest shall begin to accrue 30 days after the date due.

(C) Penalties for fraud. The commissioner shall add a penalty of 25% of the delinquent amount if any part of the delinquency is due to fraud or an attempt to evade the provisions of statutes or rules governing payment of royalty. The GLO shall apply this penalty in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to the fair market value. The GLO shall apply this penalty in addition to any other penalty assessed.

(D) Forfeiture. The state's power to forfeit a lease is not affected by the assessment or payment of any delinquency, penalty, or interest as provided in this subsection. Specifically, the lessee's failure to pay royalties and other sums of money within 30 days of the due date or the failure to file reports completed in the form and manner prescribed by this section shall subject a lease to forfeiture under §9.95 of this title (relating to Forfeiture).

(E) Reduction of penalty and/or interest. For royalties due on or after February 26, 2010, the interest rate assessed on delinquent royalties shall be determined as of the date of the first business day of the year the royalty becomes delinquent and will be reduced to prime plus one percent.

(i) As used herein "Prime" shall mean the prime interest rate, as published daily in the Wall Street Journal that is not a Saturday, Sunday, or legal holiday. For royalties due on a Saturday, "Prime" shall refer to the prime interest rate published on the next business day that is not a legal holiday.

(ii) The interest rate shall never exceed the percentage rate as stated in the Texas Natural Resource Code at §52.131(g).

(iii) Interest rates assessed hereunder shall be reset on the first business day of each calendar year; if the underlying royalties have not been paid they may be revised upward should the prime interest rate on the first business day be higher.

(iv) A lessee may request in writing a reduction of interest charged or penalties assessed under Texas Natural Resource Code §52.131 or any other interest or penalties assessed by the commissioner relating to unpaid or delinquent royalties, or late filed reports. The board may consider any factors when considering such a request, including the facts and circumstances supporting the lessee's request for a reduction, any history of delinquency by the lessee, any good faith attempts of the lessee to rectify the consequences of the delinquency, including by paying the amount of the unpaid or delinquent royalty, the recommendations of staff, and the costs and risks associated with litigation. For governmental efficiency, the board may delegate to the commissioner and/or to staff designated by the commissioner for this purpose the authority to reduce interest charged or penalties assessed relating to unpaid or delinquent royalties if the aggregate amount of such penalties and interest to be reduced is equal to or less than a de minimis amount established by the board from time to time at a regular or special public meeting.

(4) Corrections and adjustments to royalty payments and reports.

(A) Nonroutine corrections and/or adjustments, as used in this subsection, are defined as those corrections and adjustments by which someone seeks to change, on a lease basis, the originally reported royalty due for oil or the originally reported royalty due for gas by at least $25,000 or 25%.

(B) The GLO Royalty Management Division must receive at least 30 days advance written notice of the lessee's intention to take a nonroutine correction and/or adjustment which will result in a credit with written documentation explaining and supporting the requested credit. The credit may be taken 30 days after that GLO division receives such notice if by that date, the GLO has not, in writing, denied lessee permission to take the credit. If the GLO denies permission, the GLO will set forth its reasons for such denial. Any nonroutine credit improperly taken may not be used to offset royalty due on current reports. The improper application of credits will result in a current month delinquency and the assessment of associated penalties and interest.

(C) Effective with the production month of March 1989, all prior month adjustments must be submitted on GLO-1 and GLO-2 report documents separate from the reports containing the current month royalty activity. The GLO-1 or GLO-2 containing prior month adjustments must be labeled as "Amended Reports" (underlined).

(5) Temporary reduction of gas royalty rates.

(A) Prerequisites. Application for a temporary reduction of the royalty rates established may be considered by SLB if:

(i) the lease covers any of the state lands described in §9.21 of this title (relating to Leasing Guide)

(ii) state land was leased by SLB on the basis of a royalty bid and at a royalty rate exceeding 25%; and

(iii) the lease has not been pooled or unitized with other leases.

(B) Amount of reduction. If the value of gas from such lands is at or below $3.00 for each 1,000 cubic feet of gas, the board may reduce the royalty rate for gas produced from such lands for any term set by SLB, such term to be set after September 1, 1987, and before September 1, 1990, as follows:

(i) for gas valued as $1.50 or less per Mcf of gas, the board may reduce a royalty rate to 25%;

(ii) for gas valued from $1.51 to $2.00 per Mcf of gas, the board may reduce a royalty rate to 30%;

(iii) for gas valued from $2.01 to $2.50 per Mcf of gas, the board may reduce a royalty rate to 35%;

(iv) for gas valued from $2.51 to $3.00 per Mcf of gas, the board may reduce a royalty rate to 40%.

(C) Definition of value. For purposes of this paragraph, the value of the gas is defined as the highest market price paid or offered for gas of comparable quality in the general area where produced and when run, or the gross price paid is offered to the producer, whichever is greater.

(D) Request for reduction. A lessee seeking the approval of SLB for a temporary reduction in gas royalty rates must make written request for an application to the Minerals Leasing Division, General Land Office, 1700 North Congress Avenue, Room 640, Austin, Texas 78701-1495. The application should be completed and returned to the Minerals Leasing Division of the GLO.

(i) The applicant must submit an affidavit and documentation in support of its request for a temporary reduction of gas royalty rates. The affidavit will attest to the fact that the requirements set out in this paragraph have been satisfied. The accompanying documentation will contain pertinent lease data, production and reserve data, gas price data, development data, and any other information which may be required to support the application, including the reason for requesting a royalty reduction.

(ii) SLB will consider the request for temporary reduction in gas royalty rates based upon lessee's affidavit, documents in support thereof, and the recommendation of the Minerals Leasing Division.

(iii) SLB may reevaluate the temporary reduction in gas royalty rates at any time.

(E) Verification of gas valuation. The gas valuation information submitted by the lessee will be subject to verification by the Royalty Audit Division.

(F) Effective dates for reduced royalty rates. The reduced royalty rates shall be effective beginning the first day of the next month following approval by SLB. Royalty rates on gas produced after September 1, 1990, will not be subject to reduction under this section.

(G) No retroactive effect. The reduced royalty rates will not be applied retroactively for previous months' production.

(c) Marginal Properties Royalty Incentive Program.

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

(A) Active well--Any well on the qualifying property as defined in subparagraph (H) of this paragraph in actual use either as a producing well or an injection well as defined in subparagraph (D) of this paragraph during at least six months of the qualifying period as defined in subparagraph (G) of this paragraph.

(B) Average daily per well production--

(i) Un-pooled leases: For a given reservoir, the total oil, condensate, and/or natural gas production from the lease for the qualifying period, in BOE as defined in subparagraph (C) of this paragraph, divided by the product of 365 and the number of the reservoir's active wells on the lease. Average daily per well production is calculated in BOE/day and is rounded down to the next whole number.

(ii) Pooled leases: For a given reservoir, the total oil, condensate, and/or natural gas production from the unit for the qualifying period, in BOE, divided by the product of 365 and the number of the reservoir's active wells in the unit. Average daily per well production is calculated in BOE/day and is rounded down to the next whole number.

(C) Barrel of oil equivalent (BOE)--One 42-gallon barrel of crude oil, or the greater of 6,000 cubic feet (6 Mcf) of natural gas available for sale off the lease or unit or a volume of natural gas available for sale off the lease or unit with a minimum heating value of 6,000,000 British thermal units (6,000 MBtu).

(D) Injection well--Any well approved by the RRC for use in the injection of gas or fluids in a secondary or tertiary enhanced recovery or pressure maintenance operation, excluding disposal wells.

(E) Mcf--Thousand cubic feet.

(F) Price--The five-day average spot price of West Texas Intermediate crude oil at the Midland, Texas, oil terminal as reported in The Oil Daily.

(G) Qualifying period--The 12-month period immediately preceding the most recent month of production.

(H) Qualifying property--Land subject to a State of Texas oil and gas lease issued pursuant to Texas Natural Resources Code, Chapter 32, Chapter 51, Subchapter E, or Chapter 52. Land subject to a free royalty reserved by the state under Texas Natural Resources Code, §51.054 or its predecessor statutes cannot be qualifying property.

(I) Qualifying Gulf of Mexico property--Land described in Texas Natural Resources Code, §52.011(2), that is subject to a State of Texas oil and gas lease issued pursuant to Texas Natural Resources Code, Chapter 52, Subchapter B.

(J) Qualifying reservoir--A reservoir underlying a qualifying property or a reservoir within a pooled unit that includes qualifying property, having average daily per well production during the qualifying period equal to or less than 15 BOE/day. Unless specified or unless the context clearly requires a different interpretation, the term "qualifying reservoir" includes a "qualifying Gulf of Mexico reservoir."

(K) Qualifying Gulf of Mexico (GOM) reservoir--A reservoir underlying a qualifying GOM property or a reservoir within a pooled unit that includes qualifying GOM property, having average daily per well production during the qualifying period equal to or less than 50 BOE/day.

(L) Reservoir--A "common reservoir" as defined in Texas Natural Resources Code, Chapter 86, Subchapter A, §86.002.

(2) Qualification for Royalty Reduction.

(A) The SLB may consider a lease for a royalty reduction if:

(i) the average of the daily price of oil during the qualifying period was equal to or less than $25 per barrel; and

(ii) the applicant submits a sworn application to the SLB which includes:

(I) proof that the applicant is the lease operator as shown by the most current RRC records;

(II) proof that the land is qualifying property;

(III) proof that the reservoir is a qualifying reservoir, including proof of the reservoir's volume of oil, condensate, and/or natural gas produced from, or attributable to, the lease during the qualifying period;

(IV) a representation that the lease is in force and effect; and

(V) such additional information as may be required upon written request by GLO staff.

(B) GLO staff will review the application and submit it and a recommendation to the SLB. The staff shall include in the recommendation information regarding any other royalty interests in the tract, including royalty interests held by owners of the soil (or their successors in interest) of Relinquishment Act lands, as defined in §9.1 of this title (relating to Definitions). Thereafter, if the SLB finds that all requirements under subparagraph (A) of this paragraph are met, the SLB may approve the application or may condition approval on specified requirements. In determining whether to grant a reduction in the royalty rate, the SLB may consider whether the qualifying property or qualifying Gulf of Mexico property is being operated efficiently, including whether the property is pooled or has reasonable potential for the application of secondary or tertiary recovery techniques. If a qualifying reservoir for which a royalty rate reduction is sought under this section is included in a unit subject to SLB authority, the SLB may modify the terms and conditions for the unit as a condition of approving the requested reduction in the royalty rate. The SLB has the sole discretion to grant final approval. SLB approval of a reduced royalty applies only to the qualifying reservoir. The effective date of the royalty rate reduction is the first day of the month following SLB approval of the application. A reduced royalty under this incentive program is available only for a lease issued or approved by the state that is in effect on, or takes effect on or after, the effective date of this subsection.

(C) The approval of an application shall not constitute a finding that a lease has been maintained in force and effect or otherwise ratify or revive any lease.

(3) Royalty Rate. After the SLB approves an application:

(A) the SLB will determine the qualifying reservoir's applicable royalty rate according to the published reduced royalty schedules. The SLB may not set the royalty at a rate less than the lowest rate provided by statute for the category of property for which application is made.
Figure: 31 TAC §9.51(c)(3)(A) (No change.)

(B) Except as provided in subparagraph (C) of this paragraph, the royalty rate may not be reduced to less than 6.25% of 100% (one-sixteenth of eight-eighths).

(C) Royalty rate under specific types of leases:

(i) The royalty rate owed to the state under a lease issued under Texas Natural Resources Code, Chapter 52, Subchapter F (Relinquishment Act leases) or §51.195(c)(2) or (d) may not be reduced under this subsection to less than 3.125% of 100% (one thirty-second of eight-eighths). The state's royalty rate may not be reduced under this clause only if the aggregate royalty rate for the owner(s) of the soil is reduced in the same proportion. Only royalty payable by the lessee to the commissioner may be reduced by the SLB pursuant to this rule.

(ii) The royalty rate under a lease issued under Texas Natural Resources Code, Chapter 52, Subchapter C (riverbed leases), may not be reduced to a rate lower than the rate under a lease of land that:

(I) adjoins the land leased under Subchapter C; and

(II) is held or operated by, or is under the significant control of, the state's lessee.

(iii) The royalty rate under a lease issued under Texas Natural Resources Code, Chapter 32, Subchapter F (highway leases), may not be reduced to a rate that is lower than the rate under a lease of land that adjoins the land leased under Subchapter F.

(D) The qualifying reservoir's reduced royalty rate applies for two years from the effective date of the royalty rate reduction. The SLB may extend the reduced rate for additional periods not to exceed two years each. An operator may apply for a two-year extension by filing an affidavit that the conditions that existed at the time that the original royalty rate reduction was granted have not changed materially. The GLO or the SLB may require an operator to submit additional information in support of an application for extension. An operator may apply for further royalty reduction to a qualified reservoir during the anniversary month of the effective date of the current royalty rate reduction.

(E) Except as provided in subparagraph (F) of this paragraph, a reservoir that has not produced during the preceding 12 months and is located under, or is attributable to, a lease with a royalty reduction under this program, may be granted the lowest royalty rate currently allowed by the SLB for any other reservoir under, or attributable to, that lease. Such rate applies for two years from the month production from the newly productive reservoir commences. An operator must request and obtain written approval from the GLO for reduced royalty under this subparagraph.

(F) On leases with a royalty reduction under this program, a reservoir below the stratigraphic equivalent of any producing qualifying reservoir under, or attributable to, that lease may be granted the lowest royalty rate currently allowed by the SLB for any other reservoir under, or attributable to, that lease. To qualify for such reduced royalty, the deeper reservoir production cannot exceed 15 BOE per day per well (50 BOE for Gulf of Mexico properties), as shown by well tests and/or other appropriate data. If the deeper reservoir production exceeds 15 BOE per day per well (50 BOE for Gulf of Mexico properties), the royalty rate for such production is the rate specified in the lease. A royalty reduced under this subparagraph applies for one year from the month production from the deeper reservoir commences, after which the reduction terminates unless the operator by application seeks and obtains SLB approval for the reduction for that deeper reservoir.

(G) If the minimum annual royalty payment provided for in the lease exceeds the SLB-approved reduced royalty, the reduced royalty is the amount due from the lessee as the minimum annual royalty payment.

(H) If over a consecutive six-month period the average of the daily price of oil exceeds $25 per barrel, the SLB may terminate all previously granted royalty rate reductions upon 60 calendar days notice in writing to the operators of the leases for which royalty reduction has been granted.

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

Filed with the Office of the Secretary of State on August 5, 2024.

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Jennifer Jones
Chief Clerk, Deputy Land Commissioner
General Land Office
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For further information, please call: (512) 475-1859

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §§53.2, 53.3, 53.6, 53.18

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 28, 2024, adopted amendments to 31 TAC §§53.2, 53.3, 53.6, and 53.18, concerning License, Permit, and Boat and Motor Fees. Section 53.2 and §53.18 are adopted with changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 967) and will be republished. Section 53.3 and §53.6 are adopted without change and will not be republished.

The change to 53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules, and 53.18, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules - Provisions for Digital Products, replace the 30-inch length limit for spotted seatrout with a 28-inch length limit, which reflects the direction of the commission in the adoption of 57.985, published elsewhere in this issue of the *Texas Register.*

The amendments provide for the creation and issuance of the Exempt Angler Spotted Seatrout Tag, the Bonus Spotted Seatrout Tag, and duplicates of those tags, and establish the fee associated with the various versions of the tag.

In another rulemaking published elsewhere in this issue of the *Texas Register*, the department adopts an annual retention limit of one spotted seatrout of 28 inches or greater ("oversized" spotted seatrout) per appropriately licensed saltwater angler. The rules allow retention of the oversized fish via utilization of an oversized spotted seatrout tag, which will be included at no cost with the purchase of an appropriate saltwater license or saltwater endorsement. Those rules also provide for the use of an Exempt Angler Spotted Seatrout Tag and Bonus Spotted Seatrout Tag, which must be purchased separately from a fishing license (i.e., those tags are not included in the fishing license or license packages). As explained in the preamble to that adopted rulemaking, the department is attempting to facilitate the recovery of spotted seatrout populations from extreme population impacts resulting from Winter Storm Uri in February 2021, while still providing some opportunity for the public to harvest "trophy" spotted seatrout.

The amendments adopted in this rulemaking make changes necessary to include the spotted seatrout tag in the various licenses and license packages, provide for a Bonus Spotted Seatrout Tag, provide for issuance of duplicate tags for lost or destroyed tags, provide a mechanism for persons who are exempt by statute or

rule from license requirements to obtain tags, provide for the use of digital versions of the tags, and establish the tag fee ($3.00).

The department received 361 comments opposing adoption of the rules as proposed. Of those comments, 115 provided a reason or rationale for opposing adoption. Those comments, followed by the department's response to each, follow. The department notes that because some comments addressed more than one concern, the total number of comments being addressed by categorized reason for disagreement will not match the total number of commenters opposing adoption.

The department received 31 comments opposing adoption on the basis that the bonus tag fee should be higher. The commenters suggested various higher fee amounts. The department disagrees with the comments and responds that the fee amount for the seatrout tag mirrors the fee amount for the red drum tag and reflects the administrative cost to the department to implement the tagging system. No changes were made as a result of these comments.

The department received eight comments opposing adoption on the basis that there should be no charge for the tags. The department disagrees with the comments and responds that all fishing licenses with a saltwater endorsement will include a spotted seatrout tag at no additional cost. The fees established in this rulemaking apply only to persons who are exempt from license requirements (i.e., not required to obtain or possess a license while fishing) and persons who have already utilized a license tag for an oversized spotted seatrout and seek to retain an additional oversize spotted seatrout as provided in Chapter 57, Subchapter N, Division 2 (Bonus Spotted Seatrout Tag). No changes were made as a result of these comments.

The department received five comments opposing adoption on the basis that the spotted seatrout tag should be sold separately from fishing licenses (i.e., not included with licenses and license packages). The department disagrees with the comments and responds that the logistical complexity and customer inconvenience associated with a stand-alone sales model would be problematic, and in any case, a similar tag system for the red drum fishery has been in place for many years without issue. No change was made as a result of the comments.

The department received four comments that opposed adoption and stated the rules will result in negative economic impacts as a consequence of the spotted seatrout tag system. The department disagrees with the comments and responds that the maximum annual economic impact to any person affected by the rules would be the one-time $3 fee for an oversized spotted seatrout tag or bonus oversized spotted seatrout tag, which the department believes is not a significant burden or barrier. No changes were made as a result of the comments.

The department received 41 comments opposing adoption on the basis that the rules constitute government overreach and overregulation. The department disagrees with the comments and responds that the department has both the statutory duty and the statutory authority to manage and conserve wildlife resources of the state for the enjoyment of the public and that the rules as adopted are consistent with the regulatory authority and direction delegated to the commission by the legislature. No changes were made as a result of the comments.

The department received 26 comments that opposed adoption that in some form or fashion alleged that the rules were the result of improper political or monetary influence. The department disagrees and responds that rules are solely the result of scientific investigation and the department's statutory duty to protect and maintain sustainable fisheries. No changes were made as a result of the comments.

The department received 429 comments supporting adoption of the rule as proposed.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 46 which authorizes the commission to prescribe fees for initial and duplicate tags for the take of finfish and to prescribe tagging requirements for the take of finfish; and authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species

§53.2. License Issuance Procedures, Fees, Possession, and Exemption Rules.

(a) Hunting license possession.

(1) Except as provided in this section, no person may hunt in this state without having a valid physical hunting license in immediate possession.

(2) A person may hunt in this state without having a valid physical hunting license in immediate possession if that person has acquired a license electronically and has either:

(A) a receipt, notification, or application data from the department on a smart phone, computer, tablet, or similar device indicating acquisition of a digital license described in §53.3(a)(12) of this title (relating to Combination Hunting and Fishing License Packages) or §53.4(a)(1) of this title (relating to Lifetime Licenses); or

(B) a valid confirmation number in possession while awaiting fulfilment of the physical license. Confirmation numbers shall only be valid for 20 days from date of purchase.

(3) Except as provided in this section, a person may hunt deer in this state without having a valid physical hunting license in immediate possession only if that person:

(A) has acquired a license electronically and has a valid confirmation number in possession while awaiting fulfilment of the physical license; and

(B) is lawfully hunting:

(i) under the provisions of §65.29 of this title (relating to Managed Lands Deer (MLD) Programs);

(ii) by special permit under the provisions of Chapter 65, Subchapter H of this title (relating to Public Lands Proclamation);

(iii) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0271; or

(iv) by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(4) For the purposes of this chapter, any person under the age of 17 is a resident.

(b) Fishing license possession.

(1) A person may fish in this state without having a valid physical fishing license in immediate possession if that person:

(A) is exempt by rule or statute from holding a fishing license; or

(B) has acquired a license electronically and has either:

(i) a receipt, notification, or application data from the department on a smart phone, computer, tablet, or similar device indicating acquisition of a digital license described in §53.3(a)(12) of this title or §53.4(a)(1) of this title; or

(ii) a valid confirmation number in possession while awaiting fulfilment of the physical license. Confirmation numbers shall only be valid for 20 days from date of purchase.

(2) No person may catch and retain a red drum over 28 inches in length in the coastal waters of this state without having a valid fishing license, saltwater sportfishing stamp (unless exempt), and valid red drum tag in immediate possession, unless the person has purchased a valid digital license described in §53.3(a)(12) of this title or a valid license with digital tags under §53.4(a)(1) of this title.

(3) No person may catch and retain a spotted seatrout 28 inches or greater in length in the coastal waters of this state without having a valid fishing license, saltwater sportfishing stamp (unless exempt), and valid Spotted Seatrout tag in immediate possession, unless the person has purchased a valid digital license described in §53.3(a)(12) of this title or a valid license with digital tags under §53.4(a)(1) of this title.

(c) Issuance of licenses and stamp endorsements electronically (on-line or by telephone).

(1) A person may acquire recreational hunting and/or fishing licenses electronically from the department by agreeing to pay a convenience fee of up to $5 per license in addition to the normal license fee.

(2) A person may acquire recreational hunting and/or fishing stamp endorsements electronically from the department by agreeing to pay a convenience fee of up to $5 per stamp order in addition to the normal stamp endorsement fee(s). This fee shall not be charged if a license is acquired during the same transaction.

(3) The fees established by this subsection apply to the electronic acquisition of a digital license identified in §53.3(a)(12) of this title or §53.4(a)(1) of this title.

(d) The following categories of persons are exempt from fishing license requirements and fees:

(1) residents under 17 years of age;

(2) non-residents under 17 years of age;

(3) non-residents 65 years of age or older who are residents of Louisiana and who possess a Louisiana recreational fishing license;

(4) non-residents 65 years of age or older who are residents of Oklahoma;

(5) persons who hold valid Louisiana non-resident fishing licenses while fishing on all waters inland from a line across Sabine Pass between Texas Point and Louisiana Point that form a common boundary between Texas and Louisiana if the State of Louisiana allows a reciprocal privilege to persons who hold valid Texas annual or temporary non-resident fishing licenses; and

(6) residents of Louisiana who meet the licensing requirements of their state while fishing on all waters inland from a line across Sabine Pass between Texas Point and Louisiana Point that form a common boundary between Texas and Louisiana if the State of Louisiana allows a reciprocal privilege to Texas residents who hold valid Texas fishing licenses.

(e) A Louisiana resident who holds a valid Louisiana license equivalent to the Texas freshwater fishing guide license may engage in business as a fishing guide on all Texas waters north of the Interstate Highway 10 bridge across the Sabine River that form a common boundary between Texas and Louisiana, provided the State of Louisiana allows a reciprocal privilege to persons who hold a valid Texas resident freshwater fishing guide license. Except as may be specifically provided elsewhere in this chapter or Parks and Wildlife Code, no person may take or attempt to take fish in Texas public waters without first having obtained a Texas license valid for that purpose.

(f) An administrative fee of $3 shall be charged for replacement of lost or destroyed licenses, stamp endorsements, or permits. This fee shall not be charged for items which have a fee for duplicates otherwise prescribed by rule or statute.

(g) A license or permit issued under the Parks and Wildlife Code or this title that has been denied or revoked by the department may not be re-issued or reinstated unless the person applying for re-issuance or reinstatement applies to the department for re-issuance or reinstatement and pays to the department an application review fee of $100, in addition to any other fees or penalties required by law.

(h) A person who has purchased a valid hunting, fishing, or combination hunting and fishing license but is not in physical possession of that license in any circumstance for which the license is required may use a wireless communications device (laptop, cellphone, smart phone, electronic tablet, phablet, or similar device) to satisfy applicable license possession requirements.

(1) Upon request for proof of licensure by a department employee in the performance of official duties, a person may display one of the following images via a wireless communications device:

(A) an image of information from the Internet website of the department or mobile application verifying issuance of the license valid for the activity or circumstance for which proof of licensure has been requested; or

(B) a display image of a digital photograph of the applicable license issued to the person.

(2) The requirements of paragraph (1)(B) of this subsection are satisfied by separate digital images of the entirety of the front and back of the license. The images must be of a resolution, contrast, and image size sufficient to allow definitive verification of the information on the license.

(3) This subsection applies only to proof of licensure and does not relieve any person from any legal requirement or obligation to be in physical possession of a stamp, stamp endorsement, tag, or permit.

§53.18. License Issuance Procedures, Fees, Possession, and Exemption Rules - Provisions for Digital Products.

(a) The provisions of this section are in addition to the provisions of §53.2 of this title (relating to License Issuance Procedures, Fees, Possession, and Exemption Rules) and to the extent that any provision of this section conflicts with the provisions of §53.2 of this title, this section controls.

(b) Hunting license possession. A person may hunt in this state without having a valid physical hunting license in immediate possession if that person has acquired a license electronically and has a receipt, notification, or application data from the department on a smart phone, computer, tablet, or similar device indicating acquisition of a digital license described in §53.3(a)(12) of this title (relating to Combination Hunting and Fishing License Packages), §53.4 of this title (relating to Lifetime Licenses), or §53.5(a)(3) of this title (relating to Recreational Hunting Licenses, Stamps, and Tags).

(c) Fishing license possession.

(1) A person may fish in this state without having a valid physical fishing license in immediate possession if that person has acquired a license electronically and has a receipt, notification, or application data from the department on a smart phone, computer, tablet, or similar device indicating acquisition of a digital license described in §53.3(a)(12) of this title or §53.4 of this title.

(2) A person may catch and retain a red drum over 28 inches in length in the coastal waters of this state without having a valid fishing license, saltwater sportfishing stamp, and valid red drum tag in immediate possession, if the person has:

(A) obtained a valid digital exempt angler red drum tag; or

(B) purchased a valid digital license described in §53.3(a)(12) of this title or a valid license with digital tags under 53.4 of this title.

(3) A person may catch and retain a spotted seatrout 28 inches or greater in length in the coastal waters of this state without having a valid fishing license, saltwater sportfishing stamp, and valid spotted seatrout tag in immediate possession, if the person has:

(A) obtained a valid digital exempt angler spotted seatrout tag; or

(B) purchased a valid digital license described in §53.3(a)(12) of this title or a valid license with digital tags under 53.4 of this title.

(d) Issuance of licenses, stamp endorsements, and tags electronically (on-line or by telephone).

(1) A person may acquire a tag electronically from the department by agreeing to pay a convenience fee of up to $5 in addition to the normal tag fee, if a fee is required. This fee shall not be charged if the tag is acquired in the same transaction with a license.

(2) The fees established by this subsection apply to the electronic acquisition of a digital license, stamp endorsement, or tag identified in §53.3(a)(12) of this title, 53.4 of this title, §53.5(a)(3) of this title, or §53.6 of this title (relating to Recreational Fishing Licenses, Stamps, and Tags).

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

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 57. FISHERIES
SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 24, 2024, adopted amendments to 31 TAC §57.972 and §57.984, and new §57.985, concerning the Statewide Recreational and Commercial Fishing Proclamation. Section 57.985 is adopted with changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 970) and will be republished. Section 57.972 and §57.984 are adopted without change and will not be republished.

The change to §57.985, concerning Spotted Seatrout - Special Provisions, replaces the proposed 30-inch minimum length limit for oversized spotted seatrout with a 28-inch minimum length limit.

The amendments and new section establish an annual bag limit of one spotted seatrout of 28 inches or greater and establish an oversized spotted seatrout tagging system similar to that currently in effect for red drum.

In February of 2021 Winter Storm Uri resulted in the largest freeze-related fish kill on the Texas Gulf coast since the 1980's, severely impacting spotted seatrout populations coastwide. In an effort to accelerate recovery of the spotted seatrout population, the department promulgated an emergency rule (subsequently replaced via the standard notice and comment rulemaking process) that implemented reduced bag and slot (a mechanism to protect certain age classes) limits. Those provisions included an automatic expiration date of August 31, 2023, at which time the harvest regulations reverted to provisions that were in effect before the freeze event. Department monitoring has continuously indicated lower post-freeze catch rates (compared to the previous ten-year average), and the commission accordingly acted to implement continued measures to enhance and accelerate population recovery, adopting rules that reduced the bag limit and narrowed the "slot" limit (the upper and lower length values for lawful retention of harvested fish) for spotted seatrout. In January 2024 the commission directed staff to develop a mechanism that would allow the retention of "oversized" fish (fish in excess of the maximum length established by rule) at a level not likely to compromise or defeat recovery measures. The rules as adopted accomplish that goal and implement a tagging system to administer that harvest.

The department received 363 comments opposing adoption of the rule as proposed. Of those comments, 311 expressed a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that because some comments addressed more than one concern, the total number of comments being addressed by categorized reason for disagreement will not match the total number of commenters opposing adoption.

The department received 75 comments opposing adoption of the 30-inch minimum size limit. The commenters expressed various preferences for the length limits, both larger and smaller. The department recognizes the various length limit preferences expressed in the comments and responds that the proposed 30-inch minimum length limit was selected by analyzing the size structure and spawning potential of the population to determine a reasonable balance between recovery of the fishery and providing an opportunity for anglers to catch a larger size-class (trophy) fish; however, following public comment and discussion, the commission directed the adoption of a 28-inch minimum length limit, which offers a very similar benefit without significantly decreasing recovery time for the fishery.

The department received 60 comments opposing adoption and stating disagreement with the need for a tagging system for spotted seatrout. The department disagrees with the comments and replies that a tag system, with an option bonus or exempt angler

tag fee, is the preferred method for equitably distributing limited opportunity for anglers to catch a trophy-sized fish while sustainably managing the fishery and providing for ease of compliance and enforcement. No changes were made as a result of these comments.

The department received 56 comments opposing adoption on the basis that there should be no harvest of oversized spotted seatrout. The department disagrees with the comments and responds that allowing harvest of spotted seatrout larger than 28 inches on an extremely conservative basis (i.e., no more than two per person per year) will not significantly impact the spawning population of spotted seatrout and is sustainable for the fishery. No changes were made as a result of the comments.

The department received 41 comments opposing adoption on the basis that the rule constitutes government overreach and overregulation. The department disagrees with the comments and responds that the department has both the statutory duty and the statutory authority to manage and conserve wildlife resources of the state for the enjoyment of the public and that the rules as adopted are consistent with the regulatory authority and direction delegated to the commission by the legislature. No changes were made as a result of the comments.

The department received 40 comments opposing adoption and stating disagreement with allowing the harvest of an oversized spotted seatrout under a bonus tag in addition to the harvest of an oversized spotted seatrout under the tag issued as part of a fishing license. The department disagrees with the comments and responds that an analysis of the size structure and spawning potential of the population determined that allowing the harvest of oversized spotted seatrout on a very conservative basis (including an oversized spotted seatrout in addition to that automatically allowed under a fishing license) will provide an opportunity for anglers to catch trophy-sized fish without impeding recovery of the fishery. No changes were made as a result of the comments.

The department received 26 comments opposing adoption that in some form or fashion alleged that the rules were the result of improper political or monetary influence. The department disagrees and responds that rules are solely the result of scientific investigation and the department's statutory duty to protect and maintain sustainable fisheries. No changes were made as a result of the comments.

The department received 25 comments opposing adoption because of dissatisfaction with daily bag and slot limits. The department disagrees with the comments and responds that the commission is satisfied that the daily bag and slot limits for spotted seatrout represent the fastest pathway to recovery of the fishery with the least inconvenience to anglers. No changes were made as a result of the comments.

The department received 22 comments opposing adoption because the rarity of spotted seatrout in excess of 28 inches in length means there will be few opportunities to utilize the oversize spotted seatrout tag. The department disagrees with the comments and responds that the department's goal is to protect the reproductive potential of spotted seatrout population while the fishery recovers from the effects of Winter Storm Uri and to do so in a fashion that balances the speed of that recovery with the interests of anglers. No changes were made as a result of these comments.

The department received 19 comments that opposed adoption and stated that additional limitations should be imposed on guides and commercial anglers. The department disagrees with comments and responds that the rules as adopted apply equally to all anglers whether they are on a guided fishing trip or not. The department also notes that guides are prohibited from personally retaining fish caught during a guided trip. A small subset of the comments stated that the department should limit commercial anglers. The department responds that if the commenters are referring to fishing guides, the previous department response is applicable; otherwise, the department responds that there is no commercial fishery for spotted seatrout. No changes were made as a result of the comments.

The department received 13 comments that opposed adoption, questioning the integrity of data collection and methodology because of conflict with personal observation. The department disagrees with the comments and responds that the fishery-independent and human dimension data used to guide the department's management decisions are collected according to acknowledged and scientifically valid protocols. These and other data, such as environmental factors and angler behavior, inform all management actions taken by the department. Numerous peer-reviewed studies, management decisions, and reports have been based on these same data. The anecdotal experiences of individual anglers are neither equivalent to nor a substitute for the spatial or temporal extent of department survey effort, nor are they controlled by a sampling design. No changes were made as a result of the comments.

Eight commenters opposed adoption and expressed concern for increased release-related mortality as a result of the rules, including but not limited to fish being "gut-hooked." The department disagrees with the comments and responds that studies indicate overall high survivability (or lower percentages of release mortality) for fish released properly, especially when using artificial baits or lures. No changes were made as a result of the comments.

The department received seven comments that opposed adoption and stating that the fishery should be closed until population recovery was achieved. The department disagrees with the comments and responds that although a complete closure is without question the fastest pathway to fishery recovery, the department believes it possible to continue to provide meaningful angling opportunity while implementing effective measures to recover spawning stock biomass. No changes were made as a result of the comments.

The department received five comments opposing adoption and stating that ecosystem health and pollution should be addressed instead of harvest restrictions. The department disagrees with the comments and responds that although there are a variety of long-term factors that affect coastal ecology, the department's regulatory authority is restricted to managing fisheries resources populations. No changes were made as a result of the comments.

The department received four comments opposing adoption and stating that the spotted seatrout fishery should be managed and regulated regionally. The department disagrees with the comments and responds that regional management, in addition to presenting regulatory complexity, would not be more effective in restoring overall spawning biomass as quickly as a coastwide harvest regulation. No changes were made as a result of these comments.

The department received four comments opposing adoption because the rule as proposed would have prohibited the retention

of any oversized spotted seatrout until the tag system could be implemented at the beginning of the next license year. The department agrees with the comments and changes were made accordingly. The department responds that the commission determined that in order to reduce confusion, status quo should be maintained until the implementation of the tagging system and the annual limit for oversized fish occur on September 1, which is the beginning of the license year.

Three commenters opposed adoption and stated that instead of altering recreational harvest rules, the department should more vigorously pursue unlawful take of spotted seatrout. The department disagrees with the comments and responds that department vigilantly detects, cites, and prosecutes violators; however, law enforcement personnel cannot be everywhere at all times. The department believes that the overwhelming majority of anglers obey the law, which is supported by creel survey data indicating high compliance rates for spotted seatrout bag and size limits. Additionally, there is no evidence to suggest that unlawful take is a significant factor in current population status. Finally, the department encourages all persons with knowledge of conservation crimes to contact the department directly or via the Operation Game Thief Hotline, which pays cash rewards for information leading to the conviction of violators and keeps the identities of sources anonymous. No changes were made as a result of the comments.

The department received three comments opposing adoption on the basis that natural predation pressure should be addressed instead of harvest pressure. The department disagrees with the comments and responds that predation occurs in any natural system and there is no data to suggest that it is a major factor affecting spotted seatrout populations. Commenters specifically mentioned revising redfish regulations to alleviate pressure. Though beyond the scope of this rulemaking, the department responds that there is no evidence to suggest that redfish predation has measurable impact on the spotted seatrout fishery. No changes were made as a result of the comments.

The department received three comments opposing adoption on the basis that Sabine Lake was not effectively managed due to differential regulations in Texas and Louisiana. The department disagrees with the comment and responds that although the department works cooperatively with Louisiana to manage resources in shared waters, there is no evidence to suggest that harvest regulations on Sabine Lake, in the context of the goal of recovering the spotted seatrout population from the deleterious effects of Winter Storm Uri, are problematic. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that commercial activity, including commercial fishing, dredging, silting, and barges, debilitates habitat quality and contributes to spotted seatrout declines. Though the comment addresses issues beyond the scope of this rulemaking, the department responds that it has limited authority to regulate matters other than the recreational and commercial harvest of marine species, which does not include the authority to regulate dredging or barge traffic. A subset of commenters specifically mentioned commercial shrimp harvest's impact on the spotted seatrout fishery. The department disagrees with the comments and responds that there is no biological evidence to suggest that spotted seatrout populations are substantively affected by commercial shrimping activity. No changes were made as a result of the comments.

The department received three comments opposing adoption and stating that the harvest of oversized trout should be regulated on a daily or monthly basis, not annually. The department disagrees with the comments and responds that the annual bag limit for oversized spotted seatrout is intended to provide a very conservative harvest opportunity for trophy-sized fish while the fishery is recovering from the effects of Winter Storm Uri; allowing daily harvest would retard and perhaps jeopardize efficient recovery of populations and a monthly limit would be difficult to implement and enforce. No changes were made as a result of the comments.

Two commenters opposed adoption on the basis that the spotted seatrout population is fine and does not need management. The department disagrees with the comments and responds spotted seatrout population data indicate that population levels are below recent historical averages, which justifies prompt and effective management actions to stabilize and reverse negative population trends as quickly as possible. No changes were made as a result of the comments.

One commenter opposed adoption and stated that anglers should be allowed to harvest two oversized spotted seatrout via a bonus tag system. The department disagrees with the comment and replies that the primary goals of the regulation are to protect the spotted seatrout population and maintain some opportunity for anglers to harvest a trophy-sized spotted seatrout; however, given the rarity of spotted seatrout of greater than 28 inches in length, it is very unlikely that any angler would be able to utilize a second bonus tag. No changes were made as a result of the comments.

The department received one comment opposing adoption and stating that anglers should have to choose either a bonus red drum tag or an oversized spotted seatrout tag when purchasing a fishing license. The department disagrees and replies that because red drum and spotted seatrout are different species, they are also different fisheries that are independent from one another and not managed as a single stock; therefore, there is no biological reason to deprive anglers of fishing opportunity. No changes were made as a result of the comments.

One commenter opposed adoption and alleged that public comments are not considered by the commission because the decisions have already been made before the commission meets. The department disagrees with the comment and responds that the commission is provided with a complete record of all public comment prior to each commission meeting and a summary of public comment is provided to and deliberated by the commission at the time of the commission meeting. The department notes that the commission in this rulemaking considered public comment and adopted the rule with changes to the proposed text, which refutes assertions to the contrary. No changes were made as a result of the comments.

The department received one comment opposing adoption and stating that the rules should allow anglers under the age of 18 to retain a spotted seatrout greater than 20 inches in length per day as part of the daily bag. The department disagrees with the comment and responds that harvest regulations equitably distribute identical harvest opportunity to all anglers regardless of age. No changes were made as a result of the comment.

The department received 421 comments supporting adoption of the rule as proposed.

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.972

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 46 which authorizes the commission to prescribe fees for initial and duplicate tags for the take of finfish and to prescribe tagging requirements for the take of finfish; and authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; and to specify the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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

Filed with the Office of the Secretary of State on July 31, 2024.

TRD-202403535
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: September 1, 2024
Proposal publication date: February 23, 2024
For further information, please call: (512) 389-4775

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DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.984, §57.985

The amendment and new section are adopted under the authority of Parks and Wildlife Code, Chapter 46 which authorizes the commission to prescribe fees for initial and duplicate tags for the take of finfish and to prescribe tagging requirements for the take of finfish; and authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; and to specify the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§57.985. Spotted Seatrout - Special Provisions.

(a) On the effective date of this section, the provisions of §57.981(c)(5)(O)(iv) of this title (relating to Bag, Possession, and Length Limits) cease effect and no person may retain a spotted seatrout of 28 inches in length or greater except as provided in this section. To the extent that any provision of this section conflicts with any provision of §57.981(c)(5)(O) of this title, this section controls.

(b) The provisions of subsections (c) - (f) of this section take effect September 1, 2024.

(c) During a license year, a person may retain one spotted seatrout of greater than 28 inches in length, provided:

(1) a properly executed Spotted Seatrout Tag, a properly executed Exempt Angler Spotted Seatrout Tag, or properly executed Duplicate Exempt Spotted Seatrout Tag has been affixed to the fish; and

(2) one spotted seatrout exceeding the length limit established by subsection (a) of this section in addition to a spotted seatrout retained under the provisions of paragraph (1) of this section, provided a properly executed Bonus Spotted Seatrout Tag or properly executed Duplicate Bonus Spotted Seatrout Tag has been affixed to the fish.

(3) A spotted seatrout retained under a Spotted Seatrout Tag, an Exempt Angler Spotted Seatrout Tag, a Duplicate Exempt Spotted Seatrout Tag, or a Bonus Spotted Seatrout Tag may be retained in addition to the daily bag and possession limit as provided in §57.981(c)(5)(O) of this title.

(d) A person who lawfully takes a spotted seatrout under a digital license issued under the provisions of §53.3(a)(12) this title (relating to Super Combination Hunting and Fishing License Packages) or under a lifetime license with the digital tagging option provided by §53.4(a)(1) of this title (relating to Lifetime Licenses) that exceeds the maximum length limit established in §57.981(c)(5)(O) of this title is exempt from any requirement of Parks and Wildlife Code or this subchapter regarding the use of license tags for that species; however, that person shall immediately upon take ensure that a harvest report is created and submitted via a mobile or web application provided by the department for that purpose. If the absence of data connectivity prevents the receipt of a confirmation number from the department following the report required by this subparagraph, the person who took the spotted seatrout is responsible for ensuring that the report required by this subsection is uploaded to the department immediately upon the availability of network connectivity.

(e) It is an offense for any person to possess a spotted seatrout exceeding the maximum length established by this section under a digital license or digital tagging option without being in immediate physical possession of an electronic device that is:

(1) loaded with the mobile or web application designated by the department for harvest reporting under this section; and

(2) capable of uploading the harvest report required by this section.

(f) A person who is fishing under a license identified in §53.4(a)(1) of this title and selected the fulfilment of physical tags must comply with the tagging requirements of this chapter that are applicable to the tagging of spotted seatrout under a license that is not a digital license.

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

Filed with the Office of the Secretary of State on July 31, 2024.

TRD-202403536

James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: September 1, 2024
Proposal publication date: February 23, 2024
For further information, please call: (512) 389-4775

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PART 4. SCHOOL LAND BOARD

CHAPTER 151. OPERATIONS OF THE SCHOOL LAND BOARD

31 TAC §151.6

The School Land Board (SLB) adopts an amendment to Texas Administrative Code §151.6, concerning new procedures for the release of funds from the Real Estate Special Fund Account, pursuant to Texas Natural Resources Code, Section 51.413(b), without changes to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3790) and the text will not be republished.

INTRODUCTION AND BACKGROUND

The adopted amendments to §151.6 create new procedures for the release of funds from the Real Estate Special Fund Account to reflect legislative changes that have occurred since the current rule was adopted in 2016, as required by Section 51.413(b) of the Texas Natural Resources Code.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

The adopted amendment to §151.6 is proposed under Section 51.413(b) of the Texas Natural Resources Code, which requires the Board to adopt rules to establish the procedure that will be used by the Board to determine the date a transfer will be made and the amount of the funds that will be transferred to the available school fund or to the Texas Permanent School Fund Corporation for investment in the permanent school fund from the real estate special fund account.

STATUTES AFFECTED

Texas Natural Resources Code §51.413 and §32.061 are affected by this adopted rulemaking action.

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

Filed with the Office of the Secretary of State on August 5, 2024.

TRD-202403584
Jennifer Jones
Chief Clerk, Deputy Land Commissioner
School Land Board
Effective date: August 25, 2024
Proposal publication date: May 24, 2024
For further information, please call: (512) 475-1959

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER B. INTERACTION WITH THE PUBLIC

DIVISION 2. PROGRAMMING FOR YOUTH WITH SPECIALIZED TREATMENT NEEDS

37 TAC §380.8789

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §380.8789, Use of Clinical Polygraph in the Sexual Behavior Treatment Program, as proposed in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4578). The repeal will not be republished.

SUMMARY OF CHANGES

The section is repealed because the practice described in the rule is no longer applicable to current TJJD services.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The repeal is adopted under §2001.039, Government Code, which requires TJJD to review its rules every four years and to determine whether the original reasons for adopting reviewed rules continue to exist.

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

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

Filed with the Office of the Secretary of State on July 31, 2024.

TRD-202403542
Jana L. Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 490-7278

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CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

SUBCHAPTER A. CONTRACTS

37 TAC §385.1101

The Texas Juvenile Justice Department (TJJD) adopts amendments to §385.1101, Contract Authority and Responsibilities, without changes to the text as proposed in the June 21, 2024,

issue of the *Texas Register* (49 TexReg 4579). The amendment will not be republished.

SUMMARY OF CHANGES

Amendments to §385.1101: 1) add a definition for *total value*; 2) clarify that TJJD staff must present to the board any change order for a construction contract that exceeds $150,000 individually or cumulatively, or a dollar amount that causes the total value of the contract to exceed $300,000; 3) delete a paragraph pertaining to the approval of contracts involving the expenditure of funds for outside audit services and outside legal services; and 4) delete paragraphs pertaining to competitive solicitations, consulting services, professional services, construction services, rate setting, exemptions from the competitive bidding process for youth services, iron and steel products, and contracts with businesses that do not boycott Israel. The above deletions are adopted because it is understood that TJJD is already abiding by the statutes referenced.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The amended section is adopted under §2001.039, Government Code, which requires TJJD to review its rules every four years and to determine whether the original reasons for adopting the reviewed rules continue to exist.

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

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

Filed with the Office of the Secretary of State on July 31, 2024.

TRD-202403543
Jana L. Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2024
Proposal publication date: June 21, 2024
For further information, please call: (512) 490-7278

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PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.202, §651.222

The Texas Forensic Science Commission (Commission) adopts amendments to 37 Texas Administrative Code §651.202, Definitions, and §651.222, Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee, and Procedure for Denial of Initial Application or Renewal Application and Reconsideration without changes to the text as proposed in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3491) and will not be republished. The rule adoption adds new definitions, creates new voluntary license categories for latent print processing technicians, crime scene processing technicians, crime scene investigation analysts, and crime scene reconstruction analysts and elevates the minimum education requirement for document examiners from a high school diploma to a baccalaureate based on input received from the document examiner community.

Reasoned Justification for Rule Adoption. Under the adopted rules, crime scene processing technicians, crime scene investigation analysts, and crime scene reconstruction analysts may apply for a voluntary license by the Commission. The Commission also defines certain crime scene processing and reconstruction and document examination terms for clarity. The rule adoption is necessary to reflect adoptions made by the Commission at its July 26, 2024 quarterly meeting at which the Commission voted to incorporate the adopted changes to its administrative rules expanding its voluntary licensing program to include these new licenses and updates to the document examiner voluntary license.

Public Comment. Pursuant to § 2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on May 17, 2024 and ended on June 17, 2023. The Commission did not receive any comments from the public.

Statutory Authority. The rules are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a, its authority to regulate forensic analysts under Article 38.01 § 4-a, and its authority to establish voluntary licensing programs for forensic examinations or tests not subject to accreditation requirements under Article 38.01 § 4-a(c).

Cross reference to statute. The adoption affects Tex. Code Crim. Proc. art. 38.01 §§ 4-a and 4-a(c).

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

Filed with the Office of the Secretary of State on August 2, 2024.

TRD-202403555
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: August 22, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 936-0661

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37 TAC §651.207, §651.208

The Texas Forensic Science Commission (Commission) adopts amendments to 37 Texas Administrative Code Chapter §651.207, Forensic Analyst Licensing Requirements, Including License Term, Fee, and Procedure for Denial of Application and Reconsideration, and §651.208, Forensic Analyst and Technician License Renewal with changes to the text as proposed in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3497). The rules will be republished. The adopted amendments change the Commission's current policy for forensic analyst and forensic technician licenses to expire on the last day of

the licensee's birth month to apply only to current licensees who were initially licensed before January 1, 2024, and are renewing on or before December 31, 2026. Under the adopted rule changes, new license applicants will expire two years from the date of initial licensure. The adopted rule changes also expressly expand the eligibility requirements for the Commission's General Forensic Analyst Licensing Exam to include eligible voluntary license applicants employed at a laboratory or agency. Under the current rules, the eligibility is implied (but not expressly stated) since voluntary licensees are required to take the exam.

Reasoned Justification for Rule Adoption. Under the current license expiration rules, forensic analyst and forensic technician licenses expire on the last day of the licensee's birth month after each two-year license cycle, rather than every two years from their initial application. At the inception of the Commission's forensic analyst licensing program on January 1, 2019, a majority of the Commission's licenses expired at the same time in the even-numbered years during the Fall months, placing a heavy administrative burden both on Commission staff and licensees waiting on their licenses to be renewed at the same time. The Commission recently transitioned to last-day-of-birth-month expiration dates, which included a pro-ration of initial licensure and renewal fees and applicable continuing forensic education hours. The transition has eased the burden on staff and licensees processing license renewals for current licensees at the same time each year. However, the same dilemma does not apply for new applicants for licensure as they apply and are granted an initial license at different times throughout the year. Therefore, the adopted rule changes adjust the last-day-of-birth-month expiration policy to apply only to current licensees who were initially licensed before January 1, 2024, and are renewing on or before December 31, 2026, and new license applicants expire two years from the date of initial licensure. The rule adoption is necessary to reflect adoptions made by the Commission at its July 26, 2024 quarterly meeting at which the Commission voted to adopt changes to its current license expiration policy for new applicants to expire two years from the date of initial licensure.

Public Comment. Pursuant to § 2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on May 17, 2024 and ended on June 17, 2023. The Commission did not receive any comments from the public.

Statutory Authority. The rule is adopted under the general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 §§3-a and its authority to license forensic analysts under §4-a(b).

Cross reference to statute. The adoption affects Tex. Code Crim. Proc. art. 38.01.

§651.207. Forensic Analyst and Forensic Technician Licensing Requirements, Including Initial License Term and Fee, Minimum Education and Coursework, General Forensic Examination, Proficiency Monitoring and Mandatory Legal and Professional Responsibility Training.

(a) Issuance. The Commission may issue an individual's Forensic Analyst or Forensic Technician License under this section.

(b) License Term. A Forensic Analyst or Forensic Technician license holder must renew the license holder's license after the initial date of issuance, every two years on the day before the issuance of the initial license with the exception of §651.208(b) of this subchapter (relating to Renewal Term).

(c) Application. Before being issued a Forensic Analyst or Forensic Technician License, an applicant must:

(1) demonstrate that he or she meets the definition of Forensic Analyst or Forensic Technician set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of $220 for Analysts and $150 for Technicians/Screeners;

(B) Biennial renewal fee of $200 for Analyst and $130 for Technicians/Screeners;

(C) Pro-rated Fees for Certain License Renewals. This subsection applies to licensees initially licensed before January 1, 2024 who are renewing on or before December 31, 2026. Application fee of $220 for Analysts and $150 for Technicians for the twenty-four months of the Initial License Term. If the Analyst or Technician's renewed license term under §651.208(b) of this subchapter exceeds twenty-four months, the Analyst or Technician shall pay an additional prorated amount of $8.33 per month (for Analysts) and $5.42 per month (for Technicians) for each month exceeding two years. If the Analyst or Technician's Initial License Term under §651.208(b) of this subchapter is less than twenty-four months, the Analyst or Technician shall pay a prorated amount of $8.33 per month (for Analysts) and $5.42 per month (for Technicians) for each month in the Initial License Term;

(D) Temporary License fee of $100;

(E) Provisional License fee of $110 for Analysts and $75 for Technicians; An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted;

(F) License Reinstatement fee of $220;

(G) *De Minimis* License fee of $200 per ten (10) licenses;

(H) Uncommon Forensic Analysis License fee of $200 per ten (10) licenses; and/or

(I) Special Exam Fee of $50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts or voluntarily taking the exam under the Unaccredited Forensic Discipline Exception described in subsection (g)(5)(C) of this section;

(4) provide accurate and current address and employment information to the Commission and update the Commission within five (5) business days of any change in address or change of employment. Licensees are required to provide a home address, email address, and employer name and address on an application for a license; and

(5) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(d) Minimum Education Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) Seized Drugs Technician. An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive)). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in subsection (f) or (j) of this section applies.

(e) Specific Coursework Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an

accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(f) Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(g) Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

(A) The American Board of Forensic Toxicology;

(B) The American Board of Clinical Chemistry;

(C) The American Board of Criminalistics;

(D) The International Association for Identification; or

(E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(h) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a $50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law or employed by an agency rendering them eligible for a voluntary license

under §651.222 (*Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee and Procedure for Denial of Initial Application or Renewal Application and Reconsideration*) of this subchapter to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

(i) is currently enrolled in an accredited university as defined in §651.202 of this subchapter (relating to Definitions);

(ii) has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative who will proctor and administer the exam at the university for the student.

(C) Crime Laboratory Management and Unaccredited Forensic Discipline Exception. An Employee of a crime laboratory accredited under Texas law who is either part of the crime laboratory's administration or management team or authorized for independent casework in a forensic discipline listed below is eligible for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam:

(i) forensic anthropology;

(ii) the location, identification, collection or preservation of physical evidence at a crime scene;

(iii) crime scene reconstruction;

(iv) latent print processing or examination;

(v) digital evidence (including computer forensics, audio, or imaging);

(vi) breath specimen testing under Transportation Code, Chapter 724, limited to analysts who perform breath alcohol calibrations; and

(vii) document examination, including document authentication, physical comparison, and product determination.

(i) Proficiency Monitoring Requirement.

(1) An applicant must demonstrate participation in the employing laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements of the laboratory's accrediting body as of the date of the analyst's application, must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework by the laboratory or employing entity.

(j) Mandatory Legal and Professional Responsibility Course:

(1) All Forensic Analyst and Forensic Technician License applicants must complete the current Commission-sponsored mandatory legal and professional responsibility update at the time of their application or demonstrate that they have taken the training within the 12-month period preceding the date of their application.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

§651.208. Forensic Analyst and Forensic Technician License Renewal.

(a) Timing of Application for Renewal. The Commission may renew an individual's Forensic Analyst or Forensic Technician License up to 60 days before the expiration of the individual's license term.

(b) Renewal Term. The renewal date of a Forensic Analyst or Forensic Technician License is every two years on the day before the initial application was granted, unless the applicant is a licensee who was initially licensed before January 1, 2024, and is renewing their license on or before December 31, 2026. Licensees renewing between January 1, 2024 and December 31, 2026 expire on the last day of the license holder's birth month.

(c) Renewal Fees. The biennial renewal fee is $200 for Forensic Analysts and $130 for Forensic Technicians. Renewal fees for Forensic Analysts and Forensic Technicians initially licensed before January 1, 2024 and renewing on or before December 31, 2026 will be pro-rated on a monthly basis depending upon the birth month of the renewing license holder and the number of months in the renewal term as described in subsection (b) of this section. The pro-rated fee will be assessed at $8.33 per month (for Forensic Analysts) and $5.42 per month (for Forensic Technicians).

(d) Application. An applicant for a Forensic Analyst or Forensic Technician License renewal shall complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Renewal Application provided by the Commission, pay the required fee, attach documentation of fulfillment of Continuing Forensic Education and other requirements set forth in this section.

(e) Proficiency Monitoring Certification Form for Renewal Applicants Employed by an Accredited Laboratory. An applicant for a Forensic Analyst or Forensic Technician License renewal must provide an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties. The form must be:

(1) signed by the licensee's authorized laboratory representative; and

(2) designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized or currently participating in a training program to become authorized to perform supervised or independent forensic casework.

(f) Proficiency Monitoring Certification Form for Renewal Applicants Not Employed at an Accredited Laboratory or at an Accredited Laboratory in a Forensic Discipline Not Covered by the Scope of the Laboratory's Accreditation. An applicant for a Forensic Analyst or Forensic Technician license renewal who is employed by

an entity other than an accredited laboratory or performs a forensic examination or test at an accredited laboratory in a forensic discipline not covered by the scope of the laboratory's accreditation must provide the following items.

(1) an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory or employing entity's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties:

(A) signed by the licensee's authorized laboratory representative; and

(B) designating the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent forensic casework;

(2) written proof of the Forensic Science Commission's approval of the laboratory or employing entity's proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties; and

(3) written documentation of performance in conformance with expected consensus results in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties.

(g) Continuing Forensic Education Including Mandatory Legal and Professional Responsibility:

(1) Forensic Analyst and Forensic Technician Licensees must complete a Commission-sponsored mandatory legal and professional responsibility update by the expiration of each two-year license cycle as provided by the Commission. Forensic Technicians are not required to complete any other continuing forensic education requirements listed in this section.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

(3) All forensic analysts shall be required to satisfy the following Continuing Forensic Education Requirements by the expiration of each two-year license cycle:

(A) Completion of thirty-two (32) continuing forensic education hours per 2-year license cycle.

(B) Sixteen (16) hours of the thirty-two (32) must be discipline-specific training, peer-reviewed journal articles, and/or conference education hours. If a licensee is licensed in multiple forensic disciplines, at least eight (8) hours of discipline-specific training in each forensic discipline are required, subject to the provisions set forth in subsection (f) of this section.

(C) The remaining sixteen (16) hours may be general forensic training, peer-reviewed journal articles, and/or conference education hours that include hours credited for the mandatory legal and professional responsibility training.

(4) Continuing forensic education programs will be offered and/or designated by the Commission and will consist of independent, online trainings, readings, and participation in recognized state, regional, and national forensic conferences and workshops.

(5) Approved continuing forensic education hours are applied for credit on the date the program and/or training is delivered.

(h) Timeline for Exemption from Supplemental Continuing Forensic Education Requirements. Where a current licensee adds a forensic discipline to the scope of his or her license, the following continuing forensic education requirements apply for the supplemental forensic discipline:

(1) If the supplemental forensic discipline is added less than six (6) months prior to the expiration of the analyst's current license, no additional discipline-specific training is required for the supplemental forensic discipline.

(2) If the supplemental forensic discipline is added six (6) months or more but less than eighteen (18) months prior to the expiration of the analyst's current license, four (4) additional discipline-specific training hours are required for the supplemental forensic discipline.

(3) If the supplemental forensic discipline is added eighteen (18) months or more prior to the expiration of the analyst's current license, eight (8) additional discipline-specific training hours are required for the supplemental forensic discipline.

(i) If an applicant fails to fulfill any or all of the requirements pertaining to license renewal, continuing forensic education and the mandatory legal and professional responsibility update, the applicant may apply to the Commission for special dispensation on a form to be provided on the Commission's website. Upon approval by the Commission, the applicant may be allowed an extension of time to fulfill remaining continuing forensic education requirements.

(j) Temporary Exception to Continuing Forensic Education Requirements During January 2024 to December 2026 Transition from Application to Birthdate-Based Renewal Terms. For any licensee who has less than two years to complete the continuing forensic education requirements in subsection (g) of this section as a result of the transition from application-based renewal to birthdate-based renewal, the number of required continuing education hours in subsection (g)(3)(A) and (B) of this section for license renewal shall be pro-rated based on the number of months in the renewal term.

(k) Subsections (j) and (k) of this section expire on December 31, 2026.

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

Filed with the Office of the Secretary of State on August 2, 2024.

TRD-202403556
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: August 22, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 936-0661

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SUBCHAPTER E. NOTICE TO AND APPEALS BY LICENSE HOLDERS AND CRIME LABORATORIES

37 TAC §651.401

The Texas Forensic Science Commission (Commission) adopts new rule 37 Texas Administrative Code §651.401, Notice and Hearing without changes to the text as published in the May 17, 2024 issue of the *Texas Register* (49 TexReg 3502) to reestablish the Commission's notice and hearing process previously repealed due to a non-substantive numbering error. The rule will not be republished.

Reasoned Justification for Rule Adoption. The Commission repealed its notice and hearing process under 37 Texas Administrative Code §651.402 to correct a numbering error. This adoption establishes a policy for the Commission to notify license holders and crime laboratories that are the subject of any disciplinary action, finding of professional negligence or professional misconduct, violation of the Code of Professional Responsibility, or violation of another rule or order of the Commission. The adoption further establishes the Commission's hearing process and the process for appeals by license holders and crime laboratories before the Judicial Branch Certification Commission. The adoption also provides the option for disposition by agreement between the Commission and respondents. The changes are necessary to reflect adoptions made by the Commission at its July 26, 2024 quarterly meeting at which the Commission voted to correct the numbering error.

Public Comment. Pursuant to § 2001.029 of the Texas Government Code, the Commission gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rule. The public comment period began on May 17, 2024, and ended on June 17, 2023. The Commission did not receive any comments from the public.

Statutory Authority. The newly adopted rule is made in accordance with the Commission's rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01. It is also promulgated under Code of Criminal Procedure, Art. 38.01, § 4-c, which establishes the disciplinary action process.

Cross reference to statute. The adoption implements Code of Criminal Procedure, Art. 38.01, § 4-c.

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

Filed with the Office of the Secretary of State on August 2, 2024.

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Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) adopts 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. The repeal of §§21.143 - 21.145, 21.150, 21.152 - 21.164, 21.166 - 21.193, 21.195, and 21.197 - 21.206, and §§21.414, 21.420, 21.421, and 21.431 are adopted without changes and will not be republished. The amendments to §21.142, and §§21.409, 21.417, 21.423 - 21.426, 21.435, 21.448, 21.450, 21.452, 21.453 and 21.457; and new §§21.143 - 21.200 are adopted with changes to the proposed text as published in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2258) and will be republished.

EXPLANATION OF ADOPTED 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 in Subchapter I 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 specifically on these four issues. Comments were received and considered 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 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 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 step-by-step 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 15 of the preceding year and will provide notice to the license holder of the annual amount due on or before January 1. Quarterly, the department will issue reminder notices to all license holders maintaining any unpaid balance. The department must receive the total annual fee in full on or before November 1 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 15 and the full amount with late fee (as described in new §21.148(c)) 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 license holder under Chapter 21, Subchapter I and the number of off-premise sign permits held by the license holder 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. 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 regulated persons to provide notice to the department on removal of a permitted sign structure. The section ensures that 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 to provide the required bond.

New §21.152, License Revocation, contains the substance of existing §21.158 and adds language clarifying that an 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 that a sign outside of a city is regulated when the content of a sign face is visible to a regulated road.

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 confusion regarding the allowance of electronic signs and eliminate numerous permit denial appeals. 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 included to identify situations in which signs may not be permitted due to violations of other laws. The amended language implements a standard department practice addressed under the former 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 increases, from 60 to 90, the number of days for the department to render a decision. The section clarifies the issuance of a state permit does not supersede local ordinances and law.

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 regulated persons.

New §21.161, Zoned Commercial or Industrial Area, clarifies how zoned areas are treated for regulatory purposes. This section describes the zoned area 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. This allows for consistency in evaluating the zoned area and maintains compliance with federal law and Transportation Code §391.031(c) for zoned areas.

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, describes the unzoned 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 change greatly simplifies the process used to identify the unzoned area for the department and 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.

Certain provisions in existing §21.179, concerning the activities themselves, were moved to new §21.163, Commercial or Industrial Activity, to reduce redundancy and improve readability by regulated persons.

Finally, this rulemaking does not contain language similar to existing §21.179(h) because it is no longer necessary. The conformity of signs erected 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 license holder, 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, many of the requirements were outdated and no longer achieved their original purpose. The current rules tend to exclude modern small businesses, which are wholly legitimate commercial enterprises.

The new rules create a list of requirements that are common indicators of actual commercial or industrial activity. The listed requirements ensure that the proposed business activities meet state and federal requirements for permanent buildings, actual commercial or industrial land use, regular operation, distance to, and visibility from the highway.

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 erected 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 of 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, the department, and the Office of the Attorney General.

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

New §21.166, Notice of Commercial Sign Becoming Subject to Regulation, contains the substance of existing §21.169 and requires issuance of an unlawful sign notice to align with new §21.190, Unlawful Sign.

New §21.167, Appeal Process for Application Denials, contains the substance of existing §21.170 and increases, from 60 to 90, the number of 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 of existing §21.150 with modifications to align with new §21.173, Void Permit.

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

New §21.170, Amended Permit, contains the substance of existing §21.174 with changes to the permit amendment process and increases, from 60 to 90, the number of days for the department to render a decision on an application. The additional days are needed to address the increase in amended permit applications.

New §21.171, Permit Application Fee, contains the substance of existing §21.174 with changes to remove all references to permit renewals as permits are no longer individually renewable; operators now maintain permits directly under their licenses (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, 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, describes 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 of a license ensures an accurate count of signs and the invoicing of fees under Section §21.148, License Fees.

New §21.174, Cancellation of Permit, contains the substance of existing §21.176 and clarifies actions that will result in permit cancellation.

Subsection (c) is added to provide ability for the department to cancel a permit that was issued in conflict with state law.

Subsection (e) is added to ensure the department meets its obligation to maintain effective control under the Highway Beautification Act of 1965 (23 U.S.C. §131). Added language authorizes the department to amend and include additional noncompliance issues found after the original enforcement notice and petition are sent.

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 of existing §21.181.

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

New §21.177, Prohibited Sign Locations, contains the substance of existing §§21.145 and 21.183 and removes language that allows signs to be erected 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 of existing §21.184.

New §21.179, Location of Commercial Signs Near Certain Highway Facilities, contains the substance of existing §§21.185 and 21.186 and implements a 1,000-foot prohibition on the erection of signs near interchanges, intersection, rest areas, ramps, and highway acceleration or deceleration lanes. This prohibition extends to include these same facilities when located along non-freeway primary highways, as those features inherently increase the danger of driver distraction.

The section increases the setback distance from the right of way line for signs permitted 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 of existing §21.187.

New §21.181, Commercial Sign Height Restrictions, contains the substance of 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 42 1/2 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, and 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 new Transportation Code §391.0381, which provides 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 of notice of the receipt of the violation until the violation is timely corrected, as described in subsection §21.174, Cancellation of Permit, until the sign is removed in accordance with §21.190, 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 of existing §21.190.

New §21.184, Repair and Maintenance of Commercial Signs, contains the substance of 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 C.F.R. §750.707(d)(5), Nonconforming Signs.

New §21.185, Damage to or Destruction of Commercial Signs, requires an amended permit 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, provides that an amended permit is not required to rebuild a conforming sign and 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 of 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 of existing §21.198 and establishes a 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 be assessed penalties in accordance with §21.191, Administrative Penalties for Commercial Signs.

To ensure compliance with state and federal requirements that unlawful signs ultimately be 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 of existing §21.200.

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

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

New §21.195, Complaint Procedures, contains the substance of existing §21.203.

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

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

New §21.198, Credit for Acquired Commercial Sign, provides eligibility procedures for an active sign permit holder to apply for an acquired sign permit. 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 of existing §21.193.

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

Amendments to various sections in Chapter 21, Subchapter K, as set out below, update the references to the new sections 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 clarifying the requirements for legal access to a sign site. The section ensures compliance with Transportation Code Chapter 393, Outdoor Signs on Public Rights-of-Way. 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 nonprofit 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 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 occurring 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 §394.082 (Administrative Penalties). The section ensures that the department imposes the penalties under Transportation Code, §394.082 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, §394.082, therefore the examples are being repealed. The term "intentional" was removed for consistency between Subchapter I and K. 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 occurring 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 step-by-step 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 15 of the preceding year and will provide notice to the license holder of the annual amount due on or before January 1. Quarterly, the department will issue reminder notices to all license holders maintaining any unpaid balance. The department must receive the total annual fee in full on or before November 1 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 15 and the full renewal fee amount, together with late fee, 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 license holder 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 comport with Transportation Code §394.0203, License Fee, reduce administrative work for regulated persons and the department, and reduce late fees assessed on renewals.

Amendments to §21.457, Nonprofit Sign Permit, change the references to new §21.145, License Issuance; Amendment.

This rulemaking will take effect September 1, 2024.

COMMENTS

There was a total of 427 responses to the proposed draft rules, the overwhelming majority concerning the commercial or industrial activity requirements and local control of signs.

Comments were received from the Office of Representative Zwiener, Office of Representative Canales, Office of Representative Eckhardt, Office of Representative Ashby, Senator Molly Cook, city of Austin, city of Bandera, city of Belton, city of Benbrook, city of Boerne, city of Celina, city of Dripping Springs, city of Edinburg, city of Flower Mound, city of Fort Worth, city of Georgetown, city of Johnson City, city of Lancaster, city of McKinney, city of Mesquite, city of Newton, city of Quinlan, city of Richardson, city of Richmond, city of Round Rock, city of Spring Branch, Round Rock Chamber of Commerce, Texas Municipal League (TML), A21, American Campus Communities, Scenic Texas, Texas Hotel & Lodging Association, Texas Food & Fuel Association, Texas Association of Business, Texas Retailers Association, Texas Center for the Missing, Outdoor Advertising Association of Texas (OAAT), Reagan National Advertising, Inc. (Regan National), Kailee Mills Foundation, KEM Texas Ltd., Dark Sky Texas, University of Texas at Austin McDonald Observatory, Billboard Source, Inc., Tarrant County Black Historical and Genealogical Society, Habitat for Humanity ReStore, Goodnight Properties, Inc., Media Choice, L.P., Lindmark Companies (Lindmark), and the Office of the Attorney General (OAG). The department also received comments from 392 private citizens. A majority of these individuals expressed concern about ensuring local control of signs, commercial or industrial activity requirements, and relocation sign credits. Approximately twenty individual business owners expressed general support for outdoor advertising but did not recommend any specific changes to the rules.

Comment: Scenic Texas commented regarding the definitions of a "conforming" and "nonconforming sign" in §21.142. Scenic Texas suggested adding the word "ordinances" to the definitions to ensure lawful compliance with local ordinances.

Response: The department disagrees. The term "lawful" is utilized in accordance with state law and regulations. A city's ability to regulate signs is authorized by Sections 216.901 and 216.902 of the Texas Local Government Code, which the proposed rules cannot consider.

Comment: OAG commented regarding the definition of a "sign face" in §21.142(21). It suggested clarifying which components of a sign face are included when measuring face size.

Response: The department disagrees. The definition of "sign face in §21.142(21) comports with the Texas Federal-State Agreement on Outdoor Advertising, which states sign faces are inclusive of border and trim but excluding the base or apron, supports, and other structural members.

Comment: OAG commented that language in §21.145(a)(2), requiring surety bond companies to be authorized to conduct business in this state, is repetitive and unnecessary because §21.144(c)(3) already contains that requirement and §21.145(a) states that the department will issue a license if the requirements of §21.144 are satisfied.

Response: The department agrees and has deleted §21.145(a)(2), requiring surety bond companies to be authorized to conduct business in this state, because that requirement is already contained in §21.144(c)(3).

Comment: Media Choice, L.P. and OAG commented that the language in §21.147, describing when a license expires, was unclear.

Response: The department agrees and has amended language in §21.147(c) to clarify that a license expires on November 2 of the year for which the license renewal fee is due. Language in §21.147(b) has also been amended to clarify that the department will send electronic license renewal notices regarding the amount due not later than January 1 of the year for which the license renewal fee is due.

Comment: OAAT commented that the term "eligible" needs to be defined in §21.148(a)(2).

Response: The department agrees and has amended §21.148(b)(2) by deleting the term "eligible" and adding language clarifying that annual renewal license fees are computed using the number of valid permits and valid credits issued under §21.198. Section §21.148 has also been amended by adding subsection (e), which now states that a permit is valid if the permit has not been canceled or voided and a credit is valid if the credit has not expired or been used for a permit issued under §21.199.

Comment: Scenic Texas, TML, Senator Cook, multiple municipalities, and a majority of private citizens expressed concern about ensuring local control of commercial signs. The entities and individuals commented that language should be added to the rules clarifying that a state permit does not supersede municipal ordinances.

Response: The department agrees that language is needed to emphasize the importance and applicability of local sign regula-

tions and has added new subsection (e) to §21.159 clarifying that the department's issuance of a permit for a new location does not exempt the permit holder from the application of applicable local regulations, including codes, ordinances, or other law.

Comment: OAAT commented regarding the issuance of a permit with a non-conforming status under §21.157(b) and suggested amending the definition of "lawfully erected" in §21.142(10) by adding language specifying the acceptable types of documentation required to prove the erection date of a sign.

Response: The department disagrees. The definition of "lawfully erected" in §21.142(10) clearly establishes the requirements for determining when the department may issue a permit with a non-conforming status under §21.157(b). It would not be feasible or beneficial to provide in §21.142(10) an exhaustive list of acceptable types of documentation required to prove the erection date of a sign.

Comment: Media Choice, L.P. commented regarding permit applications for preexisting signs that §21.157 should be amended by deleting 21.157(c)(1) because a sign in a prohibited location under §21.177 is entitled to non-conforming permit if the sign was lawfully erected within a municipality prior to becoming subject to department regulation.

Response: The department disagrees. Rule §21.157(b) addresses non-conforming signs lawfully erected prior to becoming subject to department regulation. Signs not lawfully erected are not eligible for non-conforming permits. The language in §21.157(c)(1) is necessary to establish prohibited locations for signs under chapter 391 of the Transportation Code.

Comment: OAAT, Media Choice, L.P., Lindmark, Representative Ashby, and Reagan National commented regarding the permit approval timeline in §21.159(b), expressing concern about financial investment in the construction of a sign structure prior to permit approval.

Response: The department agrees with the comments and has amended §21.159(b) by deleting language requiring the permit applicant to construct a sign prior to department inspection and permit approval and adding language stating that the department will notify the applicant of permit approval if the permit application is approved and requiring the sign to be constructed at the approved location before the first anniversary of the date the notice of permit approval is sent.

Comment: OAAT commented regarding the location of signs on parcels identified for acquisition, that §21.160(c)(1) was vague concerning the appropriate time frame to file a permit application for a sign location within the limits of a transportation project.

Response: The department disagrees that §21.160(c)(1) is vague concerning the appropriate time frame for submitting a permit application. The language clearly states that the department may refuse to issue a permit or approve an application for an amended permit if the location of the sign is 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.

Comment: Media Choice, L.P. commented regarding commercial sign location requirements that §21.160(c) should be amended by adding language specifying that if the proposed sign location is not located within the portion of the parcel identified for acquisition, then the site will not be subject to a taking or impacted by the acquisition.

Response: The department disagrees that additional language is needed in §21.160(c). The existing language ensures the timely acquisition of property for highway construction projects. The department maintains that a permit denied under this section is subject to appeal.

Comment: Media Choice, L.P. commented regarding electronic sign spacing requirements that §21.160(e) should be amended by adding language stating that electronic sign spacing requirements within a certified city should only apply on the same side of the road as the proposed sign location.

Response: The department disagrees. The regulation of sign spacing inside a certified city is controlled by a municipality on behalf of the department. A certified city may establish electronic sign spacing requirements that are more or less restrictive than state regulations.

Comment: Media Choice, L.P. commented regarding zoned commercial or industrial areas that §21.161(a)(1) should be deleted because it imposes an additional and unnecessary restriction upon the general commercial or industrial zoning designations of a municipality and creates an additional burden of establishing a new zoning layer upon the municipality's designation.

Response: The department agrees that §21.161 should be amended to clarify the evaluation criteria set forth in Code of Federal Regulations §750.708 and Transportation Code §391.032. Section 21.161(a) has been amended by revising the language to provide that a zoned commercial or industrial area is an area containing at least one commercial or industrial activity located within 800 feet from the center of the existing or proposed sign structure and on the same side of the highway as the existing or proposed sign. Subsection (b) has also been revised to clarify that an area zoned for mixed use, regardless of the specific label, is not considered to be a zoned commercial or industrial area if the land use of the area is predominantly residential.

Comment: OAAT commented that the term "incidental" in 21.161(b) needs further definition to ensure consistent application and suggested defining the term to mean the commercial/industrial activity must be permanent.

Response: The department disagrees that the term "incidental" in 21.161(b) requires further defining because the permanent nature of a commercial or industrial activity is clearly delineated in §21.163.

Comment: Lindmark and Media Choice, L.P. commented that §21.161(b) should be deleted because it contradicts legislative authority and a city's comprehensive zoning ordinance.

Response: The department disagrees with the suggested deletion because §21.161(b)is necessary to ensure land use standards are maintained in compliance with Code of Federal Regulations §750.708(d), which states "[a] zone in which limited commercial or industrial activities are permitted as an incident to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising control purposes

Comment: KEM Outdoor commented regarding location of signs near certain highway facilities that language in §21.179(f) relating to the 10-foot sign setback to overhead transmission or distribution lines is unnecessary and adds another layer of regulation differentiating between existing and proposed signs.

Response: The department disagrees. The 10-foot sign setback distance to transmission or distribution lines added to §21.179(f)(2) incorporates requirements of the Texas Health and Safety Code and ensures a safe working environment for the department and regulated persons. The term "erected" in §21.179(e) and §21.179(f) was changed to "permitted" to better reflect a date certain, which is important for applicability of rules.

Comment: Scenic Texas commented regarding spacing of commercial signs that language should be added to §21.180(e) requiring 300 feet of spacing to another sign that is on the same side of the highway and inside the incorporated boundaries of a municipality.

Response: The department agrees. Section §21.180(e) has been amended by adding §21.180(e)(2) and language requiring 300 feet of spacing to another sign that is on the same side of the highway and inside the incorporated boundaries of a municipality.

Comment: OAAT commented regarding sign height restrictions that §21.181(a) should be amended by adding language stating that sign height measurements are from the centerline of the main-traveled way closest to the sign face, perpendicular to the sign location.

Response: The department disagrees. Amending §21.181(a) is not necessary because the method of measuring sign height is already described in §21.181(e).

Comment: Reagan National commented regarding sign height restrictions that §21.181(a) should be amended by adding language excluding from all sign height measurements a cutout that extends beyond the rectangular border of the sign.

Response: The department agrees and has amended §21.181(a) by adding language comporting with Transportation Code §391.038(a) and clarifying that a cutout that extends above the rectangular border of the sign is not included in the overall sign height measurement.

Comment: Reagan National commented regarding sign height restrictions that §21.181 should be amended by adding language reiterating that a permit is not required to rebuild a sign lawfully erected and existing on March 1, 2017, because of damage to the sign caused by the enumerated reasons in Transportation Code §391.038(c-2).

Response: The department disagrees. A new or amended permit is required in §21.181(g) because the department needs to confirm that the sign damage is a result of wind, natural disaster or vehicle damage before any construction activity is initiated by the sign owner in accordance with Transportation Code §391.038(c-1).

Comment: OAAT commented regarding effect of sign height violations on certain persons that §21.182 should include an exception for an owner that cures or removes a sign height violation after notice is received from the department.

Response: The department disagrees. The proposed exception is not necessary under §21.181 because a sign height violation can be cured pursuant to §21.174(h). If a sign height violation is cured in accordance with §21.174(h), the permit cancellation is rescinded, and the procedures referenced in §21.182 are not applicable.

Comment: KEM Outdoor commented regarding effect of sign height violations on certain persons that the targeted sign height restrictions in §21.182 to a license holder with 100 or more permitted signs is discriminatory and potentially violative of equal protection and due process laws.

Response: The department disagrees. The restrictive sign height language in §21.182 comports with existing statutory language in Transportation Code §391.0381.

Comment: Lindmark commented regarding damage to or destruction of commercial sign that §21.185 should be amended to allow a sign operator to take mitigating action while awaiting the issuance of an amended permit in order to prevent further damage to the sign structure during this period.

Response: The department disagrees. It would not be feasible or beneficial to provide in §21.185 an exhaustive list of acceptable types of undefined "mitigating action" a sign owner may take while awaiting issuance of an amended sign permit. Under §21.184(a), the sign operator may conduct certain maintenance activities without an amended permit.

Comment: Chairman Canales, OAAT, Lindmark, and Reagan National commented regarding the determination that a sign has been destroyed that the method and standard for assessing the destruction of a sign in §21.186 lacks a clear, objective standard and conflicts with federal guidance and state statute. The comments recommend retaining the methodology outlined in current rule §21.197.

Response: The department disagrees because the current regulation does not comport with the Federal Highway Administration's 2009 Destroyed Sign Guidance regarding the definition of a "destroyed" sign. The current rule utilizes a percentage of the cost to replace the sign while the 2009 guidance recommends criteria utilizing a specified percentage of damaged sign structure supports.

Comment: OAAT commented regarding the determination that a sign has been destroyed that §21.186(c) should be amended to clarify that only the above ground portion of the sign structure must be dismantled and removed pursuant to permit cancellation under §21.174(a)(2).

Response: The department agrees and has amended §21.186(c) to require the dismantling of only the above ground portion of the sign structure.

Comment: OAAT commented regarding determination that sign is destroyed that §21.186(d) should be amended by deleting language prohibiting repair of a sign structure during the permit cancellation appeal process.

Response: The department agrees and has amended §21.186(d) by deleting the prohibition of repairing a sign structure during the permit cancellation appeal process.

Comment: OAG commented regarding the department's determination that a sign has been destroyed that §21.186(b) should be rewritten to reduce confusion.

Response: The department agrees and has rewritten §21.186(b) to better clarify the procedure for disputing the determination that a sign has been destroyed.

Comment: OAAT commented regarding destruction of vegetation and prohibited access from the right of way that the department should remove the requirement §21.188(c) for a sign owner to notify the department before crossing the right of way to access a sign.

Response: The department disagrees. The notice requirement in §21.188(c) is necessary for safety and liability purposes.

Comment: Lindmark commented regarding destruction of vegetation and prohibited access from the right of way that §21.188(a)(1) should be amended to allow for vegetation management in the right of way.

Response: The department disagrees. The proposed amendment to §21.188(a)(1) is not necessary because §21.175(3) has been amended to clarify that the department may consider a sign abandoned and cancel the permit if the sign structure is overgrown by trees or other vegetation on private property.

Comment: KEM Outdoor commented regarding unlawful signs that §21.190(d) should be amended by increasing, from 45 to 60 or 90, the number of days required for removing a sign in response to a removal demand from the department under §21.190(c)(1).

Response: The department disagrees. The time for removing a sign in response to a removal demand from the department in §21.190(d) comports with statutory language in Transportation Code §391.034(b).

Comment: OAAT commented regarding administrative penalties for commercial signs that §21.191(a) should be amended to set criteria for sending notice of and for use in determining the reasonableness of penalties.

Response: The department disagrees. The language in §21.191(a) allows the department to address noncompliance with the rules by imposing and sending notice of administrative penalties in accordance with Transportation Code §391.0355.

Comment: OAAT commented regarding administrative penalties for commercial signs that §21.191(a) should be amended to restrict the imposition of administrative penalties only against those who intentionally violate the law, as provided in §21.426(a) (relating to administrative penalties for control of sign along rural roads).

Response: The department disagrees that §21.191(b) should be amended to add an intentionality requirement because the rule comports with Transportation Code §391.0355. The department agrees that §21.426 should be amended to reconcile with §21.191(a) and has deleted the intentionality requirement in §21.426(a) to comport with Transportation Code §394.082.

Comment: Reagan National commented regarding administrative penalties for commercial signs that §21.191 should be amended to clarify that administrative penalties will not be imposed during an administrative hearing process.

Response: The department disagrees that §21.191 should be amended to abate the imposition of penalties during an administrative hearing because the rule complies with Transportation Code §391.0355 for continuing violations. The department has amended §21.191(b) to clarify that administrative penalties will be "assessed" rather than "collected" for each day a continuing violation occurs.

Comment: OAG commented regarding local control of commercial signs that §21.192 should be amended to clarify that the issuance of a permit for a state acquired sign will not supersede local codes, ordinances, and applicable laws.

Response: The department disagrees with the proposed amendment to §21.192 because the department does not issue permits inside the corporate limits of a certified city.

Comment: Senator Eckhardt, Senator Cook, Mr. Weekly, American Campus Communities, and Texas Municipal League, commented regarding local control of commercial signs that §21.192(c) be amended to ensure that a state-issued permit does not supersede the ordinances of a political subdivision.

Response: The department disagrees with the proposed amendment because §21.192(c) relates specifically to certified cities that have been given authority to issue permits on behalf of the department.

Comment: Media Choice, L.P. commented regarding previously relocated commercial signs that §21.197 should be amended by removing reference to relocation permits issued before September 1, 2024.

Response: The department disagrees. The date reference in §21.197 is necessary to maintain conformity of acquired sign permits issued before the current rule amendments.

Comment: Senator Cook commented regarding the creation of the acquired sign credit in §21.198 will treat billboard owners as superior to all other property owners by granting them a

free "credit" program to relocate billboards during the following four years. No other Texas property owner receives such treatment. Please do not create this unfair and costly precedent for one class of property owners.

Response: The department disagrees. The acquired sign "credit" was promulgated into the regulations in March 2018 in current §21.192. The regulation provides a "credit" for a legally permitted sign that is acquired in a highway construction project, provided that the sign owner timely removes the sign when notified by department. The "credit" program is beneficial to the department and the taxpayers because it provides an incentive to the sign owner to remove the sign timely. Therefore, minimizing litigation, time, and cost during the acquisition phase of a highway construction project.

Comment: OAAT commented regarding credit for acquired commercial signs that §21.198 should be amended to allow the redaction of company sensitive information from leases required to be provided to the department under §21.198(a)(1)(A).

Response: The department disagrees with the proposed amendment because permit holders are not prohibited from redacting company sensitive information from leases or other documents provided to the department under §21.198 or any other rule.

Comment: OAAT and Media Choice, L.P. commented regarding credit for acquired commercial signs that §21.198(a)(1)(E) should be amended to require removal of only the above ground portion of the sign structure.

Response: The department agrees and has amended §21.198(a)(1)(E) by deleting the word "entire" and adding language requiring removal of the part of the commercial sign structure that is above ground and the filling to ground level all holes in the ground caused by the sign removal.

Comment: Scenic Texas and numerous individuals commented regarding credit for acquired commercial signs that §21.198 should be amended to make clear that issuance of a state permit does not supersede the ordinances of municipalities.

Response: The department agrees and has amended §21.159 by adding new subsection (e) stating the department's issuance of a permit for a new location does not exempt the permit holder from the application of applicable local regulations, including codes, ordinances, or other law.

Comment: Scenic Texas and numerous individuals commented regarding credit for acquired commercial signs that §21.198(c) should be amended to set forth an expiration for an acquired sign credit.

Response: The department agrees and has amended §21.198 by adding new subsection (c), which provides that a credit expires on the fourth anniversary of the date that the permit holder satisfies the requirements of §21.198(a)(1)(E).

Comment: Media Choice, L.P. commented regarding credit for acquired commercial signs that §21.198 should be amended by adding language allowing some due process for exceptional circumstances referenced in §21.198(a) and adding language clarifying that "rights" are being conveyed in §21.198(a)(1)(B).

Response: The department disagrees. It is not appropriate to condition, using the appeal process, a decision rendered by the executive director or his designee. Furthermore, sign structures are considered real property and any rights provided or conveyed under the law are addressed during the acquisition process. No "rights" are created by the issuance of a permit; therefore, there are no "rights" to be conveyed by the issuance of an acquired sign permit.

Comment: OAG commented regarding credit for acquired commercial signs that §21.198(a)(1)(C) should be amended to remove any language requiring the permit holder to agree in the conveyance document to retain possession of and title to the commercial sign structure and its associated credit because such language suggests that the credit itself is a property interest.

Response: The department agrees and has amended §21.198(a)(1)(C) by deleting the phrase "and its associated credit." This deletion clarifies that the issuance of an acquired sign credit does not create a property interest.

Comment: Media Choice, L.P. commented regarding credit for acquired commercial signs that §21.198 should be amended to clarify the method for submitting required documentation to the department.

Response: The department agrees and has amended §21.198 by adding new subsection §21.198(a)(1)(F), which requires the permit holder to provide, not later than 180 days after the date of the sign's removal, documentation in the form prescribed by the department by submitting it electronically through the department's website, www.txdot.gov.

Comment: Chairman Canales, Media Choice, L.P., and OAAT commented regarding permits issued with credit for acquired commercial sign that §21.199 should be amended to comport with current requirement in §21.193(a) of one commercial or industrial activity to qualify an unzoned area utilizing an acquired sign credit.

Response: The department agrees and has amended §21.199 by adding language to subsection (a) requiring within an unzoned commercial or industrial area only one commercial or industrial activity.

Comment: OAAT commented regarding acquired commercial sign within certified cities that §21.200 should be amended by the defining of circumstances under which the department will consider the issuance of an acquired sign credit for a sign acquired as a result of a highway construction project inside the limits of a certified city that does not allow for relocation of commercial signs.

Response: The department agrees and has amended §21.200 by revising the language to clarify the department will not issue a credit to erect a sign unless the sign owner provides a certified document from the city stating that the city is declining to allow the relocation.

Comment: TML commented regarding acquired commercial sign within certified cities that §21.200 should be amended to clarify that the department will not issue a state permit inside the corporate limits of a certified city.

Response: The department agrees and has amended §21.200 by revising the language to clarify the department will neither issue a permit to erect a sign within a certified city nor issue a credit to erect a sign outside of the certified city unless the sign owner provides a certified document from the city stating that the city is declining to allow the relocation.

SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND PRIMARY HIGHWAYS

43 TAC §§21.142 - 21.200

STATUTORY AUTHORITY

The amendments, and new sections are adopted 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 erected and maintained in compliance 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) 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) 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) License--A commercial sign license issued by the department.

(12) 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.

(13) 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) 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.

(15) Permit--Written authorization to erect or maintain a commercial sign structure at a specified location.

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

(17) 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.

(18) Regulated highway--A highway on the interstate highway system or primary system.

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

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

(21) 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) 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.

(23) 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.

(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 the requirements of §21.144 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 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, not later than 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) Not later than January 1 of the year for which the license renewal fee is due, the department will provide electronically to the license holder a notification of the amount 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) If the requirements of subsection (a) of this section are not met, a license expires on November 2of the year for which the license renewal fee is due. 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.

(d) An expired license that is not reinstated under this section is terminated on December 16 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 valid permits and valid credits issued under §21.198 of this subchapter (relating to Credit for Acquired Commercial Sign) 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.

(e) For the purposes of this section, a permit is valid if the permit has not been canceled or voided and a credit is valid if the credit has not expired or been used for a permit issued under §21.199 (relating to Permit Issued with Credit for Acquired Commercial Sign).

§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 equals or exceeds:

(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 permit approval and the applicant must construct the sign at the approved location before the first anniversary of the date the notice of permit approval is sent.

(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.

(e) The department's issuance of a permit for a new location does not exempt the permit holder from the application of applicable local regulations, including codes, ordinances, or other law.

§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 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 §21.179 of this subchapter (relating to Location of Commercial Signs Near Certain Highway Facilities).

(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) For purposes of this subchapter, a zoned commercial or industrial area is an area that:

(1) 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

(2) contains at least one commercial or industrial activity, as defined in §21.163 of this subchapter (relating to Commercial or Industrial Activity), that is located:

(A) within 800 feet from the center of the existing or proposed sign structure; and

(B) on the same side of the highway as the existing or proposed sign.

(b) An area that is zoned for mixed use, regardless of the specific label, is not considered to be a zoned commercial or industrial area if the land use of the area is predominantly residential.

(c) An area is not considered to be a zoned commercial or industrial area if the area is not a part of comprehensive zoning action and is created primarily to permit or accommodate commercial sign structures.

§21.162. Unzoned Commercial or Industrial Area.

(a) For purposes of this subchapter, an unzoned commercial or industrial area is an area that:

(1) is centered on the location of an existing or proposed sign structure, and measured, on the same side of the highway, 800 feet in each direction along the highway right of way to a depth of 660 feet; and

(2) contains two or more commercial or industrial activities, as defined by §21.163 of this subchapter (relating to Commercial or Industrial Activity); and

(3) 50 percent or less of which is used for residential purposes.

(b) To determine whether an area is using 50 percent or less for residential purposes under subsection (a)(3) of this section, the department will evaluate for residential use each property within the designated area that is represented to be used for residential purposes. Not more than one acre will be considered residential for each property determined to be a residence.

(c) A road or street is considered to be used for residential purposes only if residential property is located on both of its sides.

§21.163. Commercial or Industrial Activity.

(a) For the purposes of this subchapter, a 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 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;

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

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

(F) the activity has available to it directly related equipment, supplies, or services.

(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 by email to the address, 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 voided 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 the 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 voided 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 was 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 on private property.

§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 railroad right of way or utility right of way.

(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 1,000 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 highway; 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 highway.

(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, or historic site.

§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 permitted 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 permitted 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 or 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:

(1) 750 feet to another sign that is on the same side of the highway and outside the incorporated boundaries of a municipality; or

(2) 300 feet to another sign that is on the same side of the highway and inside 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, excluding a cutout that extends above the rectangular border of the sign.

(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, or its support is twisted.

(b) To dispute the department's determination that a sign has been destroyed, the sign owner must file with the department, before the 90 thday after the date that the notice of the determination was sent, documentation from 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), all the sign structure above ground must be dismantled and removed without cost to the state. No portion of the sign structure may remain above ground.

(d) If a decision to cancel a permit is appealed, the sign may not be rebuilt 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 assessed 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;

(D) Agree in the conveyance document to remove the commercial sign structure by the deadline provided by the department in a Notice to Vacate;

(E) Not later than the deadline provided in the Notice to Vacate remove the part of the commercial sign structure that is above ground and fill to ground level all holes in the ground caused by the sign removal; and

(F) Not later than 180 days after the date of the sign's removal provide the documentation required by this section in the form prescribed by the department by submitting it electronically through the department's website, www.txdot.gov.

(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.

(b) 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 is not eligible for an acquired sign credit.

(c) The department will issue a credit under this section only if all requirements of this section are satisfied. A credit expires on the fourth anniversary of the date that the permit holder satisfies the requirements of subsection (a)(1)(E) of this section.

(d) The holder of a credit issued under this section may transfer the credit. To transfer the credit, the transferee must file an electronic transfer application through the department's website, www.txdot.gov. A transferred credit retains the original credit expiration date.

§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) except that an unzoned commercial or industrial area may include only one commercial or industrial activity.

(b) The department will issue a permit under this section for a sign located in accordance with §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 credit to erect a sign unless the sign owner provides a certified document from the city stating that the city is declining to allow the relocation.

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

Filed with the Office of the Secretary of State on July 30, 2024.

TRD-202403495
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: September 1, 2024
Proposal publication date: April 12, 2024
For further information, please call: (512) 463-3164

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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 adopted 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.

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

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SUBCHAPTER K. 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 and new sections are adopted 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. The application, at a minimum, must include:

(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) 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).

(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 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 §21.425 of this subchapter (relating of Cancellation of Permit).

(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 landowner.

(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 90 days of the date 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 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 of this chapter (relating to Appeal Process for Application 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 90 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 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 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 voided.

§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.

(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 90 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 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 assessed under Transportation Code, §394.081.

(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 90 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 received by the department not later than the 90th day after the date the notice of administrative penalties is sent.

(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 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.

(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 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 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 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.

§21.452. License Renewals.

(a) To renew a license, the license holder must submit through the department's website, www.txdot.gov, not later than November 1 of the year for which the license renewal fee is due:

(1) an electronic application;

(2) the applicable renewal fee prescribed by §21.453 of this subchapter (relating to License Fees); and

(3) proof of current surety bond coverage.

(b) No later than January 1 of the year for which the license renewal fee is due, the department will provide electronically to the license holder a notification of the amount 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) If the requirements of subsection (a) of this section are not met, a license expires on November 2nd. 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.

(d) An expired license that is not reinstated under this section is terminated on December 16 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 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.

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

(e) In this section, "eligible" means any permit that does not have a status of "canceled" or "expired."

§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 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 adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 30, 2024.

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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: September 1, 2024
Proposal publication date: April 12, 2024
For further information, please call: (512) 463-3164

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43 TAC §§21.414, 21.420, 21.421, 21.431

STATUTORY AUTHORITY

The repeals are adopted 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.

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

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